

Date of Hearing: April 8, 2021

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Ed Chau, Chair

AB 1545 (Wicks) – As Introduced February 19, 2021

**AS PROPOSED TO BE AMENDED**

**SUBJECT:** Children: internet safety: platform operator: prohibited acts

**SUMMARY:** This bill would enact the Kids Internet Design and Safety (KIDS) Act for purposes of keeping children safe and protecting their interests on the internet. Specifically, **this bill would:**

- 1) Prohibit an operator of a platform from incorporating any of the following features with respect to content viewable by a covered user without first obtaining consent from the parent or guardian of the covered user:
  - An auto-play setting that, without input from the covered user, commences additional video content directly following the video content initially selected by the covered user.
  - Push alerts that are not for safety or security purposes.
  - A display of the quantity of positive engagement or feedback that a covered user has received from other users.
  - Any design feature or setting that allows a covered user to make purchases, submit content, or communicate with other individuals on the platform.
- 2) Prohibit an operator of a platform from displaying to a covered user advertising related to alcohol, tobacco, or products containing nicotine.
- 3) Prohibit an operator of a platform from, through content directed to children, promoting, amplifying, or otherwise encouraging the consumption of content or advertising that involves any of the following:
  - Sexual material.
  - Physical or emotional violence, including bullying.
  - Adult activities.
- 4) Require an operator of a platform with content directed to children to do all of the following:
  - Allow a parent or guardian to create an account for that person's child who is under 13 years of age.

- Provide a parent or guardian with parental controls that enable the parent or guardian to filter and block content viewable by the covered user for whom the parent or guardian created an account.
  - Incorporate visual indicators that distinguish commercial content from noncommercial content.
  - Publish and maintain a publicly accessible digital record of the content viewable or playable by a covered user.
  - Implement a mechanism for users to report to the platform suspected violations of this section.
- 5) Beginning in 2026, provide that the Attorney General (AG) shall do all of the following:
- On or before June 1, 2027, and annually thereafter, conduct an audit of platforms to determine compliance with this title.
  - Audit ten of the platforms that have the highest total number of covered users in the previous calendar year, and provide that the AG may contract with a private entity to conduct, or assist with conducting, the audit.
  - Adopt regulations as necessary to implement the KIDS Act.
- 6) Provide that a violation of the KIDS Act shall constitute unfair competition.
- 6) Define “content” to mean media streaming in which the data from a video file is continuously delivered via the internet to a remote user, allowing a video to be viewed online without being downloaded on a host computer or device.
- 7) Define “covered user” to mean a natural person under 13 years of age who is a California resident and who is logged into an account that meets both of the following criteria:
- The account was created by the person’s parent or guardian.
  - The account explicitly identifies the primary user as a person under 13 years of age based on information provided by the parent or guardian who created the account.
- 8) Define “directed to children” to mean any one or more of the following:
- content that a reasonable person would believe was intended to appeal primarily to children under the age of 13.
  - A channel consisting mainly of content that a reasonable person would believe was content intended to appeal primarily to children under the age of 13.
  - Content viewed by a covered user.

- 9) Define “operator” to mean any person that operates a platform, including any person offering products or services for sale through that platform, involving commerce within the State.
- 10) Define “platform” to mean an internet website, online service, online application, or mobile application that is operated for commercial purposes and that provides content that is directed to children.
- 11) Make various findings and declarations related to children’s consumption of digital entertainment on the internet.

**EXISTING LAW:**

- 1) Provides, under the U.S. Constitution, that “Congress shall make no law . . . abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.” (U.S. Const., 1st Amend., as applied to the states through the 14th Amendment’s Due Process Clause; *see Gitlow v. New York* (1925) 268 U.S. 652.)
- 2) Requires, pursuant to the federal Children’s Online Privacy Protection Act (COPPA), that an operator of an internet website or online service directed to a child, as defined, or an operator of an internet website or online service that has actual knowledge that it is collecting personal information (PI) from a child to provide notice of what information is being collected and how that information is being used, and to give the parents of the child the opportunity to refuse to permit the operator’s further collection of information from the child. (15 U.S.C. Sec. 6502.)
- 3) Prohibits, pursuant to the Privacy Rights for Minors in the Digital World, the operator of an internet website, online service, online application, or mobile application from:
  - marketing or advertising a product or service to a minor, if the minor cannot legally purchase the product or participate in the service in the State of California; or,
  - using, disclosing, or compiling, or knowingly allowing a third party to use, disclose, or compile, the PI of a minor for the purpose of marketing goods or services that minors cannot legally purchase or engage in in the State of California. (Bus. & Prof. Code Sec. 22580.)
- 4) Requires an operator of an internet website, online service, online application, or mobile application to do all of the following:
  - permit a minor who is a user of the operator’s internet website, service, or application to remove content or information submitted to or posted on the operator’s website, service or application by the user;
  - provide notice to a minor who is the user of the operator’s internet website, service, or application that the minor may remove content or information submitted to or posted on the operator’s website, service, or application by the user; and,

