

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: SB 1788

INTRODUCER: Senator Grall and Senator Garcia

SUBJECT: Age Verification for Social Media Platform Accounts

DATE: February 2, 2024

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Collazo</u>	<u>Cibula</u>	<u>JU</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>FP</u>	_____

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**I. Summary:**

SB 1788 requires social media platforms, as defined in the bill, to perform reasonable age verification before permitting users to access their platforms. The age verification method used must be conducted by an independent third party not affiliated with the social media platform.

The bill prohibits minors younger than 16 from creating or maintaining accounts on social media platforms. With respect to existing accounts belonging to minors younger than 16, the bill requires social media platforms to terminate them, and also allows the account holders or their parents or guardians to terminate them. Social media platforms must permanently delete all personal information held by them relating to terminated accounts unless otherwise required by law to maintain the personal information.

Minors who are 16 or 17 years of age are allowed to create and maintain accounts, but social media platforms are required to provide them certain disclosures, disclaimers, and other information identified in the bill.

The bill does not apply to certain websites identified in the bill, including those whose predominant function is email, messaging, or texts; streaming services; news, sports, or entertainment; or online shopping or gaming.

Any violation of the bill's regulations is deemed to be an unfair and deceptive trade practice, actionable only by the Department of Legal Affairs under the Florida Deceptive and Unfair Trade Practices Act. The bill also provides a private cause of action against social media platforms for failing to timely delete the account of a minor younger than 16 after receiving a request to delete the account.

The bill authorizes the department to adopt rules to implement the bill.

The bill takes effect on July 1, 2024.

## II. Present 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> Today, an estimated 4.9 billion people use social media across the world.<sup>2</sup> In 2005, the year Facebook started, just 5 percent of American adults used social media platforms. By 2011, that share had risen to half of all Americans; and by 2021, 72 percent of the public used some type of social media.<sup>3</sup>

Approximately 38 percent of children between the ages of 8 and 12, and 84 percent of teenagers between the ages of 13 and 18, are using social media.<sup>4</sup> More than one in three teens, ages 13 to 17, report that they use social media “almost constantly.”<sup>5</sup> To comply with federal requirements, some social media companies already prohibit kids younger than 13 from creating accounts on their platforms, but children can easily get around such bans, regardless of whether they have their parents’ consent.<sup>6</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 has largely shifted to mobile phones and tablets. With the advent of social media apps that run on smartphones, end users can now take their communities with them wherever they go and use social media at any time.<sup>7</sup>

### Addictive Designs and Deceptive Patterns

In general, “addictive designs” or “deceptive patterns,” also called “dark patterns,” are deceptive user experiences that take advantage of how people habitually use websites, to get them to do things that they may not normally do, such as impulse purchasing, giving away personal information, or spending excessive time on websites.<sup>8</sup> Examples of dark patterns include “autoplay,” when a video website automatically plays new videos in succession as a default

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<sup>1</sup> Meriam-Webster, *Dictionary, Definition: Social Media*, <https://www.merriam-webster.com/dictionary/social%20media> (last visited Jan. 17, 2024).

<sup>2</sup> Belle Wong, *Top Social Media Statistics And Trends Of 2024*, Forbes Advisor, May 18, 2023, <https://www.forbes.com/advisor/business/social-media-statistics/>.

<sup>3</sup> Pew Research Center, *Social Media Fact Sheet*, Apr. 7, 2021, <https://www.pewresearch.org/internet/fact-sheet/social-media/>.

<sup>4</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>.

<sup>5</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>.

<sup>6</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>.

<sup>7</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/>.

<sup>8</sup> Brad Bartlett, *Dark Design Patterns: Teach Kids to Recognise Them*, Kidslox, Feb. 7, 2023, <https://kidslox.com/guide-to/dark-design-patterns/>.

setting;<sup>9</sup> and “infinite scroll,” when a website allows users to scroll endlessly through content, rather than clicking through pages.<sup>10</sup>

In 2022, the Federal Trade Commission issued a report outlining the ways that companies are increasingly using dark patterns to manipulate consumers into buying products or forfeiting their privacy.<sup>11</sup> Common dark pattern tactics include:

- Disguising ads by designing advertisements to look like independent editorial content.
- Claiming to be neutral, but actually ranking companies in exchange for compensation.
- Using countdown timers designed to make consumers believe they only have a limited time to purchase a product or service, even though 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 they do not see before making a purchase.
- Tricking consumers into sharing data, which involves falsely giving consumers choices about privacy settings or sharing data, but instead steering them toward the option that gives away the most personal information.<sup>12</sup>

Recently, the commission has filed complaints against several companies for using dark patterns as a deceptive trade practice.<sup>13</sup> For example, it has taken action against Twitter (now X), alleging it deceptively used account security information to sell targeted advertisements.<sup>14</sup> Additionally, the commission filed a complaint against Amazon, alleging the use of dark patterns to deceive users into subscribing to a premium service.<sup>15</sup> Both cases are still pending.

