

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1 Social Media Use for Minors

**SPONSOR(S):** Sirois and others

**TIED BILLS:** HB 1377 **IDEN./SIM. BILLS:** SB 1788

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	13 Y, 1 N	Wright	Anstead
2) Judiciary Committee			

### SUMMARY ANALYSIS

In 2023, an estimated 4.9 billion people worldwide used social media. Bipartisan groups, professional associations, teachers and parents across the world have recently sounded the alarm about the dangers of social media use by children. The U.S. Surgeon General and the American Psychological Association have issued advisories urging action to protect children online.

Many experts have tied the increased use of social media in our society with the increase in rates of depression, anxiety, and stress of adolescents. Studies also indicate that social media may trigger an array of negative emotions in users that contribute to or worsen their depression symptoms.

The bill requires social media platforms to prohibit children under the age of 16 from creating an account and to perform reasonable age verification methods to verify that the age of a person attempting to create an account is 16 years of age or older. The reasonable age verification method must be conducted by an independent third-party not affiliated with the commercial entity, and any information used to verify age must be deleted after it is verified.

The bill requires a social media platform to do the following related to existing accounts belonging to a minor younger than 16 years of age:

- Terminate any such account that it reasonably knows to be held by a minor younger than 16 years of age.
- Allow such an account holder or the confirmed parent or guardian to terminate the account.
- Permanently delete all personal information held by the social media platform relating to the terminated account, unless there are legal requirements to maintain such information.

If the social media platform allows minors younger than 18 years of age to create an account on the platform, the bill requires the platform to include a link on its Internet homepage or platform login page that contains:

- Disclosure of use of addictive designs, deceptive patterns, and manipulated images.
- Informative resources on suicide prevention, domestic violence, law enforcement, and bullying.
- A reporting mechanism related to bullying, harassment, and threats of violence or self-harm.
- Whether the platform collects or sells personal information of children and who it is sold to.

The bill does not apply to certain websites whose predominant function is:

- E-mail, Messaging, or Texts;
- Streaming services, News, Sports or Entertainment sites; and
- Online Shopping or Gaming.

The bill provides that, if a social media platform violates the requirements for minor users, it is an unfair and deceptive trade practice actionable under Florida Deceptive and Unfair Trade Practice Act, solely by Department of Legal Affairs. The bill also allows a private cause of action against a commercial entity that fails to prohibit or block a minor from future access after a report of unauthorized or unlawful access.

The bill has no fiscal impact on local governments, and an indeterminate fiscal impact on state government.

The bill provides an effective date of July 1, 2024.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives .**

**STORAGE NAME:** h0001a.RRS

**DATE:** 1/11/2024

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Current Situation

##### **Social Media Platforms**

The term “social media” includes “forms of electronic communication (such as websites for social networking and microblogging) through which users create online communities to share information, ideas, videos, personal messages, and other content.”<sup>1</sup>

In 2005, the year Facebook started, just 5% of American adults used social media platforms. By 2011, that share had risen to half of all Americans, and by 2021, 72% of the public used some type of social media.<sup>2</sup>

Virtually all teens ages 13 to 17 use social media, with more than 1 in 3 reporting that they use it “almost constantly.” While most U.S. social media platforms require users to be at least 13 years old, nearly 40 percent of kids ages 8 to 12 use social media.<sup>3</sup>

In less than a generation, social media has evolved from direct electronic information exchange, to a virtual gathering place, retail platform, and marketing tool. What began as a desktop or laptop experience shifted to mobile phones and tablets. With the advent of social media apps that could run on smartphones, end users could take their communities with them wherever they went and use social media at any time.<sup>4</sup>

Some social media companies already prohibit kids under 13 from signing up to their platforms to comply with federal requirements, but children may easily get around the bans, regardless of their parents’ consent.<sup>5</sup> In fact, approximately 38% of children between the ages 8 to 12 and 84% of teenagers between the ages of 13 and 18 are using social media.<sup>6</sup>

##### **Lawsuits Against Social Media Platforms**

Evidence exists that social media platforms have intentionally created algorithms and other functions deliberately designed to hold users’ attention as long as possible, and tapping into psychological biases and vulnerabilities relating to our desire for validation and fear of rejection. The platforms continue to do so even though they are aware that too much passive use of social media, can be unhealthy.<sup>7</sup>

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<sup>1</sup> Meriam-Webster, *Dictionary, Definition, Social Media*, <https://www.merriam-webster.com/dictionary/social%20media> (last visited Jan. 8, 2024).

<sup>2</sup> Pew Research Center, *Social Media Fact Sheet*, (Apr. 7, 2021), <https://www.pewresearch.org/internet/fact-sheet/social-media/> (last visited Jan. 8, 2024).

<sup>3</sup> The Annie E. Casey Foundation, *Social Media's Concerning Effect on Teen Mental Health*, (Aug. 10, 2023), <https://www.aecf.org/blog/social-medias-concerning-effect-on-teen-mental-health#:~:text=Numerous%20studies%20show%20that%20higher,poor%20body%20image%2C%20eating%20disorder> (last visited January 8, 2024).

<sup>4</sup> Maryville University, *The Evolution of Social Media: How Did It Begin, and Where Could It Go Next?*, (May 28, 2020), <https://online.maryville.edu/blog/evolution-social-media/> (last visited Jan. 8, 2024).

<sup>5</sup> Barbara Ortutay, *Car seats and baby formula are regulated. Is social media next?*, The Associated Press, May, 23, 2023, <https://apnews.com/article/surgeon-general-kids-social-media-teens-tiktok-instagram-443530d9baa3f91386bf9fbfb313bbaf> (last visited Jan. 9, 2024).

<sup>6</sup> Shiv Sudhakar, *Age 13 and younger is 'too early' for kids to be on social media, surgeon general admits*, Fox News, Feb. 10, 2023, <https://www.foxnews.com/lifestyle/age-13-too-early-kids-social-media-surgeon-general> (last visited Jan. 9, 2024).

<sup>7</sup> Kraut R, Patterson M, Lundmark V, Kiesler S, Mukophadhyay T, Scherlis W., *Internet paradox: a social technology that reduces social involvement and psychological well-being?*, *Am Psychol.*, Sept. 1998, <https://pubmed.ncbi.nlm.nih.gov/9841579/> (last visited Jan. 8, 2024)

On October 24, 2023, a group of 41 states and the District of Columbia, including Florida, filed suit against Meta,<sup>8</sup> the parent company of Facebook, Instagram, WhatsApp, and Messenger, contending that the company knowingly used features on its platforms to cause children to use them compulsively, even as the company said that its social media sites were safe for young people.<sup>9</sup> The complaint alleges that Meta took actions which qualify as a deceptive or unfair trade practice and which violate the federal Children's Online Privacy Protection Act.<sup>10</sup>

The complaint states that "Meta has harnessed powerful and unprecedented technologies to entice, engage and ultimately ensnare youth and teens. It's motive is profit, and in seeking to maximize its financial gains, Meta has repeatedly misled the public about the substantial dangers of its social media platforms" and Meta "has concealed the ways in which these platforms exploit and manipulate its most vulnerable consumers: teenagers and children."<sup>11</sup>

Regarding the motivation for the suit, Florida Attorney General Ashley Moody stated that "Meta has gone unchecked for too long, and our children are suffering the consequences of these unlawful practices...I took action to stop Meta from targeting minors with addictive features to keep them online for hours, collecting their data and other unlawful actions that harm teens' mental health,"<sup>12</sup> and "It's no surprise to parents that children cannot stay off their phones. This has been shown to be very addictive to children across the United States. It's caused mental health problems and sleep problems."<sup>13</sup>

