

MINUTES

Study Committee on Artificial Intelligence and Regulation of Internet Access by Minors



Senator Steve Kolbeck, Co-Chair
Representative Mike Weisgram, Co-Chair

Third Meeting, 2024 Interim
Wednesday, October 2, 2024

Room 414 – State Capitol
Pierre, South Dakota

The third interim meeting of the Study Committee on Artificial Intelligence and Regulation of Internet Access by Minors was called to order by Representative Mike Weisgram at 9:00 a.m. (CT) in Room 414 of the State Capitol in Pierre, South Dakota.

A quorum was determined with the following members answering roll call: Representatives Amber Arlint, Byron Callies, Steve Duffy, Chris Karr (remote), Bethany Soye (remote), Tony Venhuizen, and Mike Weisgram; and Senators Helene Duhamel (remote), Red Dawn Foster (remote), Liz Larson (remote), Jim Mehlhaff, David Wheeler and Steve Kolbeck. Senator Michael Walsh and Representative Eric Emery were excused.

Staff members present included Amanda Marsh, Committee Services Administrator; Jacob Carlson, Research Analyst; Dilyn Tramp, IT Support Specialist; and DeLaney Lewis, Administrative Specialist.

NOTE: For the purpose of continuity, the following minutes are not necessarily in chronological order. Also, all referenced documents distributed at the meeting are hyperlinked to the document on the Legislative Research Council website. This meeting was live streamed. The archived live stream is available at the LRC website at sdlegislature.gov.

Approval of Minutes

Senator Wheeler moved, seconded by Representative Arlint, to approve the minutes of the August 14, 2024, Study Committee on Artificial Intelligence and Regulation of Internet Access by Minors meeting. The motion prevailed on a voice vote.

American Principles Project

Mr. Jon Schweppe, Director of Policy, stated that nineteen states have passed legislation requiring age verification on the website level, and there is interest in these states to add legislation at an app store level. Mr. Schweppe mentioned that there are currently no consequences for pornographic websites exposing youth to porn. Mr. Schweppe shared that on average, youth start using porn at the age of twelve.

Representative Weisgram asked if Mr. Schweppe had insight into the Paxton case in Texas. Mr. Schweppe said the rulings have thus far been encouraging for Mr. Paxton. Mr. Schweppe added that age verification is shown to be the least restrictive, and Mr. Paxton will likely win the case which will help future cases. Representative Weisgram asked if there was an update on an end verdict. Mr. Schweppe said he expects a verdict by May or June 2025.

Representative Soye asked in what order protections are put on websites, app stores, and devices, and what barriers exist. Mr. Schweppe stated that website level protections are the easiest, as pornographic sites are usually the main industry affected. The next level would be app stores where there are multiple different companies involved that might be in opposition, and device age verification would be the hardest as more businesses would be affected, such as phone carriers and streaming services. Mr. Schweppe stated that something needs to be done to protect the children of South Dakota and it will be a multi-step process; however, it is something that could be very successful in the next decade.

Senator Larson asked if Mr. Schweppe had any knowledge about the Utah bill that passed after some extreme revisions. Mr. Schweppe responded that one of the main issues was trying to put age verification on social media which led to potential violations of First Amendment rights.

Digital Progress Institute

Mr. Joel Thayer, President, Digital Progress Institute, stated that social media is harmful to children and access to social media has been linked to a rise in youth suicides. Mr. Thayer shared that a recent paper published by the Institute of Family Studies and Gallup showed that anyone who spends more than five hours a day on social media is 2.4 times more likely to have suicidal thoughts or harm themselves. Mr. Thayer emphasized there is no regulation by the federal government, and is vital that South Dakota takes the steps to implement age verification. App stores have the ability to verify age, and it can be done in a one-time verification. Mr. Thayer stated that applying age verification on the app stores will not solve every problem, but it would be a good start.

Senator Wheeler asked for more information on the consent decree with the FTC that was briefly mentioned and what would be required of app stores. Mr. Thayer replied that app stores were allowing children to download apps and make purchases, surprising parents and guardians when the purchase showed up on monthly bills. Due to these situations, the app stores were required to put up guardrails which became age verification. Mr. Thayer stated that the consent decree currently applies to app store purchases.

Senator Larson asked what in the Utah case might apply to South Dakota. Mr. Thayer reiterated that age verification is key and there are a lot of new mechanisms available to make that verification. Mr. Thayer suggested if South Dakota is looking at age verification on social media, the state should have a solid method of implementation.

