

Senate File 2219 - Introduced

SENATE FILE 2219

BY PETERSEN

A BILL FOR

1 An Act relating to the regulation of access to obscene material
2 by minors on social media platforms, and including effective
3 date provisions.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 659B.1 Definitions.

2 As used in this chapter, unless context otherwise requires:

3 1. "*Child pornography*" means the same as defined in 18
4 U.S.C. §2256.

5 2. "*Child sexual abuse material*" means any of the following:

6 a. Child pornography.

7 b. Obscene material that depicts a minor personally engaging
8 in, or personally simulating, sexual conduct.

9 3. "*Identifiable minor*" means the same as defined in 18
10 U.S.C. §2256.

11 4. "*Minor*" means the same as defined in 18 U.S.C. §2256.

12 5. "*Obscene material*" means the same as defined in section
13 728.1.

14 6. "*Reporting user*" means a natural person who reports
15 material to a social media platform using the means provided
16 by the social media platform.

17 7. "*Social media company*" means a person or entity that
18 owns or operates one or more social media platforms. "*Social*
19 *media company*" does not include a nonprofit organization exempt
20 from federal income tax pursuant to section 501(c)(3) of the
21 Internal Revenue Code.

22 8. a. "*Social media platform*" means a public or semipublic
23 internet-based service or application that has users in this
24 state and that meets all of the following criteria:

25 (1) (a) A substantial function of the service or
26 application is to connect users in order to allow users
27 to interact socially with each other within the service or
28 application.

29 (b) A service or application that provides electronic mail
30 or direct messaging services shall not be considered to meet
31 this criterion on the basis of that function alone.

32 (2) The service or application allows users to do all of the
33 following:

34 (a) Construct a public or semipublic profile for purposes of
35 signing into and using the service or application.

1 (b) Populate a list of other users with whom an individual
2 shares a social connection within the system.

3 (c) Create or post content viewable by other users,
4 including on message boards, in chat rooms, or through a
5 landing page or main feed that presents the user with content
6 generated by other users.

7 *b. "Social media platform"* does not include any of the
8 following:

9 (1) A stand-alone direct messaging service that provides
10 end-to-end encrypted communication or the portion of a
11 multiservice platform that uses end-to-end encrypted
12 communication.

13 (2) An internet-based service or application owned or
14 operated by a nonprofit organization exempt from federal income
15 tax pursuant to section 501(c)(3) of the Internal Revenue Code.

16 **Sec. 2. NEW SECTION. 659B.2 Reporting requirements.**

17 A social media platform shall do all of the following:

18 1. Provide, in a mechanism that is reasonably accessible
19 to users, a means for a user who is a resident of this state
20 to report material to the social media platform that the user
21 reasonably believes meets all of the following criteria:

22 *a.* The reported material is child sexual abuse material.

23 *b.* The reporting user is an identifiable minor depicted in
24 the reported material.

25 *c.* The reported material is displayed, stored, or hosted on
26 the social media platform.

27 2. Collect information reasonably sufficient to enable the
28 social media platform to contact, pursuant to subsection 3, a
29 reporting user.

30 3. Contact a reporting user in writing by a method,
31 including but not limited to a telephone number for purposes of
32 sending text messages or an electronic mail address, that meets
33 all of the following criteria:

34 *a.* The method is chosen by the reporting user.

35 *b.* The method is not a method that is within the control of

1 the social media company that owns or operates the social media
2 platform.

3 4. *a.* Permanently block the instance of reported material
4 from being viewable on the social media platform if the
5 reported material meets all of the following criteria:

6 (1) There is a reasonable basis to believe that the reported
7 material is child sexual abuse material.

8 (2) The reported material is displayed, stored, or hosted
9 on the social media platform.

10 (3) (a) The report contains basic identifying information,
11 such as an account identifier, sufficient to permit the social
12 media platform to locate the reported material.

13 (b) A social media platform shall not require a report to
14 contain a specific piece of information for purposes of this
15 subparagraph.

16 *b.* A social media platform shall make reasonable efforts to
17 remove and block other instances of the same reported material
18 blocked pursuant to this subsection from being viewable on the
19 social media platform.

20 5. Provide written confirmation to a reporting user that the
21 social media platform received that person's report that meets
22 all of the following criteria:

23 *a.* The written confirmation is provided to the reporting
24 user within thirty-six hours of when the material was first
25 reported.

26 *b.* The written confirmation is provided using the
27 information collected from the reporting user under subsection
28 2.