Additionally, New York Attorney General Letitia James stated "Meta has profited from children's pain by intentionally designing its platforms with manipulative features that make children addicted to their platforms while lowering their self-esteem....Social media companies, including Meta, have contributed to a national youth mental health crisis and they must be held accountable."<sup>14</sup>

## Effects of Social Media on Children

Social media has become an important aspect of a minor's digital interactions, as they use it for entertainment and communication purposes.<sup>15</sup> Adolescents are constantly in touch with their peers via social media accounts. However, social media has the potential to have both positive and negative effects on their health.<sup>16</sup>

Children can see many benefits from using social media, including:<sup>17</sup>

- Enhanced communication skills,
- Enhanced social connections,
- Making new friends and meaningful connections,
- Exchanging ideas and digital photos,

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<sup>8</sup> *State of Florida v. Meta Platforms, Inc., Instagram, LLC*, Case No. 8:23-cv-02412 (M.D. Fla.); *State of Arizona, et al. v Meta Platforms, Inc., Instagram LLC, Meta Payments, Inc., et al*, Case No. 4:23-cv-05448 (N.D. Cal.). The cases have merged, and are still pending.

<sup>9</sup> *State of Arizona, et al. v Meta, Id*; Matt Richtel, *Is Social Media Addictive? Here's What the Science Says*, New York Times, Oct. 25, 2023, <https://www.nytimes.com/2023/10/25/health/social-media-addiction.html> (last visited Jan. 8, 2024).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> Office of Attorney General Ashley, ATTORNEY GENERAL MOODY TAKES LEGAL ACTION AGAINST META TO PROTECT CHILDREN, Oct. 24, 2023, <https://www.myfloridalegal.com/newsrelease/attorney-general-moody-takes-legal-action-against-meta-protect-children> (last visited Jan. 9, 2024).

<sup>13</sup> Craig Patrick, *Florida among states suing Meta, claiming Facebook and Instagram are addicting to children*, AOL, <https://www.aol.com/news/florida-among-states-suing-meta-224317028.html> (last visited Jan. 9, 2024).

<sup>14</sup> Amanda Bronstad, *State AGs Sue Meta: Social Media 'Unsafe and Addictive' to Youth*, ALM|Law.com, <https://www.law.com/therecorder/2023/10/24/state-ags-sue-meta-social-media-unsafe-and-addictive-to-youth/?sreturn=20240009113225> (last visited Jan. 9, 2024).

<sup>15</sup> Andrea Imer & Florian Schmiedek, *Associations between youth's daily social media use and well-being are mediated by upward comparisons*, Communications Psychology, (Aug. 22, 2023), <https://www.nature.com/articles/s44271-023-00013-0#citeas> (last visited Jan. 8, 2024).

<sup>16</sup> Maya Dollarhide, *Social Media: Definition, Effects, and List of Top Apps*, Investopedia.com, <https://www.investopedia.com/terms/s/social-media.asp> (last visited Jan. 6, 2024).

<sup>17</sup> *Id.*

- Developing a new interest, and experimenting with new forms of self-expression,
- Learning basic social and technical skills,
- Feelings of Inclusion,
- Interacting across geographic barriers, and
- Humor.

Common risks from using social media include:<sup>18</sup>

- Depression,
- Increased stress,
- Social withdrawal,
- Anxiety,
- Poor body image,
- Loneliness,
- Low self-esteem,
- Exposure to harmful or inappropriate content,
- Exposure to dangerous people,
- Cyberbullying,<sup>19</sup>
- Sexting,
- Oversharing personal or private information,
- Exposure to excessive advertisements,
- Identity theft or being hacked,
- Interference with sleep, exercise, homework, or family activities,
- Drama,
- Social pressure,
- Suicidal thoughts or suicide,
- Negative influence on cognitive ability, and
- Negative school performance.

Children use social media to find community,<sup>20</sup> but their mental health may be negatively affected. Deterioration in mental health is one of the side effects stemming from social media overuse. The link between social-media use, depression, and loneliness has been causally linked or proven by psychologists showing that an increase in use causes a decrease in well-being.

In May 2023, U.S. Surgeon General Dr. Vivek Murthy released an advisory to call attention to the effects of social media on youth mental health. The Advisory noted that at crucial periods of adolescent brain development, social media use is predictive of decreases in life satisfaction, as well as additional concerns around body image, sleep issues, and much more.<sup>21</sup> He has also concluded that 13 years old is “too early” for children to use social media, despite most social media companies allowing 13-year-olds to use their platforms. In early adolescence, kids are still “developing their identity, their sense of self.”<sup>22</sup>

Other experts agree. David Greenfield, a psychologist, said the platforms lure users with powerful tactics. One is “intermittent reinforcement,” which creates the idea that a user could get a reward at any

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<sup>18</sup> Loyola Medicine, *Social Media Safety for Kids and Teens*, <https://www.loyolamedicine.org/about-us/blog/social-media-safety-kids-teens>, (last visited Jan. 6, 2024); *Is social media bad for mental health and wellbeing? Exploring the perspectives of adolescents*.

O'Reilly M, Dogra N, Whiteman N, Hughes J, Eruyar S, Reilly P. *Clin Child Psychol Psychiatry*. 2018;23:601–613.

<sup>19</sup> Research shows that victims of cyberbullying are more likely to use alcohol and drugs and skip school than other students. They also are more likely to receive poor grades and experience low self esteem and health problems. In extreme situations, cyberbullying has led to suicide. Fisher BW, Gardella JH, Teurbe-Tolon AR, *Peer cybervictimization among adolescents and the associated internalizing and externalizing problems: a meta-analysis.. J Youth Adolesc.*, Jul. 22, 2016, <https://pubmed.ncbi.nlm.nih.gov/27447707/> (last visited Jan. 8, 2024).

<sup>20</sup> Pew Research Center, *Teens' Social Media Habits and Experiences*, <https://www.pewresearch.org/internet/2018/11/28/teens-social-media-habits-and-experiences/>, (last visited Jan. 6, 2024).

<sup>21</sup> "Social Media and Youth Mental Health," The US Surgeon General's Advisory, May 2023.

<sup>22</sup> Lauraine Langreo, EducationWeek, *Surgeon General: Kids Under 14 Should Not Use Social Media*, Feb. 2, 2023, <https://www.edweek.org/leadership/surgeon-general-kids-under-14-should-not-use-social-media/2023/02> (last visited Jan. 6, 2024).

time, but when the reward comes is unpredictable. Adults are susceptible, but young people are particularly at risk, because the brain regions that are involved in resisting temptation and reward are not nearly as developed in children and teenagers as in adults.<sup>23</sup>

Examples of studies and reports that have shown the dangers of social media use by children include:

