2025 South Dakota Legislature

Senate Bill 180

Introduced by: **Senator** *Peterson (Sue)*

1   **An Act to to require age verification before an individual may access an application**
2   **from an online application store.**

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

4   **Section 1. That a NEW SECTION be added to a NEW CHAPTER in title 26:**

5   Terms used in this chapter mean:

6   (1)   "Age category," one of the following categories of individual based on age:

7   (a)   "Adult," an individual who is at least eighteen years of age;

8   (b)   "Child," an individual who is under thirteen years of age;

9   (c)   "Older teenager," an individual who is at least sixteen but less than eighteen

10   years of age; and

11   (d)   "Younger teenager," an individual who is at least thirteen but less than

12   sixteen years of age;

13 (2)   "Age category data," information about a user's age that is:

14   (a)   Collected by an application store provider; and

15   (b)   Shared with developers;

16 (3)   "Age rating," a classification that provides an assessment of the suitability of an

17   application's content;

18 (4)   "Application store," a publicly available website, software application, or electronic

19   service that distributes to a user, applications from third-party developers;

20 (5)   "Application store provider," a person that owns, operates, or controls an

21   application store;

22 (6)   "Content description," a description of the specific content elements that informed

23   an application's age rating;

24 (7)   "Covered application," a software application, website, or electronic service that a

25   user may run or direct on a mobile device and is likely to be accessed by children,

26   provided that the term does not include:

1   (a)   A broadband internet access service as defined in 47 C.F.R. § 8.1 (January
2   1, 2025);
3   (b)   A telecommunications service, as defined in 47 U.S.C. § 153 (January 1,
4   2025); or
5   (c)   The delivery or use of a physical product unconnected to the internet;
6   (8)   "Developer," a person that owns or controls an application made available through
7   an application store;
8   (9)   "Knowingly," to act with actual knowledge or to act with knowledge fairly inferred
9   based on objective circumstances;
10   (10)   "Likely to be accessed by children," the reasonable expectation that an application
11   will be accessed by children, based on satisfying any of the following criteria:
12   (a)   The application is determined, based on competent and reliable evidence
13   regarding audience composition, to be routinely accessed by children; or
14   (b)   Internal research findings determine the application is routinely accessed
15   by children;
16   (11)   "Minor," an individual who is under eighteen years of age;
17   (12)   "Minor account," an account with an application store provider that:
18   (a)   Is established by an individual who the application store has determined,
19   through the application store provider's age verification methods, to be
20   under eighteen years of age; and
21   (b)   Requires affiliation with a parent account;
22   (13)   "Mobile device," a portable computing device that:
23   (a)   Provides cellular or wireless connectivity;
24   (b)   Is capable of connecting to the internet;
25   (c)   Runs a mobile operating system; and
26   (d)   Is capable of running an application through the mobile operating system;
27   (14)   "Mobile operating system," software that:
28   (a)   Manages mobile device hardware resources;
29   (b)   Provides common services for mobile device programs;
30   (c)   Controls memory allocation; and
31   (d)   Provides interfaces for applications to access device functionality;
32   (15)   "Parent," an individual who has the legal authority to make decisions on behalf of
33   a minor;
34   (16)   "Parent account," an account with an application store provider that:

1   (a)   Is verified to be established by an individual who the application store

2   provider has determined, through the application store provider's age

3   verification methods, to be at least eighteen years old; and

4   (b)   May be affiliated with one or more minor accounts;

5   (17)   "Parental consent disclosure," the information that an application store provider

6   must provide to a parent before obtaining parental consent, including:

7   (a)   If the application store provider has an age rating for an application or in-

8   application purchase, the age rating of the application or in-application

9   purchase;

10   (b)   If the application store provider has a content description for the application

11   or in-application purchase, the content description of the application or in-

12   application purchase;

13   (c)   A description of the personal data collected by the application, from a user;

14   (d)   A description of the personal data shared by the application, with a third

15   party; and

16   (e)   If personal data is collected by the application, the methods implemented

17   by the developer to protect the personal data;

18   (18)   "Significant change," a modification to an application's terms of service or privacy

19   policy that:

20   (a)   Changes the categories of data collected, stored, or shared;

21   (b)   Alters the application's age rating or content descriptions;

22   (c)   Adds new monetization features, including in-application purchases or

23   advertisements; or

24   (d)   Materially changes the functionality of the application or the application's

25   user experience; and

26   (19)   "Verifiable parental consent," authorization that:

27   (a)   Is provided by an individual whom the application store provider has verified

28   is an adult;

29   (b)   Is given after the application store provider has clearly and conspicuously

30   provided the parental consent disclosure to the individual; and

31   (c)   Requires the parent to make an affirmative choice to grant or decline

32   consent.