29 *c.* The written confirmation informs the reporting user of
30 the schedule of regular written updates that the social media
31 platform is required to make under subsection 6.

32 6. *a.* Provide a written update to the reporting user as
33 to the status of the social media platform's handling of the
34 reported material using the information collected from the
35 reporting user under subsection 2.

1 *b.* The written update required by this paragraph shall
2 be provided seven days after the date on which the written
3 confirmation required under subsection 5 was provided and every
4 seven days thereafter until the final written determination
5 required by subsection 7 is provided.

6 7. Issue a final written determination to the reporting
7 user, using the information collected from the reporting user
8 under subsection 2, stating one of the following:

9 *a.* The reported material has been determined to be child
10 sexual abuse material that was displayed, stored, or hosted on
11 the social media platform and has been blocked on the social
12 media platform.

13 *b.* The reported material has been determined not to be child
14 sexual abuse material.

15 *c.* The reported material has been determined not to be
16 displayed, stored, or hosted on the social media platform.

17 8. *a.* Except as provided in paragraph “*b*”, comply with
18 this section no later than thirty days after the date on which
19 material was first reported pursuant to this section.

20 *b.* (1) If the social media platform cannot comply with
21 this section due to circumstances beyond the reasonable control
22 of the social media platform, the social media platform shall
23 comply with this section no later than sixty days after the
24 date on which material was first reported pursuant to this
25 section.

26 (2) If this paragraph applies, the social media platform
27 shall promptly provide written notice of the delay, no later
28 than forty-eight hours from the time the social media platform
29 knew the delay was likely to occur, to the reporting user
30 using the information collected from the reporting user under
31 subsection 2.

32 Sec. 3. NEW SECTION. **659B.3 Liability.**

33 1. A social media company that fails to comply with the
34 requirements of this chapter shall be liable to a reporting
35 user for all of the following:

1 *a.* Any actual damages sustained by the reporting user as a
2 result of the violation.

3 *b.* (1) (a) Subject to subparagraph divisions (b) and (c),
4 statutory damages of no more than two hundred fifty thousand
5 dollars per violation.

6 (b) If a social media platform has permanently blocked the
7 instance of the reported material pursuant to section 659B.2,
8 subsection 4, before a complaint is filed for a violation of
9 this chapter, the maximum statutory damages awarded pursuant
10 to subparagraph division (a) shall be one hundred twenty-five
11 thousand dollars per violation.

12 (c) If a social media platform meets all of the following
13 requirements, the maximum statutory damages awarded pursuant to
14 subparagraph division (a), for a violation of section 658B.2,
15 subsections 4, 5, 6, and 7, shall be seventy-five thousand
16 dollars per violation:

17 (i) The social media platform registers with, and
18 participates in, the national center for missing and exploited
19 children's take it down service or service's successor.

20 (ii) The social media platform receives updated hash
21 values for identified child sexual abuse material from the
22 national center for missing and exploited children's take it
23 down service, or the service's successor, at least once every
24 thirty-six hours.

25 (iii) Within thirty-six hours of receiving updated hash
26 values for identified child sexual abuse material from the
27 national center for missing and exploited children's take it
28 down service, or service's successor, pursuant to subparagraph
29 subdivision (ii), the social media platform removes child
30 sexual abuse material identified by hash values from the social
31 media platform.

32 (iv) The social media platform reports identified child
33 sexual abuse material to the national center for missing and
34 exploited children's cybertipline, as required by 18 U.S.C.
35 §2258A.

1 (v) The social media platform provides to a reporting user
2 all of the following when a user reports child sexual abuse
3 material to the platform directly:

4 (A) Written confirmation to the reporting user that the
5 social media platform received that person's report within
6 thirty-six hours after the child sexual abuse material was
7 reported.

8 (B) A final written determination to the reporting user
9 within thirty days after the date on which the material was
10 first reported.

11 (2) In determining the amount of statutory damages pursuant
12 to this paragraph, a court shall consider the willfulness and
13 severity of the violation and whether the social media platform
14 has previously violated this chapter.

15 c. Costs of the action including reasonable attorney fees.

16 d. Any other relief that the court deems proper.

17 2. The failure of a social media platform to comply with
18 section 658B.2, subsections 4, 5, 6, and 7, within sixty days
19 after the date on which material was first reported pursuant to
20 section 658B.2 shall establish a rebuttable presumption that
21 the reporting user is entitled to statutory damages under this
22 section.

23 3. This chapter shall not be construed to limit or impair in
24 any way a cause of action under section 714H.3.