- provide notice to a minor who is the user of the operator’s internet website, service, or application that the removal described above does not ensure complete or comprehensive removal of the content or information. (Bus. & Prof. Code Sec. 22581.)
- 5) Establishes the California Consumer Privacy Act of 2018 (CCPA) and provides various rights to consumers pursuant to the act. Subject to various general exemptions, a consumer has, among other things:
- the right to know what PI a business collects about consumers, as specified, including the categories of third parties with whom the business shares PI;
  - the right to know what PI a business sells about consumers, as specified, including the categories of PI that the business sold about the consumer and the categories of third parties to whom the PI was sold, by category or categories of PI for each third party to whom the PI was sold;
  - the right to access the specific pieces of information a business has collected about the consumer;
  - the right to delete information that a business has collected from the consumer; and,
  - the right to opt-out of the sale of the consumer’s PI if over 16 years of age, and the right to opt-in if the consumer is a minor (as exercised by the parent if the minor is under 13, or as exercised by the minor if the minor is between ages 13 and 16); and,
  - the right to equal service and price, despite exercising any of these rights. (Civ. Code Sec. 1798.100 et seq.)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

- 1) **Purpose of this bill:** This bill seeks to protect children by allowing parents to exercise age-appropriate parental controls regarding streaming media content directed to children online. This bill is sponsored by Common Sense.
- 2) **Author’s statement:** According to the author:

California’s children have access to digital environments that provide infinite sources of information and entertainment. While they still enjoy and consume content through television and radio - new digital technologies provide interactive and social engagement experiences in ways those traditional media cannot. Unlike television, which is regulated by the Federal Communication Commission, there are no safeguards for children’s online content. As a result, digital content and products that are targeted to kids leave them vulnerable to dangerous digital media because the platforms they use have been loaded with adult design principals that do not factor in the unique needs of young minds, abilities, and sensibilities. In addition, there has also been little discussion about the ethical implications and potential unintended consequences of targeting products and content to children that were explicitly built for adults.

The KIDS Act protects kids by addressing the design techniques that have flourished on platforms in the absence of clear, enforceable rules.

- 3) **Federal and state efforts to protect children online are largely related to privacy:** The broadcast of children's television programming stations in the United States is regulated by the Federal Communications Commission (FCC), under regulations colloquially referred to as the Children's Television Act. Since 1997, television stations have been required to broadcast at least three hours per week of programs that are specifically designed to meet the educational and informative needs of children aged 16 and younger. There are also regulations on advertising in broadcast and cable television programming targeting children 12 and younger, including limits on ad time, and prohibitions on advertising of products related to the program currently airing.

As the internet has become more accessible and attractive to children, the government has similarly created protections to protect children online. Enacted in 1998, the federal Child's Online Privacy Protection Act of 1998 (COPPA), requires the Federal Trade Commission (FTC) to issue and enforce a rule (the Rule) concerning children's online privacy. The FTC notes that:

The primary goal of COPPA and the Rule is to place parents in control over what information is collected from their young children online. The Rule was designed to protect children under age 13 while accounting for the dynamic nature of the internet. The Rule applies to operators of commercial websites and online services directed to children under 13 that collect, use, or disclose personal information from children, and operators of general audience websites or online services with actual knowledge that they are collecting, using, or disclosing personal information from children under 13.<sup>1</sup>

In an effort to further protect minors online, California subsequently passed SB 568 (Steinberg, Ch. 336, Stats. 2013), known as Privacy Rights for California Minors in the Digital World, which prohibits the operator of an internet website or other online service or mobile application from marketing or advertising a product or service to a minor if the minor cannot legally purchase the product or participate in the service in California, or, compiling PI to market those products or services. This prohibition only applies to an operator that has actual knowledge that a minor is using its online service or whose site service is directed to minors. That bill also permits a minor to remove content or information posted to a website or service, as specified.