### *Effects 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>16</sup> Adolescents are constantly in touch with their peers via social media accounts. However, social media has the potential to have both

<sup>9</sup> René Otto, *Autoplay and infinite scroll*, Medium, Jan. 26, 2021, <https://rene-otto.medium.com/autoplay-and-infinite-scroll-8607abe52bb7#:~:text=nobody%20asked%20for%20autoplay%20video,%3A%20stealing%20your%20attention%20back.%E2%80%9D>.

<sup>10</sup> Erin Rupp, *The Infinite Scroll: Why It's So Addictive and How to Break Free*, Freedom.to, Feb. 28, 2022, <https://freedom.to/blog/infinite-scroll/>.

<sup>11</sup> Federal Trade Commission (FTC), *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>.

<sup>12</sup> *Id.*

<sup>13</sup> Frank Gorman et al., *FTC Targets “Dark Patterns” in Actions Against Amazon and Publishers Clearing House*, WilmerHale, Aug. 14, 2023, <https://www.wilmerhale.com/insights/client-alerts/20230814-ftc-targets-dark-patterns-inactions-against-amazon-and-publishers-clearing-house>.

<sup>14</sup> FTC, *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>.

<sup>15</sup> FTC, *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>.

<sup>16</sup> Andrea Irmer & Florian Schmiedek, *Associations between youth’s daily social media use and well-being are mediated by upward comparisons*, 1 COMMUN. PSYCHOL. 12 (Aug. 22, 2023), available at <https://doi.org/10.1038/s44271-023-00013-0>.

positive and negative effects on their health.<sup>17</sup> Some 80 percent of teenagers say social media allows them to feel more connected to their peers, according to a 2022 Pew Research Center survey of U.S. teens ages 13 to 17. Overall, one in three said that social media has had a mostly positive effect on them, while 59 percent said that it had neither a positive nor a negative effect.<sup>18</sup> On the other hand, many teens' use, and overuse, of social media has raised questions about its effect on their physical and mental health by distracting them, disrupting their sleep, and exposing them to bullying, rumor spreading, unrealistic views of other people's lives, and peer pressure.<sup>19</sup>

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>20</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>21</sup>

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>22</sup>

Based on their preparation and review of 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, has stated that just because social media is here to stay, it does not mean the dangers have to be accepted. "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>23</sup>

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<sup>17</sup> Maya Dollarhide, *Social Media: Definition, Effects, and List of Top Apps*, Investopedia.com, Aug. 31, 2023, <https://www.investopedia.com/terms/s/social-media.asp>.

<sup>18</sup> Monica Anderson et al., *Connection, Creativity, and Drama: Teen Life on Social Media in 2022*, Pew Research Center, Nov. 16, 2022, <https://www.pewresearch.org/internet/2022/11/16/connection-creativity-and-drama-teen-life-on-social-media-in-2022/>.

<sup>19</sup> Mayo Clinic, *Tween and teen health*, <https://www.mayoclinic.org/healthy-lifestyle/tween-and-teen-health/in-depth/teens-and-social-media-use/art-20474437> (last visited Jan. 17, 2024).

<sup>20</sup> U.S. Department of Health and Human Services, Office of the Surgeon General, *Social Media and Youth Mental Health: The U.S. Surgeon General's Advisory* (2023), available at <https://www.ncbi.nlm.nih.gov/books/NBK594761/>.

<sup>21</sup> Lauraine Langreo, *Surgeon General: Kids Under 14 Should Not Use Social Media*, EducationWeek, Feb. 2, 2023, <https://www.edweek.org/leadership/surgeon-general-kids-under-14-should-not-use-social-media/2023/02>.

<sup>22</sup> Matt Richtel, *Is Social Media Addictive? Here's What the Science Says.*, The New York Times, Oct. 25, 2023, <https://www.nytimes.com/2023/10/25/health/social-media-addiction.html>.

<sup>23</sup> Kirsten Weir, *Social media brings benefits and risks to teens. Here's how psychology can help identify a path forward*, American Psychological Association, Sept. 1, 2023, <https://www.apa.org/monitor/2023/09/protecting-teens-on-social-media>.

