

2026 South Dakota Legislature

House Bill 1275**AMENDMENT 1275B
FOR THE HOUSE STATE AFFAIRS ENGROSSED BILL**

1 **An Act to create requirements for age-~~verification~~ assurance and parental consent**
2 **for application stores and to provide a penalty therefor.**

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

4 **Section 1. That § 37-24-6 be AMENDED:**

5 **37-24-6.** It is a deceptive act or practice for any person to:

- 6 (1) Knowingly act, use, or employ any deceptive act or practice, fraud, false pretense,
7 false promises, or misrepresentation or to conceal, suppress, or omit any material
8 fact in connection with the sale or advertisement of any merchandise or the
9 solicitation of contributions for charitable purposes, regardless of whether any
10 person has in fact been misled, deceived, or damaged thereby;
- 11 (2) Advertise price reductions without satisfying one of the following:
- 12 (a) Including in the advertisement the specific basis for the claim of a price
13 reduction; or
- 14 (b) Offering the merchandise for sale at the higher price from which the
15 reduction is taken for at least seven consecutive business days during the
16 sixty-day period prior to the advertisement.

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

- 1 and that has a sales price before price reduction that is less than fifteen dollars per
2 item;
- 3 (3) Represent a sale of merchandise at reduced rates due to the cessation of business
4 operations and after the date of the first advertisement remain in business under
5 the same, or substantially the same, ownership or trade name, or continue to offer
6 for sale the same type of merchandise at the same location for more than one
7 hundred twenty days;
- 8 (4) Give or offer a rebate, discount, or anything of value to a person as an inducement
9 for selling consumer property or services in consideration of giving the names of
10 prospective purchasers or otherwise aiding in making a sale to another person, if
11 the earning of the rebate, discount, or other thing of value is contingent upon the
12 occurrence of an event subsequent to the time the person agrees to the sale;
- 13 (5) Engage in any scheme or plan for disposal or distribution of merchandise whereby
14 a participant pays a valuable consideration for the chance to receive compensation
15 primarily for introducing one or more additional persons into participation in the
16 planner's scheme or for the chance to receive compensation when the person
17 introduced by the participant introduces a new participant;
- 18 (6) Send, deliver, provide, mail, or cause to be sent, delivered, provided, or mailed
19 any bill or invoice for unordered property or unordered service provided;
- 20 (7) Advertise a rate, price, or fee for a hotel, motel, campsite, or other lodging
21 accommodation which is not in fact available to the public under the terms
22 advertised. It is not a violation of this subdivision to establish contract rates which
23 are different than public rates;
- 24 (8) Charge a rate, price, or fee for a hotel, motel, campsite, or other lodging
25 accommodation which is different than the rate, price, or fee charged on the first
26 night of the guest's stay unless, at the initial registration of the guest, a written
27 notification of each price, rate, or fee to be charged during the guest's reserved
28 continuous stay is delivered to the guest and an acknowledgment of receipt of the
29 notice is signed by the guest and kept by the innkeeper for the same period of time
30 as is required by § 34-18-21;
- 31 (9) Knowingly fail to mail or to deliver by electronic means to a future guest a written
32 confirmation of the date and rates of reservations made for any accommodation at
33 a hotel, motel, campsite, or other lodging accommodation when a written request
34 for confirmation is received from the future guest;

- 1 (10) Require money in advance of arrival or a handling fee in the event of cancellation
2 of any hotel, motel, campsite, or other lodging accommodation unless the
3 innkeeper has a written policy or a separate contract with the guest stating so that
4 is mailed or delivered by electronic means to the guest at or near the making of
5 the reservation;
- 6 (11) Knowingly advertise or cause to be listed through the internet or in a telephone
7 directory a business address that misrepresents where the business is actually
8 located or that falsely states that the business is located in the same area covered
9 by the telephone directory. This subdivision does not apply to a telephone service
10 provider, an internet service provider, or a publisher or distributor of a telephone
11 directory, unless the conduct proscribed in this subdivision is on behalf of the
12 provider, publisher, or distributor;
- 13 (12) Sell, market, promote, advertise, or otherwise distribute any card or other
14 purchasing mechanism or device that is not insurance that purports to offer
15 discounts or access to discounts from pharmacies for prescription drug purchases
16 if:
- 17 (a) The card or other purchasing mechanism or device does not expressly state
18 in bold and prominent type, prevalently placed, that discounts are not
19 insurance;
- 20 (b) The discounts are not specifically authorized by a separate contract with
21 each pharmacy listed in conjunction with the card or other purchasing
22 mechanism or device; or
- 23 (c) The discount or access to discounts offered, or the range of discounts or
24 access to the range of discounts, is misleading, deceptive, or fraudulent,
25 regardless of the literal wording.
- 26 The provisions of this subdivision do not apply to a customer discount or membership card
27 issued by a store or buying club for use in that store or buying club, or a patient
28 access program voluntarily sponsored by a pharmaceutical manufacturer, or a
29 consortium of pharmaceutical manufacturers, that provide free or discounted
30 prescription drug products directly to low income or uninsured individuals either
31 through a discount card or direct shipment;
- 32 (13) Send or cause to be sent an unsolicited commercial electronic mail message that
33 does not include in the subject line of such message "ADV:" as the first four
34 characters. If the message contains information that consists of explicit sexual
35 material that may only be viewed, purchased, rented, leased, or held in possession

