

AMENDED IN ASSEMBLY APRIL 21, 2021

AMENDED IN ASSEMBLY APRIL 12, 2021

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

ASSEMBLY BILL

No. 1545

Introduced by Assembly Member Wicks

February 19, 2021

An act to add Title 1.81.7 (commencing with Section 1798.300) to Part 4 of Division 3 of the Civil Code, relating to business.

LEGISLATIVE COUNSEL'S DIGEST

AB 1545, as amended, Wicks. Children: internet safety: platform operators.

Existing law, the California Consumer Privacy Act of 2018 (CCPA), grants consumers certain rights in regard to businesses, as defined, that collect personal information about them, including the right to know what information is collected and the right to opt-out of the sale of that information. Existing law, the California Privacy Rights Act of 2020, approved by the voters as Proposition 24 at the November 3, 2020, statewide general election, among other changes in the CCPA, establishes the California Privacy Protection Agency and vests it with full administrative power, authority, and jurisdiction to implement and enforce the CCPA. Existing law prohibits specified unfair, dishonest, deceptive, destructive, fraudulent, and discriminatory practices by which fair and honest competition is destroyed or prevented.

Existing law prohibits a business from selling personal information of consumers that the business knows are less than 16 years of age unless that sale is affirmatively authorized, as specified. Existing law, commencing January 1, 2023, also prohibits a business from sharing

personal information of consumers that the business knows are less than 16 years of age unless that sale is affirmatively authorized, as specified.

This bill would enact the Kids Internet Design and Safety Act for purposes of keeping children safe and protecting their interests on the internet. The bill would, among other things, prohibit an operator of a platform, as defined, from incorporating certain features with respect to content viewable by a covered user, as defined, without first obtaining consent from the parent or guardian of the covered user, including an auto-play setting that, without input from a covered user, commences additional video content directly following the video content initially selected by the covered user; *except as specified.*

~~This bill would prohibit an operator of a platform from promoting, amplifying, or otherwise encouraging the consumption of content or advertising that involves, among other things, sexual material. The bill would provide that a violation of these provisions constitutes unfair competition.~~

This bill would require an operator of a platform to, among other things, allow a parent or guardian to create an account *or profile* for that person's child who is under 13 years of age. The bill would, ~~beginning January 1, 2026, on or before June 1, 2023, upon appropriation by the Legislature,~~ require the Attorney General to conduct an annual audit of ~~10 of the platforms that have the highest total number of covered users in the previous calendar year, as specified.~~ *to determine compliance with specified state and federal law.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Children increasingly consume digital entertainment on the
- 4 internet and are uniquely susceptible to manipulation online given
- 5 their lack of important neurological and psychological mechanisms
- 6 that develop later in adulthood.
- 7 (b) Artificial intelligence, machine learning, and other complex
- 8 systems are used to make continuous decisions about how online
- 9 content for children can be personalized to increase engagement.

1 (c) Online companies gather, analyze, and use data for
2 behavioral marketing directed at children.

3 (d) Companies employ sophisticated strategies, including
4 neuromarketing, to affect consumer behavior and manipulate
5 decisionmaking.

6 (e) Branded content in various forms of multimedia, including
7 native advertising and influencer marketing, exposes children to
8 marketing that is inherently manipulative or purposely disguised
9 as entertainment or other information.

10 SEC. 2. Title 1.81.7 (commencing with Section 1798.300) is
11 added to Part 4 of Division 3 of the Civil Code, to read:

12
13 TITLE 1.81.7. KIDS INTERNET DESIGN AND SAFETY
14 ACT
15

16 1798.300. (a) This title shall be known, and may be cited, as
17 the Kids Internet Design and Safety Act or the KIDS Act.

18 (b) The purpose of this title is to keep children safe and protect
19 their interests on the internet.

20 1798.302. For purposes of this title:

21 (a) “Content” means streaming media in which the data from a
22 video file is continuously delivered via the internet to a remote
23 user allowing a video to be viewed online without being
24 downloaded on a host computer or device.

25 (b) “Covered user” means a natural person under 13 years of
26 age who is a California resident and who is logged into an account
27 *or profile* that meets both of the following criteria:

28 (1) The account *or profile* was created by the person’s parent
29 or guardian.

