

FIRST ENGROSSMENT

ENGROSSED HOUSE BILL NO. 1593

Introduced by

Representatives Hendrix, Bolinske, VanWinkle, K. Anderson, M. Ruby, McLeod, Frelich,
Steiner

Senators Boehm, Paulson, Castaneda, Clemens

1 A BILL for an Act to create and enact a new section to chapter 51-07 of the North Dakota
2 Century Code, relating to a covered platform's liability for publishing or distributing sexual
3 material harmful to a minor; and to provide a penalty.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** A new section to chapter 51-07 of the North Dakota Century Code is created
6 and enacted as follows:

7 **Liability for publishing or distributing sexual material harmful to minors - Age**
8 **verification requirements - Damages.**

9 1. As used in this section:

- 10 a. "Covered platform" means an entity that is a website that in the regular course of
11 business creates, hosts, or makes available content that meets the definition of
12 material harmful to a minor.
- 13 b. "Distribute" means to issue, sell, give, provide, deliver, transfer, transmute,
14 circulate, or disseminate by any means.
- 15 c. "Minor" means an individual under eighteen years of age.
- 16 d. "Publish" means to communicate or make information available to another
17 person on a publicly available internet website.
- 18 e. "Reasonable age verification methods" includes verifying the individual seeking to
19 access the material is eighteen years of age or older by using:
- 20 (1) A state-issued operator's license;
- 21 (2) A state-issued identification;

- 1 (3) A government-issued identification;
2 (4) A digital identification;
3 (5) A credit card or debit card;
4 (6) Bank account information; or
5 (7) Any commercially reasonable method that reliably and accurately can verify
6 a user attempting to access a covered platform is a minor and prevent
7 access by minors to the context on a covered platform.
- 8 f. "Sexual material harmful to a minor" includes material that:
- 9 (1) The average individual applying contemporary community standards would
10 find, taking the material as a whole and with respect to a minor, is designed
11 to appeal to or pander to the prurient interest;
- 12 (2) In a manner patently offensive with respect to a minor, exploits, is devoted
13 to, or principally consists of descriptions of actual, simulated, or animated
14 displays or depictions of:
- 15 (a) An individual's pubic hair, anus, genitals, or the nipple of the female
16 breast;
- 17 (b) Touching, caressing, or fondling of nipples, breasts, buttocks, anuses,
18 or genitals; or
- 19 (c) Sexual intercourse, masturbation, sodomy, bestiality, oral copulation,
20 flagellation, excretory functions, exhibitions, or any other sexual act;
- 21 (3) Taken as a whole, lacks serious literary, artistic, political, or scientific value
22 for a minor; and
- 23 (4) Is obscene, indecent, or child pornography.
- 24 2. A covered platform that knowingly publishes or distributes sexual material harmful to a
25 minor on the internet from a website must be held liable if the entity fails to perform
26 reasonable age verification methods to verify the age of an individual attempting to
27 access the material and fails to prevent access to the material by a minor.
- 28 3. A covered platform shall apply due diligence based on available technology and may
29 not rely solely on the internet protocol address to confirm the location of an individual
30 seeking to access the material.

- 1 4. This section only applies to a minor who is a permanent resident in this state and has
2 been present in the state for at least thirty-one consecutive days.
- 3 5. A covered platform or third party must ensure that a reasonable age verification
4 method is designed to anonymize an individual's identity, may not retain any
5 identifying information of the individual after access has been granted to the material,
6 and be incapable of being used to create a record of the individual's online activity.
- 7 6. A covered platform found to have violated subsection 2 or 3 is liable for damages and
8 subject to a fine of ten thousand dollars for each day the violation occurs.
- 9 7. The attorney general shall enforce this section.
- 10 8. A civil action may be brought against any covered platform, or third party that performs
11 the required age verification on behalf of the covered platform, by:
 - 12 a. A parent or guardian whose minor child was allowed access to the material in
13 violation of subsection 2; or
 - 14 b. An individual whose identifying information is retained in violation of subsection 5.
- 15 9. An individual authorized to bring a civil action under subsection 8 may seek and the
16 court may award:
 - 17 a. An injunction to enjoin continued violation of this section;
 - 18 b. Compensatory and exemplary damages; and
 - 19 c. Costs and fees, including reasonable attorney fees.
- 20 10. This section does not apply to any bona fide news or public interest broadcast,
21 website video, report, or event, and may not be construed to affect the rights of any
22 news-gathering organization.
- 23 11. An internet service provider or its affiliates or subsidiaries, a search engine, a cloud
24 service provider, or an application store may not be held to have violated this section
25 solely for providing access or connection to or from a website or other information or
26 content on the internet or a facility, system, or network not under the provider's control,
27 including transmission, downloading, intermediate storage, access software, or other
28 forms of access or storage to the extent the provider is not responsible for the creation
29 of the content of the communication that constitutes sexual material harmful to a
30 minor.