1 by an individual eighteen years of age and older, the subject line of each message
 2 shall include "ADV:ADLT" as the first eight characters. An unsolicited commercial
 3 electronic mail message does not include a message sent to a person with whom
 4 the initiator has an existing personal or business relationship or a message sent at
 5 the request or express consent of the recipient;

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

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

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

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

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

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

24 (17) Violate § 58-29G-2 or 58-29G-3; or

25 (18) Violate the provisions of sections 2 to 19, inclusive, of this Act.

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

30 **Section 2. That a NEW SECTION be added to a NEW CHAPTER in title 37:**

31 Terms used in this chapter mean:

32 (1) "Account holder," the individual who is associated with the mobile device;

33 (2) "Age category," one of the following categories of individuals based on age:

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

- 1 **(b) "Child," an individual who is under thirteen years of age;**
2 **(c) "Older teenager," an individual who is at least sixteen but less than eighteen**
3 **years of age; and**
4 **(d) "Younger teenager," an individual who is at least thirteen but less than**
5 **sixteen years of age;**
6 **(3) "Age category data," information about an account holder's age category that is**
7 **collected by an application store provider and shared with developers;**
8 **(4) "Age rating," one or more classifications that assess the suitability of an**
9 **application's content and functions for different age groups;**
10 **(5) "Application," or "app," a software application or electronic service that a user may**
11 **run or direct on a mobile device, including pre-installed applications;**
12 **(6) "Application store," a publicly available website, software application, or electronic**
13 **service that allows account holders to download applications from third-party**
14 **developers onto a mobile device;**
15 **(7) "Application store provider," a person that owns, operates, or controls an**
16 **application store that allows account holders in the state to download apps onto a**
17 **mobile device;**
18 **(8) "Content description," a description of the specific content elements or functions**
19 **that informed an app's age rating;**
20 **(9) "Developer," a person that owns or controls an application made available through**
21 **an application store in the state or an application pre-installed onto a mobile**
22 **device;**
23 **(10) "Knowingly," to act with actual knowledge or to act with knowledge fairly inferred**
24 **based on objective circumstances;**
25 **(11) "Minor," an individual under eighteen years of age, unless the individual is married**
26 **or legally emancipated;**
27 **(12) "Minor account," an account with an application store provider that:**
28 **(a) Is established by an individual who is a minor; and**
29 **(b) Must be affiliated with a parent account, pursuant to section 4 of this Act;**
30 **(13) "Mobile device," a phone or general purpose tablet that:**
31 **(a) Provides cellular or wireless connectivity;**
32 **(b) Is capable of connecting to the internet;**
33 **(c) Runs a mobile operating system; and**
34 **(d) Is capable of running applications through the mobile operating system;**
35 **(14) "Mobile operating system," software that:**

