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LEGISLATURE OF NEBRASKA

ONE HUNDRED NINTH LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 504

Introduced by Bosn, 25; at the request of the Governor; Ballard, 21; Bostar, 29; Prokop, 27.

Read first time January 21, 2025

Committee:

A BILL FOR AN ACT relating to consumer protections; to adopt the Age-Appropriate Online Design Code Act; to provide an operative date; and to provide severability.

Be it enacted by the people of the State of Nebraska,

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Section 1. Sections 1 to 12 of this act shall be known and may be cited as the Age-Appropriate Online Design Code Act.

Sec. 2. For purposes of the Age-Appropriate Online Design Code Act:

(1) Actual knowledge includes all information and inferences known to the covered online service relating to the age of the individual, including, but not limited to, self-identified age, and any age the covered online service has attributed or associated with the individual for any purpose, including marketing, advertising, or product development;

(2) Child or children means an individual or individuals younger than thirteen years of age;

(3) Compulsive usage means the persistent and repetitive use of a covered online service that substantially limits one or more major life activities of a user, including sleeping, eating, learning, reading, concentrating, communicating, or working;

(4) Covered design feature means any feature or component of a covered online service that will encourage or increase the frequency, time spent, or activity of a user on the covered online service and includes, but is not limited to:

(a) Infinite scroll;

(b) Rewards or incentives for frequency of visits or time spent on the covered online service;

(c) Notifications or push alerts;

(d) In-game purchases; or

(e) Appearance altering filters;

(5)(a) Covered online service means a sole proprietorship, a limited liability company, a corporation, an association, or any other legal entity that owns, operates, controls, or provides an online service that:

(i) Conducts business in this state;

(ii) Is reasonably likely to be accessed by minors;

(iii) Alone, or jointly with its affiliates or subsidiaries or

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parent companies, determines the purposes and means of the processing of consumers' personal data; and

(iv) Either:

(A) Has annual gross revenue in excess of twenty-five million, adjusted every odd-numbered year to reflect changes in the Consumer Price Index;

(B) Annually buys, receives, sells, or shares the personal data of fifty thousand or more consumers, households, or devices, alone or in combination with its affiliates or subsidiaries; or

(C) Derives at least fifty percent of its annual revenue from the sale or sharing of consumers' personal data.

(b) A covered online service includes:

(i) An entity that controls or is controlled by a business that shares a name, service mark, or trademark that causes a reasonable consumer to understand that two or more entities are commonly owned; and

(ii) A joint venture or partnership composed of businesses in which each has at least a forty percent interest in the joint venture or partnership;

(6) Known to be a minor means actual knowledge that the covered online service is reasonably likely to be accessed by minors;

(7) Minor means an individual younger than eighteen years of age;

(8) Online service means any service, product, or feature that is accessible to the public via the Internet, including a website or application. An online service includes a digital service, product, or feature that is based in whole or in part on artificial intelligence. An online service does not include any of the following:

(a) A telecommunications service as defined in 47 U.S.C. 153;

(b) A broadband internet access service as defined in 47 C.F.R. 8.1(b); or

(c) The sale, delivery, or use of a physical device;

(9) Parent has the same meaning as in the federal Children's Online

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Privacy Protection Act of 1998, 15 U.S.C. 6501 et seq., and the Federal Trade Commission rules implementing such act;

(10) Personal data means any information, including derived data and unique identifiers, that is linked or reasonably linkable, alone or in combination with other information, to an identified or identifiable individual or to a device that identifies, is linked to, or is reasonably linkable to one or more identified or identifiable individuals in a household. Personal data does not include publicly available data;

(11) Personalized recommendation system means a fully or partially automated system used to suggest, promote, or rank content, including other users, hashtags, or posts, based on the personal data of users;

(12) Precise geolocation information means any data that identifies within a radius of one thousand eight hundred fifty feet a user's present or past location or the present or past location of a device that links or is linkable to a user or any data that is derived from a device that is used or intended to be used to locate a user within a radius of one thousand eight hundred fifty feet by means of technology that includes a global positioning system that provides latitude and longitude coordinates. Precise geolocation information does not include the content of communications or any data generated or connected to advanced utility metering infrastructure systems or equipment for use by a utility;