- One study conducted by social media and psychology scholars found a link between social media use and poor mental health, especially among girls. The study demonstrated that girls experience a consistent and substantial association between mental health and social media, and such associations were stronger than links between mental health and binge drinking, sexual assault, obesity, and hard drug use.<sup>24</sup>
  - Dr. Jean Twenge, a generational trends scholar, saw the beginning of a mental health crisis starting in 2012 when reviewing mental health metrics that showed rates of depression, anxiety and loneliness were rising, which she points out coincides with the fast rise in use of smartphones in 2012 and all the social media that comes along with them.<sup>25</sup>
- Another study found that social media use causes children to be more sensitive to anticipating social risks: While children generally become more attuned to social interactions as they enter adolescence, those who are frequent, early social media users become particularly sensitive to anticipating social risks and rewards from their peers.<sup>26</sup>
  - The researchers found that “habitual” social media users, or those who checked their social feeds 15 times a day or more, responded quicker and more intensely to perceived good or bad emotions from peers, compared to students who checked once a day or less.<sup>27</sup>
- A recent report by the Wall Street Journal outlined internal Meta research showing that Instagram conducted online surveys, diary studies, focus groups, and large-scale questionnaires, which showed that 32 percent of teenage girls reported that Instagram made them have a worse body image. Of research participants who experienced suicidal thoughts, 13 percent of British teens and 6 percent of American teens directly linked their interest in suicide to Instagram.<sup>28</sup>
- Several studies have also tied the advent of the smartphone, where the majority of children are accessing social media, to increased rates of depression especially among girls.<sup>29</sup> Since 2019, rates of depression especially among young girls has skyrocketed. In 2021, more than 40 percent of high school students reported depressive symptoms, with girls reporting even higher rates of poor mental health and suicidal thoughts, according to data from the U.S. Centers for Disease Control and Prevention (CDC).<sup>30</sup>
  - According to the CDC, nearly one in three high school girls considered suicide in 2021, a 60 percent increase since 2011, teen depression doubled between 2010 and 2019, and

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<sup>23</sup> Matt Richtel, New York Times, *Is Social Media Addictive? Here's What the Science Says*. (Oct. 25, 2023), <https://www.nytimes.com/2023/10/25/health/social-media-addiction.html> (last visited Jan. 8, 2024).

<sup>24</sup> Haidt, J., Rausch, Z., & Twenge, J., *Social Media and Mental Health: A Collaborative Review*, New York University, <https://jonathanhaidt.com/reviews/> (last visited Jan. 8, 2024).

<sup>25</sup> Michaeleen Doucleff, *The truth about teens, social media and the mental health crisis*, NPR Health Shots, Apr. 25, 2023, <https://www.npr.org/sections/health-shots/2023/04/25/1171773181/social-media-teens-mental-health> (last visited Jan. 8, 2024).

<sup>26</sup> Sarah D. Sparks, *Preteens' Social Media Habits Could Be Changing Their Brains*, Education Week, Jan. 6, 2023, <https://www.edweek.org/leadership/preteens-social-media-habits-could-be-changing-their-brains/2023/01> (last visited Jan. 6, 2024); Maria T. Maza, BS; Kara A. Fox, MA; Seh-Joo Kwon, BS; et al, *Association of Habitual Checking Behaviors on Social Media With Longitudinal Functional Brain Development*, JAMA Pediatrics, (Jan. 3, 2023), <https://jamanetwork.com/journals/jamapediatrics/article-abstract/2799812> (last visited Jan. 6, 2024).

<sup>27</sup> Maria T. Maza, *supra* note 26.

<sup>28</sup> Taylor Hatmaker, *Facebook knows Instagram harms teens. Now, its plan to open the app to kids looks worse than ever*, TechCrunch.com, <https://techcrunch.com/2021/09/16/facebook-instagram-for-kids-mosseri-wsj-teen-girls/> (last visited Jan. 6, 2024).

<sup>29</sup> Nesi J, Prinstein MJ., *Using social media for social comparison and feedback-seeking: gender and popularity moderate associations with depressive symptoms*. J Abnorm Child Psychol., Nov. 2015, <https://pubmed.ncbi.nlm.nih.gov/25899879/> (last visited Jan. 8, 2024).

<sup>30</sup> Fardouly J, Vartanian LR, *Social media and body image concerns: current research and future directions*, Curr. Opin. Psychol., 2016, <https://www.sciencedirect.com/science/article/abs/pii/S2352250X15002249> (last visited Jan. 8, 2024).

emergency room admissions for self-harm among 10- to 14-year-old girls tripled between 2009 and 2015.<sup>31</sup>

- A study on the effects of social media use on mental health during adolescent development indicates that there are two windows of time when children are most sensitive to detrimental effects of social media, and when higher estimated social media use predicts a decrease in life satisfaction ratings a year later. For girls, the windows occur at ages 11 through 13, and 19; and for boys, the windows occur at ages 14 through 15, and 19.<sup>32</sup>

Based on these studies and scientific research, many experts have called for the regulation of social media and specifically regulation of the use of social media by children. Dr. Mary Alvord, a member of the American Psychological Association social media advisory panel, states that just because social media is here to stay, doesn't "mean we have to accept its dangers. Just as we decide when kids are old enough to drive, and we teach them to be good drivers, we can establish guidelines and teach children to use social media safely."<sup>33</sup>

## Safety Measures and Parental Controls

Providing children with information on ways to more safely use social media may decrease the harm they experience. Having conversations about social media, its benefits, and its risks, may help promote positive social media usage.<sup>34</sup> Parental controls may also help protect children from inappropriate content, cyberbullying and other online safety issues.<sup>35</sup> Examples of parental controls include blocking websites, filtering content, imposing limits on screen time, allowing parents to monitor online activity, location tracking, and disabling Wi-Fi.<sup>36</sup>

However, two studies at the University of Central Florida found that parental control apps may actually be counterproductive, harming the trust between a parent and child and reducing the child's ability to respond to online threats. In one of the studies, children found the apps overly restrictive and prevented them from doing everyday tasks, such as homework assignments. Additionally, a researcher stated that "parental involvement and direct supervision were both associated with fewer peer problems and less online victimization for teens, but neither of these factors correlated with the use of parental control apps."<sup>37</sup>

## Social Media and Addictive Designs and Deceptive Patterns

In general, addictive designs or deceptive patterns, also called dark patterns, are deceptive user experiences that take advantage of how people habitually use websites to get people to do something they may not normally do, such as impulse purchasing, giving away personal information, or spending excessive time on a website.<sup>38</sup> Examples include autoplay, when a video website automatically plays

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<sup>31</sup> Centers for Disease Control and Prevention, *U.S. Teen Girls Experiencing Increased Sadness and Violence* (Feb. 13, 2023), <https://www.cdc.gov/media/releases/2023/p0213-yrbs.html> (last visited Jan. 8, 2024)

<sup>32</sup> Kirsten Weir, *Social media brings benefits and risks to teens. Here's how psychology can help identify a path forward*, American Psychological Association (Sep. 1, 2023), <https://www.apa.org/monitor/2023/09/protecting-teens-on-social-media#:~:text=During%20those%20windows%E2%80%94around%201.1649%2C%202022>. (last visited Jan. 8, 2023).

<sup>33</sup> Kirsten Weir, *supra* note 32.

<sup>34</sup> WebMD Editorial Contributors, *How to Talk to Your Kids About Social Media*, WebMD.com, <https://www.webmd.com/parenting/how-to-talk-to-kids-about-social-media> (last visited Jan. 6, 2024).

<sup>35</sup> Internetmatters.org, *Parental Controls*, <https://www.internetmatters.org/parental-controls/> (last visited Jan. 6, 2024).

<sup>36</sup> Caroline Knorr, Commonsensemedia.org, *Parents' Ultimate Guide to Parental Controls*, <https://www.commonsensemedia.org/articles/parents-ultimate-guide-to-parental-controls> (last visited Jan. 6, 2024).

<sup>37</sup> Barbara Abney and Zenaïda Kotala, *Apps to Keep Children Safe Online May be Counterproductive*, UCF Today, Apr. 2, 2018, <https://www.ucf.edu/news/apps-keep-children-safe-online-may-counterproductive/> (last visited Jan. 9, 2024).