Representative Soye stated that South Dakota is looking into the app (Instagram, Facebook, etc.) version for a bill. She asked how a pornography website could be regulated as it is not on an app. Mr. Thayer stated that the web browser Safari is still considered an app on devices. Anything that was to be applied to the app could also work on a web browser on the device. Mr. Thayer said the app store approach does cover the majority of what is being seen on social media and recommended a targeted bill.

Senator Kolbeck asked what the penalty could look like for age verification violations. Mr. Thayer replied that the penalty would depend on how the bill is written, and if South Dakota chose the consumer protection route, the penalty would be handled by state law enforcement under state power.

Meta

Ms. Nicole Lopez, Global Director of Youth Safety Policy, stated that Meta supports legislation in South Dakota for a minor under the age of sixteen. Ms. Lopez highlighted that parent involvement is crucial in guiding teens to verify they are not seeing or doing things they should not. She said Meta is launching teen accounts which automatically places all individuals under the age of eighteen in a restricted online environment. Teens under the age of sixteen will have a sleep mode that can be activated and give parents the ability to control when and where their teen can access their social media accounts. Ms. Lopez stated this change is in addition to the current policies, such as requiring everyone who creates an account to share their age. Ms. Lopez stated that legislation should require app stores to obtain parent approval every time their teen under the age of sixteen wants to download an app, as it is easier on parents and will empower them when overseeing their teen's experiences. Ms. Lopez stated that when a parent purchases a device and creates an account in the app store for their child, the adult can add their teen's profile and confirm they are the parent. Ms. Lopez added that the most natural time to verify age and relationship resulting in one verification. Ms. Lopez stated that once the teen account has been set up, the app will send a

notification to the parent when a teen wants to download an app. The parent can then approve or deny the download, and because the app store knows the age of the user, that would help filter out inappropriate content.

Representative Venhuizen asked how age verification works through a web browser. Ms. Lopez stated that the app store solution is specific to the app. If someone were to use a browser, the age verification applies to the browser as the browser is controlled by the same system. Ms. Lopez stated that Meta acknowledges there will be individuals that find work arounds, and Meta will continue to evolve.

Representative Soye asked why the age was set at sixteen instead of eighteen. Ms. Lopez stated that the research shows every teen is different; however, younger teens have a different developmental function than older teens. If a parent believes their child needs more supervision, the parents can control that through the parental controls. Representative Soye asked about how the default apps (Safari, Google Chrome, etc.) that are already on the phone or device when you set it up gets tied into the parental controls. Ms. Lopez commented that the parent must establish they are the parent, and then input the minor's age into the operating system. Through the operating system, that information is shared with the app store and applies the controls to that device. Ms. Lopez stated that civil enforcement is strongly preferred because criminal is likely to be more costly and time consuming for both the state and companies.

Representative Duffy asked if there is any obligation for a minor who finds work arounds, and if the child would be held accountable, or if Meta fixed the holes as they appear. Ms. Lopez stated that she could not speak for what enforcement and liability would look like, but Meta's main goal was to get the parents involved with their teen.

Senator Foster asked what mechanisms are in place if an adult chooses to lie about their age to have access to youth. Ms. Lopez stated that Meta has mechanisms in place that will eliminate adults who are attempting to access children by pretending to be teens. Senator Foster also asked if there is a mechanism that can empower parents to prohibit data collection on their children through these platforms. Ms. Lopez answered that the only data Meta collects is the city, state, and age of the individual. Ms. Lopez stated that the only data shared would be the consent from parents and the age band.

Senator Wheeler asked if Meta does any additional checks other than the app store. Ms. Lopez stated that currently when a teen opens an Instagram account, Meta is doing many things to verify a teen is really a teen. Parents enter the teenager's age when they purchase the device, and then when the teen requests to download an app, the parent can approve or deny the request and those signals will be shared with the app. Senator Wheeler asked if it rolls into the next control level as the child gets older. Ms. Lopez stated that the app store tracks the child's age, and as they get older, the app store would share this information with the apps.