(13) Process means to perform an operation or set of operations by manual or automated means on personal data. Process includes collecting, using, storing, disclosing, sharing, analyzing, deleting, or modifying personal data;

(14) Profile means any form of automated processing of personal data to evaluate, analyze, or predict certain aspects relating to a user, including a user's economic situation, health, personal preferences, interests, reliability, behavior, location, or movements;

(15) Publicly available data means data (a) that is lawfully made available from federal, state, or local government records, (b) that a

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business has a reasonable basis to believe is lawfully made available to the general public by the individual or from widely distributed media, or (c) that is made available by a person to whom the individual has disclosed the data if the individual has not restricted the data to a specific audience. Publicly available data does not mean biometric data collected by a covered online service about a user without the user's knowledge;

(16) Reasonably likely to be accessed by minors means:

(a) It is reasonable to expect that the covered online service would be accessed by an individual minor or by minors, based on satisfying either of the following criteria:

(b) The covered online service has actual knowledge that a particular consumer is a minor; or

(c) The covered online service is directed to children;

(17) Sensitive personal data means personal data that reveals:

(a) An individual's social security, driver's license, state identification card, or passport number;

(b) An individual's account log-in, financial account, debit card, or credit card number in combination with any required security or access code, password, or credentials allowing access to an account;

(c) An individual's precise geolocation information;

(d) An individual's racial or ethnic origin, citizenship or immigration status, religious or philosophical beliefs, or union membership;

(e) The contents of an individual's mail, email, text messages, or other forms of communications that perform similar functions, including shared images and videos, unless the business is the intended recipient of the communication;

(f) An individual's genetic data;

(g) Biometric data that uniquely identifies an individual, including, but not limited to, personal images or physical

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characteristics;

(h) Personal data concerning an individual's health; or

(i) Personal data revealing sex, sex life, sexual orientation, gender, or gender identity;

(18) Targeted advertising means displaying advertisements to an individual where the advertisement is selected based on personal data obtained or inferred from that individual's activities over time and across nonaffiliated websites or online applications to predict the individual's preferences or interest. Targeted advertising does not include:

(a) Advertisements based on activities within a covered online service's own Internet websites or online applications;

(b) Advertisements based on the context of an individual's current search query, visit to an Internet website, or use of an online application;

(c) Advertisements directed to an individual in response to the individual's request for information or feedback; or

(d) Processing personal data solely to measure or report advertising frequency, performance, or reach; and

(19) User means, with respect to a covered online service, an individual who registers an account or creates a profile on the covered online service.

Sec. 3. (1) The Age-Appropriate Online Design Code Act does not apply to:

(a) A federal, state, tribal, or local government entity in the ordinary course of its operations;

(b) Personal data subject to a statute or regulation that is controlled by a covered online service that is required to comply with:

(i) Title V of the federal Gramm-Leach-Bliley Act;

(ii) The federal Health Information Technology for Economic and Clinical Health Act; or

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(iii) Regulations promulgated under section 264 of the Health Insurance Portability and Accountability Act of 1996; and

(c) Information, including, but not limited to, personal data, collected as part of a clinical trial subject to the federal policy for the protection of human subjects in accordance with:

(i) Good clinical practice guidelines issued by the International Council for Harmonization of Technical Requirements for Pharmaceuticals for Human Use; or

(ii) Human subject protection requirements of the federal Food and Drug Administration.

(2) The requirements of the Age-Appropriate Online Design Code Act are in addition to and shall not limit or restrict in any way the application of other laws, including, but not limited to, statutes, rules and regulations, and the common law of Nebraska.

(3) In the event of a conflict between the Age-Appropriate Online Design Code Act and one or more other laws, the law that affords the greatest protection from harm to minors shall control.

