

Date of Hearing: April 26, 2021

ASSEMBLY COMMITTEE ON ARTS, ENTERTAINMENT, SPORTS, TOURISM, AND
INTERNET MEDIA

Sharon Quirk-Silva, Chair

AB 1545 (Wicks) – As Amended April 21, 2021

SUBJECT: Children: internet safety: platform operators.

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:**

- 1) Prohibits 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:
 - 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, unless the initially selected video content is an episode of the same television show or online series as the video content that directly follows it.
 - b) Any design feature or setting that allows a covered user to make purchases, submit content, or communicate with other individuals on the platform.
- 2) Prohibits an operator of a platform from displaying to a covered user advertising related to alcohol, tobacco, or products containing nicotine.
- 3) Requires an operator of a platform with content directed to children to do all of the following:
 - a) Allow a parent or guardian to create an account or profile for that person's child who is under 13 years of age.
 - b) 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 or profile.
 - c) Incorporate visual indicators that distinguish commercial content from noncommercial content.
- 4) Contains the following definitions:
 - a) "Content" means 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.
 - b) "Covered user" means 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:

- i) The account or profile was created by the person's parent or guardian.
- ii) The account or profile 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.
- c) "Directed to children" has the same meaning as "website or online service directed to children" as defined by Section 6501 of Title 15 of the United States Code.
- d) "Operator" means any person that operates a platform, including any person offering products or services for sale through that platform, involving commerce within the State.
- e) "Platform" means an internet website, online service, online application, or mobile application that is operated for commercial purposes and that provides content that is directed to children.

Clarifies "Platform" does not include an internet website, online service, online application, or mobile application that prohibits use by California residents under 13 years of age.

- 5) Provides that the Attorney General (AG) shall, on or before June 1, 2023 and upon appropriation from the Legislature, annually conduct an audit of platforms, as defined, to determine compliance with Children's Online Privacy Protection Act (15 U.S.C. Sec. 6502) and the Privacy Rights for California Minors in the Digital World (SB 568 - Steinberg, Ch. 336, Stats. 2013).
- 6) Declares that a violation of the KIDS Act shall constitute unfair competition.
- 7) Makes 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:

- a) 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,
 - b) 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:
- a) 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;
 - b) 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,
 - c) 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:
- a) 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;
 - b) 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;
 - c) the right to access the specific pieces of information a business has collected about the consumer;
 - d) the right to delete information that a business has collected from the consumer; and,
 - e) 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,
 - f) the right to equal service and price, despite exercising any of these rights. (Civ. Code Sec. 1798.100 et seq.)

FISCAL EFFECT: Unknown. This measure has been keyed as Fiscal by the Legislative Counsel.

COMMENTS:

- 1) *Author's statement of need for legislation: Streaming content protection for children needs to more closely resemble those for children's television programming.* 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. Television, however, provides greater safeguards for kids' content than online platforms because its programming is governed by the Federal Children's Television Act, which authorizes the Federal Communications Commission (FCC) to regulate the content kids consume on the airwaves. Online sources of kids' content, however, are not subject to the FCC's rules. This has been such a source of concern for parents, policy makers and federal regulators that, in 2019, the FCC acknowledged in a rulemaking document that Internet-based content may present risks to children that are not present on broadcast television.

"As children spend more time in digital media environments, we have to ensure that safeguards are in place to protect their wellbeing. The growing popularity of influencer marketing, and design features such as auto-play and algorithms that amplify certain material, encourages children to consume more content, and can expose them to harmful and inappropriate online media. AB 1545 would address this issue by requiring platforms to discontinue manipulative design features that keep kids glued to the screen or dupe kids into sharing data or making online purchases; limiting direct marketing to children and blocking amplification or promotion of harmful content involving age-inappropriate material or behavior. This bill is an important step that will help protect our children when they are online."

- 2) Background:

- a) *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.

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.

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.

- b) *Auto-forward can lead to a dark and scary place for children on some platforms: YouTube's cautionary tale points to the problems platforms face with policing auto forward content while allowing user uploaded content.* The YouTube autoplay function has been the subject of parental and child advocate and regulatory concern, despite their efforts to protect children from inappropriate content. In November of 2017 the New York Times ran an article about disturbing videos targeted at children that were being distributed via YouTube. "Parents reported that their children were encountering knock-off editions of their favorite cartoon characters in situations of violence and death: Peppa Pig drinking bleach, or Mickey Mouse being run over by a car. A brief Google of some of the terms mentioned in the article brought up not only many more accounts of inappropriate content, in Facebook posts, newsgroup threads, and other newspapers, but also disturbing accounts of their effects. Previously happy and well-adjusted children became frightened of the dark, prone to fits of crying, or displayed violent behavior and talked about self-harm – all classic symptoms of abuse... In March 2018, *Wired* catalogued a slew of violent accounts and demonstrated that it was possible to go from a popular children's alphabet video to a Minnie Mouse snuff film in 14 steps, just by following YouTube's own recommendations." (*How Peppa Pig became a video nightmare for children*, The Observer, June 2018, <https://www.theguardian.com/technology/2018/jun/17/peppa-pig-youtube-weird-algorithms-automated-content>, accessed April 22, 2021)

According to a 2016 article in CNET magazine:

The Campaign for Commercial Free Childhood (CCFC) and the Center for Digital Democracy (CDD) issued a letter to the Federal Trade Commission on Tuesday saying that the YouTube Kids app is "rife" with content that is not only unsuitable for children, but potentially harmful. In a review over the last month, the organizations discovered that the YouTube Kids app includes a swath of "inappropriate content" ranging from "explicit sexual language" to "jokes about pedophilia and drug use."...

