Sixty-ninth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 7, 2025

HOUSE BILL NO. 1561
(Representatives Swiontek, Bosch, Fisher, Karls, Novak, Pyle, Nelson)
(Senators Hogan, Lee, Myrdal, Axtman)

AN ACT to create and enact a new section to chapter 51-07 of the North Dakota Century Code, relating to a commercial entity's liability for publishing or distributing sexual material harmful to a minor; to provide a penalty; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 51-07 of the North Dakota Century Code is created and enacted as follows:

Liability for publishing or distributing sexual material harmful to minors - Age verification requirement - Damages.

1. As used in this section:

   a. "Commercial entity" includes a corporation, limited liability company, partnership, limited partnership, sole proprietorship, or other legally recognized business entity.

   b. "Distribute" means to issue, sell, give, provide, deliver, transfer, transmute, circulate, or disseminate by any means.

   c. "Minor" means an individual under eighteen years of age.

   d. "News-gathering organization" means an employee of a:

      (1) Newspaper, news publication, or news source, printed or on an online or mobile platform, of current news and public interest, who is acting within the scope of employment and can provide documentation of employment with the newspaper, news publication, or news source; or

      (2) Radio broadcast station, television broadcast station, cable television operator, or wire service, who is acting within the scope of employment and can provide documentation of employment with the radio broadcast station, television broadcast station, cable television operator, or wire service.

   e. "Publish" means to communicate or make information available to another person on a publicly available internet website.

   f. "Reasonable age verification methods" includes verifying the individual seeking to access the material is eighteen years of age or older by using:

      (1) A digitized identification card; or

      (2) Requiring the individual attempting to access the material to comply with a commercial age verification system including the use of:

         (a) Government-issued identification; or

         (b) Any commercially reasonable method that relies on public or private transactional data to verify the age of the individual attempting to access the information is eighteen years of age or older.

g. "Sexual material harmful to a minor" includes material that:

(1) The average individual applying contemporary community standards would find, taking the material as a whole and with respect to a minor, is designed to appeal to or pander to the prurient interest;

(2) In a manner patently offensive with respect to a minor, exploits, is devoted to, or principally consists of descriptions of actual, simulated, or animated displays or depictions of:

(a) An individual's pubic hair, anus, genitals, or the nipple of the female breast;

(b) Touching, caressing, or fondling of nipples, breasts, buttocks, anuses, or genitals; or

(c) Sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, excretory functions, exhibitions, or any other sexual act; and

(3) Taken as a whole, lacks serious literary, artistic, political, or scientific value for a minor.

h. "Substantial portion" means more than thirty-three and one-third percent of total material on a website is sexual material harmful to a minor.

i. "Transactional data" means a sequence of information that documents an exchange, agreement, or transfer between an individual, commercial entity, or third party used for the purpose of satisfying a request or event. The term includes records from mortgage, education, and employment entities.

2. A commercial entity that knowingly publishes or distributes sexual material harmful to a minor on the internet from a website that contains a substantial portion of material, must be held liable if the entity fails to perform reasonable age verification methods to verify the age of an individual attempting to access the material.

3. A commercial entity or third party that performs the required age verification may not retain any identifying information of the individual after access has been granted to the material.

4. A commercial entity found to have violated subsection 2 or 3 is liable for damages.

5. A civil action may be brought against any commercial entity, or third party that performs the required age verification on behalf of the commercial entity, by:

a. A parent or guardian whose minor child was allowed access to the material in violation of subsection 2; or

b. An individual whose identifying information is retained in violation of subsection 3.

6. An individual authorized to bring a civil action under subsection 5 may seek and the court may award:

a. An injunction to enjoin continued violation of this section;

b. Compensatory and exemplary damages; and

c. Costs and fees, including reasonable attorney fees.

7. This section does not apply to any bona fide news or public interest broadcast, website video, report, or event, and may not be construed to affect the rights of any news-gathering organization.

8. An internet service provider or its affiliates or subsidiaries, a search engine, an application store, or a cloud service provider may not be held to have violated this section solely for providing access or connection to or from a website or other information or content on the internet or a facility, system, or network not under the provider's control, including transmission, downloading, intermediate storage, access software, or other forms of access or storage to the extent the provider is not responsible for the creation of the content of the communication that constitutes sexual material harmful to a minor.

SECTION 2. APPLICATION. This Act applies to websites accessed on or after the effective date of this Act.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-ninth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1561.

House Vote:	Yeas 91	Nays 0	Absent 3
Senate Vote:	Yeas 46	Nays 0	Absent 1

Chief Clerk of the House

Received by the Governor at _____M. on _____, 2025.

Approved at _____M. on _____, 2025.

Governor

Filed in this office this _____day of _____, 2025,

at _____ o'clock _____M.

Secretary of State