

## 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		Leshko	Kramer

### SUMMARY ANALYSIS

In 2023, an estimated 4.9 billion people worldwide used social media. Many experts have tied the increased use of social media in our society to the increase in rates of depression, anxiety, and stress in adolescents. Studies also indicate that social media may trigger an array of negative emotions in users that contribute to or worsen their depression symptoms. Accordingly, 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.

HB 1 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 social media platform, 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 who are 16 or 17 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 certain information, including:

- A disclosure of the use of addictive designs, deceptive patterns, and manipulated images.
- Local resources for law enforcement, suicide prevention, and domestic violence prevention services.
- A reporting mechanism related to bullying, harassment, and threats of violence or self-harm.
- Whether the platform collects or sells personal information of minors under the age of 18 and to whom it is sold.

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 under 16 years of age, it is an unfair and deceptive trade practice actionable under the Florida Deceptive and Unfair Trade Practice Act, solely by the Department of Legal Affairs. The bill also provides a private cause of action against a social media platform that fails to timely delete an account of a minor under 16 years of age after receiving a request to delete the account.

The bill may have an indeterminate fiscal impact on state government and private entities. See Fiscal Comments.

The bill provides an effective date of July 1, 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>

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>3</sup> More than one in three teens ages 13 to 17 report that they use social media “almost constantly”.<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 less than a generation, social media has evolved from a 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>6</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 incentivize 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>7</sup> Examples include “autoplay,” when a video website

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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> 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>4</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>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> 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>7</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).

automatically plays new videos in succession as a default setting;<sup>8</sup> and “infinite scroll,” when a website allows users to scroll endlessly through content, rather than clicking through pages.<sup>9</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 forfeiting their privacy.<sup>10</sup> Common dark pattern tactics include:

- Disguising ads by designing advertisements to look like independent, editorial content; claiming to be neutral but really ranking companies based on compensation; and utilizing 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 do not see before making a purchase.
- Tricking consumers into sharing data, which involves falsely giving consumers choices about privacy settings or sharing data, and instead steering consumers toward the option that gives away the most personal information.<sup>11</sup>

Recently, FTC has filed complaints against several companies for using dark patterns as a deceptive trade practice.<sup>12</sup> For example, FTC has taken action against Twitter (now X), alleging it deceptively used account security information to sell targeted advertisements.<sup>13</sup> Additionally, FTC filed a complaint against Amazon, alleging use of dark patterns to deceive users into subscribing to a premium service.<sup>14</sup> Both cases are still pending.

## Effects of Social Media on Children

Social media has become an important aspect of the digital interactions of minors, who use social media 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 may experience many benefits from using social media, including:<sup>17</sup>

- Enhancing their communication skills;
- Enhancing their social connections;

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<sup>8</sup> Rene Otto, *Autoplay and infinite scroll*, Medium, <https://rene-otto.medium.com/autoplay-and-infinite-scroll-8607abe52bb7#:~:te xt=nobody%20asked%20for%20autoplay%20video.%3A%20stealing%20your%20attention%20back.%E2%80%9D> (last visited Jan. 6, 2024).

<sup>9</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](https://www.freedom.to/blog/the-infinite-scroll-why-it-s-so-addictive-and-how-to-break-free-freedom-matters) (last visited Jan. 6, 2024).

<sup>10</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>11</sup> *Id.*

<sup>12</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>13</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>14</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>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.*

- Making new friends and meaningful connections;
- Exchanging ideas and digital photos;
- Developing a new interest, and experimenting with new forms of self-expression;
- Learning basic social and technical skills;
- Feeling more included;
- Interacting across geographic barriers; and
- Enjoying humor.

On the other hand, common risks associated with 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;
- Being the victim of hacking or identity theft;
- Interference with sleep, exercise, homework, or family activities;
- Drama;
- Social pressure;
- Suicide or suicidal thoughts;
- 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 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, because in early adolescence, kids are still “developing their identity, their sense of self.”<sup>22</sup>

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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).

Other experts, such as David Greenfield, a psychologist, agree and assert the platforms lure users with powerful tactics. One such tactic is “intermittent reinforcement,” which refers to a reward scheme in which the user receives rewards inconsistently and unpredictably. While adults are susceptible, 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 the following.

- 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 more quickly 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<sup>28</sup> 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>29</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>30</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>31</sup>

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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> Michaelleen 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> Meta is the parent company of Facebook, Instagram, WhatsApp, and Messenger.