25 Sec. 4. NEW SECTION. **659B.4 Civil actions.**

26 1. This section shall apply only in a civil action brought
27 by, or on behalf of, or for the benefit of, a person who is
28 a minor or nonminor dependent and is a victim of commercial
29 sexual exploitation committed by a person who is over eighteen
30 years of age or facilitated, aided, or abetted by a social
31 media platform in violation of subsection 7. For purposes of
32 this section, the age of the victim, the status of the victim
33 as a minor or nonminor dependent, and the age of the defendant
34 is determined at the time of the defendant's act of commercial
35 sexual exploitation of the victim.

1 2. In a civil action brought by, on behalf of, or for the
2 benefit of a minor, or nonminor dependent, against a person who
3 engaged in any act of commercial sexual exploitation of a minor
4 or nonminor dependent, whenever a trier of fact is authorized
5 by a statute, other than subsection 3, to impose either a
6 fine, or a civil penalty or other penalty, or any other remedy
7 the purpose or effect of which is to punish or deter, and the
8 amount of the fine, penalty, or other remedy is subject to the
9 trier of fact's discretion, the trier of fact shall consider
10 all of the following factors, in addition to other appropriate
11 factors, in determining the amount of fine, civil penalty, or
12 other penalty, or other remedy to impose. If the trier of fact
13 makes an affirmative finding in regard to one or more of the
14 following factors, the trier of fact may impose a fine, civil
15 penalty, or other penalty, or other remedy in an amount up to
16 three times greater than authorized by the statute, or, if the
17 statute does not authorize a specific amount, up to three times
18 greater than the amount the trier of fact would impose in the
19 absence of that affirmative finding:

20 *a.* Whether the defendant's conduct was directed to more than
21 one minor or nonminor dependent.

22 *b.* Whether one or more minors or nonminor dependents
23 suffered substantial physical, emotional, or economic damage
24 resulting from the defendant's conduct.

25 *c.* Whether the defendant knew or reasonably should have
26 known that the victim was a minor or nonminor dependent. It
27 shall not be a defense to imposition of fines, penalties, or
28 other remedies pursuant to this paragraph that the defendant
29 was unaware of the victim's age or status as a nonminor
30 dependent at the time of the act.

31 3. If the trier of fact is not authorized by statute to
32 impose a civil penalty in an action described in subsection
33 2, the court may award a civil penalty not exceeding fifty
34 thousand dollars, and not less than ten thousand dollars, for
35 each act of commercial sexual exploitation committed by the

1 defendant upon making an affirmative finding in regard to one
2 or more of the factors in subsection 2. This penalty may be
3 imposed in addition to any other remedy available in law or in
4 equity.

5 4. Any penalty imposed pursuant to this section shall be
6 paid to the victim of the act of sexual exploitation.

7 5. It shall not be a defense to the imposition of fines or
8 penalties pursuant to this section that the victim consented to
9 the act of commercial sexual exploitation.

10 6. If the victim is under eighteen years of age, the court,
11 in its discretion, may order that any penalty imposed pursuant
12 to this section be held in trust for the victim and used
13 exclusively for the benefit and well-being of the victim. When
14 the victim reaches eighteen years of age or is emancipated, the
15 trust shall expire and any unspent remainder shall be the sole
16 property of the victim.

17 7. *a.* A social media platform shall not knowingly
18 facilitate, aid, or abet commercial sexual exploitation.

19 *b.* For a violation of this subsection, a court shall award
20 statutory damages not exceeding four million dollars and not
21 less than one million dollars for each act of commercial sexual
22 exploitation facilitated, aided, or abetted by the social media
23 platform.

24 *c.* A social media platform shall not be deemed to be in
25 violation of this subsection if the social media platform
26 demonstrates all of the following:

27 (1) The social media platform instituted and maintained
28 a program of at least biannual audits of the social media
29 platform designs, algorithms, practices, affordances, and
30 features to detect designs, algorithms, practices, affordances,
31 or features that have the potential to cause or contribute to
32 violations of this subsection.

33 (2) The social media platform took action, within
34 thirty days of the completion of an audit described in
35 subparagraph (1), designed to mitigate or eliminate the

1 reasonably foreseeable risk that a design, algorithm, practice,
2 affordance, or feature violates, or contributes to a violation
3 of, this subsection.

4 (3) The social media platform provided to each member of the
5 social media platform's board of directors a true and correct
6 copy of each audit within ninety days of the audit being
7 completed accompanied by a description of any action taken
8 pursuant to subparagraph (2).