33   **Section 2. That a NEW SECTION be added to a NEW CHAPTER in title 26:**

34   An application store provider shall:

1   (1)   At the time an individual who is located in this state creates an account with the

2   application store provider:

3   (a)   Request age information from the individual; and

4   (b)   Verify the individual's age using methods of age verification that are

5   reasonably designed to ensure accuracy and are commercially available or

6   meet the requirements of the rules promulgated pursuant to section 9 of

7   this Act;

8   (2)   If the age verification process described in subdivision (1) determines the individual

9   is a minor:

10   (a)   Require the account to be affiliated with a parent account; and

11   (b)   Obtain verifiable parental consent from the holder of the affiliated parent

12   account before allowing the minor to download a covered application,

13   purchase a covered application, or make any in-application purchases;

14   (3)   After receiving notice of a significant change from a developer:

15   (a)   Notify the user of the significant change; and

16   (b)   If the user is the holder of a minor account, notify the holder of the affiliated

17   parent account and obtain renewed verifiable parental consent;

18   (4)   Provide developers with real-time access to:

19   (a)   Age category data for each user located; and

20   (b)   The status of verified parental consent for each minor located in the state;

21   and

22   (5)   Protect personal age verification data by:

23   (a)   Limiting collection and processing of data necessary for verifying a user's

24   age, obtaining parental consent, or maintaining compliance records; and

25   (b)   Transmitting personal age verification data using industry-standard

26   encryption protocols that ensure data integrity and data confidentiality.

27   **Section 3. That a NEW SECTION be added to a NEW CHAPTER in title 26:**

28   An application store provider may not:

29   (1)   Enforce a contract or terms of service against a minor unless the application store

30   provider has obtained verifiable parental consent;

31   (2)   Knowingly misrepresent the information in the parental content disclosure; or

32   (3)   Share personal age verification data except:

33   (a)   Between an application store provider and a developer as required by this

34   chapter; or

1   (b)   As required by law.

2   **Section 4. That a NEW SECTION be added to a NEW CHAPTER in title 26:**

3   A developer shall:

4   (1)   Determine whether each application the developer provides is likely to be accessed

5   by children and, if the application is provided for distribution via an application

6   store, provide notice to the application store that the application is likely to be

7   accessed by children;

8   (2)   Verify through the data sharing methods of the application store:

9   (a)   The age category of users located in the state; and

10   (b)   For a minor account, whether verifiable parental consent has been obtained;

11   (3)   Notify application store providers of a significant change to the application; and

12   (4)   Use age category data received from an application store only to:

13   (a)   Enforce any developer implemented age-related restrictions;

14   (b)   Ensure compliance with applicable laws and regulations; and

15   (c)   Implement safety-related features or defaults.

16   **Section 5. That a NEW SECTION be added to a NEW CHAPTER in title 26:**

17   A developer may not:

18   (1)   Enforce a contract or terms of service against a minor unless the developer has

19   verified through the application store provider that verifiable parental consent has

20   been obtained;

21   (2)   Knowingly misrepresent any information in the parental consent disclosure; or

22   (3)   Share age category data with any person.

23   **Section 6. That a NEW SECTION be added to a NEW CHAPTER in title 26:**

24   The parent of a minor who has been harmed by a violation of section 2, 3, 4, or 5

25   of this Act, may bring a civil action against an application store provider.

26   In an action brought pursuant to this section, the court shall award a prevailing

27   parent:

28   (1)   The greater of actual damages or one thousand dollars for each violation;

29   (2)   Reasonable attorney fees; and

30   (3)   Litigation costs.

31   **Section 7. That a NEW SECTION be added to a NEW CHAPTER in title 26:**

1   A developer is not liable for a violation of this chapter, in an action brought under
2   this chapter, if the developer demonstrates that the developer:
3   (1)   Relied in good faith on:
4   (a)   Personal age verification data provided by an application store provider;
5   and
6   (b)   Notification from an application store provider that verifiable parental
7   consent was obtained; and
8   (2)   Complied with the requirements of sections 4 and 5 of this Act.
9   This section may not be construed to limit a developer's liability under any other
10 applicable law.

