

2025 South Dakota Legislature

Senate Bill 180**AMENDMENT 180A
FOR THE INTRODUCED BILL**

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 ~~or entity~~ 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)~~(11) "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)~~(12) "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)~~(13) "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)~~(14) "Parent," an individual who has the legal authority to make decisions on behalf
33 of a minor;
- 34 ~~(16)~~(15) "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)~~(16) "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)~~(17) "Significant change," a modification to an application's terms of service or
19 privacy 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)~~(18) "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 A violation of subdivision (2) of this section is a deceptive act or practice, pursuant
 3 to § 37-24-6.

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

5 A developer shall:

6 ~~(1) Determine whether each application the developer provides is likely to be accessed~~
 7 ~~by children and, if the application is provided for distribution via an application~~
 8 ~~store, provide notice to the application store that the application is likely to be~~
 9 ~~accessed by children;~~

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

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

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

13 ~~(3)~~(2) Notify application store providers of a significant change to the application; and

14 ~~(4)~~(3) Use age category data received from an application store only to:

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

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

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

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

19 A developer may not:

20 (1) Enforce a contract or terms of service against a minor unless the developer has
 21 verified through the application store provider that verifiable parental consent has
 22 been obtained;

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

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

25 A violation of subdivision (2) of this section is a deceptive act or practice, pursuant
 26 to § 37-24-6.

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

28 The parent of a minor who has been harmed by a violation of section 2, 3, 4, or 5
 29 of this Act, may bring a civil action against an application store provider.

30 In an action brought pursuant to this section, the court shall award a prevailing
 31 parent:

- 1 (1) The greater of actual damages or one thousand dollars for each violation;
- 2 (2) Reasonable attorney fees; and
- 3 (3) Litigation costs.

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

5 A developer is not liable for a violation of this chapter, in an action brought under
6 this chapter, if the developer demonstrates that the developer:

- 7 (1) Relied in good faith on:
 - 8 (a) Personal age verification data provided by an application store provider;
 - 9 and
 - 10 (b) Notification from an application store provider that verifiable parental
 - 11 consent was obtained; and
- 12 (2) Complied with the requirements of sections 4 and 5 of this Act.

13 This section may not be construed to limit a developer's liability under any other
14 applicable law.

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

16 Nothing in this chapter may be construed to:

- 17 (1) Prevent an application store provider from taking reasonable measures to:
 - 18 (a) Block, detect, or prevent distribution to minors, of unlawful material,
 - 19 obscene material, or other harmful material;
 - 20 (b) Block or filter spam;
 - 21 (c) Prevent criminal activity; or
 - 22 (d) Protect application store or application security;
- 23 (2) Require an application store provider to disclose user information to a developer
24 beyond:
 - 25 (a) Age category; or
 - 26 (b) Verification of parental consent status; or
- 27 (3) Allow an application store provider to implement measures required by this chapter
28 in a manner that is arbitrary, capricious, anticompetitive, or unlawful.

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

30 ~~The attorney general shall promulgate rules, pursuant to chapter 1-26, establishing~~
31 ~~the standards for what constitutes a commercially reasonable method for age verification~~

1 ~~required under this chapter, and the processes of age verification that meet those~~
2 ~~standards.~~

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

4 ~~**37-24-6.** It is a deceptive act or practice for any person to:~~

5 ~~(1) — Knowingly act, use, or employ any deceptive act or practice, fraud, false pretense,~~
6 ~~false promises, or misrepresentation or to conceal, suppress, or omit any material~~
7 ~~fact in connection with the sale or advertisement of any merchandise or the~~
8 ~~solicitation of contributions for charitable purposes, regardless of whether any~~
9 ~~person has in fact been misled, deceived, or damaged thereby;~~

10 ~~(2) — Advertise price reductions without satisfying one of the following:~~

11 ~~(a) — Including in the advertisement the specific basis for the claim of a price~~
12 ~~reduction; or~~