SB 568 was opposed by the Center for Democracy and Technology, who took issue with the bill's limitation that a website must be directed to minors for the provisions of the bill to apply. SB 568, now codified beginning at Business and Professions Code Sec. 22580, provided that a site or service is "directed to minors" if it is "created for the purpose of reaching an audience that is *predominantly* composed of minors, and is not intended for a more general audience comprised of adults." (Emphasis added.) The definition adds that a site or service would not be deemed to be "directed at minors" merely because it contained links to sites or services that were directed to minors.

---

<sup>1</sup> FTC: Frequently Asked Questions about the Children's Online Privacy Protection Rule, <http://www.ftc.gov/privacy/coppafaqs.shtm>, [as of Apr. 2, 2021].)

Further protecting the rights of minors, the Legislature enacted the California Consumer Protection Act of 2018 (CCPA) which provides various rights to consumers related to the sale of their PI, as defined. Relevant to this bill, the CCPA prohibits any business, as defined, from selling the PI of minors 16 years of age and under, without prior opt-in consent to the sale of the information. For minors between the ages of 13 and 16, the minor can opt-in to the sale of their PI on their own. For minors under 13 years of age, only a parent or guardian may opt-in to the sale of the minor's information. (Civ. Code Sec. 1798.120.)

Notably, the protections for children online largely focus on the collection and sale of children's PI. In fact, because of the way social media platforms like FaceBook, Instagram, and others collect, use, and sell data, the passage of COPPA, SB 568, and similar laws have resulted in many social media platforms not allowing children under 13 years of age to create a profile or otherwise join those platforms. Instead of regulating social media companies more generally, this bill now seeks to extend protections to children in the space of video content streaming, similar to the protections children and parents enjoy in the space of broadcast television. Specifically, this bill seeks to ensure children under the age of 13 are not shown advertisements or content that are inappropriate for their age by requiring that parents are given tools to control the content that their young children view online.

Staff notes that if the author intends to target platforms that specifically provide video streaming content intended for children under the age of 13, whether or not that platform also provides content for adults, the bill may need to be narrowed to avoid both constitutional and practical issues. Specifically, as discussed more in Comment 5 below, because constitutional issues may arise if the bill has too broad of an application, the author should consider amending the definition of "platform" to clarify that it does not apply to social media platforms that prohibit use by California residents under thirteen years of age.

4) **AB 1545 seeks to give parents tools to monitor content that their young children online:**

While broadcast television used to be the main way children viewed video content, the internet has opened up many more options for families. Streaming services like Netflix, Hulu, and Prime Video provide countless hours of entertainment and educational content for children. Unlike the broadcast television of old, content directed to children is available on these services 24 hours a day, and new shows are "suggested" for viewers by algorithms that take into account the user's viewing habits. In practice, this allows very young children to navigate from show to show with ease, before they are even capable of reading. While each of the streaming services mentioned above appear to allow parents some amount of control over the content their children can view, parental controls are not uniform across the various platforms.

YouTube is another popular platform where children can both create and view content. A recent report surveyed 3,154 families and showed that 80% of children under seven years of age use YouTube, and 59% use YouTube Kids. While most young children are likely using their parents' accounts, 11% have their own YouTube accounts and 16% have registered with the YouTube Kids app.<sup>2</sup>

---

<sup>2</sup> Michelle M. Neumann & Christothea Herodotou (2020) *Young Children and YouTube: A global phenomenon*, *Childhood Education*, 96:4, 72-77, <https://doi.org/10.1080/00094056.2020.1796459> [as of Apr. 4, 2021].

Concerns have been raised about the impact of YouTube viewing on early childhood learning and development, “including risks of exposure to commercial advertisements and ‘disturbing’ videos.” YouTube’s algorithms for circulating videos may expose children to distressing content. Popular children’s characters may be combined with depictions of violence and inappropriate connotations and posted online. Further, some commercial content may be deceptively integrated into children’s content, such as in the ‘unboxing’ videos of candy and toys. In addition, pop-up advertisements appear prior to watching many videos that children must view for a period of time before they can choose to skip them.”<sup>3</sup>

This bill seeks to address some of these issues, without impermissibly regulating speech, by creating baseline protections for children who watch content online and ensuring that parents have the ability to monitor and control the content their children see across various platforms. To establish these protections, the bill would require that a platform (defined as an internet website, online service, online application, or mobile application that is operated for commercial purposes and that provides content that is *directed to children*) allow parents to create profiles for children under the age of 13, whereby the parent can opt-in to certain features, such as auto-play, in-app purchases, push alerts, or the ability for the child to submit content to the platform. The bill would prohibit any of these features from being enabled as a default for profiles of children under 13 years of age.