<sup>29</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>30</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>31</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).



- 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 emergency room admissions for self-harm among 10 to 14-year-old girls tripled between 2009 and 2015.<sup>32</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 for boys, the windows occur at ages 14 through 15.<sup>33</sup>

Based on these studies and other 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>34</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>35</sup> Parental controls may also help protect children from inappropriate content, cyberbullying, and other online safety issues.<sup>36</sup> Examples of parental controls include blocking websites, filtering content, imposing limits on screen time, allowing parents to monitor online activity, using location tracking, and disabling Wi-Fi.<sup>37</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 believed that the apps were 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>38</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, tapping into psychological biases and vulnerabilities relating to the human 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>39</sup>

<sup>32</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>33</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%2011,164%2C%202022>. (last visited Jan. 8, 2023).

<sup>34</sup> Kirsten Weir, *supra* note 32.

<sup>35</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>36</sup> Internetmatters.org, *Parental Controls*, <https://www.internetmatters.org/parental-controls/> (last visited Jan. 6, 2024).

<sup>37</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>38</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>39</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, including Florida, and the District of Columbia, filed suit against Meta,<sup>40</sup> 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>41</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>42</sup>

The complaint alleges that “Meta has harnessed powerful and unprecedented technologies to entice, engage and ultimately ensnare youth and teens. Its 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 “has concealed the ways in which these Platforms exploit and manipulate its most vulnerable consumers: teenagers and children.”<sup>43</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>44</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>45</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>46</sup>

## Florida’s Social Media Laws for Children

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

Section 1003.42(2)(n), F.S., 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.

Sections 1006.07(2)(f) and 1003.32(1)(a), F.S., prohibit 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.

### *Protection of Children in Online Spaces Act*

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<sup>40</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>41</sup> *State of Arizona, et al. v Meta, Id*; Matt Richtel, *Is Social Media Addictive? Here’s What the Science Say*,. New York Times, Oct. 25, 2023, <https://www.nytimes.com/2023/10/25/health/social-media-addiction.html> (last visited Jan. 8, 2024) (sic).

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

<sup>43</sup> Compl., *State of Arizona, et al. v. Meta Platforms, Inc., et al.*, [https://www.washingtonpost.com/documents/b68f2951-2a4b-4822-b0fb-04238703c039.pdf?itid=lk\\_inline\\_manual\\_5](https://www.washingtonpost.com/documents/b68f2951-2a4b-4822-b0fb-04238703c039.pdf?itid=lk_inline_manual_5) (N.D. Cal. Oct. 24, 2023) (No. 4:23-cv-05448).

<sup>44</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>45</sup> CBS, *Florida Attorney General Ashley Moody targets Meta over negative impacts on kids*, (Oct. 25, 2023) <https://www.cbsnews.com/miami/news/florida-attorney-general-ashley-moody-targets-meta-negative-impacts-kids/> (last visited Jan. 13, 2024).

<sup>46</sup> New York State Attorney General, *Attorney General James and Multistate Coalition Sue Meta for Harming Youth*, (Oct. 24, 2023) <https://ag.ny.gov/press-release/2023/attorney-general-james-and-multistate-coalition-sue-meta-harming-youth> (last visited Jan. 13, 2024).

Section 501.1735, F.S., 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:

- Process the personal information of any child if the platform has actual knowledge or willfully disregards that the processing may result in substantial harm or privacy risk to children.
- Profile a child.
- Collect, sell, share, or retain any personal information that is not necessary to provide an online service, product, or feature with which a child is actively and knowingly engaged.
- Use a child's personal information for any unstated reason.
- Collect, sell, or share any precise geolocation of data of children.
- Use dark patterns to lead or encourage children to provide personal information beyond what personal information would otherwise be reasonably expected to be provided for that online service, product, game or feature; to forego privacy protections; or to take any action that the online platform has actual knowledge of or willfully disregards that may result in substantial harm or privacy risk to children.
- Use collected information to estimate age or age range for any other purpose or retain that personal information longer than necessary to estimate age.

### 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>47</sup> This legislative action was rapidly followed by several other states, including Arkansas, Louisiana, Ohio, and Texas, with numerous others contemplating similar measures.<sup>48</sup>

According to the Utah law, effective March 1, 2024, a social media company must:<sup>49</sup>

- Verify the age of a Utah resident seeking to maintain or open an account,
- Obtain 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 attempting to access their account.
- Give a minor's parents or guardians access to all posts, messages, and responses.
- Not display advertising to minors.
- Not allow minors to engage in direct messaging to individuals outside their platform friend group.
- Prohibit minors from accessing their accounts between 10:30pm and 6:30am.