### *Safety Measures and Parental Controls*

Providing children with information regarding how to more safely use social media could reduce or eliminate harms. Having conversations with them about social media, its benefits, and its risks, could promote positive social media usage.<sup>24</sup> Parental controls can also protect children from inappropriate content, cyberbullying, and other online safety issues.<sup>25</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>26</sup>

However, two 2018 studies found that parental control apps may actually be counterproductive because they harm the trust between a parent and child and reduce 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>27</sup>

### *Lawsuits*

Evidence exists that social media platforms have intentionally created algorithms and other functions that are 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 use these algorithms and functions even though they are aware that too much passive use of social media can be unhealthy.<sup>28</sup>

On October 24, 2023, a group of 41 states, including Florida, and the District of Columbia, filed suit against Meta,<sup>29</sup> contending that the company knowingly uses features on its platforms to cause children to use them compulsively, even as the company says that its social media sites are safe for young people.<sup>30</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>31</sup>

<sup>24</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. 17, 2024).

<sup>25</sup> Internetmatters.org, *Parental Controls*, <https://www.internetmatters.org/parental-controls/> (last visited Jan. 17, 2024).

<sup>26</sup> Caroline Knorr, *Parents' Ultimate Guide to Parental Controls*, Commonsensemedia.org, Mar. 9, 2021, <https://www.commonsensemedia.org/articles/parents-ultimate-guide-to-parental-controls>.

<sup>27</sup> Barbara Abney & Zenaida 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/>.

<sup>28</sup> R. Kraut et al., *Internet paradox: a social technology that reduces social involvement and psychological well-being?*, 53 AM. PSYCHOL. 9, at 1017-31 (Sept. 1998), available at <https://pubmed.ncbi.nlm.nih.gov/9841579/> (finding that greater use of the Internet was associated with declines in participants' communication with family members in the household, declines in the size of their social circle, and increases in their depression and loneliness).

<sup>29</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>30</sup> *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.); Matt Richtel, *Is Social Media Addictive? Here's What the Science Says.*, The New York Times, Oct. 25, 2023, <https://www.nytimes.com/2023/10/25/health/social-media-addiction.html>.

<sup>31</sup> See generally Complaint, *State of Florida v. Meta Platforms, Inc., Instagram, LLC*, Case No. 8:23-cv-02412 (M.D. Fla.), available at <https://www.myfloridalegal.com/sites/default/files/2023-10/oag-v.-meta.pdf>; see also Complaint, *State of*

The complaint also 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>32</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>33</sup> and “[i]t’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>34</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>35</sup>

## **Social Media Laws for Children**

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

State law requires students in grades 6 through 12 to receive instruction on the social, emotional, and physical effects of social media. The instructional materials must be available online, and district school boards must notify parents of the material’s availability.<sup>36</sup>

State law also prohibits students from using wireless communication devices at school during instructional time, except when expressly directed by a teacher solely for educational purposes, and requires a teacher to designate an area for wireless communications devices during instructional time.<sup>37</sup>

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*Arizona, et al. v Meta Platforms, Inc., Instagram LLC, Meta Payments, Inc., et al*, Case No. 4:23-cv-05448 (N.D. Cal.), available at [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).

<sup>32</sup> Complaint ¶ 1, *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. Oct. 24, 2023), available at [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).

<sup>33</sup> Press Release, Office of Attorney General Ashley Moody, *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>.

<sup>34</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/>.

<sup>35</sup> Press Release, 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>.

<sup>36</sup> Section 1003.42(2)(o)5., F.S.

<sup>37</sup> Sections 1006.07(2)(f) and 1003.32(1)(a), F.S.

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

State law 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.
  - Forego privacy protections.
  - 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.<sup>38</sup>

### ***Social Media Laws for Children in Other States***

In March 2023, Utah became the first state to adopt laws regulating minors' access to social media.<sup>39</sup> Louisiana, Texas, Arkansas, and Ohio soon followed.<sup>40</sup> Connecticut and Ohio, have introduced similar bills.<sup>41</sup>

According to the Utah law, effective March 1, 2024, a social media company must:<sup>42</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.
- Deny access to existing users who do not verify their age within 14 days after 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 10:30 p.m. and 6:30 a.m.

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<sup>38</sup> Section 501.1735, F.S.

<sup>39</sup> See ch. 498, Laws of Utah (2023), codifying UTAH CODE s. 13-63.

<sup>40</sup> Act No. 440 (H.B. 61), Laws of La. (2023), codifying LSA-R.S. 9:2717.1; Tex. H.B. 18 (2023), codifying TEX. BUS. & COMM. CODE ss. 509.001 et seq.; Ark. Acts 689 (S.B. 396) (2023), codifying ARK. CODE ss. 4-88.1101 et seq.; Ohio H.B. 33 (2023), codifying OHIO REV. CODE ss. 1349.09 et seq.