- 1 (a) Manages mobile device hardware resources;
2 (b) Provides common services for mobile device programs;
3 (c) Controls memory allocation; and
4 (d) Provides interfaces for apps to access device functionality;
- 5 (15) "Parent," with respect to a minor, an individual who is reasonably believed to be a
6 parent, a legal guardian, an individual with legal custody, or any other individual
7 who has the legal authority to make decisions on behalf of the minor under
8 applicable state law;
- 9 (16) "Parent account," an account with an application store provider that:
10 (a) Is ~~verified to be~~ established by an individual whom the application store
11 provider has determined, through the application store provider's age
12 ~~verification assurance~~ methods, to be at least eighteen years old, married,
13 or legally emancipated; and
14 (b) May be affiliated with one or more minor accounts;
- 15 (17) "Parental consent disclosure," the following information that an application store
16 provider is required to provide clearly and conspicuously to a parent before
17 obtaining parental consent:
18 (a) If the application store provider has an age rating for the application, the
19 application's age rating;
20 (b) If the application store provider has a content description for the
21 application, the application's content description;
22 (c) A description of:
23 (i) The personal data collected by the application from an account
24 holder; and
25 (ii) The personal data shared by the application with a third party; and
26 (d) If personal data is collected by the application, the methods implemented
27 by the developer to protect the personal data.
- 28 (18) "Pre-installed applications," any application or portion thereof that is present on a
29 mobile device at the time of purchase, initial activation, or first use by the
30 consumer, including browsers, search engines, and messaging, but excluding core
31 operating system functions, essential device drivers, and applications necessary
32 for basic device operation such as phone, settings, and emergency services
33 applications. Pre-installed applications include applications, or portions thereof,
34 installed or partially installed by the device manufacturer, wireless service provider,

1 retailer, or any other party prior to purchase, initial activation, or first use by the
 2 consumer and which may be updated thereafter;

3 (19) "Significant change," a material modification to an application's terms of service or
 4 privacy policy that materially:

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

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

7 (c) Introduces in-application purchases where no in-application purchases were
 8 previously present in the application; or

9 (d) Introduces advertisements where no advertisements were previously
 10 present in the application; and

11 (20) "Verifiable parental consent," authorization that:

12 (a) Is provided by a parent account;

13 (b) Is given after the application store provider has clearly and conspicuously
 14 provided the parental consent disclosure as part of the application
 15 installation, download, purchase, or in-application purchase process; and

16 (c) Requires the parent to make an affirmative choice to grant or decline
 17 consent.

18 **Section 3. That a NEW SECTION be added to a NEW CHAPTER in title 37:**

19 An application store provider shall, at the time an individual who is located in this
 20 state creates an account with the application store provider, ~~or on or before December 1,~~
 21 ~~2027, for an existing account:~~

22 (1) Request age ~~category~~ information from the individual; and

23 (2) ~~Verify Obtain~~ the individual's age category by using:

24 (a) Commercially available ~~or generally acceptable~~ methods that are
 25 reasonably designed to ensure accuracy; or

26 (b) An age ~~verification assurance~~ method that complies with this chapter.

27 For accounts in existence on December 1, 2027, where an application store
 28 provider does not already have an individual's age category, an application store provider
 29 shall, before January 1, 2028, provide an accessible interface that allows an account holder
 30 to indicate the birth date, age, or both, of the user of that device for the purpose of
 31 indicating to applications available in the application store the user's age category.

32 **Section 4. That a NEW SECTION be added to a NEW CHAPTER in title 37:**

1 If the application store provider determines the individual is a minor, the
2 application store provider must:

- 3 (1) Require the account to be affiliated with a parent account; and
4 (2) Obtain verifiable parental consent from the holder of the affiliated parent account
5 before allowing the minor to download, install, or purchase an application, or make
6 an in-application purchase.

7 **Section 5. That a NEW SECTION be added to a NEW CHAPTER in title 37:**

8 After receiving notice of a significant change from a developer, an application store
9 provider shall:

- 10 (1) Notify the account holder of the significant change; and
11 (2) For a minor account:
12 (a) Notify the parent account; and
13 (b) Obtain renewed verifiable parental consent before providing access to the
14 significantly changed version of the application; and
15 (3) Provide to a developer, in response to a request authorized under section 11 of
16 this Act:
17 ~~(a) Age category data for an account holder located in the state; and~~
18 ~~(b) The status of verifiable parental consent for a minor located in the state and after~~
19 ~~the account holder or account holder's affiliated parent account has consented to~~
20 ~~the sharing, the age category data for an account holder located in the state.~~

21 **Section 6. That a NEW SECTION be added to a NEW CHAPTER in title 37:**

22 An application store provider must provide to the parent the following disclosures
23 before obtaining consent:

- 24 (1) The age rating of the application;
25 (2) The content description of the application;
26 (3) A description of the personal data collected from a user by the application;
27 (4) A description of the personal data shared with a third party by the application; and
28 (5) The methods implemented by the developer to protect the personal data being
29 collected from a user.

