

Date of Hearing: May 5, 2021

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Lorena Gonzalez, Chair

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

Policy Committee:	Privacy and Consumer Protection	Vote: 9 - 1
	Arts, Entertainment, Sports, Tourism, and Internet Media	4 - 0

Urgency: No State Mandated Local Program: No Reimbursable: No

SUMMARY:

This bill enacts the Kids Internet Design and Safety (KIDS) Act. Specifically, this bill:

- 1) Prohibits an operator of a platform from incorporating in content viewable by children any of the following features without first obtaining parental consent:
 - 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.
 - 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 the Department of Justice (DOJ), 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 (COPPA) (15 U.S.C. § 6502) and the Privacy Rights for California Minors in the Digital World (PRCMDW) (SB 568 (Steinberg), Chapter 336, Statutes of 2013).

FISCAL EFFECT:

Costs (General Fund (GF)) in the low millions of dollars to the DOJ Consumer Protection Section in additional staff and resources to annually audit platforms for compliance with COPPA and PRCMDW and draft regulations in support of that objective.

COMMENTS:

- 1) **Purpose.** According to the author:

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.

- 2) **Existing Federal and State Law.** COPPA imposes certain requirements on operators of websites or online services directed to children under 13 years of age, and on operators of other websites or online services that have actual knowledge that they are collecting personal information online from a child under 13 years of age. COPPA requires operators to, among other things, post a clear and comprehensive online privacy policy describing what personal information is collected online from children; provide direct notice to parents and obtain verifiable parental consent 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; provide parents access to their child's personal information to review the information and have the information deleted; and give parents the opportunity to prevent further use or online collection of a child's personal information. Violation of COPPA may result in significant fines and civil prosecution. COPPA is enforced by the Federal Trade Commission (FTC). This bill requires DOJ to annually audit platforms for compliance with COPPA, but it does not direct DOJ to do anything with the information collected. Presumably, if DOJ identifies a violation of COPPA, it may notify the FTC or bring action in California for violations of existing privacy laws or the Unfair Competition Law (UCL).

The PRCMDW prohibits an operator of an internet website or platform from marketing specified types of products or services to a minor. It also prohibits an operator from knowingly using, disclosing or allowing a third party to use or disclose a minor's personal information for the purpose of marketing or advertising certain products or services. There is no enforcement agency identified in the PRCMDW. However, DOJ is responsible for enforcing the California Consumer Privacy Act and the Consumer Privacy Rights Act –both of which limit platform operator's ability to sell a user's information and allows a user to opt out of any sale of their personal information.

- 3) **Prior Legislation.** AB 3339 (Wicks), of the 2019-2020 Legislative Session, was similar to this bill and was referred to, but never heard in the Assembly Privacy and Consumer Protection Committee.

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