<sup>41</sup> Lisa Thomas et al., *The Beehive State Joins the Buzz Around Minors and Social Media*, Dec. 26, 2023, <https://www.natlawreview.com/article/beehive-state-joins-buzz-around-minors-and-social-media>.

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

The law has recently been challenged on First Amendment grounds.<sup>43</sup> NetChoice, LLC, an Internet trade association whose members include Facebook, Instagram, Twitter, TikTok, Snapchat, Pinterest, and Nextdoor, claims the provisions amount to an “unconstitutional attempt to regulate both minors’ and adults’ access to – and ability to engage in – protected expression.” The case is still pending.<sup>44</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>45</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 it applies.<sup>46</sup>

## **Child-Focused Online Privacy Laws**

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

COPPA,<sup>47</sup> and its related rules,<sup>48</sup> regulate websites’ collection and use of children’s information. The operator of a website or online service that is directed to children, or that has actual knowledge that it collects children’s personal information (covered entities), must comply with requirements regarding data collection and use, privacy policy notifications, and data security.<sup>49</sup>

For purposes of COPPA, children are individuals under the age of 13.<sup>50</sup> 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>51</sup>

COPPA defines personal information as individually identifiable information about an individual that is collected online, including:<sup>52</sup>

- First and last name.
- A home or other physical address including street name and name of a city or town.
- Online contact information.
- A screen or user name that functions as online contact information.
- A telephone number.
- A social security number.
- A persistent identifier that can be used to recognize a user over time and across different websites or online services.

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<sup>43</sup> *NetChoice, LLC v. Reyes*, Case No. 2:23-cv-00911 (D. Utah December 18, 2023).

<sup>44</sup> Complaint ¶ 2, *NetChoice, LLC v. Reyes*, Case No. 2:23-cv-00911 (D. Utah December 18, 2023), available at [https://netchoice.org/wp-content/uploads/2023/12/NetChoice-v-Reyes\\_Official-Complaint\\_FINAL-Filed.pdf](https://netchoice.org/wp-content/uploads/2023/12/NetChoice-v-Reyes_Official-Complaint_FINAL-Filed.pdf); see also Mack Degeurin, *Tech trade group sues over ‘unconstitutional’ Utah teen social media curfew law*, Popular Science, Dec. 20, 2023, <https://www.popsoci.com/technology/lawsuit-utah-teen-social-media-curfew/>.

<sup>45</sup> *NetChoice v. Griffin*, 2023 WL 5660155 (W.D. Ark. Aug. 31, 2023).

<sup>46</sup> *Id.*

<sup>47</sup> 15 U.S.C. ss. 6501-6505.

<sup>48</sup> 16 C.F.R. pt. 312.

<sup>49</sup> Federal Trade Commission, *Complying with COPPA: Frequently Asked Questions*, <https://www.ftc.gov/business-guidance/resources/complying-coppa-frequently-asked-questions> (last visited Jan. 18, 2024).

<sup>50</sup> *Id.*

<sup>51</sup> 15 U.S.C. §§ 6502(a)-(b).

<sup>52</sup> Federal Trade Commission, *Complying with COPPA: Frequently Asked Questions*, <https://www.ftc.gov/business-guidance/resources/complying-coppa-frequently-asked-questions> (last visited Jan. 18, 2024).

- A photograph, video, or audio file, where such file contains a child's image or voice.
- Geolocation information sufficient to identify street name and name of a city or town.
- Information concerning the child or the parents of that child that the operator collects online from the child and combines with an identifier described above.<sup>53</sup>

Operators covered by the rule must:<sup>54</sup>

- Post a clear and comprehensive online privacy policy describing their information practices for personal information collected online from children.
- Provide direct notice to parents and obtain verifiable parental consent, with limited exceptions, before collecting personal information online from children.
- Give parents the choice of consenting to the operator's collection and internal use of a child's information, but prohibiting the operator from disclosing that information to third parties (unless disclosure is integral to the site or service, in which case, this must be made clear to parents).
- Provide parents access to their child's personal information to review or have the information deleted.
- Give parents the opportunity to prevent further use or online collection of a child's personal information.
- Maintain the confidentiality, security, and integrity of information they collect from children, including by taking reasonable steps to release such information only to parties capable of maintaining its confidentiality and security.
- Retain personal information collected online from a child for only as long as is necessary to fulfill the purpose for which it was collected and delete the information using reasonable measures to protect against its unauthorized access or use.
- Not condition a child's participation in an online activity on the child providing more information than is reasonably necessary to participate in that activity.<sup>55</sup>