<sup>38</sup> Brad Bartlett, *Dark Design Patterns: Teach Kids to Recognise Them*, Kidslox, Feb. 7, 2023, <https://kidslox.com/guide-to/dark-design-patterns> (last visited Jan. 6, 2024).

new videos in succession as a default setting;<sup>39</sup> and infinite scroll, when a website allows users to scroll endlessly through content, rather than clicking through pages.<sup>40</sup>

In 2022, the Federal Trade Commission (FTC) issued a report outlining the ways that companies are increasingly using dark patterns to manipulate consumers into buying products or giving up their privacy.<sup>41</sup> Common dark pattern tactics include:

- Disguising Ads, which includes advertisements designed to look like independent, editorial content; comparison shopping sites that claim to be neutral but really rank companies based on compensation; and countdown timers designed to make consumers believe they only have a limited time to purchase a product or service when the offer is not actually time-limited.
- Making it difficult to cancel subscriptions or charges, which involves tricking someone into paying for goods or services without consent.
- Burying key terms and junk fees, which involves hiding or obscuring material information from consumers that consumers don't see before making a purchase.
- Tricking consumers into sharing data, which involves falsely giving consumers choices about privacy settings or sharing data, and instead steer consumers toward the option that gives away the most personal information.<sup>42</sup>

Recently, FTC has filed complaints against several companies for using dark patterns as a deceptive trade practice.<sup>43</sup> For example, the FTC has taken action against Twitter (now X), alleging it deceptively used account security information to sell targeted advertisements.<sup>44</sup> Additionally, the FTC filed a complaint against Amazon, alleging use of dark patterns to deceive users into subscribing to a premium service.<sup>45</sup> Both cases are still pending.

## Age Verification Mechanisms

There are several ways that Internet companies verify, or attempt to verify, age. Options include using:<sup>46</sup>

- Government identity documents, which generally requires the user to submit a government document or a third party to the company for review.
- Phone records, which generally checks the user's phone for parental controls.
- Credit score databases, which generally requires the user to enter identifying information, which is then confirmed through a credit check agency.
- Biometric age estimation, which generally requires a facial analysis to estimate age.
- Credit cards, which generally requires to supply credit card information for validation.

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<sup>39</sup> Rene Otto, *Autoplay and infinite scroll*, Medium, <https://rene-otto.medium.com/autoplay-and-infinite-scroll-8607abe52bb7#:~:text=nobody%20asked%20for%20autoplay%20video,%3A%20stealing%20your%20attention%20back.%E2%80%9D> (last visited Jan. 6, 2024).

<sup>40</sup> Erin Rupp, *The Infinite Scroll: Why It's So Addictive and How to Break Free*, Freedom.to, Feb. 28, 2022, [The Infinite Scroll: Why It's So Addictive and How to Break Free - Freedom Matters](#) (last visited Jan. 6, 2024).

<sup>41</sup> Federal Trade Commission, *FTC Report Shows Rise in Sophisticated Dark Patterns Designed to Trick and Trap Consumers*, Sep. 15, 2022, <https://www.ftc.gov/news-events/news/press-releases/2022/09/ftc-report-shows-rise-sophisticated-dark-patterns-designed-trick-trap-consumers> (last visited Jan. 9, 2024).

<sup>42</sup> *Id.*

<sup>43</sup> Frank Gorman, Benjamin Chapin, Reade Jacob, and Julia May, *FTC Targets "Dark Patterns" in Actions Against Amazon and Publishers Clearing House*, WilmerHale, <https://www.wilmerhale.com/insights/client-alerts/20230814-ftc-targets-dark-patterns-in-actions-against-amazon-and-publishers-clearing-house> (last visited Jan. 6, 2024).

<sup>44</sup> Federal Trade Commission, *FTC Charges Twitter with Deceptively Using Account Security Data to Sell Targeted Ads*, May 25, 2022, <https://www.ftc.gov/news-events/news/press-releases/2022/05/ftc-charges-twitter-deceptively-using-account-security-data-sell-targeted-ads> (last visited Jan. 9, 2024).

<sup>45</sup> Federal Trade Commission, *FTC Takes Action Against Amazon for Enrolling Consumers in Amazon Prime Without Consent and Sabotaging Their Attempts to Cancel*, Jun. 21, 2023, <https://www.ftc.gov/news-events/news/press-releases/2023/06/ftc-takes-action-against-amazon-enrolling-consumers-amazon-prime-without-consent-sabotaging-their> (last visited Jan. 6, 2024).

<sup>46</sup> The Age Verification Providers Association, *How do you check age online?*, <https://avpassociation.com/avmethods/> (last visited Jan. 7, 2024).

- Open banking, which generally requires the user to log into their own online banking system, and give approval for date of birth data to be supplied to a bank-approved third party age verification provider.
- Algorithmic profiling, which generally assesses the likely age of a user based on their online behavior.
- Self-declaration, which generally requires the user to tick a box or self-enter a birthdate.
- Zero knowledge proofs, which generally enables users to upload identity documents to privacy servers and securely share encrypted, anonymous “proofs” of age to a company, through a process called hashing, without actually transmitting the identity documents to the company.<sup>47</sup>

Many industries are required to use age verification methods, including for:

- Using tobacco,<sup>48</sup>
- Engaging in gambling,<sup>49</sup>
- Consuming alcohol,<sup>50</sup> and
- Purchasing firearms.<sup>51</sup>

When verifying age online, people usually share personal information, including:

- Full name and location.
- Email or phone number (when using two-factor authorization).
- Home address.

Some social media platforms ask for age identifying information to create an account, but such information is not always verified. For example, Facebook requires new users to self-report a birthdate to confirm age of at least 13 years old. However, Meta is currently testing new ways to age verify, including through the use of biometrics and online interviews.<sup>52</sup>

Additionally, adult websites in the United States generally use a checkbox for a user to confirm they are at least 18 years of age. Recently, however, several states and the United Kingdom passed laws to require adult websites to use age verification measures to block adult content from being accessed by minors.<sup>53</sup>

Identity theft is a potential risk when users reveal this information, and websites can collect the information revealed through age verification processes and combine it with other data for targeted advertisements or sharing that data with third parties.<sup>54</sup>

However, there are numerous minimally invasive verification techniques that do not require sharing any age verification information at all with social media platforms. For instance, a trusted third party could verify age and provide a QR code or similar device to the social media platform, establishing age

<sup>47</sup> Bessie Liu, *Aleo blockchain adds zPass, a ZK protocol for verifying identities*, Blockworks, <https://blockworks.co/news/zk-decentralized-identity-verification> (last visited Jan. 6, 2024).

<sup>48</sup> S. 569.14, F.S. Additionally, the U.S. Food and Drug Administration (FDA) recommends using independent, third-party age- and identity-verification services that compare customer information against third-party data sources for online sellers of tobacco. FDA, *Enforcement Priorities for Electronic Nicotine Delivery Systems (ENDS) and Other Deemed Products on the Market Without Premarket Authorization (Revised)*, p. 7, April 2020, <https://www.fda.gov/media/133880/download> (last visited Jan. 9, 2024).

<sup>49</sup> S. 551.113(1), F.S.; S. 849.0931(10), F.S.

<sup>50</sup> S. 84

<sup>51</sup> S. 790.065, F.S.

<sup>52</sup> Meta, *Introducing New Ways to Verify Age on Instagram*, Jun. 23, 2022, <https://about.fb.com/news/2022/06/new-ways-to-verify-age-on-instagram/> (last visited Jan. 9, 2024).