Google launched YouTube Kids with good intentions: to provide a safe place for children to view video content. Google in February 2016 launched its YouTube Kids app for iOS and Android. The service is intended to provide a safe environment for kids to browse content without running into inappropriate videos. To achieve that goal, Google went through YouTube and stripped away any content that was not directly targeted at children. Parental controls are also bundled with the app to help caregivers keep age-appropriate content in front of kids and limit viewing times.

That said, Google isn't alone in offering a child-friendly video service. Netflix, for instance, has an entire section of curated content for children. Hulu and Amazon also have special kids-only sections in their own video services. YouTube's service is different, however, by providing user-uploaded content in addition to professional programming. The other services offer professional content acquired through licensing deals with the content owners. (*Google, YouTube Kids under fire for 'inappropriate content'* <https://www.cnet.com/news/youtube-kids-under-fire-for-inappropriate-content/> accessed 4/22/21)

It should be noted that YouTube continues to address this issue, for instance establishing a division that is exclusively in charge of detecting inappropriate content before it goes viral.

In addition, YouTube offers two ways for viewers to turn off autoplay. Under the terms of a recent COPPA settlement with the FTC, YouTube was also required to develop, implement, and maintain a system for Channel Owners to designate whether their Content on the YouTube Service is directed to Children and have altered their advertisement targeting and information practices accordingly.

- 3) *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.

As noted in the excellent analysis of AB 1545 by the Committee on Privacy and Consumer Protection, 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 advertising related to alcohol, tobacco, or products containing nicotine 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.

- 4) *Recent clarifying and narrowing amendments appear to have largely addressed opposition issues.* AB 1545 was recently amended to strike all but two major provisions, and made clarifying changes to each of those. First, regarding parental permissions, auto-play settings were loosened to recognize that episodes of the same series should be allowed to continue automatically, and the scope was broadened to allow a parent or guardian to create an account, *or profile within an account*, for children under 13, and provide parental controls over that account or profile. This change was in response to opposition concerns that some platforms use “accounts” and some allow multiple family “profiles” under one account.

Second, the provision requiring the Attorney General to annually audit platforms for compliance with the Kids Internet Design and Safety Act has been refocused to require an annual audit of platforms compliance with the Federal (COPPA), and Privacy Rights for Minors in the Digital World Act found in CA Business and Professions Code 22580, et seq., in order to assure that existing laws to protect children in the digital space are in fact achieving that goal.

Amendments to the definition of “Directed to Children” now reference the existing definition under COPPA, which addressed a major concern of previous opposition that content that would “appeal” to a child was too vague and in conflict with that statute. The definition of “Platform” was also amended to exclude websites, online services and online or mobile applications which prohibit use by California residents under the age of 13, which addressed a concern that these sites could be unintentionally swept up in the rules for those who intend to provide content directed to children.

In relation to earlier versions of this bill, various opponents 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." The thrust of the opposition was that 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 to earlier versions of the bill appear to have been largely addressed by the narrowing and clarifying amendments reflected in this analysis. Should any concerns remain after opposition groups have had a chance to review the bill now in print, 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.

5) *Prior related legislation.*

- a) AB 3339 (Wicks), Legislation of 2019, was substantially similar to the introduced version of the measure currently under consideration.
Status: Held without hearing in the Assembly Privacy and Consumer Protection Committee.
- b) AB 3067 (Chau) Chapter 347, Statutes of 2018, Banned the marketing of cannabis products or businesses to minors via the Internet; prohibits website operators from knowingly collecting, using, or selling data from minors for the purpose of marketing or advertising cannabis products or businesses; and, prohibits advertising cannabis products, paraphernalia, or businesses on websites or mobile applications directed at minors.
- c) SB 568 (Steinberg, Ch. 336, Stats. 2013) established the Privacy Rights for California Minors in the Digital World which prohibits operators of Internet Web sites, online service, online applications, and mobile applications that are directed to minors, from marketing certain products or services, such as tobacco and alcohol to minors. The bill also prohibits operators of the same services that are not directed towards minors, from marketing such products to a minor, if the operator has actual knowledge that a minor is using the Web site or online service.

REGISTERED SUPPORT / OPPOSITION:

Support

None received for this version of the bill.

Opposition

None received for this version of the bill.

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