30 **Section 7. That a NEW SECTION be added to a NEW CHAPTER in title 37:**

31 An application store provider shall:

- 1 (1) Provide a mechanism for a parent account to withdraw consent;
 2 (2) ~~Notify a developer when a parent revokes verifiable parental consent;~~
 3 (3) ~~Verify~~Obtain the individual's age category by using commercially available or
 4 generally accepted methods that are reasonably designed to ensure accuracy or
 5 another age ~~verification~~ assurance method that complies with this chapter; and
 6 (4)(3) Comply with a developer's request to prevent minor accounts from downloading or
 7 purchasing the developer's application.

8 For individuals under eighteen years of age, a method is commercially available if
 9 it includes affirmative age attestation by someone who is reasonably believed to be the
 10 parent or legal guardian, along with other information collected in the ordinary course of
 11 account creation or use.

12 **Section 8. That a NEW SECTION be added to a NEW CHAPTER in title 37:**

13 An application store provider shall protect age category data and any associated
 14 verification data by:

- 15 (1) Limiting collection and processing to data necessary for ~~verifying~~ obtaining an
 16 account-holder's age category, obtaining verifiable parental consent, or
 17 maintaining compliance records; and
 18 (2) Transmitting age category data using industry-standard encryption protocols that
 19 ensure data integrity and data confidentiality.

20 **Section 9. That a NEW SECTION be added to a NEW CHAPTER in title 37:**

21 For a pre-installed application, an application store provider shall provide available
 22 age-category information in response to a request from a developer and take reasonable
 23 measures to facilitate verifiable parental consent for use of the application.

24 This section does not apply to a developer of a pre-installed application if the
 25 developer is also an application store provider subject to the obligations set forth in
 26 sections 3 to 8, inclusive, of this Act, with respect to the device on which the application
 27 is pre-installed.

28 **Section 10. That a NEW SECTION be added to a NEW CHAPTER in title 37:**

29 An application store provider may not:

- 30 (1) Enforce a contract or terms of service against a minor, unless the application store
 31 provider has obtained verifiable parental consent;

- 1 (2) Knowingly misrepresent the information in the parental consent disclosure; or
 2 (3) Share age category data and any associated data, except as required by this
 3 chapter or otherwise required by law.

4 **Section 11. That a NEW SECTION be added to a NEW CHAPTER in title 37:**

5 A developer:

- 6 (1) Shall verify:
 7 ~~(a) The age category data of account holders located in this state through the~~
 8 ~~application store's data-sharing methods; and~~
 9 ~~(b) Whether verifiable parental consent for a minor's account has been obtained; the~~
 10 ~~age category data of account holders located in this state through the application~~
 11 ~~store's data-sharing methods;~~
 12 (2) Shall notify application store providers of a significant change to an application;
 13 (3) May only use age category data received through the application store's data-
 14 sharing methods to:
 15 (a) Enforce any developer-created age-related restrictions, safety-related
 16 features, or defaults; and
 17 (b) Ensure compliance with applicable laws, rules, and regulations; and
 18 (4) Shall request age category data ~~or verifiable parental consent:~~
 19 (a) When the account holder downloads or purchases an application, or
 20 launches a pre-installed application for the first time;
 21 (b) When implementing a significant change to an application; or
 22 (c) To comply with applicable law.

23 ~~This section does not apply to a developer of a pre-installed application if the~~
 24 ~~developer is also an application store provider subject to the obligations set forth in~~
 25 ~~sections 3 to 8, inclusive, of this Act, with respect to the device on which the application~~
 26 ~~is pre-installed.~~

27 **Section 12. That a NEW SECTION be added to a NEW CHAPTER in title 37:**

28 A developer may request age category data:

- 29 (1) No more than once during each six-month period to ~~verify~~ ~~determine~~ the accuracy
 30 of age category data associated with an account holder or continued account use
 31 within the age category;

- 1 (2) When the developer reasonably suspects that an account has been transferred to
2 a minor or suspects use by a minor outside of the minor's applicable age category;
3 or
4 (3) When an account holder creates a new account with the developer.

5 **Section 13. That a NEW SECTION be added to a NEW CHAPTER in title 37:**

6 When implementing any developer-created age-related restrictions, safety-related
7 features, or defaults, a developer must use the lowest age category indicated by age
8 category data received through the application store's data-sharing methods or age data
9 independently collected by the developer.

10 This section does not prohibit a developer from allowing a parent to customize age-
11 related restrictions, safety-related features, or content settings for individual users within
12 a minor account after the initial defaults described in this section are set.