<sup>53</sup> Masha Borak, UK introduces Online Safety Bill mandating age verification, Oct. 27, 2023, <https://www.biometricupdate.com/202310/uk-introduces-online-safety-bill-mandating-age-verification#:~:text=The%20United%20Kingdom%20has%20finally,checking%20measures%2C%20including%20biometric%20technology>. (last visited Jan. 9, 2024); Dmytro Sashchuk, *Age verification regulations in the United States of America*, Veriff, (Nov. 15, 2023), <https://www.veriff.com/fraud/learn/age-verification-legalization-in-the-united-states-of-america> (last visited Jan. 7, 2024).

<sup>54</sup> John Reynolds, *Don't risk identity fraud just to play that video game — do this instead*, Aleo, <https://aleo.org/post/dont-risk-identity-fraud-to-play-that-video-game/#:~:text=The%20risks%20of%20today's%20age,public%20records%2C%20or%20ID%20scans>) (last visited Jan. 7, 2024).

without the platform even seeing the age verification documents or even the user's identity.<sup>55</sup> Experts argue that age verification systems have progressed considerably from a generation ago.<sup>56</sup>

Age fabrication is a widespread issue. For example, underage customers in the United States consumed 11.73% of all alcoholic drinks sold in the U.S. market in 2016, and 49.8% of tobacco and vape shops in California failed to check the ID of underage decoys in 2018.<sup>57</sup>

## Florida's Social Media Laws for Children

### *Requirements for Social Media and Phones in Schools*

In 2023, the Legislature passed a law<sup>58</sup> that requires students in grades 6 through 12 to receive instruction on the social, emotional, and physical effects of social media. The instructional materials must be available online, and district school boards must notify parents of the material's availability.<sup>59</sup>

The law also prohibits students from using wireless communications devices at school during instructional time, except when expressly directed by a teacher solely for educational purposes and requires a teacher to designate an area for wireless communications devices during instructional time.<sup>60</sup>

### *Protection of Children in Online Spaces Act (PCOSA)*

In 2023, the Legislature passed PCOSA,<sup>61</sup> which provides that any online service, product, game, or feature likely to be **predominantly accessed by children** under 18 years of age may not, except under certain situations:<sup>62</sup>

- Process personal information of or profile a child.
- Collect, sell, share, or retain personal information or geolocation of a child.
- Use a child's personal information for any unstated reason.
- Use dark patterns to obtain more information of a child than necessary.
- Use collected information to estimate age for any other reason.

## Social Media Use by Children - Laws in Other States

In March 2023, Utah became the first state to adopt laws regulating kids' access to social media.<sup>63</sup> This legislative action was rapidly followed by several states, including Arkansas, Louisiana, Ohio, and Texas, with numerous others contemplating similar measures.<sup>64</sup>

According to the Utah law, effective March 1, 2024, a social media company must:<sup>65</sup>

- Verify the age of a Utah resident seeking to maintain or open an account,
- Get parental consent before minors under 18 can open or maintain their current account, and
- Deny access to existing users who do not verify their age within 14 days of trying to access their

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<sup>55</sup> The Federalist Society, *Age Verification for Social Media: A Constitutional and Reasonable Regulation* (Aug. 7, 2023), <https://fedsoc.org/commentary/fedsoc-blog/age-verification-for-social-media-a-constitutional-and-reasonable-regulation> (last visited Jan. 8, 2024).

<sup>56</sup> Broadband Breakfast, *Improved Age Verification Allows States to Consider Restricting Social Media*, Nov. 20, 2023, [Improved Age Verification Allows States to Consider Restricting Social Media – Broadband Breakfast](#) (last visited Jan. 9, 2023).

<sup>57</sup> Persona, *Age verification system: How to add it into your business*, <https://withpersona.com/blog/incorporate-age-verification-into-business> (last visited Jan. 9, 2024).

<sup>58</sup> Ch. 2023-36, L.O.F.

<sup>59</sup> S. 1003.42(2)(o)5.a., F.S.

<sup>60</sup> S. 1006.07(2)(f), F.S.

<sup>61</sup> Ch. 2023-201, L.O.F.

<sup>62</sup> S. 501.1735, F.S.

<sup>63</sup> Ch. 498, Laws of Utah 2023.

<sup>64</sup> Act No. 441, 2023 La. Acts; Tex. H.B. 18 (2023); 2023 Ark. Acts 689; Ohio House Bill 33 - 135th General Assembly.

<sup>65</sup> Lisa M. Thomas, Snehal Desai, and Kathryn Smith, *The Beehive State Joins the Buzz Around Minors and Social Media*, *The National Law Review*, Dec. 26, 2023, <https://www.natlawreview.com/article/beehive-state-joins-buzz-around-minors-and-social-media> (last visited Jan. 7, 2024).

account.

Related to account limitations and parental controls, a social media company:<sup>66</sup>

- Must give a minor's parents or guardians access to all posts, messages, and responses.
- Cannot display advertising to minors.
- May not allow minors to engage in direct messaging to individuals outside their platform friend group.
- Must prohibit minors from accessing their accounts between 10:30pm and 6:30am.

The law has recently been challenged on First Amendment grounds.<sup>67</sup> NetChoice, a tech industry group, claims the provisions amount to a "unconditional attempt to regulate both minors' and adults' access to, and ability to engage in, protected expression." The case is still pending.<sup>68</sup>

However, similar cases challenging a similar law in Arkansas resulted in the law being preliminarily enjoined, meaning it is not in effect, pending an appeal.<sup>69</sup> The court found that the law placed too high a burden on adults and children attempting to access protected content, and was impermissibly vague as to whom the bill applies.<sup>70</sup>

## Child-Focused Online Privacy Laws

### *Children's Online Privacy Protection Act (COPPA)*

COPPA<sup>71</sup> and its related rules, is a federal law that regulates websites' collection and use of children's information. The operator of a website or online service that is directed to children, or that has actual knowledge that it collects children's personal information (covered entities), must comply with requirements regarding data collection and use, privacy policy notifications, and data security.

A covered entity may not collect personal information from **a child under the age of 13** without the prior, verifiable consent of his or her parent.<sup>72</sup>

COPPA requires covered entities to:<sup>73</sup>

- Give parents direct notice of their privacy policies, including a description of their data collection and sharing practices;
- Post a clear link to their privacy policies on their home page and at each area of their website where they collect personal information from children;
- Institute procedures to protect the personal information that they hold;
- Ensure that any third party with which they share collected personal information implements the same protection procedures; and
- Delete children's personal information after the purpose for its retention has been fulfilled.

Violations of COPPA are deemed an unfair or deceptive act or practice and may therefore be federally prosecuted by the FTC. COPPA also authorizes state attorneys general to enforce violations that affect

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<sup>66</sup> *Id.*

<sup>67</sup> *NetChoice, LLC v. Reyes*, D. Utah, Case No. 2:23-cv-00911.

<sup>68</sup> Mack Degeurin, *Tech trade group sues over 'unconstitutional' Utah teen social media curfew law*, Popular Science, <https://www.popsoci.com/technology/lawsuit-utah-teen-social-media-curfew/#:~:text=NetChoice%2C%20in%20a%20suit%20filed,age%20verification%20requirement%2C%20which%20NetChoice> (last visited Jan. 8, 2024).

<sup>69</sup> *NetChoice v. Griffin*, 2023 WL 5660155 (W.D. Ark. 2023).

<sup>70</sup> *Id.*

<sup>71</sup> 16 C.F.R. pt. 312.

<sup>72</sup> 15 U.S.C. ss. 6502(a)-(b).

