

2024 South Dakota Legislature

House Bill 1257**AMENDMENT 1257B
FOR THE INTRODUCED BILL**

1 **An Act to require age verification by websites containing material harmful to minors.**

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 **Section 1. That § 22-24-27 be AMENDED:**

4 **22-24-27.** Terms used in §§ 22-24-25 to 22-24-37, inclusive, and sections 2 to
5 6, inclusive, of this Act, mean:

6 (1) "Contemporary community standard," the contemporary community standard of
7 the state in which the question of obscenity is to be tested, by the average person,
8 of the state;

9 ~~(2) "Covered platform," a website for which it is in the regular course of trade or~~
10 ~~business to create, host, or make available that contains a substantial portion of~~
11 ~~material harmful to minors;~~

12 ~~(2)(3)~~ "Distributed," to transfer possession of, whether with or without consideration;

13 ~~(3)(4)~~ "Exhibit," to show or display;

14 ~~(4)(5)~~ "Harmful to minors," includes in its meaning the quality of any material or of any
15 performance or of any description or representation, in whatever form, of nudity,
16 sexual conduct, sexual excitement, or sado-masochistic abuse, if it:

17 (a) Predominantly appeals to the prurient, shameful, or morbid interest of
18 minors; and

19 (b) Is patently offensive to prevailing standards in the adult community as a
20 whole with respect to what is suitable material for minors; and

21 (c) Is without serious literary, artistic, political, or scientific value;

22 ~~(5)(6)~~ "Magistrate," any circuit court or magistrate judge;

23 ~~(6)(7)~~ "Material," anything tangible which is harmful to minors, whether derived through
24 the medium of reading, observation, or sound;

25 ~~(7)(8)~~ "Matter" or "material," any book, magazine, newspaper, or other printed or written
26 material; or any picture, drawing, photograph, motion picture, or other pictorial

1 representation; or any statue or other figure; or recording, transcription or
2 mechanical, chemical, or electrical reproduction; or any other articles, equipment,
3 machines, or materials;

4 ~~(8)~~(9) "Minor," any person less than eighteen years of age;

5 ~~(9)~~(10) "Nudity," within the meaning of subdivision (4) of this section, the showing of
6 the human male or female genitals, pubic area, or buttocks with less than a full
7 opaque covering, or the showing of the female breast with less than a full opaque
8 covering or any portion thereof below the top of the nipple, or the depiction of
9 covered male genitals in a discernibly turgid state;

10 ~~(10)~~(11) "Obscene live conduct," any physical human body activity, whether performed
11 or engaged in alone or with other persons, including singing, speaking, dancing,
12 acting, simulation, or pantomiming, where:

13 (a) The dominant theme of such conduct, taken as a whole, appeals to a
14 prurient interest;

15 (b) The conduct is patently offensive because it affronts contemporary
16 community standards relating to the description or representation of sexual
17 matters; and

18 (c) The conduct is without serious literary, artistic, political, or scientific value.
19 In prosecutions under §§ 22-24-27 to 22-24-37, inclusive, if circumstances of
20 production, presentation, advertising, or exhibition indicate that live
21 conduct is being commercially exploited by the defendant for the sake of its
22 prurient appeal, such evidence is probative with respect to the nature of the
23 conduct;

24 ~~(11)~~(12) "Obscene material," material:

25 (a) The dominant theme of which, taken as a whole, appeals to the prurient
26 interest;

27 (b) Which is patently offensive because it affronts contemporary community
28 standards relating to the description or representation of sado-masochistic
29 abuse or sexual conduct; and

30 (c) Lacks serious literary, artistic, political, or scientific value.

31 In prosecutions under §§ 22-24-27 to 22-24-37, inclusive, if circumstances of
32 production, presentation, sale, dissemination, or publicity indicate that the
33 matter is being commercially exploited by the defendant for the sake of its
34 prurient appeal, such evidence is probative with respect to the nature of the
35 matter;

1 ~~(12)~~(13) "Prurient interest," a shameful or morbid interest in nudity, sex, or excretion,
 2 which goes substantially beyond customary limits of candor in description or
 3 representation of such matters. If it appears from the character of the material or
 4 the circumstances of its dissemination that the subject matter is designed for a
 5 specially susceptible audience or clearly defined deviant sexual group, the appeal
 6 of the subject matter shall be judged with reference to such audience or group;