The law has recently been challenged on First Amendment grounds.<sup>50</sup> NetChoice, LLC, an Internet trade association whose members include Facebook, Instagram, Twitter, TikTok, Snapchat, Pinterest, and Nextdoor, 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>51</sup>

A case challenging a similar law in Arkansas resulted in the law being preliminarily enjoined, meaning it is not in effect, pending an appeal.<sup>52</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>53</sup>

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<sup>47</sup> Ch. 498, Laws of Utah 2023.

<sup>48</sup> Act No. 441, 2023 La. Acts; Tex. H.B. 18 (2023); 2023 Ark. Acts 689; Ohio House Bill 33 - 135th General Assembly.

<sup>49</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).

<sup>50</sup> *NetChoice, LLC v. Reyes*, (D. Utah December 18, 2023) (No. 2:23-cv-00911).

<sup>51</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>52</sup> *NetChoice v. Griffin*, 2023 WL 5660155 (W.D. Ark. Aug. 31, 2023).

<sup>53</sup> *Id.*



## Child-Focused Online Privacy Laws

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

COPPA,<sup>54</sup> and its related rules,<sup>55</sup> federally regulate websites' collection and use of children's information. COPPA provides that the operator of a covered entity, a website or online service that is directed at children, or that has actual knowledge that it collects children's personal information, 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>56</sup>

COPPA requires covered entities to:<sup>57</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 FTC. While there is no criminal prosecution or private right of action under COPPA, it does authorize state attorneys general to enforce violations that affect residents of their states.<sup>58</sup>

In 2019, Google and its subsidiary YouTube agreed to pay a \$170 million settlement for lawsuits from FTC and New York for violations of COPPA for collecting personal information from children without consent. Specifically, it was alleged that YouTube tracked cookies<sup>59</sup> from viewers of child-directed channels, without first notifying parents and obtaining their consent. YouTube earned millions of dollars by using the identifiers to deliver targeted ads to viewers of these channels.<sup>60</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>61</sup> legislation modeled on the United Kingdom's Age Appropriate Design Code,<sup>62</sup>

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<sup>54</sup> 15 U.S.C. §6502.

<sup>55</sup> 16 C.F.R. pt. 312.

<sup>56</sup> 15 U.S.C. §§ 6502(a)-(b).

<sup>57</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).

<sup>58</sup> *Id.*

<sup>59</sup> Cookies are bits of data that are sent to and from a user's browser to identify the user. When the user opens a website, the user's browser sends a piece of data to the web server hosting that website. This data usually appears as strings of numbers and letters in a text file. Every time the user accesses a website, a cookie is created and placed in a temporary folder on the user's device. From here, cookies try to match the user's preferences for what the user wants to read, see, or purchase. Microsoft, *Everything you need to know about Internet cookies*, (April 25, 2023), <https://www.microsoft.com/en-us/edge/learning-center/what-are-cookies?form=MA1312> (last visited Jan. 12, 2024).

<sup>60</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>61</sup> Cal. Civil Code § 1798.99.28-.35.

<sup>62</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).

which requires online platforms to adhere to strict default privacy and safety settings that protect the best interest of children.<sup>63</sup> CAADCA covers children under 18 years of age and will be effective July 1, 2024.<sup>64</sup>

More specifically, 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 a:<sup>65</sup>

- Prohibition on using personal information of any child in a way that it knows or has reason to know is materially detrimental to a child's physical or mental health and/or wellbeing; and
- Prohibition on using dark patterns to manipulate children into providing unnecessary personal information.

The law has recently been challenged on several grounds, including on First Amendment and Supremacy Clause grounds, and has been preliminarily enjoined.<sup>66</sup> A similar law has since been adopted in Utah.<sup>67</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 of age or younger, and may apply to children 16 years of age or younger.<sup>68</sup>

Additionally, in 2023, the E.U. passed the Digital Services Act (DSA), which currently applies to 19 of the largest Internet companies, including Meta, Apple, TikTok, and Google. The DSA, in part, requires such companies to prevent harmful content from spreading on their platforms and to share certain internal data with regulators and associated researchers.<sup>69</sup>

The DSA, 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>70</sup>

### **Age-Verification Mechanisms**

Many industries are currently required to use online age-verification methods, including:

- Alcohol and tobacco;<sup>71</sup>
- Gambling;
- Adult websites; and

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<sup>63</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>64</sup> Cal. Civil Code § 1798.99.28-.35

<sup>65</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>66</sup> *NetChoice, LLC v. Bonta*, 2023 WL 6135551 (N.D. Cal. 2023).