<sup>73</sup> See, Federal Trade Commission, *General Questions About the COPPA Rule: What is the Children's Online Privacy Protection Rule?*, <https://www.ftc.gov/tips-advice/business-center/guidance/complying-coppa-frequently-asked-questions-0> (last visited Jan. 6, 2024).

residents of their states. There is no criminal prosecution or private right of action provided for under COPPA.<sup>74</sup>

In 2019, Google and its subsidiary YouTube, agreed to pay a \$170 million settlement for lawsuits from the FTC and New York for violations of COPPA for collected personal information from children without consent. Specifically, it was alleged that YouTube tracked persistent identifiers, commonly known as cookies, from viewers of child-directed channels, without first notifying parents and getting their consent. YouTube earned millions of dollars by using the identifiers, to deliver targeted ads to viewers of these channels.<sup>75</sup>

### *California Age-Appropriate Design Code Act*

In 2022, California passed a combination social media and data privacy law that prohibits social media platforms from showing children advertising. California adopted the California Age-Appropriate Design Code Act (CAADCA)<sup>76</sup> legislation modelled on the United Kingdom's Age Appropriate Design Code,<sup>77</sup> which requires online platforms to adhere to strict default privacy and safety settings that protect the best interest of children.<sup>78</sup> CAADCA covers children under 18 years of age and will be effective July 1, 2024.<sup>79</sup>

CAADCA requires certain businesses that provide an online service, product, or feature that is likely to be accessed by children to comply with several new requirements and restrictions, including:<sup>80</sup>

- Prohibitions on using any personal information that it knows or should know is materially detrimental to a child's physical or mental health and/or wellbeing; and
- Prohibitions on obscuring user interface features to deliberately defeat consent or manipulate children into providing unnecessary personal information, or using dark patterns.

The law has recently been challenged on several grounds, including on the First Amendment and Supremacy Clause, and has been preliminarily enjoined.<sup>81</sup> A similar law has since been adopted in Utah.<sup>82</sup>

### *European Union - Social Media and Data Privacy Laws for Children*

In 2015, the European Union (E.U.) passed a law to require member states to require parental consent for a child to access social media. The E.U. mandates that at a minimum, such parental consent requirements must apply to children 13 years old and younger, and may apply to children up to 16 and younger.<sup>83</sup>

In 2023, the E.U. passed the Digital Services Act, which currently applies to 19 of the largest Internet companies, including Meta, Apple, TikTok, and Google. The law, in part, requires such companies to

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<sup>74</sup> *Id.*

<sup>75</sup> Federal Trade Commission, *Google and YouTube Will Pay Record \$170 Million for Alleged Violations of Children's Privacy Law*, Sep. 4, 2019, <https://www.ftc.gov/news-events/news/press-releases/2019/09/google-youtube-will-pay-record-170-million-alleged-violations-childrens-privacy-law> (last visited Jan. 9, 2024).

<sup>76</sup> Cal. Civil Code § 1798.99.28-.35.

<sup>77</sup> 5Rights Foundation, *California follows UK lead as child data protection law is passed*, <https://5rightsfoundation.com/in-action/california-follows-uk-lead-as-child-data-protection-law-is-passed.html> (last visited Jan. 7, 2024).

<sup>78</sup> Office of Governor Gavin Newsome, *Governor Newsom Signs First-in-Nation Bill Protecting Children's Online Data and Privacy*, <https://www.gov.ca.gov/2022/09/15/governor-newsom-signs-first-in-nation-bill-protecting-childrens-online-data-and-privacy/> (last visited Jan. 7, 2024).

<sup>79</sup> Cal. Civil Code § 1798.99.28-.35

<sup>80</sup> Briana Kelly, Nelson Mullins Riley & Scarborough LLP, *State of California Passes Bill to Protect Children Online*, Jan. 26, 2023, <https://www.lexology.com/library/detail.aspx?g=e4c49600-b850-4d8f-a68a-117acf89972f> (last visited Jan. 7, 2024).

<sup>81</sup> *NetChoice, LLC v. Bonta*, 2023 WL 6135551 (N.D. Cal. 2023).

<sup>82</sup> Ch. 477, Laws of Utah 2023.

<sup>83</sup> Diana Graber, *Europeans Teach Us a Lesson About Banning Teens From Social Media*, HuffPost, Dec. 21, 2015, [https://www.huffpost.com/entry/europeans-teach-us-a-less\\_b\\_8854802](https://www.huffpost.com/entry/europeans-teach-us-a-less_b_8854802) (last visited Jan. 6, 2024).

prevent harmful content from spreading on their platforms and share certain internal data with regulators and associated researchers.<sup>84</sup>

The law, which became effective January 1, 2024, compels such tech companies to set up new policies and procedures to remove flagged hate speech, terrorist propaganda, and other material defined as illegal by countries within the E.U.<sup>85</sup>

### **Florida Deceptive and Unfair Trade Practices Act (FDUTPA)**

FDUTPA is a consumer and business protection measure that prohibits unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in trade or commerce.<sup>86</sup> FDUTPA was modeled after the Federal Trade Commission (FTC) Act.<sup>87</sup>

The Department of Legal Affairs (DLA) or the Office of the State Attorney (SAO) may bring actions on behalf of consumers or governmental entities when it is a matter of public interest.<sup>88</sup> The SAO may enforce violations of FDUTPA if the violations take place within its jurisdiction. The DLA has enforcement authority when the violation is multi-jurisdictional, the state attorney defers to the DLA in writing, or the state attorney fails to act within 90 days after a written complaint is filed.<sup>89</sup> In certain circumstances, consumers may also file suit through private actions.<sup>90</sup>

The DLA and the SAO have powers to investigate FDUTPA claims, which include:<sup>91</sup>

- Administering oaths and affirmations;
- Subpoenaing witnesses or matter; and
- Collecting evidence.

The DLA and the State Attorney, as enforcing authorities, may seek the following remedies:

- Declaratory judgments;
- Injunctive relief;
- Actual damages on behalf of consumers and businesses;
- Cease and desist orders; and
- Civil penalties of up to \$10,000 per willful violation.<sup>92</sup>

FDUTPA may not be applied to certain entities in certain circumstances, including:<sup>93</sup>

- Any person or activity regulated under laws administered by the Office of Insurance Regulation or the Department of Financial Services; or
- Banks, credit unions, and savings and loan associations regulated by the Office of Financial Regulation or federal agencies.

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<sup>84</sup> Martin Coulter, *Big Tech braces for EU Digital Services Act regulations*, Reuters (Aug. 24, 2023),

<https://www.reuters.com/technology/big-tech-braces-roll-out-eus-digital-services-act-2023-08-24/> (last visited Jan. 6, 2024).

<sup>85</sup> Adam Satariano, *E.U. Takes Aim at Social Media's Harms With Landmark New Law*, The New York Times, Apr. 22, 2022, <https://www.nytimes.com/2022/04/22/technology/european-union-social-media-law.html> (last visited Jan. 6, 2024).

<sup>86</sup> Ch. 73-124, L.O.F.; s. 501.202, F.S.

<sup>87</sup> D. Matthew Allen, et. al., *The Federal Character of Florida's Deceptive and Unfair Trade Practices Act*, 65 U. MIAMI L. REV. 1083 (Summer 2011).

<sup>88</sup> S. 501.207(1)(c) and (2), F.S.; see s. 501.203(2), F.S. (defining “enforcing authority” and referring to the office of the state attorney if a violation occurs in or affects the judicial circuit under the office’s jurisdiction; or the Department of Legal Affairs if the violation occurs in more than one circuit; or if the office of the state attorney defers to the department in writing; or fails to act within a specified period); see also David J. Federbush, *FDUTPA for Civil Antitrust: Additional Conduct, Party, and Geographic Coverage; State Actions for Consumer Restitution*, 76 FLORIDA BAR JOURNAL 52, Dec. 2002 (analyzing the merits of FDUTPA and the potential for deterrence of anticompetitive conduct in Florida), available at [http://www.floridabar.org/divcom/jn/jnjournal01.nsf/c0d731e03de9828d852574580042ae7a/99aa165b7d8ac8a485256c8300791ec1!OpenDocument&Highlight=0.business.Division\\*](http://www.floridabar.org/divcom/jn/jnjournal01.nsf/c0d731e03de9828d852574580042ae7a/99aa165b7d8ac8a485256c8300791ec1!OpenDocument&Highlight=0.business.Division*) (last visited on Jan. 6, 2024).