9 (4) For purposes of this subsection, a social media platform
10 shall be deemed to have knowledge under paragraph "a" if all of
11 the following are true:

12 (a) Material was reported to a social media platform using
13 the mechanism required under section 659B.2, subsection 1, for
14 four consecutive months.

15 (b) The criteria set forth in section 659B.2, subsection 1,
16 are established with respect to that reported material.

17 (c) The reported material was first displayed, stored, or
18 hosted on the platform after January 1, 2025.

19 (5) For the purposes of this subsection, "*facilitate,*
20 *aid, or abet*" means to deploy a system, design, feature, or
21 affordance that is a substantial factor in causing minor users
22 to be victims of commercial sexual exploitation.

23 8. A waiver of the provisions of this section is contrary to
24 public policy and is void and unenforceable.

25 9. Notwithstanding section 614.1 or any other provision
26 of law to the contrary, no time limitation shall apply for an
27 action brought under this section.

28 10. For purposes of this section:

29 a. "*Commercial sexual exploitation*" means an act committed
30 for the purpose of obtaining property, money, or anything else
31 of value in exchange for, or as a result of, a sexual act of a
32 minor or nonminor dependent, including but not limited to an
33 act that would constitute a violation of any of the following:

34 (1) Sex trafficking of a minor in violation of section
35 710A.2.

1 (2) Pimping of a minor in violation of section 725.2.

2 (3) Pandering of a minor in violation of section 725.3.

3 (4) Procurement of a child for lascivious acts in violation
4 of section 709.8.

5 (5) Enticing a minor in violation of section 710.10.

6 (6) Sexual exploitation of a minor, in violation of section
7 728.12, subsections 1 and 2.

8 *b. "Nonminor dependent"* means the same as dependent adult
9 defined in section 235B.2.

10 *c. "Social media platform"* does not include any of the
11 following:

12 (1) A stand-alone direct messaging service that provides
13 end-to-end encrypted communication or the portion of a
14 multiservice platform that uses end-to-end encrypted
15 communication.

16 (2) An internet-based service or application owned or
17 operated by a nonprofit organization exempt from federal income
18 tax pursuant to section 501(c)(3) of the Internal Revenue Code.

19 Sec. 5. EFFECTIVE DATE. This Act takes effect on January
20 1, 2025.

21

EXPLANATION

22 The inclusion of this explanation does not constitute agreement with
23 the explanation's substance by the members of the general assembly.

24 This bill relates to the regulation of access to obscene
25 material by a minor on social media platforms.

26 The bill requires a social media platform to provide, in a
27 mechanism that is reasonably accessible to users, a means for a
28 user who is an Iowa resident to report material to the social
29 media platform that the user reasonably believes meets certain
30 criteria, including that the reported material is child sexual
31 abuse material in which the reporting user is an identifiable
32 minor depicted in the reported material.

33 The bill requires the social media platform to permanently
34 block the reported material and make reasonable efforts to
35 remove and block other instances of the same reported material

1 from being viewable on the social media platform if there is a
2 reasonable basis to believe that the reported material is child
3 sexual abuse material that is displayed, stored, or hosted
4 on the social media platform, and the report contains basic
5 identifying information sufficient to permit the social media
6 platform to locate the reported material.

7 The bill makes a social media platform liable to the
8 reporting user, including for statutory damages of no more than
9 \$250,000 per violation, \$125,000 per violation, or \$75,000 per
10 violation, as specified.

11 The bill prohibits a social media platform from knowingly
12 facilitating, aiding, or abetting commercial sexual
13 exploitation, as specified. The bill would require a court to
14 award statutory damages not exceeding \$4 million and not less
15 than \$1 million for each act of commercial sexual exploitation
16 facilitated, aided, or abetted by the social media platform.
17 The bill defines "facilitate, aid, or abet" to mean to deploy a
18 system, design, feature, or affordance that is a substantial
19 factor in causing minor users to be victims of commercial
20 sexual exploitation. The bill prohibits a social media
21 platform from being deemed to be in violation of this provision
22 if the social media platform demonstrates certain mitigating
23 facts, including that the social media platform instituted
24 and maintained a program of at least biannual audits of its
25 designs, algorithms, practices, affordances, and features to
26 detect designs, algorithms, practices, affordances, or features
27 that have the potential to cause or contribute to violations
28 of that provision. The bill provides that there is no time
29 limitation in which to bring a civil action against a social
30 media platform that violates this provision.

31 The bill takes effect on January 1, 2025.