

2025 South Dakota Legislature

Senate Bill 18**AMENDMENT 18A
FOR THE INTRODUCED BILL**

1 **An Act to require age verification by websites containing material that is harmful to**
2 **minors, and to provide a penalty therefor.**

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

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

5 **22-24-27.** Terms used in §§ 22-24-25 to 22-24-37, inclusive, and sections ~~2 to 5~~
6 4 to 8, inclusive, of this Act, mean:

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

10 (2) "Covered platform," a website that, in the regular course of the website's trade or
11 business, creates, hosts, or makes available content, of which a substantial portion
12 is material that is harmful to minors;

13 ~~(2)(3)~~ "Distributed," to transfer possession of, whether with or without consideration;

14 ~~(3)(4)~~ "Exhibit," to show or display;

15 ~~(4)(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 ~~(5)(6)~~ "Magistrate," any circuit court or magistrate judge;

24 ~~(6)(7)~~ "Material," anything tangible ~~which~~ that is harmful to minors, whether derived
25 through 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~~ any 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~~ the evidence is probative with respect to the nature
25 of the 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~~ That is patently offensive because it affronts contemporary
30 community standards relating to the description or representation of sado-
31 masochistic abuse or sexual conduct; and

32 ~~Lacks~~ That 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~~ the evidence is probative with respect to the nature
2 of the matter;

3 ~~(12)~~(13) "Prurient interest," a shameful or morbid interest in nudity, sex, or excretion,
4 ~~which~~ that 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~~ must be judged with reference to such audience or
9 group;

10 (14) "Reasonable age verification," any method by which a covered platform confirms
11 that an individual attempting to access material that is harmful to minors is at least
12 eighteen years of age by verifying:

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

14 (b) A military identification card;

15 (c) The individual's bank account information;

16 (d) A debit or credit card from the individual that requires the individual in
17 ownership of the card to be at least eighteen years of age; or

18 (e) Any other method that reliably and accurately determines if a user of a
19 covered platform is a minor and prevents a minor from accessing the
20 content of 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; and

31 (18) "Substantial portion," an amount of content created by or hosted or otherwise
32 made available on a website that is at least thirty-three and one-third percent of
33 the total content created by or hosted or otherwise made available on the website.

34 **Section 2. That § 22-24-29 be AMENDED:**

1 **22-24-29.** A person is guilty of disseminating material that is harmful to minors if
2 that person knowingly gives or makes available to a minor or promotes or possesses with
3 intent to promote to minors, or if that person knowingly sells or loans to a minor for
4 monetary consideration, ~~any material described in subdivision § 22-24-27(4) § 22-24-27.~~

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

6 **22-24-58.** For the purposes of §§ 22-24-55 to 22-24-59, inclusive, obscene
7 material is defined pursuant to ~~subdivision 22-24-27(11) § 22-24-27.~~

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

9 A covered platform must implement reasonable age verification on the platform to
10 substantiate the age of any individual who attempts to access material that is harmful to
11 minors on the covered platform and prevent a minor's access to that material.

12 A violation of this section is a Class 1 misdemeanor. A subsequent violation of this
13 section by the same covered platform is a Class 6 felony.

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

15 A covered platform or a third party that performs the age verification required by
16 section 4 of this Act on behalf of a covered platform may not retain any identifying
17 information of an individual after the covered platform grants the individual access to the
18 material.

19 A violation of this section is a Class 1 misdemeanor. A subsequent violation of this
20 section is a Class 6 felony.

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

22 If a covered platform is not in substantial compliance with the requirements of
23 section 4 or 5 of this Act, the attorney general or the state's attorney in the county where
24 the affected minor resides must provide written notice to the covered platform before
25 initiating an action pursuant to sections 4, 5, or 7 of this Act. The attorney general or
26 state's attorney shall identify in the notice the specific provision that is alleged to have
27 been violated, and what measures must be implemented by the covered platform to
28 prevent future violations.

29 If the covered platform implements the measures stated in the notice and provides
30 the attorney general or notifying state's attorney a written statement under oath that the

1 measures stated in the notice have been implemented, within ninety days of the notice
2 provided under this section, the covered platform is not criminally liable or liable for a civil
3 penalty for any cured violation of section 4 or 5 of this Act.

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

5 Any covered platform found to be in violation of section 4 or 5 of this Act is subject
6 to an injunction and liable for a civil penalty of not more than five thousand dollars per
7 incident of a minor accessing material that is harmful to minors. The civil penalty may be
8 assessed and recovered only in a civil action brought by the attorney general or state's
9 attorney in the county where the affected minor resides. The attorney general or state's
10 attorney shall forward any civil penalty collected under this section to the state treasurer,
11 for deposit in the state general fund.

12 Nothing in this section may be construed to serve as the basis for a new private
13 right of action for any violation of section 4 or 5 of this Act.

14 **Section 8. That a NEW SECTION be added to chapter 22-24:**

15 The provisions of sections 4 to 7, inclusive, of this Act do not apply to any general-
16 purpose search engine, internet service provider or its affiliates or subsidiaries, or cloud
17 service provider.