<sup>67</sup> Ch. 477, Laws of Utah 2023.

<sup>68</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).

<sup>69</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>70</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>71</sup> 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).

- Firearms.<sup>72</sup>

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>73</sup>

Additionally, 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. Meta is currently testing new ways to age verify, including through the use of biometrics and online interviews.<sup>74</sup>

There are several ways that Internet companies verify, or attempt to verify, age. Options include using:<sup>75</sup>

- Government identity documents, which generally require the user to submit a government document to a third-party for the company for review.
- Phone records, which generally check the user's phone for parental controls.
- Credit score databases, which generally require the user to enter identifying information, which is then confirmed through a credit check agency.
- Biometric age estimation, which generally require a facial analysis to estimate age.
- Credit cards, which generally require the user to supply credit card information for validation.
- Open banking, which generally require 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 require the user to tick a box or self-enter a birthdate.
- Zero knowledge proofs, which generally enable 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>76</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.

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>77</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

<sup>72</sup> Jan Stepnov, *What Is an Age Verification System and Why Incorporate It Into Your Business*, Regula (Apr. 21, 2023), <https://regulaforensics.com/blog/age-verification-system/> (last visited Jan. 12, 2024).

<sup>73</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>74</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>75</sup> The Age Verification Providers Association, *How do you check age online?*, <https://avpassociation.com/avmethods/> (last visited Jan. 7, 2024).

<sup>76</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>77</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).

verify age and provide a QR code or similar device to the age-restricted website, establishing age without the platform even seeing the age-verification documents or even the user's identity.<sup>78</sup> Experts assert that age-verification systems have progressed considerably from a generation ago.<sup>79</sup>

Age fabrication is also 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>80</sup>

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

FDUTPA is a consumer and business protection measure that prohibits unfair methods of competition, and unconscionable, deceptive, or unfair acts or practices in the conduct of trade or commerce.<sup>81</sup> FDUTPA was modeled after the FTC Act.<sup>82</sup>

The Department of Legal Affairs (DLA) or state attorney's office (SAO) in the judicial circuit affected or where the violation occurs may bring actions on behalf of consumers or governmental entities when it serves the public interest.<sup>83</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>84</sup> In certain circumstances, consumers may also file suit through private actions.<sup>85</sup>

The DLA and the SAO have powers to investigate FDUTPA claims, which include:<sup>86</sup>

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

The DLA and SAO 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>87</sup>

FDUTPA may not be applied to certain entities in certain circumstances, including:<sup>88</sup>

- Any person or activity regulated under laws administered by the Office of Insurance Regulation or the Department of Financial Services; or

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<sup>78</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>79</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>80</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>81</sup> S. 501.202, F.S.

<sup>82</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>83</sup> Ss. 501.203(2) and 501.207(1)(c) and (2), F.S.; 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>84</sup> S. 501.203(2), F.S.

<sup>85</sup> S. 501.211, F.S.

<sup>86</sup> S. 501.206(1), F.S.

<sup>87</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>88</sup> S. 501.212(4), F.S.

- Banks, credit unions, and savings and loan associations regulated by the Office of Financial Regulation or federal agencies.

### **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 an account holder fails to verify his or her age, the account must be denied. Such reasonable age-verification method must be conducted by an independent, third-party which is 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 that 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 of 16 or 17 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 under 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 under 18 years of age.
- The policies and protections the social media platform uses to protect platform users who are under 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 under 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 16 or 17 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 under 16 years of age, it is an unfair and deceptive trade practice actionable under FDUTPA solely by DLA.<sup>89</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 under 16 years of age 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 one 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:

The bill may result in an increase in civil penalties collected by DLA.

#### 2. Expenditures:

The bill may increase regulatory costs to DLA due to the resources necessary to enforce the bill.

