

Amendment - 1st Reading/2nd House-blue - Requested by: Emma Kerr-Carpenter - (S)
Energy, Technology & Federal Relations

- 2025

69th Legislature 2025

Drafter: Jason Mohr,

HB0392.002.001

HOUSE BILL NO. 392

INTRODUCED BY K. ZOLNIKOV

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE CHILD DIGITAL PROTECTION ACT;
GENERALLY REVISING LAWS RELATED TO THE CREATION OF PROFITABLE FAMILY VIDEO CONTENT
FEATURING MINOR CHILDREN; PROVIDING FOR TRUST CONTRIBUTIONS OF PROFITS MADE FROM
VIDEO CONTENT FEATURING MINOR CHILDREN; PROVIDING A RIGHT TO REQUEST REMOVAL OF
CONTENT; PROVIDING A PRIVATE RIGHT OF ACTION; AND PROVIDING DEFINITIONS."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. **Short title.** [Sections 1 through 7] may be cited as the "Child Digital
Protection Act".

NEW SECTION. Section 2. **Legislative findings and purpose.** (1) The legislature finds that social
media influencers can make significant amounts of money from digital content. Some influencers use the
influencers' minor children as subjects of the content. The children featured in family-produced video content
generate interest in and revenue for the content but receive no financial compensation for participation. Unlike
in child acting, the children are not playing a part and lack legal protections in the state.

(2) The legislature further finds that social media influencers who market video content of the
influencers' families, or "content creators", can profit from the personal property rights of the influencers'
children without restriction. Some children are filmed from birth, with highly personal details of the children's
lives shared on the internet for compensation. In addition to severe loss of privacy, the children receive no
consideration for the use and exchange of the children's personal property rights.

(3) The purpose of [sections 1 through 7] is to allow minors to receive proportional compensation
for the use of specified personal property rights in which the minor's parent or parents have reached a specified
profit threshold from the use. Further, the purpose of [sections 1 through 7] is to provide for minors to exercise

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control over specified personal property rights on reaching the age of majority.

NEW SECTION. Section 3. Definitions. As used in [sections 1 through 7], unless the context clearly indicates otherwise, the following definitions apply:

(1) "Age of majority" means 18 years of age.

(2) "Content creation" means content shared on an online platform that generates compensation.

(3) "Content creator" means a person or persons 18 years of age or older, including family members, who creates content performed in the state that generates compensation and includes any proprietorship, partnership, company, or other corporate entity assuming the name or identity of a particular individual or individuals or family members for the purposes of that content creator.

(4) "Likeness" means an image, painting, sketch, model, diagram, or other clear representation, other than a photograph, of an individual's face, body, or part of the individual's face or body, or the distinctive appearance, gestures, or mannerisms of an individual.

(5) "Minor" means a person under 18 years of age whose principal place of residence is in the state.

(6) "Name" means the actual or assumed name or nickname of a living or deceased individual that is intended to identify that individual.

(7) "Online platform" means a public-facing website, web application, or digital application, including a mobile application. The term includes a social network, advertising network, mobile operating system, search engine, e-mail service, monetization platform to sell digital services, streaming service, AND paid subscription, ~~and internet access service.~~

(8) "Photograph" means a photograph or photographic reproduction, still or moving, or a videotape or online or live television transmission of an individual, so that the individual is readily identifiable.

(9) "Video segment" means a self-contained moving visual image that is recorded in an electronic medium.

NEW SECTION. Section 4. Trust contribution for profitable video content involving minor child.

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(1) A content creator meeting the criteria under subsection (2) shall compensate, under subsection (3), the content creator's minor child whose likeness, name, or photograph constitutes the video content meeting the criteria in subsection (2)(a).

(2) This section applies to a content creator meeting the following criteria at any time within the previous 12-month period:

(a) (i) the number of views received for each video segment on an online platform or network meet the platform or network's threshold for generation of compensation; or

(ii) the content creator receives actual compensation for the video content equal to or greater than \$0.10 a view; and

(b) at least 30% of the content creator's compensated video content produced within a 30-day period includes the likeness, name, or photograph of the content creator's minor child.

