

An Act to require age verification of children when accessing applications from a covered application store.

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

Section 1. That a NEW CHAPTER be added to title 26:

This chapter may be cited as the South Dakota Age Verification Act

Section 2. That a NEW SECTION be added to this Act:

In this chapter:

(1) “Application” means a software application or electronic service that may be run or directed by a user on a computer, a mobile device, or any other general purpose computing device.

(2) “Application store” means a publicly available website, software application, electronic service, or platform that distributes and facilitates the download of applications from third-party developers to users of a computer, a mobile device, or any other general purpose computing device.

(2) “Child”, unless otherwise specified, means a consumer or consumers who are under 16 years of age.

(4) “Covered manufacturer” means a manufacturer of an operating system for a device or an application store.

(5) “Developer” means any person, entity or organization that creates, owns, or controls an application and is responsible for the design, development, maintenance, and distribution of the application to end users through an application store.

(6) “Online service, product, or feature” does not mean any of the following:

(a) A broadband internet access service.

(b) A telecommunications service, as defined in Section 153 of Title 47 of the United States Code.

(c) The delivery or use of a physical product.

Sec 3. That a NEW SECTION be added to this Act:

A covered manufacturer shall take commercially reasonable and technically feasible steps to:

(1) Determine or estimate age;

(2) If the covered manufacturer is an application store, obtain parental or guardian consent prior to permitting a known child to download an application from the application store, provide developers in the covered application store a signal regarding whether a parent or guardian has provided consent under this subsection, and provide the parent or guardian with the option to connect the developer of such application with the approving parent or guardian for the purpose of facilitating parental supervision tools;

(3) Provide websites, applications, and online services with a digital signal via a real time application programming interface (“API”) regarding whether an individual is:

- (a) Under the age of thirteen;
- (b) At least thirteen years of age and under sixteen years of age;
- (c) At least sixteen years of age and under eighteen years of age; or;
- (d) At least eighteen years.

Websites, applications, and online services may rely on age signals and parental consent provided under subsection(2) for purposes of complying with South Dakota law.

Sec 4. That a NEW SECTION be added to this Act:

A developer shall, to the extent applicable and technically feasible, provide readily available features for a parent or guardian to oversee a child’s use of the application as appropriate to the risks that arise from the child’s use of the developer’s application. The features provided shall include:

(1) Time restrictions, including the ability to view metrics reflecting the amount of time that the child is using the application and set daily time limits on the child’s use;

(2) Social connection information, including the ability to see which individuals or accounts are affirmatively linked to the child, such as the child’s friends, followers, or accounts that the child is following;

(3) Profile visibility settings, including the ability to determine whether the child has limited the public visibility of their profile;

(4) Block lists, including the ability to see which individuals the child has blocked; and,

(5) Reporting notices, including the ability to be notified when a child submits a report to the application concerning a potential violation of its terms and policies.

Sec 5. That a NEW SECTION be added to this Act:

Nothing in this Act, or any amendment made by this Act, shall be construed to modify, impair, or supersede the operation of any of the antitrust laws, unless otherwise specified.

A covered application store shall comply with this Act in a nondiscriminatory manner, including, but not limited to:

(1) A covered application store shall impose at least the same restrictions and obligations on its own applications and application distribution as it does on those from third party applications or application distributors.

(2) A covered application store shall not use data collected from third parties, or consent mechanisms deployed for third parties, in the course of compliance with this Act to compete against those third parties, give the covered application store's services preference relative to those of third parties, or to otherwise use this data or consent mechanism in an anticompetitive manner.

Sec. 6 That a NEW SECTION be added to this ACT:

A violation of the terms of this act is a Class 1 misdemeanor. A second or subsequent violation of this act is a Class 6 felony.

If, within 90 days of the notice required by Section 9, the business cures any noticed violation and provides the Attorney General or notifying state's attorney a written statement under oath that the alleged violations have been cured, and sufficient measures have been taken to prevent future violations, to the satisfaction of the Attorney General or the notifying state's attorney, the business shall not be criminally liable for any violation cured pursuant to this section.

Sec 7. That a NEW SECTION be added to this ACT:

The Attorney General and state's attorney or deputy state's attorney in the county where the affected child resides shall have exclusive authority to enforce violations of this Act.

Sec. 8. That a NEW SECTION be added to this ACT:

In addition to any criminal liability, any covered manufacturer or developer found to be in violation of this act shall be subject to an injunction and liable for a civil penalty of not more than two thousand five hundred dollars (\$2,500) per affected child for each negligent violation or not more than seven thousand five hundred dollars (\$7,500) per affected child for each intentional violation, which shall be assessed and recovered only in a civil action brought in the name of the people of the State of South Dakota by the Attorney General or state's attorney.

Any penalties and expenses recovered in an action brought under this title shall be deposited in the General Fund.

Sec. 9. That a NEW SECTION be added to this ACT:

If a business is not in substantial compliance with the requirements of Sections 1 through 5, inclusive, the Attorney General or the state's attorney shall provide written notice to the business, before initiating an action under this title, identifying the specific provisions of this title that is alleged to have been or are being violated.

If, within 90 days of the notice required by this subdivision, the business cures any noticed violation and provides the Attorney General or notifying state's attorney a written statement under oath that the alleged violations have been cured, and sufficient measures have been taken to prevent future violations, to the satisfaction of the Attorney General or the notifying state's attorney, the business shall not be liable for a civil penalty for any violation cured pursuant to Section 8..

Sec. 10. That a NEW SECTION be added to this ACT:

Nothing in this title shall be interpreted to serve as the basis for a new private right of action under this title or any other law.

The Attorney General may solicit broad public participation and adopt regulations to clarify the requirements of this title.

Sec 11. That a NEW SECTION be added to this ACT:

This act shall take effect on January 1, 2026.