

AMENDED IN ASSEMBLY MAY 4, 2020

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

**ASSEMBLY BILL**

**No. 3339**

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**Introduced by Assembly Member Wicks**

February 21, 2020

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~~An act to amend Section 1798.120 of the Civil Code, relating to privacy.~~ 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 3339, as amended, Wicks. ~~Personal information: sale. Kids Internet Design and Safety Act.~~

Existing law 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 prohibits a business from selling personal information of consumers that the business knows are 16 years of age or younger unless that sale is affirmatively authorized.

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 prohibit an operator of a platform directed to children, as defined, from incorporating certain features on any of its platforms, including, but not limited to, an auto-play setting that, without input from a covered user, as defined, commences additional video content directly following the video content initially selected by the user. The bill would prohibit an operator of a platform directed to children, or a platform for which the operator has constructive knowledge that covered users use the platform, from engaging in certain activities, including amplifying, promoting, or encouraging covered

users' consumption of videos or other forms of content that involve sexual material or other dangerous, abusive, exploitative, or wholly commercial content. The bill would also prohibit an operator of a platform directed to children from engaging in certain activities, including directing content that includes host-selling, as defined, to covered users. The bill would provide that a violation of the act constitutes unfair competition.

This bill would require an operator of a platform to only use age verification information collected from covered users for age verification purposes. The bill would require the Attorney General to promulgate, by January 1, 2026, specified regulations relating to the act, including an annual audit process for purposes of evaluating the level of compliance with the act. The bill would require the annual audit to be conducted for 25 platforms that are directed to children and that have the highest total number of covered users in the past calendar year. The bill would require the first annual audit to be completed by no later than January 1, 2027. The bill would also make related findings and declarations.

~~Existing law 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 prohibits a business from selling personal information of consumers that the business knows is 16 years of age or younger unless that sale is affirmatively authorized.~~

~~This bill would make a nonsubstantive changes to these provisions.~~

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

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

- 1     SECTION 1. Title 1.81.7 (commencing with Section 1798.300)
- 2     is added to Part 4 of Division 3 of the Civil Code, to read:
- 3
- 4     TITLE 1.81.7. KIDS INTERNET DESIGN AND SAFETY ACT
- 5
- 6     1798.300. (a) This title shall be known, and may be cited as
- 7     the, Kids Internet Design and Safety Act, or the KIDS Act.
- 8     (b) The purpose of this act is to keep children safe and protect
- 9     their interests on the internet.

1 1798.301. *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) *Today's digital media environment, which is constantly*  
8 *evolving and now includes high-tech experiences, including*  
9 *augmented reality and virtual reality, is largely designed in a*  
10 *nontransparent manner to ensure children interact with content*  
11 *that reflect the interests and goals of content creators, platforms,*  
12 *and marketers.*

13 (c) *Artificial intelligence, machine learning, and other complex*  
14 *systems are used to make continuous decisions about how online*  
15 *content for children can be personalized to increase engagement.*

16 (d) *Online companies gather, analyze, and use data for*  
17 *behavioral marketing directed at children.*

18 (e) *Companies employ sophisticated strategies, including*  
19 *neuromarketing, to affect consumer behavior and manipulate*  
20 *decisionmaking.*

21 (f) *Branded content in various forms of multimedia, including*  
22 *native advertising and influencer marketing, exposes children to*  
23 *marketing that is inherently manipulative or purposely disguised*  
24 *as entertainment or other information.*

25 1798.302. *For purposes of this act, all of the following*  
26 *definitions apply:*

27 (a) *"Branded content" means commercial content created for,*  
28 *and distributed on, a platform in a manner that causes the*  
29 *difference between entertainment and advertising to become*  
30 *unclear for purposes of generating a positive view of the brand.*

31 (b) *"Covered user" means a natural person under 16 years of*  
32 *age who is a California resident, as defined in Section 17014 of*  
33 *Title 18 of the California Code of Regulations, as that section read*  
34 *on January 1, 2020.*

35 (c) *"Directed to children" means the targeting of a covered*  
36 *user by a platform. Targeting is determined by examining all the*  
37 *following factors with respect to a platform:*

38 (1) *The platform's subject matter.*

39 (2) *The platform's visual content.*

1     (3) *Whether the platform uses animated characters or activities*  
2 *for covered users, as well as related incentives.*

3     (4) *The type of music or audio content used by the platform.*

4     (5) *The age of any models used.*

5     (6) *The use of celebrities under 16 years of age or celebrities*  
6 *who appeal to covered users.*

7     (7) *The language used by the platform.*

8     (8) *The type of advertising content used, or used to advertise,*  
9 *on the platform.*

10    (9) *Reliable empirical evidence relating to the composition of*  
11 *the platform's users and the intended audience of the platform.*

12    (d) *"Host-selling" means commercial video content that features*  
13 *the same characters or individuals used in adjacent noncommercial*  
14 *content.*

15    (e) *"Native advertising" means a form of media paid for by the*  
16 *advertiser, where the advertising experience follows the natural*  
17 *form and function of the user experience in which it is placed.*

18    (f) *"Operator" means any person that operates a platform,*  
19 *including any person offering products or services for sale through*  
20 *that platform, involving commerce within the State of California.*

21    (g) *"Person" means any individual, partnership, corporation,*  
22 *trust, estate, cooperative, association, or other entity.*