(3) A content creator meeting the criteria in subsection (2) shall set aside a percentage, calculated under subsection (4), of the gross earnings on the video content including the likeness, name, or photograph of the content creator's minor child in a trust to be preserved for the benefit of the minor on reaching the age of majority according to the following distribution:

(a) if only one minor child meets the content threshold described in subsection (2)(b), the percentage required under subsection (4) of total gross earnings on a video segment including the likeness, name, or photograph of the content creator's minor child that is equal to or greater than the content percentage that includes the minor child as described in subsection (2)(b); or

(b) if more than one minor child meets the content threshold described in subsection (2)(b) and a video segment includes more than one of those children, the additive percentage required under subsection (4) for all minor children in a video segment must be equally divided between the children, regardless of differences in percentage of content featuring the individual children.

(4) (a) For video segments that include the likeness, name, or photograph of the minor that is equal to or greater than 30% but less than 50% of the compensated video content, the trust contribution under subsection (3) must be equal to 10% of the gross earnings.

(b) For video segments that include the likeness, name, or photograph of the minor that is equal to

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or greater than 50% but less than 75% of the compensated video content, the trust contribution under subsection (3) must be equal to 25% of the gross earnings.

(c) For video segments that include the likeness, name, or photograph of a minor that is equal to or greater than 75% of the compensated video content, the trust contribution under subsection (3) must be equal to 50% of the gross earnings.

(5) Content percentage is measured by the percentage of time the likeness, name, or photograph of the content creator's minor child visually appears or is the subject of an oral narrative in a video segment, as compared to the total length of the video segment.

NEW SECTION. Section 5. Right to be forgotten -- requests to remove content involving minor child after reaching age of majority. (1) On reaching the age of majority, an individual previously covered under [section 4] may request the permanent deletion of a video segment that includes the likeness, name, or photograph of the individual from an online platform or network that provided compensation to the individual's parent or parents in exchange for the video content.

(2) An online platform or network shall take all reasonable steps to permanently delete the video segment for which a request under subsection (1) is made.

(3) A contract with an online platform or network for the exchange or use of video content that would reasonably be anticipated to include greater than a nominal use of a content creator's minor child must include notification to the online platform or network of the minor child's future rights as provided in this section.

NEW SECTION. Section 6. Private right of action -- remedies. (1) An individual harmed by a violation of [sections 4 and 5] may maintain a cause of action for the following remedies:

(a) injunctive relief;

(b) damages in an amount that is the greater of:

(i) \$1,500; or

(ii) actual damages sustained to the individual as a result of the violation; and

(c) recovery for any profits that are attributable to the violation not included in the calculation of

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1 actual damages under subsection (2)(b).

2 (2) To prove profits under this section, an individual shall submit proof of gross revenues
3 attributable to the violation and the violating party shall prove the party's deductible expenses.

4 (3) An individual shall bring a cause of action under this section within 7 years of the discovery of
5 the violation or before the individual reaches 26 years of age, whichever is later.

6
7 **NEW SECTION. Section 7. Duty to maintain and provide information -- injunctive relief.** (1) A
8 content creator whose content meets the criteria under [section 4(2)] shall maintain the following records
9 annually and shall provide the records to the minor on an ongoing ANNUAL basis request:

10 (a) the name and documentary proof of the age of the minor engaged in the work of content
11 creation;

12 (b) the number of video segments that generated compensation as described in [section 4(2)];

13 (c) the total number of minutes of the video segments for which the content creator received
14 compensation;

15 (d) the total number of minutes each minor was featured in video segments;

16 (e) the total compensation generated from video segments featuring the minor; and

17 (f) the amount deposited in the trust fund established under the requirements of [section 4(3)] for
18 the benefit of the minor.

19 (2) The records provided for in subsection (1) must be retained and maintained by a content
20 creator until the minor reaches the age of majority, at which time the content creator shall provide the records to
21 the individual previously covered by [section 4].

22 (2)(3) If a content creator whose video segment meets the criteria under [section 4(2)] fails to
23 maintain the records as provided in subsection (1), the minor may maintain a civil action under [section 6].

24
25 **NEW SECTION. Section 8. Codification instruction.** [Sections 1 through 7] are intended to be
26 codified as a new part in a new chapter in Title 30, and the provisions of Title 30 apply to [sections 1 through 7].

27 - END -