7 ~~(13)~~(14) "Reasonable age verification," any reliable and accurate method a procedure
 8 by which a covered platform confirms that an individual attempting to access
 9 material harmful to minors is eighteen years of age or older by verifying any using
 10 the following means of identification, including:

11 (a) A state-issued driver or non-driver identification card;

12 (b) A military identification card;

13 (c) Bank account information; or

14 (d) Credit or debit card information, except cards that do not require the
 15 individual in ownership of the account to be eighteen years of age or older;
 16 or

17 (e) Any other method that reliably and accurately determines if a user of a
 18 covered platform is a minor and prevents access by minors to the content
 19 on a covered platform;

20 (15) "Sado-masochistic abuse," flagellation or torture by or upon a person who is nude
 21 or clad in undergarments, a mask or bizarre costume, or the condition of being
 22 fettered, bound, or otherwise physically restrained on the part of one who is nude
 23 or so clothed;

24 ~~(14)~~(16) "Sexual conduct," within the meaning of subdivision (4) of this section, any act
 25 of masturbation, homosexuality, sexual intercourse, or physical contact with a
 26 person's clothed or unclothed genitals, pubic area, buttocks, or if such person be
 27 a female, the breast;

28 ~~(15)~~(17) "Sexual excitement," the condition of human male or female genitals when in
 29 a state of sexual stimulation or arousal;

30 (18) "Substantial portion," more than thirty-three and one-third percent of total
 31 material on a website that meets the definition of material harmful to minors.

32 **Section 2. That a NEW SECTION be added to chapter 22-24:**

33 It is unlawful for a covered platform to publish or distribute material harmful to
 34 minors on the internet unless the platform performs a reasonable age verification to verify

1 the age of an individual attempting to access the material and prevent access by minors
2 to the material. Any parent, guardian, or custodian of a minor may bring a civil action
3 against a covered platform for violating this section and shall recover damages in the
4 amount of five thousand dollars for each separate instance that the covered platform fails
5 to perform reasonable age verification, actual damages resulting from a minor accessing
6 the material, court costs, and reasonable attorney fees.

7 **Section 3. That a NEW SECTION be added to chapter 22-24:**

8 Any covered platform or third party that performs the required age verification
9 pursuant to section 2 of this Act may not retain any identifying information of the individual
10 after access has been granted to the material. Any covered platform or third party that
11 knowingly retains identifying information of the individual is liable to the individual for
12 damages for retaining the identifying information, including court costs and reasonable
13 attorney fees.

14 **Section 4. That a NEW SECTION be added to chapter 22-24:**

15 The attorney general may investigate an alleged violation under sections 2 to 6,
16 inclusive, of this Act and initiate a civil action on behalf of the state to assess civil penalties.
17 Prior to bringing a complaint in court, the attorney general must notify the covered
18 platform and provide at least thirty days for the covered platform to comply with sections
19 2 to 6, inclusive, this Act.

20 Nothing in this section limits the right of any private person to pursue a civil action
21 under sections 2 to 6, inclusive, of this Act.

22 **Section 5. That a NEW SECTION be added to chapter 22-24:**

23 Any waiver, purported waiver, or estoppel of a person's right to bring a civil action
24 under sections 2 to 6, inclusive, of this Act is void. No court or arbitrator may enforce or
25 give effect to the waiver or estoppel, notwithstanding any choice-of-law or other provision
26 in any contract or other agreement.

27 **Section 6. That a NEW SECTION be added to chapter 22-24:**

28 Sections 2 to 6, inclusive, of this Act does not apply to any general purpose search
29 engine, internet service provider or its affiliates or subsidiaries, or cloud service provider.

1 **Section 7. That § 22-24-29 be AMENDED:**

2 **22-24-29.** A person is guilty of disseminating material harmful to minors if that
3 person knowingly gives or makes available to a minor or promotes or possesses with intent
4 to promote to minors, or if that person knowingly sells or loans to a minor for monetary
5 consideration, ~~any material described in subdivision § 22-24-27(4)~~ 22-24-27(5).

6 **Section 8. That § 22-24-58 be AMENDED:**

7 **22-24-58.** For the purposes of §§ 22-24-55 to 22-24-59, inclusive, obscene
8 material is defined pursuant to subdivision ~~22-24-27(11)~~ 22-24-27(12).