11 **Section 8. That a NEW SECTION be added to a NEW CHAPTER in title 26:**

12   Nothing in this chapter may be construed to:
13 (1)   Prevent an application store provider from taking reasonable measures to:
14   (a)   Block, detect, or prevent distribution to minors, of unlawful material,
15   obscene material, or other harmful material;
16   (b)   Block or filter spam;
17   (c)   Prevent criminal activity; or
18   (d)   Protect application store or application security;
19 (2)   Require an application store provider to disclose user information to a developer
20   beyond:
21   (a)   Age category; or
22   (b)   Verification of parental consent status; or
23 (3)   Allow an application store provider to implement measures required by this chapter
24   in a manner that is arbitrary, capricious, anticompetitive, or unlawful.

25 **Section 9. That a NEW SECTION be added to a NEW CHAPTER in title 26:**

26   The attorney general shall promulgate rules, pursuant to chapter 1-26, establishing
27 the standards for what constitutes a commercially reasonable method for age verification
28 required under this chapter, and the processes of age verification that meet those
29 standards.

30 **Section 10. That § 37-24-6 be AMENDED:**

31   **37-24-6.** It is a deceptive act or practice for any person to:

1   (1)   Knowingly act, use, or employ any deceptive act or practice, fraud, false pretense,

2   false promises, or misrepresentation or to conceal, suppress, or omit any material

3   fact in connection with the sale or advertisement of any merchandise or the

4   solicitation of contributions for charitable purposes, regardless of whether any

5   person has in fact been misled, deceived, or damaged thereby;

6   (2)   Advertise price reductions without satisfying one of the following:

7   (a)   Including in the advertisement the specific basis for the claim of a price

8   reduction; or

9   (b)   Offering the merchandise for sale at the higher price from which the

10   reduction is taken for at least seven consecutive business days during the

11   sixty-day period prior to the advertisement.

12   Any person advertising consumer property or services in this state,

13   which advertisements contain representations or statements as to any type

14   of savings claim, including reduced price claims and price comparison value

15   claims, shall maintain reasonable records for a period of two years from the

16   date of sale and advertisement, which records shall disclose the factual

17   basis for such representations or statements and from which the validity of

18   any such claim be established. However, these reasonable record provisions

19   do not apply to the sale of any merchandise that is of a class of merchandise

20   that is routinely advertised on at least a weekly basis in newspapers,

21   shopping tabloids, or similar publications and that has a sales price before

22   price reduction that is less than fifteen dollars per item;

23   (3)   Represent a sale of merchandise at reduced rates due to the cessation of business

24   operations and after the date of the first advertisement remain in business under

25   the same, or substantially the same, ownership or trade name, or continue to offer

26   for sale the same type of merchandise at the same location for more than one

27   hundred twenty days;

28   (4)   Give or offer a rebate, discount, or anything of value to a person as an inducement

29   for selling consumer property or services in consideration of giving the names of

30   prospective purchasers or otherwise aiding in making a sale to another person, if

31   the earning of the rebate, discount, or other thing of value is contingent upon the

32   occurrence of an event subsequent to the time the person agrees to the sale;

33   (5)   Engage in any scheme or plan for disposal or distribution of merchandise whereby

34   a participant pays a valuable consideration for the chance to receive compensation

35   primarily for introducing one or more additional persons into participation in the

1   planner's scheme or for the chance to receive compensation when the person

2   introduced by the participant introduces a new participant;

3   (6) Send, deliver, provide, mail, or cause to be sent, delivered, provided, or mailed

4   any bill or invoice for unordered property or unordered service provided;

5   (7) Advertise a rate, price, or fee for a hotel, motel, campsite, or other lodging

6   accommodation which is not in fact available to the public under the terms

7   advertised. It is not a violation of this subdivision to establish contract rates which

8   are different than public rates;

9   (8) Charge a rate, price, or fee for a hotel, motel, campsite, or other lodging

10   accommodation which is different than the rate, price, or fee charged on the first

11   night of the guest's stay unless, at the initial registration of the guest, a written

12   notification of each price, rate, or fee to be charged during the guest's reserved

