

Committee: HB 1257 A Conference Committee

Wednesday, March 06, 2024 11:00 AM

Roll Call

Present: Sen. Mehlhaff, Sen. Wink, Rep. May, Rep. Soye, and Rep. Hansen  
Excused: Sen. Schoenbeck

OTHERS PRESENT: See Original Minutes

**The meeting was called to order by Representative Hansen**

**HB 1257 : require the Executive Board of the Legislative Research Council to establish an interim study committee on minors' access to pornographic material.**

Presented by: Representative Bethany Soye

Proponents: Hollie Strand, Pennington County Sheriff's Office, Hermosa  
Norman Woods, SD Family Voice Action, Rapid City  
Michael G. Pauley, South Dakota Catholic Conference, Rapid City  
Linda Schauer, Concerned Woman For America, Alexandria, VA

**MOTION: AMEND HB 1257**

1257E

On page 1, line 1, of the Senate Engrossed bill, delete " the Executive Board of the Legislative Research Council to establish an interim study committee on minors' access to pornographic material" and insert " age verification by websites containing material harmful to minors"

On the Senate Engrossed bill, delete everything after the enacting clause and insert:  
"

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

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

- (1) "Contemporary community standard," the contemporary community standard of the state in which the question of obscenity is to be tested, by the average person, of the state;
- (2) "Covered platform," a website for which it is in the regular course of trade or business to create, host, or make available material harmful to minors;
- ~~(2)~~(3) "Distributed," to transfer possession of, whether with or without consideration;
- ~~(3)~~(4) "Exhibit," to show or display;
- ~~(4)~~(5) "Harmful to minors," includes in its meaning the quality of any material or of any performance or of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sado-masochistic abuse, if it:
  - (a) Predominantly appeals to the prurient, shameful, or morbid interest of minors; and

- (b) Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and
  - (c) Is without serious literary, artistic, political, or scientific value;
- ~~(5)~~(6) "Magistrate," any circuit court or magistrate judge;
- ~~(6)~~(7) "Material," anything tangible which is harmful to minors, whether derived through the medium of reading, observation, or sound;
- ~~(7)~~(8) "Matter" or "material," any book, magazine, newspaper, or other printed or written material; or any picture, drawing, photograph, motion picture, or other pictorial representation; or any statue or other figure; or recording, transcription or mechanical, chemical, or electrical reproduction; or any other articles, equipment, machines, or materials;
- ~~(8)~~(9) "Minor," any person less than eighteen years of age;
- ~~(9)~~(10) "Nudity," within the meaning of subdivision (4) of this section, the showing of the human male or female genitals, pubic area, or buttocks with less than a full opaque covering, or the showing of the female breast with less than a full opaque covering or any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state;
- ~~(10)~~(11) "Obscene live conduct," any physical human body activity, whether performed or engaged in alone or with other persons, including singing, speaking, dancing, acting, simulation, or pantomiming, where:
- (a) The dominant theme of such conduct, taken as a whole, appeals to a prurient interest;
  - (b) The conduct is patently offensive because it affronts contemporary community standards relating to the description or representation of sexual matters; and
  - (c) The conduct is without serious literary, artistic, political, or scientific value.
- In prosecutions under §§ 22-24-27 to 22-24-37, inclusive, if circumstances of production, presentation, advertising, or exhibition indicate that live conduct is being commercially exploited by the defendant for the sake of its prurient appeal, such evidence is probative with respect to the nature of the conduct;
- ~~(11)~~(12) "Obscene material," material:
- (a) The dominant theme of which, taken as a whole, appeals to the prurient interest;
  - (b) Which is patently offensive because it affronts contemporary community standards relating to the description or representation of sado-masochistic abuse or sexual conduct; and
  - (c) Lacks serious literary, artistic, political, or scientific value.
- In prosecutions under §§ 22-24-27 to 22-24-37, inclusive, if circumstances of production, presentation, sale, dissemination, or publicity indicate that the matter is being commercially exploited by the defendant for the sake of its prurient appeal, such evidence is probative with respect to the nature of the matter;
- ~~(12)~~(13) "Prurient interest," a shameful or morbid interest in nudity, sex, or excretion, which goes substantially beyond customary limits of candor in description or representation of such matters. If it appears from the character of the material or the circumstances of its dissemination that the subject matter is designed for a