Violations of COPPA are deemed an unfair or deceptive act or practice and are therefore prosecuted by the Federal Trade Commission.<sup>56</sup> While there is no criminal prosecution or private right of action under COPPA, the act authorizes state attorneys general to enforce violations that affect residents of their states.<sup>57</sup>

In 2019, Google and its subsidiary YouTube agreed to pay a \$170 million settlement for lawsuits brought by the commission and the state of New York for violations of COPPA for collecting personal information from children without consent. Specifically, it was alleged that YouTube tracked cookies<sup>58</sup> from viewers of child-directed channels, without first notifying parents and

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

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *See id.*; see also 15 U.S.C. s. 6502(c); 16 C.F.R. s. 312.9.

<sup>57</sup> See Federal Trade Commission, *Complying with COPPA: Frequently Asked Questions*, <https://www.ftc.gov/business-guidance/resources/complying-coppa-frequently-asked-questions> (last visited Jan. 18, 2024).

<sup>58</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.

obtaining their consent. YouTube earned millions of dollars by using the identifiers to deliver targeted ads to viewers of these channels.<sup>59</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>60</sup> legislation modeled on the United Kingdom's Age Appropriate Design Code,<sup>61</sup> which requires online platforms to adhere to strict default privacy and safety settings that protect the best interest of children.<sup>62</sup> CAADCA covers children under 18 years of age and will be effective July 1, 2024.<sup>63</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 prohibitions 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 or wellbeing.
- Dark patterns to manipulate children into providing unnecessary personal information.<sup>64</sup>

The law has recently been challenged on several grounds, including on First Amendment and Supremacy Clause grounds, and has been preliminarily enjoined.<sup>65</sup> A similar law has since been adopted in Utah.<sup>66</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 apply to children 13 years of age or younger, and may apply to children 16 years of age or younger.<sup>67</sup>

Additionally, in 2023, the E.U. passed the Digital Services Act (DSA), which became effective on January 1, 2024 and currently applies to 19 of the largest Internet companies, including Meta,

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Microsoft, *Everything you need to know about Internet cookies*, Apr. 25, 2023, <https://www.microsoft.com/en-us/edge/learning-center/what-are-cookies?form=MA13I2>.

<sup>59</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>.

<sup>60</sup> CAL. CIVIL CODE § 1798.99.28-.35.

<sup>61</sup> 5Rights Foundation, *California follows UK lead as child data protection law is passed*, Aug. 30, 2022, <https://5rightsfoundation.com/in-action/california-follows-uk-lead-as-child-data-protection-law-is-passed.html>.

<sup>62</sup> Press Release, Office of Governor Gavin Newsome, *Governor Newsom Signs First-in-Nation Bill Protecting Children's Online Data and Privacy*, Sept. 15, 2022, <https://www.gov.ca.gov/2022/09/15/governor-newsom-signs-first-in-nation-bill-protecting-childrens-online-data-and-privacy/>.

<sup>63</sup> CAL. CIVIL CODE § 1798.99.28-.35.

<sup>64</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>.

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

<sup>66</sup> Ch. 477, Laws of Utah (2023), codifying amendments to UTAH CODE s. 13-63.

<sup>67</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).

Apple, TikTok, and Google. The DSA requires, in part, such companies to prevent harmful content from spreading on their platforms and to share certain internal data with regulators and associated researchers.<sup>68</sup> It also compels them 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>69</sup>

### Age-Verification Mechanisms

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

- Alcohol and tobacco.<sup>70</sup>
- Gambling.
- Adult websites.
- Firearms.<sup>71</sup>

Adult websites in the U.S. generally use checkboxes for users to confirm that they are at least 18 years of age. Recently, however, several states and the United Kingdom have enacted laws requiring adult websites to use age-verification measures to block adult content from being accessed by minors.<sup>72</sup>

Additionally, some social media platforms ask for age-identifying information to create new accounts, but such information is not always verified. For example, Facebook requires new users to self-report a birthdate to confirm that they are at least 13 years old. Meta is currently testing new ways to verify age, including through the use of biometrics and online interviews.<sup>73</sup>

There are several ways that Internet companies can verify, or attempt to verify, age. Options include using:<sup>74</sup>

- Government identity documents, which generally require users to submit government documents to a third-party company for review.
- Phone records, which generally check users' phones for parental controls.
- Credit score databases, which generally require the user to enter identifying information that is subsequently confirmed through a credit check agency.