Sec. 4. (1) Except as provided in subsections (2) and (3) of this section, a covered online service is required to exercise reasonable care in the use of personal data of a user and in the design and implementation of such covered online service, including, but not limited to, covered design features, to prevent the following harms:

(a) Compulsive usage of the covered online service;

(b) Severe psychological harm, including but not limited to anxiety and depression;

(c) Severe emotional distress;

(d) Highly offensive intrusions on reasonable privacy expectations;

(e) Identity theft;

(f) Discrimination on the basis of race, ethnicity, sex, disability, sexual orientation, gender identity, gender expression, or national origin; and

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(g) Material financial or physical injury.

(2) Harms described in subsection (1) of this section are limited to those for which liability is permitted under 47 U.S.C. 230.

(3) Nothing in this section shall be construed to require a covered online service to prevent or preclude any user from deliberately and independently searching for or specifically requesting content, or accessing resources and information regarding the prevention or mitigation of the harms described in this section.

Sec. 5. (1) A covered online service shall provide users with accessible and easy-to-use tools that accomplish the following:

(a) Limit the ability of other users or visitors to communicate with the user;

(b) Prevent other individuals from viewing the personal data of the user;

(c) Prevent artificial intelligence from utilizing personal data to communicate or interact with the user;

(d) Control the operation of all design features, including, but not limited to, all covered design features, that are unnecessary in order to provide the covered online service by allowing users to opt out of the use of all design features or categories of design features;

(e) Control personalized recommendation systems by allowing users to opt in to a chronological feed or by preventing categories of content from being recommended;

(f) Control the use of in-game purchases or other transactions by allowing users to opt out of all such purchases and transactions or to place limits on such purchases and transactions; and

(g) Restrict the sharing of the precise geolocation information of the user and provide notice regarding tracking of the user's precise geolocation information.

(2) A covered online service shall provide a user with accessible and easy to use options to limit the amount of time the user spends on

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the covered online service.

(3) A covered online service shall establish default settings applicable to an individual the covered online service knows is a minor for the safeguards described in subsection (1) of this section at the option or level that provides the highest protection available for the safety of the individual.

Sec. 6. (1) A covered online service shall only collect and use the minimum amount of a user's personal data necessary to provide the specific elements of an online service with which a user has knowingly engaged. Such personal data may not be used for reasons other than those for which it was collected.

(2) A covered online service that collects personal data of a user for age verification or estimation cannot use such personal data for other purposes and shall delete such personal data after use for age verification.

(3) A covered online service shall only retain the personal data of a user as long as necessary to provide the specific elements of an online service with which a user has knowingly engaged.

(4) A covered online service may not facilitate targeted advertising to an individual the covered online service knows is a minor.

(5) A covered online service shall provide an obvious sign to a user when precise geolocation information is being collected or used.

(6) The use of notifications and push alerts to an individual the covered online service knows is a minor is prohibited between the hours of 10 p.m. and 6 a.m. and between the hours of 8 a.m. and 4 p.m. on week days during the school year in the minor's local time zone.

(7) A covered online service shall not profile an individual the covered online service knows is a minor unless profiling is necessary to provide a covered online service requested by such minor, and only with respect to the aspects of the covered online service with which a minor is actively and knowingly engaged.

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(8) A covered online service shall ensure that settings for the protections required pursuant to this section are set at the highest protection available for the safety of the individual by default.

(9) If a covered online service allows parental monitoring, the covered online service shall provide an obvious signal to the user when such user is being monitored.

Sec. 7. (1) A covered online service shall treat all users of a covered online service as a minor unless the covered online service has actual knowledge that the user is not a minor.

(2) A covered online service shall provide parents with tools to help parents protect and support minors using the covered online services. Such parental tools shall be on by default for an individual the covered online service knows is a child.