13 ~~(b) — Offering the merchandise for sale at the higher price from which the~~
14 ~~reduction is taken for at least seven consecutive business days during the~~
15 ~~sixty-day period prior to the advertisement.~~

16 ~~— Any person advertising consumer property or services in this state,~~
17 ~~which advertisements contain representations or statements as to any type~~
18 ~~of savings claim, including reduced price claims and price comparison value~~
19 ~~claims, shall maintain reasonable records for a period of two years from the~~
20 ~~date of sale and advertisement, which records shall disclose the factual~~
21 ~~basis for such representations or statements and from which the validity of~~
22 ~~any such claim be established. However, these reasonable record provisions~~
23 ~~do not apply to the sale of any merchandise that is of a class of merchandise~~
24 ~~that is routinely advertised on at least a weekly basis in newspapers,~~
25 ~~shopping tabloids, or similar publications and that has a sales price before~~
26 ~~price reduction that is less than fifteen dollars per item;~~

27 ~~(3) — Represent a sale of merchandise at reduced rates due to the cessation of business~~
28 ~~operations and after the date of the first advertisement remain in business under~~
29 ~~the same, or substantially the same, ownership or trade name, or continue to offer~~
30 ~~for sale the same type of merchandise at the same location for more than one~~
31 ~~hundred twenty days;~~

32 ~~(4) — Give or offer a rebate, discount, or anything of value to a person as an inducement~~
33 ~~for selling consumer property or services in consideration of giving the names of~~
34 ~~prospective purchasers or otherwise aiding in making a sale to another person, if~~

- 1 the earning of the rebate, discount, or other thing of value is contingent upon the
2 occurrence of an event subsequent to the time the person agrees to the sale;
- 3 ~~(5) Engage in any scheme or plan for disposal or distribution of merchandise whereby~~
4 ~~a participant pays a valuable consideration for the chance to receive compensation~~
5 ~~primarily for introducing one or more additional persons into participation in the~~
6 ~~planner's scheme or for the chance to receive compensation when the person~~
7 ~~introduced by the participant introduces a new participant;~~
- 8 ~~(6) Send, deliver, provide, mail, or cause to be sent, delivered, provided, or mailed~~
9 ~~any bill or invoice for unordered property or unordered service provided;~~
- 10 ~~(7) Advertise a rate, price, or fee for a hotel, motel, campsite, or other lodging~~
11 ~~accommodation which is not in fact available to the public under the terms~~
12 ~~advertised. It is not a violation of this subdivision to establish contract rates which~~
13 ~~are different than public rates;~~
- 14 ~~(8) Charge a rate, price, or fee for a hotel, motel, campsite, or other lodging~~
15 ~~accommodation which is different than the rate, price, or fee charged on the first~~
16 ~~night of the guest's stay unless, at the initial registration of the guest, a written~~
17 ~~notification of each price, rate, or fee to be charged during the guest's reserved~~
18 ~~continuous stay is delivered to the guest and an acknowledgment of receipt of the~~
19 ~~notice is signed by the guest and kept by the innkeeper for the same period of time~~
20 ~~as is required by § 34-18-21;~~
- 21 ~~(9) Knowingly fail to mail or to deliver by electronic means to a future guest a written~~
22 ~~confirmation of the date and rates of reservations made for any accommodation at~~
23 ~~a hotel, motel, campsite, or other lodging accommodation when a written request~~
24 ~~for confirmation is received from the future guest;~~
- 25 ~~(10) Require money in advance of arrival or a handling fee in the event of cancellation~~
26 ~~of any hotel, motel, campsite, or other lodging accommodation unless the~~
27 ~~innkeeper has a written policy or a separate contract with the guest stating so that~~
28 ~~is mailed or delivered by electronic means to the guest at or near the making of~~
29 ~~the reservation;~~
- 30 ~~(11) Knowingly advertise or cause to be listed through the internet or in a telephone~~
31 ~~directory a business address that misrepresents where the business is actually~~
32 ~~located or that falsely states that the business is located in the same area covered~~
33 ~~by the telephone directory. This subdivision does not apply to a telephone service~~
34 ~~provider, an internet service provider, or a publisher or distributor of a telephone~~

