

2024 South Dakota Legislature

House Bill 1257

AMENDMENT 1257E FOR THE SENATE ENGROSSED BILL

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

1 ~~An Act to require the Executive Board of the Legislative Research Council to~~
 2 ~~establish an interim study committee on minors' access to pornographic~~
 3 ~~material age verification by websites containing material harmful to minors.~~

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

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

6 ~~22-24-27. Terms used in §§ 22-24-25 to 22-24-37, inclusive, and sections 2 to~~
 7 ~~6, inclusive, of this Act, mean:~~

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

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

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

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

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

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

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

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

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

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

1 ~~(7)~~(8) "Matter" or "material," any book, magazine, newspaper, or other printed or written
2 material; or any picture, drawing, photograph, motion picture, or other pictorial
3 representation; or any statue or other figure; or recording, transcription or
4 mechanical, chemical, or electrical reproduction; or any other articles, equipment,
5 machines, or materials;

6 ~~(8)~~(9) "Minor," any person less than eighteen years of age;

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

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

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

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

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

26 ~~(11)~~(12) "Obscene material," material:

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

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

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

33 In prosecutions under §§ 22-24-27 to 22-24-37, inclusive, if circumstances of
34 production, presentation, sale, dissemination, or publicity indicate that the
35 matter is being commercially exploited by the defendant for the sake of its

1 prurient appeal, such evidence is probative with respect to the nature of the
2 matter;

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

9 (14) "Reasonable age verification," a procedure by which a covered platform confirms
10 that an individual attempting to access material harmful to minors is eighteen years
11 of age or older by using the following means:

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

13 (b) A military identification card;

14 (c) Bank account information;

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

17 or

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

21 ~~(13)~~(15) "Sado-masochistic abuse," flagellation or torture by or upon a person who is
22 nude or clad in undergarments, a mask or bizarre costume, or the condition of
23 being fettered, bound, or otherwise physically restrained on the part of one who is
24 nude or so clothed;

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

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

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

32 It is unlawful for a covered platform to publish or distribute material harmful to
33 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.

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

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

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

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

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

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

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

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

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

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

27 **22-24-29.** A person is guilty of disseminating material harmful to minors if that
28 person knowingly gives or makes available to a minor or promotes or possesses with intent

1 to promote to minors, or if that person knowingly sells or loans to a minor for monetary
2 consideration, any material described in subdivision ~~§ 22-24-27(4)~~ 22-24-27(5).

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

4 **22-24-58.** For the purposes of §§ 22-24-55 to 22-24-59, inclusive, obscene
5 material is defined pursuant to subdivision ~~22-24-27(11)~~ 22-24-27(12).

AMENDED