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<sup>68</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/>.

<sup>69</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>.

<sup>70</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)* (April 2020), at 7, available at <https://www.fda.gov/media/133880/download>.

<sup>71</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/>.

<sup>72</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>; 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>.

<sup>73</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/>.

<sup>74</sup> The Age Verification Providers Association, *How do you check age online?*, <https://avpassociation.com/avmethods/> (last visited Jan. 18, 2024).

- Biometric age estimation, which generally requires a facial analysis to estimate age.
- Credit cards, which generally requires users to supply credit card information for validation.
- Open banking, which generally requires users to log into their own online banking system and give approval for date of birth information to be supplied to a bank-approved, third-party age-verification provider.
- Algorithmic profiling, which generally assesses the likely ages of users based on their online behavior.
- Self-declaration, which generally requires users to check a box or enter a birthdate.
- Zero knowledge proofs, which generally enables users to upload identity documents to privacy servers and securely share encrypted, anonymous “proofs” of age to a company, through a process called “hashing,” without actually transmitting the identity documents to the company.<sup>75</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 information revealed through age-verification processes, and combine it with other data for targeted advertisements or data-sharing with third parties.<sup>76</sup>

However, there are numerous minimally invasive verification techniques that do not require sharing any age-verification information with social media platforms. For example, a trusted third-party could verify the age of a user, and provide a QR code or similar device, to an age-restricted website, thereby establishing the user’s age without the platform ever seeing the age-verification documents or the user’s identity.<sup>77</sup> Experts assert that age-verification systems have progressed considerably from a generation ago.<sup>78</sup>

Age fabrication is also a widespread issue. For example, underage customers in the U.S. consumed 11.73 percent of all alcoholic drinks sold in the U.S. market in 2016, and 49.8 percent of tobacco and vape shops in California failed to check the identification of underage decoys in 2018.<sup>79</sup>

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<sup>75</sup> Bessie Liu, *Aleo blockchain adds zPass, a ZK protocol for verifying identities*, Blockworks, Oct. 26, 2023, <https://blockworks.co/news/zkdecentralized-identity-verification>.

<sup>76</sup> John Reynolds, *Don’t risk identity fraud just to play that video game – do this instead*, Aleo, Dec. 28, 2023, <https://aleo.org/post/dont-risk-identity-fraud-to-play-that-video-game/>.

<sup>77</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>.

<sup>78</sup> Broadband Breakfast, *Improved Age Verification Allows States to Consider Restricting Social Media*, Nov. 20, 2023, <https://broadbandbreakfast.com/2023/11/improved-age-verification-allows-states-to-consider-restricting-social-media/>.

<sup>79</sup> Persona, *Age verification system: How to add it into your business*, <https://withpersona.com/blog/incorporate-age-verification-intobusiness> (last visited Jan. 18, 2024).

## 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>80</sup> FDUTPA was modeled after the Federal Trade Commission Act.<sup>81</sup>

The Department of Legal Affairs or the state attorney's office 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>82</sup> The state attorney's office may enforce violations of FDUTPA if the violations take place within its jurisdiction. The department has enforcement authority when: the violation is multi-jurisdictional; the state attorney defers to the department in writing; or the state attorney fails to act within 90 days after a written complaint is filed.<sup>83</sup> In certain circumstances, consumers may also file suit through private actions.<sup>84</sup>

The department and the state attorney's office have powers to investigate FDUTPA claims, which include:<sup>85</sup>

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

The department and the state attorney's office may seek the following remedies:<sup>86</sup>

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

FDUTPA may not be applied to certain entities in certain circumstances, including:<sup>87</sup>

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

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<sup>80</sup> Section 501.202, F.S.

<sup>81</sup> See 15 U.S.C. s. 45; see also 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>82</sup> Sections 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 FLA. BAR J. 52 (Dec. 2002), available at <https://www.floridabar.org/the-florida-bar-journal/fdutpa-for-civil-antitrust-additional-conduct-party-and-geographic-coverage-state-actions-for-consumer-restitution/> (analyzing the merits of FDUTPA and the potential for deterrence of anticompetitive conduct in Florida).

<sup>83</sup> Section 501.203(2), F.S.

<sup>84</sup> Section 501.211, F.S.

<sup>85</sup> Section 501.206(1), F.S.

<sup>86</sup> Sections 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. Section 501.2105, F.S.

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

### III. Effect of Proposed Changes:

The bill creates s. 501.1736, F.S., entitled “Age verification for social media platform accounts.”