The bill would also create a number of protections for children even if they do not have a profile created with the platform. Specifically, the bill would prohibit an operator of a platform from promoting, amplifying, or otherwise encouraging the consumption of content or advertising involving any of the following through content directed to children: sexual material, physical or emotional violence including bullying, or adult activities. “Directed to children” is defined under the bill to encompass any content that a child sees when they are logged into their profile, as well as “content that a reasonable person would believe was intended to appeal primarily to children under the age of 13,” or “a channel consisting mainly of content that a reasonable person would believe was intended to appeal primarily to children under the age of 13.” In practice, this should prevent an advertisement for alcohol or gambling in between episodes of a show clearly intended for children (e.g., Sesame Street), even if a parent had not created a profile for their young child.

Finally, the bill would require platforms to incorporate visual indicators that distinguish commercial content from noncommercial content, and provide a parent or guardian with parental controls that enable the parent or guardian to filter and block content viewable by the covered user for whom the parent or guardian created an account.

The sponsor of this bill, Common Sense, writes in support:

Under current law, operators of online platforms are allowed to incorporate manipulative programming features that are clearly inappropriate, if not detrimental, for children (i.e., auto-play settings, amplifying, promoting, or encouraging consumption of content that includes “host-selling”, sexual material or other dangerous, abusive, exploitative, or wholly commercial content). [...] AB 1545 aims to change this[.]

---

<sup>3</sup> *Id.* at pp. 2-3.

Alcohol Justice, also in support, writes:

We applaud the [the bill’s intention to reduce exposure to digital alcohol ads and other alcohol-related content] because while the Internet is an essential, exciting and educational destination for impressionable young minds, it is also very dangerous. It has been estimated that youth see on average between 6,000 and 10,000 commercial messages per day; many while on the Internet and many for products or services geared to adults. Alcohol is near the top of that list.

Youth drinking is a pervasive and costly social problem in California with well-documented consequences, including increased risk of death from injury, engaging in risky sexual behavior, and sexual assault perpetration or victimization. Research tells us that exposure to alcohol ads and other alcohol-related content influence youth to start drinking earlier and to drink more. Research also tells us this early exposure leads to alcohol-related problems later in life.

The Internet alcohol advertising restrictions in AB 1545 will significantly reduce youth exposure to seductive alcohol-related content and are an important goal for policy action.

- 5) **First Amendment considerations:** The First Amendment of the United States Constitution, provides “Congress shall make no law [...] abridging the freedom of speech [...]” (U.S. Const., 1st Amend.), and courts have consistently held that this prohibition on legislation abridging speech applies to state and local governments. (*See, e.g., Gitlow v. New York* (1925) 268 U.S. 652.) Courts have further established the contours of First Amendment protection of speech to include prohibitions against government compulsion of speech and against laws that serve the purpose of chilling speech on the basis of content, even if the law itself does not explicitly ban certain speech.

Unlike the introduced version of this bill which would have prohibited platforms from providing certain content and features to the public, the bill would now give parents who have created a profile for a child the ability to block specific content from being directed to their child, and would prohibit certain advertising content from being generated during or after a program that is clearly intended for children. The bill would also allow parents to opt-in to certain features like auto-play and in-app purchases. For the most part, these provisions seem narrowly tailored to the government’s objective of protecting children online and are somewhat similar to regulations that have been enacted with regard to broadcast television over the years.

That being said, this bill would prohibit an operator of a platform from directing content to children that promotes, amplifies, or otherwise encourages the consumption of content or advertising that involves *physical or emotional violence*, including bullying. Presumably, this prohibition is intended to ensure that the algorithms a video streaming service uses can recognize when a child under the age of 13 is watching a program (because the program is clearly intended for children, or the child is logged into a profile that indicates they are under 13 years of age) so that the algorithm may then only direct “appropriate” content and advertising to the child. Were this prohibition limited to marketing of alcohol or a form of speech that has been recognized as unprotected, this prohibition would likely be acceptable from a constitutional perspective. Speech involving violence, however, is protected by the First Amendment, even with regard to minors.