30 (2) The account *or profile* explicitly identifies the primary user
31 as a person under 13 years of age based on information provided
32 by the parent or guardian who created the ~~account~~; *account or*
33 *profile*.

34 (c) “Directed to children” ~~means any of the following:~~ *has the*
35 *same meaning as “website or online service directed to children”*
36 *as defined by Section 6501 of Title 15 of the United States Code.*

37 ~~(1) Content that a reasonable person would believe was intended~~
38 ~~to appeal primarily to children under the age of 13.~~

~~(2) A channel consisting mainly of content that a reasonable person would believe was intended to appeal primarily to children under the age of 13.~~

~~(3) Content viewed by a covered user.~~

~~(f)~~

~~(d) “Operator” means any person that operates a platform, including any person offering products or services for sale through that platform, involving commerce within the state.~~

~~(h)~~

~~(e) “Platform” means an internet website, online service, online application, or mobile application that is operated for commercial purposes and that provides content that is directed to children. A platform does not include an internet website, online service, online application, or mobile application that prohibits use by California residents under 13 years of age.~~

1798.303. (a) (1) An operator of a platform shall not incorporate ~~any~~ either of the following features with respect to content viewable by a covered user without first obtaining consent from the parent or guardian of the covered user:

(A) An auto-play setting that, without input from the covered user, commences additional video content directly following the video content initially selected by the covered ~~user~~; *user, unless the initially selected video content is an episode of the same television show or online series as the video content that directly follows it.*

~~(B) Push alerts that are not for safety or security purposes.~~

~~(C) A display of the quantity of positive engagement or feedback that a covered user has received from other users.~~

~~(D)~~

(B) Any design feature or setting that allows a covered user to make purchases, submit content, or communicate with other individuals on the platform.

(2) An operator of a platform shall not display to a covered user advertising related to alcohol, tobacco, or products containing nicotine.

~~(b) An operator of a platform shall not, through content directed to children, promote, amplify, or otherwise encourage the consumption of content or advertising that involves any of the following:~~

~~(1) Sexual material.~~

1 ~~(2) Physical or emotional violence, including bullying.~~

2 ~~(3) Adult activities.~~

3 ~~(e)~~

4 ~~(b)~~ An operator of a platform with content directed to children
5 shall do all of the following:

6 (1) Allow a parent or guardian to create an account *or profile*
7 for that person's child who is under 13 years of age.

8 (2) Provide a parent or guardian with parental controls that
9 enable the parent or guardian to filter and block content viewable
10 by the covered user for whom the parent or guardian created an
11 ~~account.~~ *account or profile.*

12 (3) Incorporate visual indicators that distinguish commercial
13 content from noncommercial content.

14 ~~(4) Publish and maintain a publicly accessible digital record of~~
15 ~~the content viewable or playable by a covered user.~~

16 ~~(d) An operator of a platform shall implement a mechanism for~~
17 ~~users to report to the platform suspected violations of this section.~~

18 1798.304. The Attorney General ~~shall do all of the following:~~
19 *shall, beginning on or before June 1, 2023, upon appropriation*
20 *by the Legislature, annually conduct an audit of platforms to*
21 *determine compliance with the Children's Online Privacy*
22 *Protection Act (Chapter 91 (commencing with Section 6501) of*
23 *Title 15 of the United States Code) and Chapter 22.1 (commencing*
24 *with Section 22580) of Division 8 of the Business and Professions*
25 *Code.*

26 ~~(a) (1) On or before June 1, 2027, and annually thereafter,~~
27 ~~conduct an audit of platforms to determine compliance with this~~
28 ~~title.~~

29 ~~(2) The Attorney General shall audit 10 of the platforms that~~
30 ~~have the highest total number of covered users in the previous~~
31 ~~calendar year.~~

32 ~~(3) The Attorney General may contract with a private entity to~~
33 ~~conduct, or assist with conducting, the audit required by this~~
34 ~~subdivision.~~

35 ~~(b) Adopt regulations as necessary to implement this title.~~

36 ~~(e) This section shall become operative on January 1, 2026.~~

37 1798.305. A violation of Section 1798.303 shall constitute
38 unfair competition pursuant to Chapter 5 (commencing with

- 1 Section 17200) of Part 2 of Division 7 of the Business and
- 2 Professions Code.

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