

Minutes: Senate Judiciary

Tuesday, February 18, 2025 3:00 PM

Roll Call

Present: Sen. Blanc, Sen. Duhamel, Sen. Grove, Sen. Pischke, Sen. Hulse, and
Sen. Wheeler

Excused: Sen. Mehlhaff

The meeting was called to order by Senator Wheeler

SB 180 : to require age verification before an individual may access an application from an online application store.

Proponents: Annie Chestnut Tutor, Self, The Heritage Foundation, Washington DC
Dawn Hawkins, Self, National Center on Sexual Exploitation, Washington DC
John Read, Self, Retired US Department of Justice Attorney, Alexandria VA
Melissa McKay, Self, Founder AppStore Accountability, UT
Opponents: David B. McGarry, Taxpayers Protection Alliance, Washington
Doug Abraham, ACT The App Association, Washington, D.C. (Handout(s)
HO#7, HO#4, HO#8)
Holly Farris, Board of Regents
T.J. Nelson, South Dakota Board of Technical Education, Pierre
Ben Sherman, Self, Rapid City
Rose Feliciano, TechNet, Santa Clara, CA
Aden Hizkias, Self, Chamber of Progress, McClean VA

MOTION: AMEND SB 180

180A

On page 1, line 20, of the Introduced bill, after "person" insert " or entity"
On page 1, line 24, of the Introduced bill, after "application" delete ", website,"
On page 1, line 25, of the Introduced bill, after "device" delete " and is likely to be accessed by children"
On page 2, line 10, of the Introduced bill, after "circumstances;
(10)" delete "Likely to be accessed by children," the reasonable expectation that an application will be accessed by children, based on satisfying any of the following criteria:"
On page 2, line 12, of the Introduced bill, after "criteria:" delete "(a) The application is determined, based on competent and reliable evidence regarding audience composition, to be routinely accessed by children; or
(b) Internal research findings determine the application is routinely accessed by children;
(11)"
On page 2, line 17, of the Introduced bill, delete "(12)" and insert "(11)"
On page 2, line 22, of the Introduced bill, delete "(13)" and insert "(12)"
On page 2, line 27, of the Introduced bill, delete "(14)" and insert "(13)"
On page 2, line 32, of the Introduced bill, delete "(15)" and insert "(14)"
On page 2, line 34, of the Introduced bill, delete "(16)" and insert "(15)"
On page 3, line 5, of the Introduced bill, delete "(17)" and insert "(16)"
On page 3, line 18, of the Introduced bill, delete "(18)" and insert "(17)"
On page 3, line 26, of the Introduced bill, delete "(19)" and insert "(18)"
On page 4, line 5, of the Introduced bill, after "available" delete " or meet the requirements of the rules promulgated pursuant to section 9 of this Act"
On page 5, line 1, of the Introduced bill, after "law." insert "

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

On page 5, line 4, of the Introduced bill, after "shall:

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

On page 5, line 8, of the Introduced bill, after "children;" delete "(2)"

On page 5, line 11, of the Introduced bill, delete "(3)" and insert "(2)"

On page 5, line 12, of the Introduced bill, delete "(4)" and insert "(3)"

On page 5, line 22, of the Introduced bill, after "person." insert "

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

On page 6, line 25, of the Introduced bill, after "unlawful." delete "Section 9. That a NEW SECTION be added to a NEW CHAPTER in title 26:"

On page 6, line 26, of the Introduced bill, after "26:" delete "The attorney general shall promulgate rules, pursuant to chapter 1-26, establishing the standards for what constitutes a commercially reasonable method for age verification required under this chapter, and the processes of age verification that meet those standards."

On page 6, line 30, of the Introduced bill, after "standards." delete "Section 10. That § 37-24-6 be AMENDED:

"

On page 6, line 31, of the Introduced bill, after "AMENDED:" delete "37-24-6. "

On page 6, line 31, of the Introduced bill, after "37-24-6. " delete "It is a deceptive act or practice for any person to:

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

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

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

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

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

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

(4) Give or offer a rebate, discount, or anything of value to a person as an inducement for selling consumer property or services in consideration of giving the names of prospective purchasers or otherwise aiding in making a sale to another person, if the earning of the rebate, discount, or other thing of value is contingent upon the occurrence of an event subsequent to the time the person agrees to the sale;