#### Definitions

The bill defines the following terms as used in the bill:

- “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.
- “Department” means the Department of Legal Affairs.
- “Reasonable age-verification method” means any commercially reasonable method regularly used by government agencies or businesses for the purpose of age and identity verification.

Additionally, the bill defines “Social media platform” to mean an online forum offered by an entity which has the ability to track the activity of an account holder or user, if such online forum allows an 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.

However, the term “social media platform” does not include an online service, website, or application where the predominant or exclusive function is:

- E-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.
  - A subject or skill-specific program.

## **Regulations**

### ***Reasonable Age Verification Requirement***

The bill requires social media platforms to use reasonable age-verification methods 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 social media platform must deny the account. The reasonable age-verification method must be conducted by an independent third party not affiliated with the social media platform.
- Personal identifying information used to verify age may not be retained once the age of an account holder or a person seeking an account has been verified. Any personal identifying information collected to verify age may not be used for any other purpose.

### ***Prohibition on Account Holders under 16 Years of Age***

The bill requires social media platforms to prohibit minors who are under 16 years of age from creating new accounts. Moreover, with respect to existing accounts, social media platforms must:

- Terminate any account that is reasonably known by the social media platform to be held by a minor under 16 years of age, and provide a minimum of 90 days for an account holder to dispute such termination by verifying his or her age.
- Allow an existing account holder under 16 years of age to request to terminate the account. Termination must be effective within 5 business days after such request.

- Allow the confirmed parent or guardian of an existing account holder under 16 years of age to request the minor's account be terminated. 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.

### ***Account Holders between 16 and 17 Years of Age***

The bill provides that if a social media platform allows minors under 18 years of age to create an account on the platform, the platform must, on its Internet homepage or platform user login page or through a clearly labeled, conspicuous, and readily accessible link on such homepage or login page:

- Disclose 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 under 18 years of age likely to routinely access the platform without unrelated, confusing, or contradictory materials:
  - The content moderation policies the social media platform uses for content on the 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 the age of 18 when designing, developing, and providing services.
  - 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, including personal identifiers, biometrics, and geolocation data. 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.
- Provide 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, require platform users who are under 18 years of age to read and accept a disclaimer which must be in substantially the following form:

This application may be harmful to your mental health and may use design features that have addictive qualities or present unverified information or that may be manipulated by ...insert platform name... or others for your viewing. This

application may also collect your personal data to further manipulate your viewable content and may share your personal data with others.

### **Enforcement**

The bill provides that any violation of the bill's regulations is an unfair and deceptive trade practice actionable under the Florida Deceptive and Unfair Trade Practices Act, solely by the Department of Legal Affairs against the social media platform. If the department has reason to believe that a social media platform is in violation of any of the regulations described in the bill, the department, as the enforcing authority, may bring an action against such platform for an unfair or deceptive act or practice. For the purpose of bringing an action pursuant to the bill, the sections of the Act providing for individual remedies under the Act,<sup>88</sup> and for application of the Act,<sup>89</sup> do not apply. In addition to other remedies under the Act, the department may collect a civil penalty of up to \$50,000 per violation.

The bill also provides that any social media platform that violates the provisions requiring the termination of "under 16" accounts within a specified time, after being notified to do so by the minor account holder or a confirmed parent or guardian,<sup>90</sup> is liable to the minor for such access, including court costs and reasonable attorney fees as ordered by the court. Claimants may be awarded up to \$10,000 in damages. A civil action for a claim under this subsection must be brought within one year after the violation.

Any action brought under either the Act or the previous paragraph may only be brought on behalf of a Florida minor. Additionally, for purposes of bringing an action in accordance with the Act or the previous paragraph, a social media platform that allows a Florida minor under 16 years of age to create an account on the platform is considered to be both engaged in substantial and not isolated activities within this state and operating, conducting, engaging in, or carrying on a business, and doing business in this state, and is therefore subject to the jurisdiction of the courts of this state.

### **Other Available Remedies at Law or Equity**

The bill does not preclude any other available remedy at law or equity.

### **Authorization to Adopt Rules**

The department may adopt rules to implement the bill.

### **Effective Date**

The bill takes effect on July 1, 2024.

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<sup>88</sup> Section 501.211, F.S.

<sup>89</sup> Section 501.212, F.S.

<sup>90</sup> See proposed ss. 501.1736(2)(c)2. (within five business days when requested by an account holder under 16 years of age) and (c)3., F.S. (within 10 business days when requested by the confirmed parent or guardian of an account holder under 16 years of age).