In *Brown v. Entm't Merchs. Ass'n*, (2011) 564 US 786, the Supreme Court looked at the constitutionality of a California law prohibiting the sale or rental of “violent video games” to minors, which also required that violent video games be placed in packaging that was labeled “18.” An association that represented the videogame and software industries filed a pre-enforcement action against the Governor of California, claiming that the statute violated the First Amendment to the U.S. Constitution, and the district court issued an order which enjoined California authorities from enforcing the statute. The Supreme Court found that the statute violated the First Amendment. Video games were a protected means of expression under the First Amendment, and the statute in question violated First Amendment protections because it was both under-inclusive and over-inclusive. The statute was seriously under-inclusive because it did not preclude minors from having access to information about violence in other forms, only in video games, and it was seriously over-inclusive because it abridged the First Amendment rights of young people whose parents (and aunts and uncles) thought that violent video games were a harmless pastime. The statute did not survive a strict scrutiny analysis.

While the regulation in this bill (directing violent content to children) is arguably distinct from the issue the Court considered in *Brown v. Entm't Merchs. Ass'n* because it does not prohibit any content itself and is limited to children under 13 years of age (instead of 18), there is a question as to whether this particular prohibition would pass strict scrutiny. That said, it is unlikely that a court would find the entirety of the KIDS Act unconstitutional if one provision is deemed to violate the First Amendment.

- 6) **Enforcement mechanism:** As a general matter, laws without adequate enforcement mechanisms do little to protect the individuals they were intended to serve because individuals either lack a statutory mechanism by which to seek relief, or litigating a claim is cost-prohibitive. As a method of enforcement, this bill would provide that a violation of its provisions shall constitute unfair competition pursuant to Business and Professions Code Section 17200, et seq. Section 17200 creates a private right of action for violations of statute, and allows individuals to generally seek only injunctive relief or restitutionary disgorgement.

Accordingly, money damages are likely not available for a violation of this bill’s provisions. The bill instead would allow an individual to ask the court to order a platform to either engage in, or cease, a specified act. Staff notes that attorney fees are generally not awarded to a prevailing plaintiff in Section 17200 actions. Thus, individuals with insufficient means to pay out-of-pocket for an attorney would likely not be able to seek injunctive relief for violations of this bill.

- 7) **Requires ongoing monitoring by Attorney General:** Beginning on June 1, 2027, this bill would require the Attorney General (AG) to audit platforms to determine compliance with the KIDS Act. The bill would authorize the AG to hire a vendor to complete the audit, and would require that the audit consist of 10 of the platforms that have the highest total number of users under the age of 13 in the previous calendar year. The bill would also give the AG the authority to adopt regulations as necessary to implement the KIDS Act.

These provisions should ensure that as technology develops, platforms providing content for young children are subject to adequate oversight, and that policy makers have access to current data to inform future legislation that is needed to protect kids online.

- 8) **Concerns of opposition appear to have been largely addressed by amendments:** In opposition to this bill as introduced, the Internet Association (IA) outlined a number of concerns, including that the bill was overly broad as drafted, and could have the unintended consequence of limiting kids' and teens' access to the internet. IA also argued that the bill would put platforms in the "position of deciding whether their platform is directed at children and what content is appropriate for those users under the age of 16. These are highly subjective decisions about age appropriateness and maturity that are best made by a child's parent(s). Parents should be empowered to have conversations with their young children and teens about which content is suitable, the decision should be made through family communication and should not be determined by online platforms."

Staff notes that the concerns raised by IA appear to have been largely addressed by the amendments reflected in this analysis and provided in the mockup below. Should any concerns remain after IA, or any forthcoming opposition, has had a chance to review the amendments, it would be prudent for the author and sponsor to continue working with the opposition to ensure that the protections they seek to establish in this bill are operationally feasible.

- 9) **Mockup of amendments reflected in this analysis:** This analysis is based on the mockup below, and not on the bill in print as of April 8, 2021.

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

*SECTION 1. The Legislature finds and declares all of the following:*

*(a) Children increasingly consume digital entertainment on the internet and are uniquely susceptible to manipulation online given their lack of important neurological and psychological mechanisms that develop later in adulthood.*

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

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

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

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

**SECTION 1.**

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

## TITLE 1.81.7. KIDS INTERNET DESIGN AND SAFETY ACT

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

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

~~1798.301. The Legislature finds and declares all of the following:~~

~~(a) Children increasingly consume digital entertainment on the internet and are uniquely susceptible to manipulation online, given their lack of important neurological and psychological mechanisms that develop later in adulthood.~~

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

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

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

~~(e) Companies employ sophisticated strategies, including neuromarketing, to affect consumer behavior and manipulate decisionmaking.~~