<sup>89</sup> S. 501.203(2), F.S.

<sup>90</sup> S. 501.211, F.S.

<sup>91</sup> S. 501.206(1), F.S.

<sup>92</sup> Ss. 501.207(1), 501.208, and 501.2075, F.S. Civil Penalties are deposited into general revenue. Enforcing authorities may also request attorney fees and costs of investigation or litigation. S. 501.2105, F.S.

<sup>93</sup> S. 501.212(4), F.S.

## **Effect of Proposed Changes**

The bill provides the following definitions:

- "Account holder" means a resident of this state who has or opens an account or creates a profile or other form of identification to use or access a social media platform.
- "Reasonable age verification method" means any commercially reasonable method regularly used by government agencies or businesses for the purpose of age and identity verification.
- "Social media platform:"
  - Means an online forum offered by an entity that has the ability to track the activity of an account holder or user, if the online forum allows the account holder or user to do all of the following:
    - Create or use a profile, account, or other form of identification.
    - Upload content or view the content or activity of other account holders.
    - Interact with or track other account holders or users.

The bill requires a social media platform to prohibit a minor who is younger than 16 years of age from creating a new account on the social media platform.

The bill requires a social media platform to use a reasonable age verification method to verify the age of each account holder on the social media platform at the time a new account is created. If the age is not verified, the account must be denied. Such reasonable age verification method must be conducted by an independent, third-party not affiliated with the social media platform.

Any personal identifying information used to verify age may not be:

- Retained by the third party or social media platform once the age has been verified.
- Used for any other purpose.

The bill requires a social media platform to do the following related to existing accounts belonging to a minor younger than 16 years of age:

- Terminate any such account that is reasonably known by the social media platform to be held by a minor younger than 16 years of age.
  - The social media platform must provide a minimum of 90 days for an account holder to dispute such termination by verifying age.
- Allow such an account holder to request to terminate the account.
  - Such termination must be effective within 5 business days after such request.
- Allow the confirmed parent or guardian of such an account holder to request the minor's account be terminated.
  - Such termination must be effective within 10 business days after such request.
- Permanently delete all personal information held by the social media platform relating to the terminated account, unless there are legal requirements to maintain such information.

If the social media platform allows minors younger than 18 years of age to create an account on the platform, the bill requires the platform to include a clearly labeled, conspicuous, and readily accessible link on its Internet homepage or platform login page that:

- Discloses the following social media platform policies in a manner that is clearly, concisely, prominently, and understandably written using language suited to the age of users who are younger than 18 years of age likely to routinely access the platform without unrelated, confusing, or contradictory materials:
  - The content moderation policies of the social media platform.
  - Whether the social media platform uses or allows the use of addictive design or deceptive pattern features, including autoplay or infinite scroll.
  - Whether the social media platform allows manipulated photographs or digital images to be shared on the platform.

- Whether the social media platform considers the best interests of platform users who are younger than 18 years of age when designing, developing, and providing services.
- The methodology the social media platform uses to consider the best interests of platform users who are younger than 18 years of age.
- The policies and protections the social media platform uses to protect platform users who are younger than 18 years of age against harmful behaviors, such as bullying, harassment, and threats of violence or self-harm.
- Whether the social media platform collects or sells personal information of platform users who are younger than 18 years of age. If such personal information is collected, the platform must disclose the type of personal information collected and the purpose of such collection. If such personal information is sold, the platform must disclose to whom the information is sold.
- Provides clear access to the following:
  - Zip code-based references to local resources for law enforcement, suicide prevention, and domestic violence prevention services.
  - Reporting mechanisms related to harmful behaviors, such as bullying, harassment, and threats of violence or self-harm.
- At the time of log in, and before obtaining access to the platform, requires platform users who are younger than 18 years of age to read and accept a disclaimer which must be in substantially the following form:

This application may be harmful to your mental health and may use design features that have addictive qualities or present unverified information or that may be manipulated by [insert platform name] or others for your viewing. This application may also collect your personal data to further manipulate your viewable content and may share your personal data with others.

The bill does not apply to online services, websites, or applications where the predominant or exclusive function is:

- Electronic mail.
- Direct messaging consisting of text, photos, or videos that are sent between devices by electronic means where messages are shared between the sender and the recipient only, visible to the sender and the recipient, and are not posted publicly.
- A streaming service that provides only licensed media in a continuous flow from the service, website, or application to the end user and does not obtain a license to the media from a user or account holder by agreement to its terms of service.
- News, sports, entertainment, or other content that is preselected by the provider and not user generated, and any chat, comment, or interactive functionality that is provided incidental to, directly related to, or dependent upon provision of the content.
- Online shopping or e-commerce, if the interaction with other users or account holders is generally limited to the ability to upload a post and comment on reviews or display lists or collections of goods for sale or wish lists, or other functions that are focused on online shopping or e-commerce rather than interaction between users or account holders.
- Interactive gaming, virtual gaming, or an online service, that allows the creation and uploading of content for the purpose of interactive gaming, edutainment, or associated entertainment, and the communication related to that content.
- Photo editing that has an associated photo hosting service, if the interaction with other users or account holders is generally limited to liking or commenting.
- A professional creative network for showcasing and discovering artistic content, if the content is required to be non-pornographic.
- Single-purpose community groups for public safety if the interaction with other users or account holders is generally limited to that single purpose and the community group has guidelines or policies against illegal content.
- To provide career development opportunities, including professional networking, job skills, learning certifications, and job posting and application services.
- Business to business software.

- A teleconferencing or videoconferencing service that allows reception and transmission of audio and video signals for real time communication.
- Shared document collaboration.
- Cloud computing services, which may include cloud storage and shared document collaboration.
- To provide access to or interacting with data visualization platforms, libraries, or hubs.
- To permit comments on a digital news website, if the news content is posted only by the provider of the digital news website.
- To provide or obtain technical support for a platform, product, or service.
- Academic, scholarly, or genealogical research where the majority of the content that is posted or created is posted or created by the provider of the online service, website, or application and the ability to chat, comment, or interact with other users is directly related to the provider's content.
- A classified ad service that only permits the sale of goods and prohibits the solicitation of personal services or that is used by and under the direction of an educational entity, including:
  - A learning management system;
  - A student engagement program; and
  - A subject or skill-specific program.

The bill provides that, if a social media platform violates the requirements for minor users, it is an unfair and deceptive trade practice actionable under FDUTPA solely by DLA.<sup>94</sup> In addition to other FDUTPA remedies, DLA may collect a civil penalty of up to \$50,000 per violation.

The bill allows a private cause of action against a social media platform that fails to terminate an existing account within the required time after being notified to do so by the minor account holder or a confirmed parent or guardian. The social media platform is liable to such Florida minor for such access, including up to \$10,000 in damages, court costs and reasonable attorney fees. Such an action must be brought within 1 year after the violation.

The bill requires that any action brought pursuant to the bill may only be brought on behalf of a Florida minor, and does not preclude any other available remedy at law or equity against social media platforms.

The bill allows DLA to adopt rules to implement the bill.