- especially susceptible audience or clearly defined deviant sexual group, the appeal of the subject matter shall be judged with reference to such audience or group;
- (14) "Reasonable age verification," a procedure by which a covered platform confirms that an individual attempting to access material harmful to minors is eighteen years of age or older by using the following means:
- (a) A state-issued driver or non-driver identification card;
  - (b) A military identification card;
  - (c) Bank account information;
  - (d) Credit or debit card information, except cards that do not require the individual in ownership of the account to be eighteen years of age or older; or
  - (e) Any other method that reliably and accurately determines if a user of a covered platform is a minor and prevents access by minors to the content on a covered platform;
- ~~(13)~~(15) "Sado-masochistic abuse," flagellation or torture by or upon a person who is nude or clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound, or otherwise physically restrained on the part of one who is nude or so clothed;
- ~~(14)~~(16) "Sexual conduct," within the meaning of subdivision (4) of this section, any act of masturbation, homosexuality, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or if such person be a female, the breast;
- ~~(15)~~(17) "Sexual excitement," the condition of human male or female genitals when in a state of sexual stimulation or arousal.

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

It is unlawful for a covered platform to publish or distribute material harmful to minors on the internet unless the platform performs a reasonable age verification to verify the age of an individual attempting to access the material and prevent access by minors to the material.

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

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

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

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

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

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

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

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

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

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

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

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

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

Moved by: Soye  
Second by: May  
Action: Prevailed by Majority Members Elect (5-0-1-0)

Voting Yes: Mehlhaff, Wink, May, Soye, and Hansen

Excused: Schoenbeck

**MOTION: TO RECOMMEND THE CONFERENCE COMMITTEE REPORT BE ADOPTED**

Moved by: Soye  
Second by: May  
Action: Failed by Two-Thirds Majority (4-1-1-0)

Voting Yes: Mehlhaff, May, Soye, and Hansen

Voting No: Wink

Excused: Schoenbeck

**MOTION: DO NOT CONCUR IN AMENDMENTS TO HB 1257 AND APPOINT A NEW COMMITTEE**

Moved by: Soye  
Second by: May  
Action: Failed by Two-Thirds Majority (4-1-1-0)

Voting Yes: Mehlhaff, May, Soye, and Hansen

Voting No: Wink

Excused: Schoenbeck

**MOTION: TO RECOMMEND THE CONFERENCE COMMITTEE REPORT BE ADOPTED**

Moved by: Soye

Second by: May

Action: Failed by Two-Thirds Majority (4-2-0-0)

Voting Yes: Mehlhaff, May, Soye, and Hansen

Voting No: Wink and Schoenbeck

**MOTION: DO NOT CONCUR IN AMENDMENTS TO HB 1257 AND DO NOT APPOINT A NEW COMMITTEE**

Moved by: Schoenbeck

Second by: Wink

Action: Failed by Majority Members Elect (2-4-0-0)

Voting Yes: Wink and Schoenbeck

Voting No: Mehlhaff, May, Soye, and Hansen

**MOTION: DO NOT CONCUR IN AMENDMENTS TO HB 1257 AND APPOINT A NEW COMMITTEE**

Moved by: Soye

Second by: May

Action: Prevailed by Majority Members Elect (6-0-0-0)

Voting Yes: Mehlhaff, Wink, Schoenbeck, May, Soye, and Hansen

**MOTION: ADJOURN**

Moved by: Soye

Second by: Schoenbeck

Action: Prevailed by voice vote

Madisen Vetter, Committee Secretary

/s/ JON HANSEN  
Jon Hansen, Chair

/s/ LEE SCHOENBECK  
Lee Schoenbeck, Chair