International Center for Law & Economics

Mr. Kristian Stout, Director for Innovation Policy, stated there were five different concerns with the proposed legislation. Mr. Stout said the first concern he has is the proposed penalties for simple negligence which could be devastating to smaller businesses. Mr. Stout mentioned that the exclusive enforcement authority given to the Attorney General creates the potential for politically motivated actions against companies. Also, as stated before major platforms already offer robust parental control mechanisms which could lead to minimal compliance from apps and app stores. Mr. Stout stated that the cost of implementing these regulations will likely be passed on to the consumers through higher prices and reduced app availability, and smaller developers may find the compliance too costly, causing them to avoid operating in South Dakota. Mr. Stout encouraged interaction with engineers of the products and services, as well as researching what positive incentives exist, such as legal protections, regulatory barriers for more robust data sharing, or collaboration between companies in the interest of child safety.

Representative Duffy asked what constraints Mr. Stout had seen. Mr. Stout replied that other jurisdictions have tried to impose link taxes or journalism taxes, and other companies have stated it is not worth the cost involved in offering services. Mr. Stout stated that larger companies could put gates up around South Dakota and not provide services.

Senator Wheeler asked about the Zero Knowledge proofs and how it might be involved. Mr. Stout replied that it is a third party that validates age verification which would then give a “token” to be shown as an age verification, without having to release any personal information more than once. That way personal information is given to one place rather than several, giving more protection.

NetChoice

Mr. Justin Hill, NetChoice, said that some states are passing a model policy to educate parents and children in school. Mr. Hill stated there are many places where children can access harmful content. Mr. Hill stated that there are parental controls already in place to restrict when children can be on applications. Mr. Hill shared that his children were put through the curriculum in a school in Florida where the parents went through a class to educate themselves on how to control children’s devices and how to locate the programs to help keep youth safe.

Senator Wheeler asked what the disconnect is between Meta and NetChoice when Meta is a member of NetChoice. Mr. Hill replied that all members have a first amendment right and Meta is aware of NetChoice’s position.

Representative Weisgram asked about where the Teen Online Safety Act was in place and where the funding came from. Mr. Hill replied Florida is currently using the Teen Online Safety Act and the Department of Education absorbed the cost. Mr. Hill added that public schools are mandated to have this program in Florida.

Public Testimony

Ms. Dawn Morris, self, Pierre, supported the proposal of the bills the committee is drafting. Ms. Morris shared she had a strong concern about the lack of tools to supervise children online.

Mr. Chris Hood, self, stated that age verification legislation is critical to protect children from the harmful effects of pornography. He said exposure at a young age can lead to lifelong battles with shame, addiction, and even suicidal tendencies.

Mr. Caleb Williamson, State Public Policy Counsel at ACT the App Association, stated that the draft provided in the definition section is missing the social media definition. Mr. Williamson said there are many assumptions made about traditional family structure, and that there are some families where the grandparent is raising young children which creates a massive digital literacy gap. Mr. Williamson also stated there is an assumption that each child is getting a new phone or device, which may not be the case in every house, as often phones in the household get passed down as other members get new devices. Mr. Williamson emphasized that parents need to be responsible for making sure settings and protections are turned on appropriately when these devices get passed down. Mr. Williamson suggested working with local developers to create more tangible resources that can be shared with parents and educators.

Mr. Larry Fossum, self, Hartford, stated that there are laws in South Dakota that dictate how old an individual needs to be to drive a car, join the military, consume alcohol, smoke, or even vote. Mr. Fossum asked why there is no control over the access young people have to the internet. Mr. Fossum encouraged the committee to bring forward a bill like [HB 1257](#) to protect South Dakota's youth.

Mr. Norman Woods, South Dakota Family Voice Action, encouraged the committee to look at who is responsible and ensure that the individuals or companies producing harmful content to children are taking some responsibility.

Ms. Karen McNeal, self, Rapid City, stated that the Legislature needs to listen to the voice of the people and protect the youth of South Dakota.

Mr. Taylor Barkley, Director of Public Policy at the Abundance Institute, recommended finding an approach that will better achieve the goals of keeping teens safe online. Mr. Barkley also recommended revisiting the definitions in the draft legislation.

Ms. Marisol Nichols, Foundation for a Slavery Free World, supported [Legislative Proposal 2](#) requiring app stores to play a vital role in protecting children. Ms. Nichols explained the amount of inappropriate content easily available through one click off an advertisement is horrific. Ms. Nichols added that the rating on content does not put a barrier and is only a recommendation. Ms. Nichols does acknowledge that Meta is doing a lot of work to protect minors but encouraged development within the app store for age verification.

