

2026 South Dakota Legislature

Senate Bill 168**AMENDMENT 168A
FOR THE INTRODUCED BILL**

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

1 **An Act to regulate the use of ~~chatbots by minors~~ a conversational AI service.**

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

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

4 Terms used in this chapter mean:

5 (1) "Account holder," an individual who creates an account or profile to use a
6 conversational AI service;

7 (2) "Artificial intelligence," any machine-based system that, for any explicit or implicit
8 objective, infers from the inputs received by the system how to generate content,
9 decisions, predictions, recommendations, or other outputs, which can influence
10 physical or virtual environments;

11 (3) "Conversational AI service," an artificial intelligence software application, web
12 interface, or computer program that is accessible to the general public and the
13 primary function of which is to simulate human conversation through textual,
14 visual, or audio communications, provided that the term does not include a
15 software application, web interface, or computer program that is:

16 (a) Primarily designed and marketed for use by a developer or researcher;

17 (b) A software application, web interface, or computer program that is not
18 otherwise a conversational AI service but provides a conversational AI
19 service as a feature of the application, interface, or program;

20 (c) Designed to provide outputs relating to a narrow and discrete topic;

21 (d) Primarily designed and marketed for commercial use by a business entity;

22 (e) Functions as a speaker and voice command interface or voice-activated
23 virtual assistant for a consumer electronic device; or

24 (f) Used by a business entity solely for an internal purpose;

25 (4) "Minor account holder," an account holder who is a minor;

1 (5) "Operator," a person who develops and makes a conversational AI service available
2 to the public, provided that the term does not include a mobile application store or
3 search engine that only serves to provide access to a conversational AI service;
4 and

5 (6) "Sexually explicit conduct," any actual or simulated:

6 (a) Sexual intercourse, regardless of whether between individuals of the same
7 or opposite sex;

8 (b) Bestiality;

9 (c) Masturbation;

10 (d) Sadistic or masochistic abuse; and

11 (e) Lascivious exhibition of the anus, genitals, or pubic area of any individual.

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

13 If a reasonable individual may be led to believe that the individual is interacting
14 with a human, the operator of a conversational AI service must clearly and conspicuously
15 disclose that the individual is interacting with an artificial intelligence.

16 The disclosure must appear:

17 (1) At the beginning of each session with a conversational AI service; and

18 (2) At least once every hour during which the account holder engages in continuous
19 interaction with the conversational AI service.

20 If the operator knows or has a reasonable certainty that an account holder is a
21 minor, the disclosure must appear as a persistent visible disclaimer throughout the minor
22 account holder's interaction with the conversational AI service.

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

24 If an operator knows or has a reasonable certainty that an account holder is a
25 minor, the operator may not provide the account holder with points or other rewards with
26 the intent of encouraging the account holder to increase the account holder's engagement
27 with the operator's conversational AI service.

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

29 If an operator knows or has a reasonable certainty that an account holder is a
30 minor, the operator must implement reasonable measures to prevent the operator's
31 conversational AI service from:

- 1 (1) Producing any visual material that depicts sexually explicit conduct; and
2 (2) Generating any statement that:
3 (a) Encourages the minor account holder to engage in sexually explicit conduct;
4 (3) Sexually objectifies the minor account holder; or
5 (4) Would lead a reasonable person to believe that the minor account holder is
6 interacting with a human.

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

8 An operator shall provide tools to a minor account holder to manage the account
9 holder's privacy and account settings. If an operator knows or has a reasonable certainty
10 that an account holder is a minor under the age of thirteen, the operator must provide
11 tools to the parent of a minor account holder to manage the account holder's privacy and
12 account settings.

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

14 An operator shall implement a protocol for the conversational AI service to detect
15 and respond to any prompt regarding an account holder's suicidal ideation or self-harm.
16 The conversational AI service must be able to respond to a prompt regarding suicidal
17 ideation or self-harm by referring the account holder to a suicide hotline, crisis text line,
18 or other crisis prevention service provider.

19 An operator may not knowingly and intentionally cause or program a
20 conversational AI service to make any representation or statement that indicates,
21 explicitly or implicitly, that the conversational AI service is designed to provide
22 professional mental or behavioral health care.

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

24 Any operator found in violation of section 2, 3, 4, 5, or 6 of this Act is subject to
25 an injunction and liable for a civil penalty in an amount equal to the greater of actual
26 damages or one thousand dollars per violation, provided that the penalty does not exceed
27 five hundred thousand dollars.

28 The civil penalty may be assessed and recovered only in a civil action by the
29 attorney general. The attorney general shall forward any civil penalty collected under this
30 section to the state treasurer for deposit in the general fund.

1 Nothing in this section may be construed to serve as the basis for a new private
2 right of action for any violation of section 2, 3, 4, 5, or 6 of this Act.

3 The developer of a software application, web interface, or computer program may
4 not be held liable for any violation of section 2, 3, 4, 5, or 6 of this Act if the application,
5 interface, or program:

6 (1) Is not a conversational AI service; and

7 (2) Provides as a feature of the application, interface, or program, a conversational AI
8 service that was developed by a third party.

AMENDED