<sup>89</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.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may result in increased costs for companies operating social media platforms due to the resources necessary to implement new procedures for age-verification, including using third-party verification services and creating certain disclosures.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Requiring social media platforms and their users to utilize age-verification presents 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*

The First Amendment to the U.S. Constitution guarantees that “Congress shall make no law ... abridging the freedom of speech.”<sup>90</sup> Generally, “government has no power to restrict expression because of its message, its ideas, its subject matter, or its content.”<sup>91</sup> The rights guaranteed by the First Amendment apply with equal force to state governments through the due process clause of the Fourteenth Amendment.<sup>92</sup>

In most circumstances these protections “are no less applicable when government seeks to control the flow of information to minors”<sup>93</sup> as states do not possess “a free-floating power to restrict the ideas to which children may be exposed.”<sup>94</sup>

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

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<sup>90</sup> U.S. Const., amend. I.

<sup>91</sup> *Police Dept. of City of Chicago v. Mosley*, 408 U.S. 92, 95 (1972).

<sup>92</sup> U.S. Const. amend. XIV. *See also* Art. I, Fla. Const.

<sup>93</sup> *Erznoznik v. City of Jacksonville*, 422 U.S. 205 (1975).

<sup>94</sup> *Brown v. Ent. Merchants Ass'n*, 564 U.S. 786, 794 (2011).

tailoring required may vary depending on whether a given law is content-based or content-neutral. In both circumstances a law's constitutionality depends 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, do so in a way that is substantially related to those interests, and do not substantially burden more speech than necessary to further those interests.<sup>96</sup>

The U.S. Supreme Court regards content-based laws, which limit communication because of the message it conveys, as presumptively unconstitutional.<sup>97</sup> Such a law may be justified only if the government shows that the law is required to promote a compelling state interest and that the least restrictive means have been chosen to further that articulated interest.<sup>98</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>99</sup>

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; however, she contemplated the possibility that future technological advances may allow for a constitutionally sound age-verification law.<sup>100</sup>

Experts assert that age-verification systems have progressed considerably from a generation ago when the U.S. Supreme Court held that age-verification methods often failed and were too burdensome for law-abiding adults.<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>

Additionally, in determining whether laws requiring age-verification to access social media platforms unconstitutionally restrict free speech, courts have found that even if "the state has the power to enforce parental prohibitions it does not follow that the state has the power to prevent children from hearing or saying anything without their parents' prior consent."<sup>103</sup> Moreover,

age-verification requirements are more restrictive than policies enabling or encouraging users (or their parents) to control their own access to information, whether through user-installed devices and filters or affirmative requests to third-party companies. "Filters impose selective restrictions on speech at the receiving end, not

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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).

<sup>97</sup> *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015).

<sup>98</sup> *Sable Comm's v. F.C.C.*, 492 U.S. 115 (1989).

<sup>99</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, [Reno v. Am. C. L. Union \(1997\) - The Free Speech Center \(mtsu.edu\)](#) (last visited Jan. 7, 2024).

<sup>100</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>101</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); *Reno v. Am. C. L. Union*, 521 U.S. 844, 886 (1997); *Ashcroft*, 542 U.S. 656.

<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> *NetChoice, LLC v. Yost*, 2024 WL 104336 (S.D. Ohio Jan. 9, 2024).

universal restrictions at the source.” And “[u]nder a filtering regime, adults ... may gain access to speech they have a right to see without having to identify themselves[.]” Similarly, the State could always “act to encourage the use of filters ... by parents” to protect minors.<sup>104</sup>

### *Contracts Clause*

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. However, the reach of these protections is “limited to preexisting contracts, unlike due process, which extends to future contracts as well.”<sup>105</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>106</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>107</sup>

### *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 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>108</sup>

Section 230 of the federal Communications Decency Act (CDA),<sup>109</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>110</sup> and specifically prohibits all inconsistent causes of action and liability imposed under any State or local law.<sup>111</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>104</sup> *NetChoice, LLC v. Griffin*, 2023 WL 5660155 (W.D. Ark. Aug. 31, 2023).

<sup>105</sup> *Woodstone Ltd. Partn. v. City of Saint Paul, Minnesota*, 2023 WL 3586077 (D. Minnesota May 22, 2023).

<sup>106</sup> *Sable Commc’s of California, Inc. vs. F.C.C.*, 492 U.S. 115, 126 (1989).

<sup>107</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.)

<sup>108</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>109</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>110</sup> 47 U.S.C. § 230(c)(1).

<sup>111</sup> 47 U.S.C. § 230(e).