13   continuous stay is delivered to the guest and an acknowledgment of receipt of the

14   notice is signed by the guest and kept by the innkeeper for the same period of time

15   as is required by § 34-18-21;

16 (9) Knowingly fail to mail or to deliver by electronic means to a future guest a written

17   confirmation of the date and rates of reservations made for any accommodation at

18   a hotel, motel, campsite, or other lodging accommodation when a written request

19   for confirmation is received from the future guest;

20 (10) Require money in advance of arrival or a handling fee in the event of cancellation

21   of any hotel, motel, campsite, or other lodging accommodation unless the

22   innkeeper has a written policy or a separate contract with the guest stating so that

23   is mailed or delivered by electronic means to the guest at or near the making of

24   the reservation;

25 (11) Knowingly advertise or cause to be listed through the internet or in a telephone

26   directory a business address that misrepresents where the business is actually

27   located or that falsely states that the business is located in the same area covered

28   by the telephone directory. This subdivision does not apply to a telephone service

29   provider, an internet service provider, or a publisher or distributor of a telephone

30   directory, unless the conduct proscribed in this subdivision is on behalf of the

31   provider, publisher, or distributor;

32 (12) Sell, market, promote, advertise, or otherwise distribute any card or other

33   purchasing mechanism or device that is not insurance that purports to offer

34   discounts or access to discounts from pharmacies for prescription drug purchases

35   if:

1   (a)   The card or other purchasing mechanism or device does not expressly state
2   in bold and prominent type, prevalently placed, that discounts are not
3   insurance;
4   (b)   The discounts are not specifically authorized by a separate contract with
5   each pharmacy listed in conjunction with the card or other purchasing
6   mechanism or device; or
7   (c)   The discount or access to discounts offered, or the range of discounts or
8   access to the range of discounts, is misleading, deceptive, or fraudulent,
9   regardless of the literal wording.
10   The provisions of this subdivision do not apply to a customer discount or
11   membership card issued by a store or buying club for use in that store or buying
12   club, or a patient access program voluntarily sponsored by a pharmaceutical
13   manufacturer, or a consortium of pharmaceutical manufacturers, that provide free
14   or discounted prescription drug products directly to low income or uninsured
15   individuals either through a discount card or direct shipment;
16 (13)   Send or cause to be sent an unsolicited commercial electronic mail message that
17   does not include in the subject line of such message "ADV:" as the first four
18   characters. If the message contains information that consists of explicit sexual
19   material that may only be viewed, purchased, rented, leased, or held in possession
20   by an individual eighteen years of age and older, the subject line of each message
21   shall include "ADV:ADLT" as the first eight characters. An unsolicited commercial
22   electronic mail message does not include a message sent to a person with whom
23   the initiator has an existing personal or business relationship or a message sent at
24   the request or express consent of the recipient;
25 (14)   Violate the provisions of § 22-25-52;
26 (15)   Knowingly fail to disclose the amount of any mandatory fee when reservations are
27   made by a future guest at a hotel, motel, campsite, or other lodging
28   accommodations. A mandatory fee under this subdivision includes any resort fee
29   or parking fee charged by the lodging accommodations whether or not the guest
30   utilizes the amenities or the parking facility for which the fee is assessed; ~~or~~
31 (16)   Cause misleading information to be transmitted to users of caller identification
32   technologies or otherwise block or misrepresent the origin of a telephone
33   solicitation.   No   provider   of   telephone   caller   identification   services,
34   telecommunications, broadband, or voice over internet protocol service may be

1 held liable for violations of this subdivision committed by other individuals or
2 entities. It is not a violation of this subdivision:

3 (a) For a telephone solicitor to utilize the name and number of the entity the
4   solicitation is being made on behalf of rather than the name and number of
5   the telephone solicitor;

6 (b) If an authorized activity of a law enforcement agency; or

7 (c) If a court order specifically authorizes the use of caller identification
8   manipulation; or

9 (17) Violate subdivision (2) of section 3, or subdivision (2) of section 5, of this Act.

10 Each act in violation of this section under one thousand dollars is a Class 1
11 misdemeanor. Each act in violation of this statute over one thousand dollars but under
12 one hundred thousand dollars is a Class 6 felony. Each act in violation of this section over
13 one hundred thousand dollars is a Class 5 felony.

14 **Section 11.** This Act is effective beginning January 1, 2026.