- (5) Engage in any scheme or plan for disposal or distribution of merchandise whereby a participant pays a valuable consideration for the chance to receive compensation primarily for introducing one or more additional persons into participation in the planner's scheme or for the chance to receive compensation when the person introduced by the participant introduces a new participant;
- (6) Send, deliver, provide, mail, or cause to be sent, delivered, provided, or mailed any bill or invoice for unordered property or unordered service provided;
- (7) Advertise a rate, price, or fee for a hotel, motel, campsite, or other lodging accommodation which is not in fact available to the public under the terms advertised. It is not a violation of this subdivision to establish contract rates which are different than public rates;
- (8) Charge a rate, price, or fee for a hotel, motel, campsite, or other lodging accommodation which is different than the rate, price, or fee charged on the first night of the guest's stay unless, at the initial registration of the guest, a written notification of each price, rate, or fee to be charged during the guest's reserved continuous stay is delivered to the guest and an acknowledgment of receipt of the notice is signed by the guest and kept by the innkeeper for the same period of time as is required by § 34-18-21;
- (9) Knowingly fail to mail or to deliver by electronic means to a future guest a written confirmation of the date and rates of reservations made for any accommodation at a hotel, motel, campsite, or other lodging accommodation when a written request for confirmation is received from the future guest;
- (10) Require money in advance of arrival or a handling fee in the event of cancellation of any hotel, motel, campsite, or other lodging accommodation unless the innkeeper has a written policy or a separate contract with the guest stating so that is mailed or delivered by electronic means to the guest at or near the making of the reservation;
- (11) Knowingly advertise or cause to be listed through the internet or in a telephone directory a business address that misrepresents where the business is actually located or that falsely states that the business is located in the same area covered by the telephone directory. This subdivision does not apply to a telephone service provider, an internet service provider, or a publisher or distributor of a telephone directory, unless the conduct proscribed in this subdivision is on behalf of the provider, publisher, or distributor;
- (12) Sell, market, promote, advertise, or otherwise distribute any card or other purchasing mechanism or device that is not insurance that purports to offer discounts or access to discounts from pharmacies for prescription drug purchases if:
- (a) The card or other purchasing mechanism or device does not expressly state in bold and prominent type, prevalently placed, that discounts are not insurance;
 - (b) The discounts are not specifically authorized by a separate contract with each pharmacy listed in conjunction with the card or other purchasing mechanism or device; or
 - (c) The discount or access to discounts offered, or the range of discounts or access to the range of discounts, is misleading, deceptive, or fraudulent, regardless of the literal wording.
- The provisions of this subdivision do not apply to a customer discount or membership card issued by a store or buying club for use in that store or buying club, or a patient access program voluntarily sponsored by a pharmaceutical manufacturer, or a consortium of pharmaceutical manufacturers, that provide free or discounted prescription drug products directly to low income or uninsured individuals either through a discount card or direct shipment;
- (13) Send or cause to be sent an unsolicited commercial electronic mail message that does not include in the subject line of such message "ADV:" as the first four characters. If the message contains information that consists of explicit sexual material that may only be viewed, purchased, rented, leased, or held in possession by an individual eighteen years of age and older, the subject line of each message shall include "ADV:ADLT" as the first eight characters. An unsolicited commercial electronic mail message does not include a message

sent to a person with whom the initiator has an existing personal or business relationship or a message sent at the request or express consent of the recipient;

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

(15) Knowingly fail to disclose the amount of any mandatory fee when reservations are made by a future guest at a hotel, motel, campsite, or other lodging accommodations. A mandatory fee under this subdivision includes any resort fee or parking fee charged by the lodging accommodations whether or not the guest utilizes the amenities or the parking facility for which the fee is assessed; or

(16) Cause misleading information to be transmitted to users of caller identification technologies or otherwise block or misrepresent the origin of a telephone solicitation. No provider of telephone caller identification services, telecommunications, broadband, or voice over internet protocol service may be held liable for violations of this subdivision committed by other individuals or entities. It is not a violation of this subdivision:

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

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

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

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

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

Moved by: Pischke
Second by: Hulse
Action: Prevailed by voice vote

MOTION: DEFER SB 180 TO THE 41ST LEGISLATIVE DAY

Moved by: Pischke
Second by: Hulse
Action: Was not acted on.

MOTION: SUBSTITUTE MOTION: DO PASS SB 180

Moved by: Blanc
Action: Died for lack of a second

Revert to previous motion

MOTION: DEFER SB 180 TO THE 41ST LEGISLATIVE DAY

Moved by: Pischke
Second by: Hulse
Action: Prevailed by Majority Members Elect (5-1-1-0)

Voting Yes: Duhamel, Grove, Pischke, Hulse, and Wheeler

Voting No: Blanc

Excused: Mehlhaff

MOTION: ADJOURN

Moved by: Hulse
Second by: Grove
Action: Prevailed by voice vote

Doug Mortenson, Committee Secretary

/s/ DAVID WHEELER
David Wheeler, Chair