23    (h) *"Platform" means an internet website, online service, online*  
24 *application, or mobile application that is operated for commercial*  
25 *purposes.*

26    1798.303. (a) *An operator of a platform directed to children*  
27 *shall not incorporate any of the following features on any of its*  
28 *platforms:*

29     (1) *An auto-play setting that, without input from the covered*  
30 *user, commences additional video content directly following the*  
31 *video content initially selected by the user.*

32     (2) *Push alerts that urge a covered user to spend more time*  
33 *engaged with the platform when the covered user is not actively*  
34 *using it.*

35     (3) *A display of the quantity of positive engagement or feedback*  
36 *that a covered user has received from other users.*

37     (4) *Any design feature or setting that disproportionately*  
38 *encourages a covered user, due to their age or inexperience, to*  
39 *make purchases, submit content, or spend more time engaging*  
40 *with the platform.*

1     (5) Any feature that provides a covered user with badges or  
2     other visual award symbols based on elevated levels of engagement  
3     with the platform.

4     (b) An operator of a platform directed to children, or a platform  
5     for which the operator has constructive knowledge that covered  
6     users use the platform, shall not do either of the following:

7         (1) Amplify, promote, or encourage covered users' consumption  
8         of videos or other forms of content that involve any of the  
9         following:

10             (A) Sexual material.

11             (B) Physical or emotional violence, including bullying.

12             (C) Adult activities, including gambling.

13             (D) Other dangerous, abusive, exploitative, or wholly  
14             commercial content.

15         (2) Fail to implement a mechanism for users to report suspected  
16         violations of any requirement under paragraph (1).

17     (c) An operator of a platform directed to children shall not do  
18     any of the following:

19         (1) Direct content that includes host-selling to covered users.

20         (2) Expose covered users to program-length advertisements.

21         (3) Direct branded content or native advertising to covered  
22         users.

23         (4) Direct online advertising or material with considerable  
24         commercial content involving alcohol, nicotine, or tobacco to  
25         covered users.

26         (5) Expose covered users to online advertising or material with  
27         considerable commercial content with any imbedded interactive  
28         elements that take advantage of covered users' inexperience or  
29         credulity in noncommercial content directed to children.

30         (6) Direct content that includes product placement to covered  
31         users.

32     (d) An operator of a platform shall only use age verification  
33     information collected from covered users for age verification  
34     purposes.

35     1798.304. (a) The Attorney General shall promulgate all of  
36     the following regulations:

37         (1) Regulations requiring any operator of a platform directed  
38         to children to incorporate visual indicators that distinguish  
39         commercial content from noncommercial content.

1 (2) Regulations requiring an operator of a platform that is  
2 directed to children to publish and maintain a publicly accessible  
3 digital record of the viewable or playable content of that platform.

4 (3) Regulations concerning an annual audit process for purposes  
5 of evaluating the level of compliance with the act. The annual audit  
6 shall be conducted for 25 platforms that are directed to children  
7 and that have the highest total number of covered users in the past  
8 calendar year. The first annual audit shall be completed no later  
9 than January 1, 2027.

10 (b) The Attorney General shall promulgate the regulations  
11 described in subdivision (a) by January 1, 2026.

12 1798.305. A violation of Section 1798.303 shall constitute  
13 unfair competition pursuant to Chapter 5 (commencing with  
14 Section 17200) of Part 2 of Division 7 of the Business and  
15 Professions Code.

16 SECTION 1. ~~Section 1798.120 of the Civil Code is amended~~  
17 ~~to read:~~

18 1798.120. ~~(a) A consumer shall have the right, at any time, to~~  
19 ~~direct a business that sells personal information about the consumer~~  
20 ~~to third parties not to sell the information. This right may be~~  
21 ~~referred to as the right to opt-out.~~

22 ~~(b) A business that sells consumers' personal information to~~  
23 ~~third parties shall provide notice to consumers, pursuant to~~  
24 ~~subdivision (a) of Section 1798.135, that this information may be~~  
25 ~~sold and that consumers have the "right to opt-out" of the sale.~~

26 ~~(c) Notwithstanding subdivision (a), a business shall not sell~~  
27 ~~the personal information of consumers if the business has actual~~  
28 ~~knowledge that the consumer is less than 16 years of age, unless~~  
29 ~~the consumer, in the case of consumers at least 13 years of age~~  
30 ~~and less than 16 years of age, or the consumer's parent or guardian,~~  
31 ~~in the case of consumers who are less than 13 years of age, has~~  
32 ~~affirmatively authorized the sale of the information. A business~~  
33 ~~that willfully disregards the consumer's age is deemed to have had~~  
34 ~~actual knowledge of the consumer's age. This right may be referred~~  
35 ~~to as the "right to opt-in."~~

36 ~~(d) A business that has received direction from a consumer not~~  
37 ~~to sell the consumer's personal information or, in the case of a~~  
38 ~~minor consumer's personal information, has not received consent~~  
39 ~~to sell the minor consumer's personal information is prohibited,~~  
40 ~~pursuant to paragraph (4) of subdivision (a) of Section 1798.135,~~

1 ~~from selling the information after its receipt of the consumer's~~  
2 ~~direction, unless the consumer subsequently provides express~~  
3 ~~authorization for the sale.~~

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