1 ~~directory, unless the conduct proscribed in this subdivision is on behalf of the~~
2 ~~provider, publisher, or distributor;~~

3 ~~(12) Sell, market, promote, advertise, or otherwise distribute any card or other~~
4 ~~purchasing mechanism or device that is not insurance that purports to offer~~
5 ~~discounts or access to discounts from pharmacies for prescription drug purchases~~
6 ~~if:~~

7 ~~(a) The card or other purchasing mechanism or device does not expressly state~~
8 ~~in bold and prominent type, prevalently placed, that discounts are not~~
9 ~~insurance;~~

10 ~~(b) The discounts are not specifically authorized by a separate contract with~~
11 ~~each pharmacy listed in conjunction with the card or other purchasing~~
12 ~~mechanism or device; or~~

13 ~~(c) The discount or access to discounts offered, or the range of discounts or~~
14 ~~access to the range of discounts, is misleading, deceptive, or fraudulent,~~
15 ~~regardless of the literal wording.~~

16 ~~The provisions of this subdivision do not apply to a customer discount or~~
17 ~~membership card issued by a store or buying club for use in that store or buying~~
18 ~~club, or a patient access program voluntarily sponsored by a pharmaceutical~~
19 ~~manufacturer, or a consortium of pharmaceutical manufacturers, that provide free~~
20 ~~or discounted prescription drug products directly to low income or uninsured~~
21 ~~individuals either through a discount card or direct shipment;~~

22 ~~(13) Send or cause to be sent an unsolicited commercial electronic mail message that~~
23 ~~does not include in the subject line of such message "ADV:" as the first four~~
24 ~~characters. If the message contains information that consists of explicit sexual~~
25 ~~material that may only be viewed, purchased, rented, leased, or held in possession~~
26 ~~by an individual eighteen years of age and older, the subject line of each message~~
27 ~~shall include "ADV:ADLT" as the first eight characters. An unsolicited commercial~~
28 ~~electronic mail message does not include a message sent to a person with whom~~
29 ~~the initiator has an existing personal or business relationship or a message sent at~~
30 ~~the request or express consent of the recipient;~~

31 ~~(14) Violate the provisions of § 22-25-52;~~

32 ~~(15) Knowingly fail to disclose the amount of any mandatory fee when reservations are~~
33 ~~made by a future guest at a hotel, motel, campsite, or other lodging~~
34 ~~accommodations. A mandatory fee under this subdivision includes any resort fee~~

1 ~~or parking fee charged by the lodging accommodations whether or not the guest~~
2 ~~utilizes the amenities or the parking facility for which the fee is assessed; or~~
3 ~~(16) Cause misleading information to be transmitted to users of caller identification~~
4 ~~technologies or otherwise block or misrepresent the origin of a telephone~~
5 ~~solicitation. No provider of telephone caller identification services,~~
6 ~~telecommunications, broadband, or voice over internet protocol service may be~~
7 ~~held liable for violations of this subdivision committed by other individuals or~~
8 ~~entities. It is not a violation of this subdivision:~~
9 ~~(a) For a telephone solicitor to utilize the name and number of the entity the~~
10 ~~solicitation is being made on behalf of rather than the name and number of~~
11 ~~the telephone solicitor;~~
12 ~~(b) If an authorized activity of a law enforcement agency; or~~
13 ~~(c) If a court order specifically authorizes the use of caller identification~~
14 ~~manipulation; or~~
15 ~~(17) Violate subdivision (2) of section 3, or subdivision (2) of section 5, of this Act.~~
16 ~~Each act in violation of this section under one thousand dollars is a Class 1~~
17 ~~misdemeanor. Each act in violation of this statute over one thousand dollars but under~~
18 ~~one hundred thousand dollars is a Class 6 felony. Each act in violation of this section over~~
19 ~~one hundred thousand dollars is a Class 5 felony.~~

20 **Section 9.** This Act is effective beginning January 1, 2026.