(3) A covered online service shall provide parents the ability to do the following for an individual the covered online service knows is a child or minor, as applicable:

(a) Manage the child's privacy and account settings in a manner that allows parents to:

(i) View the child's account settings; and

(ii) Change and control privacy and account settings of the child;

(b) Restrict purchases and financial transactions of the minor; and

(c) Enable parents to view the total time spent on a covered online service by a user the covered online service knows is a child and place reasonable limits on such child's use of the covered online service. Among such protections, a covered online service shall offer parents the ability to restrict a child's use of the covered online service during times of day specified by the parents, including during school hours and at night.

(4) A covered online service shall notify a user when any of the tools described in this section are in effect and describe what settings have been applied.

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Sec. 8. A covered online service shall establish mechanisms to report harms to minors on covered online services.

Sec. 9. (1) A covered online service is prohibited from facilitating ads for prohibited products, such as narcotic drugs, tobacco products, gambling, and alcohol, to individuals the covered online service knows are minors.

(2) A covered online service is prohibited from using dark patterns or any other similar practices to subvert or impair user autonomy, decision-making, or choice. Such dark patterns shall constitute a deceptive trade practice under the Uniform Deceptive Trade Practices Act and, in addition to any remedies or penalties available under the Age-Appropriate Online Design Code Act, shall be subject to any remedies or penalties available for a violation under the Uniform Deceptive Trade Practices Act.

Sec. 10. (1) Each covered online service that utilizes personalized recommendation systems is required to describe in its terms and conditions, in a clear, conspicuous and easy to understand manner, how such systems are used to provide information to minors and information regarding how minors or their parents can opt out of or control such systems.

(2) A covered online service shall provide clear, conspicuous, easy to understand, and comprehensive information in a prominent location describing the design safety for minors, the privacy protections for minors, and the tools for parents that the covered online service has adopted. Such disclosure shall also include a clear, conspicuous, and easy to understand explanation as to how minors and parents may utilize such design safety measures, privacy protections, and tools.

Sec. 11. (1) A covered online service shall annually issue a public report, prominently posted to its website, prepared by an independent third-party auditor that contains the following information:

(a) A detailed description of the covered online service as it

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pertains to minors, including its covered design features, its use of personal data, and its business practices. Each report shall include the following information, categorized by age group if appropriate:

(i) The purpose of the covered online service;

(ii) The extent to which the covered online service is likely to be accessed by minors;

(iii) An accounting of the number of users the covered online service knows to be minors in the state and an accounting of how much time such users, separated by age group, spend on the covered online service;

(iv) An accounting of the total number and types of reports made pursuant to section 8 of this act and an assessment of how such harms were addressed;

(v) Whether, how, and for what purpose the covered online service collects or processes the personal data of minors;

(vi) Whether, how, and for what purpose the covered online service collects or processes the sensitive personal data of minors;

(vii) The design safety features for minors, the privacy protections for minors, and the tools for parents that the covered online service has adopted;

(viii) Whether and how the covered online service uses covered design features;

(ix) The covered online service's process for handling data access, deletion, and correction requests for the data of a minor;

(x) Age verification or estimation methods used by the covered online service; and

(xi) Whether and how the covered online service utilizes algorithms.

(2) An independent third-party auditor that prepares a report required pursuant to this section shall follow inspection and consultation practices designed to ensure that such report is comprehensive and accurate. Any such report shall be prepared in

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consultation with experts on minors' use of covered online services.

(3) A covered online service shall provide an independent third-party auditor that prepares a report required under this section full and complete cooperation and access to information and operations required to ensure that the report is comprehensive and accurate.

Sec. 12. (1) The Attorney General shall enforce the Age-Appropriate Online Design Code Act and may investigate compliance with the act. The Attorney General may adopt and promulgate rules and regulations to carry out the act.

(2) Each covered online service shall designate one or more officers of the company as responsible for the covered online service's compliance with the Age-Appropriate Online Design Code Act.

(3) A covered online service in violation of the Age-Appropriate Online Design Code Act may be liable for a civil penalty not to exceed fifty thousand dollars for each violation.

Sec. 13. This act becomes operative on January 1, 2026.

Sec. 14. If any section in this act or any part of any section is declared invalid or unconstitutional, the declaration shall not affect the validity or constitutionality of the remaining portions.