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

Requiring social media platforms and their users to use 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>91</sup> Generally, “government has no power to restrict expression because of its message, its ideas, its subject matter, or its content.”<sup>92</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>93</sup>

In most circumstances, these protections “are no less applicable when government seeks to control the flow of information to minors”<sup>94</sup> as states do not possess “a free-floating power to restrict the ideas to which children may be exposed.”<sup>95</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 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.

<sup>91</sup> U.S. CONST. amend. I.

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

<sup>93</sup> U.S. CONST. amend. XIV; *see also* FLA. CONST., art. I.

<sup>94</sup> *Erznoznik v. City of Jacksonville*, 422 U.S. 205, 214 (1975).

<sup>95</sup> *Brown v. Ent. Merchants Ass’n*, 564 U.S. 786, 794 (2011).

- Availability of less speech-restrictive alternatives.<sup>96</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>97</sup>

The U.S. Supreme Court regards content-based laws, which limit communication because of the message it conveys, as presumptively unconstitutional.<sup>98</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>99</sup>

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

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>101</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>102</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>103</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

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<sup>96</sup> Eric N. Holmes, Congressional Research Service, *Online Age Verification (Part III): Select Constitutional Issues* (CRS Report No. LSB11022, August 17, 2023), available at <https://crsreports.congress.gov/product/pdf/LSB/LSB11022>.

<sup>97</sup> *Turner Broadcasting System, Inc. v. F.C.C.*, 520 U.S. 180,189 (U.S. 1997).

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

<sup>99</sup> *Sable Commc's of California, Inc. vs. F.C.C.*, 492 U.S. 115, 126 (1989).

<sup>100</sup> *Reno v. Am. C. L. Union*, 521 U.S. 844, 874 (1997); *Ashcroft v. American Civil Liberties Union*, 542 U.S. 656, 666 (2004); Ronald Kahn, *Reno v. American Civil Liberties Union (1997)*, Free Speech Center at Middle Tennessee State University, Dec. 15, 2023, <https://firstamendment.mtsu.edu/article/reno-v-american-civil-liberties-union/>.

<sup>101</sup> *Reno*, 521 U.S. at 886-91 (O'Connor concurring in part and dissenting in part). The court also considered overbreadth and vagueness arguments, and determined that the Communications Decency Act of 1996 was too broad and vague. *Id.* at 883-84.

<sup>102</sup> Broadband Breakfast, *Improved Age Verification Allows States to Consider Restricting Social Media*, Nov. 20, 2023, <https://broadbandbreakfast.com/2023/11/improved-age-verification-allows-states-to-consider-restricting-social-media/>; *Reno*, 521 U.S. at 886 (1997); *Ashcroft*, 542 U.S. at 666.

<sup>103</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>.

has the power to prevent children from hearing or saying anything without their parents' prior consent."<sup>104</sup> Moreover:

[A]ge-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 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>105</sup>

### **Contracts Clause**

Article I, Section 10 of the U.S. 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>106</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>107</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>108</sup>

### **Supremacy Clause**

Article VI, Paragraph 2 of the U.S. 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>109</sup>

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<sup>104</sup> *NetChoice, LLC v. Yost*, 2024 WL 104336, \*8 (S.D. Ohio Jan. 9, 2024) (internal citations and quotations omitted).

<sup>105</sup> *NetChoice, LLC v. Griffin*, 2023 WL 5660155, \*21 (W.D. Ark. Aug. 31, 2023) (internal citations omitted).

<sup>106</sup> *Woodstone Ltd. Partn. v. City of Saint Paul, Minnesota*, 2023 WL 3586077, \*6 (D. Minnesota May 22, 2023).

<sup>107</sup> *Sable Commc's of California, Inc.*, 492 U.S. at 126.

<sup>108</sup> *Ashcroft*, 542 U.S. at 666; *Cashatt v. State*, 873 So. 2d 430, 434 (Fla. 1<sup>st</sup> DCA 2004); *but see Erznoznik*, 422 U.S. at 213 (determining that the city's regulation was overly broad).

<sup>109</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 Jan. 17, 2024).

Section 230 of the federal Communications Decency Act, 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>

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will result in increased costs for companies operating social media platforms, which will now be required to implement new procedures for age verification, including the use of third-party verification services and the creation of certain disclosures.

C. Government Sector Impact:

The bill may result in an increase in civil penalties collected by the Department of Legal Affairs. It may also result in an increase of regulatory costs to the department, which has been tasked with enforcing the bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 501.1736 of the Florida Statutes.

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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<sup>110</sup> 47 U.S.C. s. 230(c)(1).

<sup>111</sup> 47 U.S.C. s. 230(e)(3).

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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