The bill provides an effective date of July 1, 2024.

## B. SECTION DIRECTORY:

- Section 1: Creates s. 501.1736, F.S.; provides requirements for social media platforms that allow access and creation of accounts by minors; provides causes of action and penalties.
- Section 2: Provides an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

There may be an increase in civil penalties collected by DLA.

<sup>94</sup> Unlike under general FDUTPA actions, DLA is not prohibited from bringing an action against a social media platform that is also a:

- Person or activity regulated under laws administered by OIR or DFS; and
- Bank, credit union, and savings and loan association regulated by OFR or federal agencies.

2. Expenditures:

There may be an increase of regulatory costs to DLA from enforcing the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Social media platforms will need to implement new procedures for age verification, including using third party verification services; create certain disclosures of their practices; and gather reference information.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

Age verification for social media platforms is a complex issue that raises several constitutional concerns. The language in the bill may implicate consideration of a number of constitutional protections.

*First Amendment Right to Freedom of Speech*

Constitutional challenges to age verification laws may raise several issues. Many of the questions regarding the constitutionality of age verification laws may concern whether such laws are sufficiently narrow to avoid inhibiting more speech than necessary. The degree of tailoring required may vary depending on whether a given law is content based or content neutral. In both circumstances a law's constitutionality would depend on several factors, including the:

- Strength of the government's interest,
- Amount of protected speech that the law directly or indirectly restricts, and
- Availability of less speech-restrictive alternatives.<sup>95</sup>

Content-neutral regulations on free speech are legitimate if they advance important governmental interests that are not related to suppression of free speech, and do not substantially burden more speech than necessary to further those interests.<sup>96</sup>

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<sup>95</sup> Holmes, Eric N. (2023, August 17), *Online Age Verification (Part III): Select Constitutional Issues* (CRS Report No. LSB11022), <https://crsreports.congress.gov/product/pdf/LSB/LSB11022> (last visited Jan. 9, 2024).

<sup>96</sup> *Turner Broadcasting System, Inc. v. F.C.C.*, 520 U.S. 180,189 (U.S. 1997).

However, the U.S. Supreme Court typically regards content-based laws<sup>97</sup> as presumptively unconstitutional.<sup>98</sup> To determine whether a content based law passes constitutional muster, courts generally apply a legal standard called strict scrutiny, under which the government must show that the law is the “least restrictive means” of advancing a “compelling” governmental interest.<sup>99</sup>

In general, the U.S. Supreme Court has held that requiring adults to prove their age to access certain content is an unconstitutional, content-based limit on free speech, when there are less restrictive means to curb access to minors, such as filters and parental controls.<sup>100</sup>

However, according to Justice O’Connor’s *Reno* dissent, because technology was insufficient for ensuring that minors could be excluded while still providing adults full access to protected content, the age verification provision was viewed as ultimately unconstitutional; but, also in her dissent, she allowed for potentially permitting a law in the future when such technology was feasible.<sup>101</sup>

Currently, there are numerous minimally invasive verification techniques that do not require sharing any age verification information at all with social media platforms.<sup>102</sup> Experts argue that age verification systems have progressed considerably from a generation ago when the U.S. Supreme Court held that age verification methods often failed at that task and were too burdensome for law abiding adults.<sup>103</sup>

### *State Authority to Regulate to Protect Minors*

The U.S. Supreme Court has determined that the state has a "compelling interest in protecting the physical and psychological well-being of minors," which "extends to shielding minors from the influence of literature that is not obscene by adult standards."<sup>104</sup> In doing so, however, the means must be narrowly tailored to achieve that end so as not to unnecessarily deny adults access to material which is constitutionally protected indecent material.<sup>105</sup>

### *Contracts*

Article I, Section 10 of the United States Constitution prohibits a state from passing any law impairing the obligation of contracts. Article I, Section 10 of the Florida Constitution also prohibits the passage of laws impairing the obligation of contracts.

### *Supremacy Clause*

Article VI, Paragraph 2 of the United States Constitution, commonly referred to as the Supremacy Clause, establishes that the federal constitution, and federal law generally, take precedence over state laws and constitutions. The Supremacy Clause also prohibits states from interfering with the federal government's exercise of its constitutional powers and from assuming any functions that are

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<sup>97</sup> Those that regulate speech by discriminating against certain content through its text (i.e., “on its face”) or through a discriminatory purpose.

<sup>98</sup> *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015).

<sup>99</sup> *Sable Comm’s v. F.C.C.*, 492 U.S. 115 (1989).

<sup>100</sup> *Reno v. Am. C. L. Union*, 521 U.S. 844, 886 (1997); *Ashcroft v. American Civil Liberties Union*, 542 U.S. 656 (2004); Ronald Kahn, *Reno v. American Civil Liberties Union (1997)*, Free Speech Center at Middle Tennessee State University, Dec. 15, 2023, <https://www.free-speech-center.org/mtsu/renov.amlu.htm> (last visited Jan. 7, 2024).

<sup>101</sup> *Reno*, 521 U.S. 844, at 886 (*O’Connor concurring in part and dissenting in part*); (*The court also considered overbreadth and vagueness arguments, and determined that the CDA was too broad and vague*).

<sup>102</sup> The Federalist Society, *Age Verification for Social Media: A Constitutional and Reasonable Regulation* (Aug. 7, 2023), <https://fedsoc.org/commentary/fedsoc-blog/age-verification-for-social-media-a-constitutional-and-reasonable-regulation> (last visited Jan. 8, 2024).

<sup>103</sup> Broadband Breakfast, *Improved Age Verification Allows States to Consider Restricting Social Media*, Nov. 20, 2023, [Improved Age Verification Allows States to Consider Restricting Social Media – Broadband Breakfast](https://www.broadbandbreakfast.com/2023/11/20/improved-age-verification-allows-states-to-consider-restricting-social-media/) (last visited Jan. 9, 2023); *Reno v. Am. C. L. Union*, 521 U.S. 844, 886 (1997); *Ashcroft*, 542 U.S. 656.

<sup>104</sup> *Sable Commc’s of California, Inc. vs. F.C.C.*, 492 U.S. 115, 126 (1989).

<sup>105</sup> *Ashcroft*, 542 U.S. 656; *Cashatt v. State*, 873 So. 2d 430, 434 (Fla. 1st DCA 2004). But see, *Erznoznik v. City of Jacksonville*, 422 U.S. 205 (1975) (Determining regulation overly broad.)

exclusively entrusted to the federal government. It does not, however, allow the federal government to review or veto state laws before they take effect.<sup>106</sup>

Section 230 of the federal Communications Decency Act (CDA),<sup>107</sup> in part, specifies that “[n]o provider ... of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider”<sup>108</sup> and specifically prohibits all inconsistent causes of action and liability imposed under any State or local law.<sup>109</sup>

**B. RULE-MAKING AUTHORITY:**

The bill provides DLA with rulemaking authority to promulgate rules to enforce the bill.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

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<sup>106</sup> Cornell Law School, Legal Information Institute, *Supremacy Clause*, [https://www.law.cornell.edu/wex/supremacy\\_clause](https://www.law.cornell.edu/wex/supremacy_clause) (last visited Feb. 23, 2021).

<sup>107</sup> *Force*, 934 F.3d at 63 (quoting *Ricci v. Teamsters Union Local 456*, 781 F.3d 25, 28 (2d Cir. 2015) (quoting *Zeran v. Am. Online, Inc.*, 129 F.3d 327, 330 (4th Cir. 1997)).

<sup>108</sup> 47 U.S.C. § 230(c)(1).

<sup>109</sup> 47 U.S.C. § 230(e).