Ms. Becky Rasmussen, CEO, Call to Freedom, stated that of all the youth having inappropriate interaction online, only ten percent share that information and seek help. Ms. Rasmussen stated that suicide rates, especially among male youth, are on the rise. Ms. Rasmussen shared that Call to Freedom has a program called Speak Up that is available to kids starting in kindergarten that teaches students what safe and unsafe interactions might look like. Ms. Rasmussen stated parents need the education and tools that are readily available to protect South Dakota youth.

Ms. Khara Boender, State Policy Director, Computer & Communications Industry Association, stated that age verification is not the least restrictive way to keep children safe. Ms. Boender encouraged parents to educate themselves and use the current tools available to protect South Dakota's youth.

Subcommittee Reports

Legal Definition for Artificial Intelligence

Representative Karr stated that the subcommittee found the Colorado artificial intelligence definition was at the top of the list. Representative Karr stated that in [Legislative Proposal 4](#), he proposed sections two, five, six, and nine be removed as they were not relevant in South Dakota. Representative Karr asked Mr. Christian Moriarty to speak to the committee about an artificial intelligence definition.

Mr. Christian Moriarty, Professor of Ethics & Law, St. Petersburg College, stated there is no single definition. Mr. Moriarty said the Colorado definition is overly broad and covers a wide range of issues without specifically calling out artificial intelligence. Mr. Moriarty suggested defining what artificial intelligence is not.

Senator Duhamel asked what the best definition for artificial intelligence is. Mr. Moriarty stated that European definitions would be something to look at and combine with the Colorado definition.

Representative Karr stated he would like to meet as a subcommittee to look at the suggestions from Mr. Moriarty and draft a proposal for legislation to bring to the next meeting.

Age Verification Legislation (Social Media and Pornographic Sites)

Senator Duhamel stated there were three draft proposals. [Legislative Proposal 1](#) was an app store age verification and parental rights act with a criminal penalty. [Legislative Proposal 2](#) was the same except with a civil penalty. [Legislative Proposal 3](#), a device-based age verification and parental rights act, was device-based legislation that would likely have a lot of opposition as it affected numerous companies. She shared that app-based legislation would be easier as it would likely not have as much opposition. Senator Duhamel stated that there were a few things to consider moving forward: think about what data protection looks like, is there use of third-party companies, does the data get deleted after age has been verified or can that data be sold, and does the proposed legislation have a civil or criminal component.

Representative Soye stated there was also [Legislative Proposal 5](#) which included a website level age verification that added a criminal enforcement mechanism that includes the safe harbor provision.

Prohibition of the Use of Cell Phones in Public Schools

Representative Arlint provided statistics gathered by the subcommittee from the school districts in South Dakota. She said of the participating school districts, 93.5 percent of districts have a device policy in place, 4.5 percent of the school districts do not have a policy, and two percent are currently working on a policy. Representative Arlint explained that of the school districts that currently have a policy in place, thirteen percent have a full ban, fifteen percent have a classroom-by-classroom approach, fifteen percent allow students to maintain possession of the device but it may not be used during school, and the remaining sixty-six percent allow students to maintain possession of the device and use it during their free time. Representative Arlint shared that thirty percent of schools need help at the state level and seventy percent do not. Representative Arlint stated there are three options moving forward: local control, creating a default policy with the ability for the school districts to create a policy that better fits that school district, or moving forward with legislation for a statewide policy. After further discussion, the committee came to a consensus that at this time there would be no action by the legislature.

Committee Discussion

Senator Wheeler moved, seconded by Representative Venhuizen, to draft bills using Legislative [Proposal 1](#) and Legislative [Proposal 3](#) as discussed. The motion prevailed on a roll call vote with 11 AYES and 4 EXCUSED. Voting AYE: Arlint, Callies, Duffy, Duhamel, Larson, Mehlhaff, Soye, Venhuizen, Wheeler, Kolbeck, and Weisgram. EXCUSED: Emery, Foster, Karr, and Walsh.

Adjournment

The final meeting of the Study Committee on Artificial Intelligence and Regulation of Internet Access by Minors will be held on October 23, 2024, in Room 414 of the State Capitol, Pierre, starting at 9:00 a.m. (CT).

Representative Callies moved, seconded by Senator Kolbeck, that the Study Committee on Artificial Intelligence and Regulation of Internet Access by Minors meeting be adjourned. The motion prevailed on a voice vote.

The Committee adjourned at 3:39 p.m.