13 **Section 14. That a NEW SECTION be added to a NEW CHAPTER in title 37:**

14 A developer may not:

- 15 (1) Enforce a contract or terms of service against a minor, unless the developer has
16 ~~verified through an application store's data-sharing methods that verifiable~~
17 ~~parental consent has been obtained~~ obtained consent from the minor's parent;
18 (2) Knowingly misrepresent any information in the parental consent disclosure; or
19 (3) Share age category data with any person.

20 **Section 15. That a NEW SECTION be added to a NEW CHAPTER in title 37:**

21 A minor or the parent of a minor who has been harmed by a violation of this chapter
22 may bring a civil action against an application store provider or a developer. In an action
23 pursuant to this section, the court shall award a prevailing plaintiff:

- 24 (1) The greater of actual damages or one-thousand dollars for each violation;
25 (2) Punitive damages;
26 (3) Reasonable attorney's fees; and
27 (4) Litigation costs.

28 **Section 16. That a NEW SECTION be added to a NEW CHAPTER in title 37:**

29 In addition to any other remedy available under state or federal law, the attorney
30 general may bring an action against an application store provider or a developer to:

- 1 (1) Recover a civil penalty not exceeding seven-thousand five-hundred dollars for each
 2 violation, to be forwarded to the state treasurer for deposit into the general fund;
 3 (2) Restrain or enjoin, using the procedures set forth in §§ 37-24-16, 37-24-23, and
 4 37-24-25, the application store provider or developer from violating this chapter;
 5 (3) Seek injunctive relief;
 6 (4) Obtain damage, restitution, disgorgement, or other compensation on behalf of
 7 residents of the state;
 8 (5) Recover reasonable attorney's fees;
 9 (6) Recover litigation costs and the costs of investigating the violation; and
 10 (7) Recover any other relief that the court may consider appropriate.

11 **Section 17. That a NEW SECTION be added to a NEW CHAPTER in title 37:**

- 12 A developer is not liable for a violation of this chapter if the developer:
 13 (1) Relied in good faith on applicable age category data received through an application
 14 store's data-sharing methods;
 15 (2) Relied in good faith on ~~notification from evidence that~~ an application store provider
 16 ~~that obtained~~ verifiable parental consent ~~was obtained~~; and
 17 (3) Complied with the requirements of this chapter.
 18 An application store provider that makes a good faith effort to comply with this
 19 Act, taking into consideration available technology and any reasonable technical
 20 limitations or outages, is not liable for any action taken in an attempt to comply with this
 21 Act.

22 **Section 18. That a NEW SECTION be added to a NEW CHAPTER in title 37:**

- 23 The immunity described in section 17 of this Act applies only to actions brought
 24 under this chapter, and does not limit a developer or application store provider's liability
 25 under any other applicable law.
 26 Nothing in this Act shall displace any other available remedies or rights authorized
 27 under the laws of this state or the United States.

28 **Section 19. That a NEW SECTION be added to a NEW CHAPTER in title 37:**

- 29 Nothing in this chapter may be construed to:
 30 (1) Prevent an application store provider or developer from taking reasonable
 31 measures to:

- 1 (a) Block, detect, or prevent distribution to minors of unlawful, obscene, or
2 other harmful material;
3 (b) Block or filter spam;
4 (c) Prevent criminal activity; or
5 (d) Protect application store or application security;
6 (2) Require an application store provider to disclose user information to a developer
7 beyond age category data ~~or status of parental consent~~;
8 (3) Allow an application store provider or developer to implement measures required
9 by this chapter in a manner that is arbitrary, capricious, anticompetitive, or
10 unlawful;
11 (4) Require a developer to collect, retain, reidentify, or link any information beyond
12 what is necessary to verify age category data as required by sections 11 and 12 of
13 this Act and what is collected, retained, reidentified, or linked in the developer's
14 ordinary course of business;
15 (5) Require a developer or application store provider to create, adopt, or implement
16 an application age rating system or content classification framework; or
17 (6) Require an application store provider or developer to block access to an application
18 that an account holder has downloaded or installed onto a mobile device prior to
19 December 1, ~~2026~~ 2027, except to the extent that a parent account revokes
20 verifiable consent for an affiliated minor account, or that there has been a
21 significant change to the application.

22 **Section 20.** This Act is effective beginning December 1, ~~2026~~ 2027.