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

1798.302. For purposes of this title, all of the following definitions apply: *title*:

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

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

~~(b) "Covered user" means a natural person under 16 years of age who is a California resident, as defined in Section 17014 of Title 18 of the California Code of Regulations, as that section read on January 1, 2021. under 13 years of age who is a California resident and who is logged into an account that meets both of the following criteria:~~

~~(1) The account was created by the person's parent or guardian.~~

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

~~(e) “Directed to children” means the targeting of a covered user by a platform. Targeting is determined by examining all the following factors with respect to a platform:~~

~~(1) The platform’s subject matter.~~

~~(2) The platform’s visual content.~~

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

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

~~(5) The age of any models used.~~

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

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

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

~~(9) Reliable empirical evidence relating to the composition of the platform’s users and the intended audience of the platform.~~

~~(d) “Host selling” means commercial video content that features the same characters or individuals used in adjacent noncommercial content.~~

~~(e) “Native advertising” means a form of media paid for by the advertiser, where the advertising experience follows the natural form and function of the user experience in which it is placed.~~

*(c) “Directed to children” means any of the following:*

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

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

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

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

~~(g) “Person” means any individual, partnership, corporation, trust, estate, cooperative, association, or other entity.~~

(h) “Platform” means an internet website, online service, online application, or mobile application that is operated for commercial ~~purposes~~. *purposes and that provides content that is directed to children.*

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

~~(1)~~

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

~~(2)~~

~~(B)~~ Push alerts ~~that urge a covered user to spend more time engaged with the platform when the covered user is not actively using it~~. *that are not for safety or security purposes.*

~~(3)~~

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

~~(4)~~

~~(D)~~ Any design feature or setting that ~~disproportionately encourages a covered user, due to their age or inexperience, to make purchases, submit content, or spend more time engaging with the platform~~. *allows a covered user to make purchases, submit content, or communicate with other individuals on the platform.*

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

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

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

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

~~(A)~~ Sexual material.

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

~~(C)~~ Adult activities, including gambling.

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

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

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

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

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

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

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

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

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

~~(d) For age verification purposes, an operator of a platform shall use only age verification information collected from covered users.~~

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

*(1) Sexual material.*

*(2) Physical or emotional violence, including bullying.*

*(3) Adult activities.*

*(c) An operator of a platform with content directed to children shall do all of the following:*

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

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

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

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

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

~~1798.304. (a) The Attorney General shall adopt all of the following regulations:~~

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

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

~~(3) Regulations concerning an annual audit process for purposes of evaluating the level of compliance with this title. The annual audit shall 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 first annual audit shall be completed by January 1, 2027.~~

~~(b) The Attorney General shall adopt the regulations described in subdivision (a) by January 1, 2026.~~

*1798.304. The Attorney General shall do all of the following:*

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

*(2) The Attorney General shall audit ten of the platforms that have the highest total number of covered users in the previous calendar year.*

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

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

*(c) This section shall become operative on January 1, 2026.*

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

10) **Prior legislation:** AB 3339 (Wicks, 2020) was identical to the introduced version of this bill. AB 3339 was never set for hearing in the Privacy & Consumer Protection Committee due to constraints on the legislative process resulting from the COVID-19 pandemic.

AB 1138 (Gallagher, 2019) sought to prohibit a person or business that conducts business in California, and that operates a social media website or application, from allowing a person under 16 years of age to create an account with the website or application unless the website or application obtains the consent of the person's parent or guardian before creating the account.

AB 1665 (Chau, 2019) as introduced, would have prohibited a person or business that conducts business in California, that operates an internet website or application that seeks to use a minor's name, picture, or any information about the minor in connection with third party advertising, as specified, from doing so without obtaining prior parental consent.

AB 375 (Chau, Ch. 55, Stats. 2018) enacted the California Consumer Privacy Protection Act (CCPA), which gives consumers certain rights regarding their PI, including: (1) the right to know what PI that is collected and sold about them; (2) the right to request the categories and

specific pieces of PI the business collects about them; and (3) the right to opt-out of the sale of their PI, or opt-in in the case of minors under 16 years of age.

SB 568 (Steinberg, Ch. 336, Stats. 2013) *See* Comment 3.

11) **Double referral:** This bill has been double-referred the Committee on Arts, Entertainment, Sports, Tourism & Internet Media.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Common Sense (sponsor)  
Alcohol Justice

**Opposition**

The Internet Association

**Analysis Prepared by:** Nichole Rocha / P. & C.P. / (916) 319-2200