LEGISLATIVE GENERAL COUNSEL
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₵ 02-05-24 7:47 AM ₵

H.B. 464

SOCIAL MEDIA REGULATION ACT AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jordan D. Teuscher

Senate Sponsor: _____

LONG TITLE

General Description:

This bill enacts provisions regarding harm to minors from the excessive use of algorithmically curated social media services.

Highlighted Provisions:

This bill:

- defines terms;
- enacts legislative findings regarding potential harms of excessive social media use by minors;
- allows a private right of action related to harms to minors from excessive social media use and establishes related provisions;
- establishes an affirmative defense for a social media company to defend against the private right of action; and
- prohibits waivers of rights and protections.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

ENACTS:

78B-3-1101, Utah Code Annotated 1953

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78B-3-1102, Utah Code Annotated 1953
78B-3-1103, Utah Code Annotated 1953
78B-3-1104, Utah Code Annotated 1953
78B-3-1105, Utah Code Annotated 1953
78B-3-1106, Utah Code Annotated 1953

REPEALS:

13-63-101, as enacted by Laws of Utah 2023, Chapters 477, 498
13-63-102, as enacted by Laws of Utah 2023, Chapter 498
13-63-103, as enacted by Laws of Utah 2023, Chapter 498
13-63-104, as enacted by Laws of Utah 2023, Chapter 498
13-63-105, as enacted by Laws of Utah 2023, Chapter 498
13-63-201, as enacted by Laws of Utah 2023, Chapter 498
13-63-202, as enacted by Laws of Utah 2023, Chapter 498
13-63-203, as enacted by Laws of Utah 2023, Chapter 498
13-63-301, as enacted by Laws of Utah 2023, Chapter 498
13-63-401, as enacted by Laws of Utah 2023, Chapter 477
13-63-501, as enacted by Laws of Utah 2023, Chapter 477
13-63-601, as enacted by Laws of Utah 2023, Chapters 477, 498
13-63-701, as enacted by Laws of Utah 2023, Chapters 477, 498

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **78B-3-1101** is enacted to read:

Part 11. Harm to Minors by Algorithmically Curated Social Media Service

78B-3-1101. Definitions.

As used in this part:

(1) "Account holder" means a person who has, creates, or opens an account or profile to use an algorithmically curated social media service.

(2) (a) "Adverse mental health outcome" means a condition affecting a minor's mental health that is:

(i) diagnosable by a licensed mental health care provider; and

(ii) acknowledged by professional mental health experts as having a negative impact on

a minor's well-being.

(b) "Adverse mental health outcome" includes depression, anxiety, suicidal thoughts or behaviors, and self-harm thoughts or behaviors.

(3) "Algorithmically curated social media service" means a social media service that drives user engagement primarily through the use of:

(a) a curation algorithm; and

(b) engagement driven design elements.

(4) "Content" means any information, visual depiction, or other material that appears on or is available or enabled through a social media service.

(5) (a) "Curation algorithm" means a computational process or set of rules used by a social media platform that determines, influences, or personalizes, designed to encourage prolonged or frequent engagement:

(i) the content a user views;

(ii) the order in which content is displayed;

(iii) how prominently content is displayed; or

(iv) the manner in which content is displayed.

(b) "Curation algorithm" does not include the curation of:

(i) responses to specific user queries or user prompts requesting content related to defined topics or interests selected by the user; or

(ii) content to ensure only age appropriate material is provided to a user based on the user's age;

(iii) content that prevents a minor from viewing violent, bullying, threatening, or harassing content; or

(iv) content to comply with any state or federal law restricting the display of material harmful to minors.

(6) "Engagement driven design elements" means:

(a) autoplay features that continuously play content without requiring user interaction;

(b) scroll or pagination that loads additional content as long as the user continues scrolling; or

(c) push notifications.

(7) "Excessive use" means the use of a social media service by a minor to an extent that

the use substantially interferes with the minor's normal functioning in:

(a) academic performance;

(b) sleep;

(c) in-person relationships;

(d) mental health; or

(e) physical health.

(8) "Minor" means an individual who is under 18 years old that:

(a) has not been emancipated as that term is defined in Section 80-7-102; or

(b) has not been married.

(9) "Parent" includes a legal guardian.

(10) "Push notification" means an automatic electronic message displayed on an account holder's device, when the user interface for the social media service is not actively open or visible on the device, that prompts the account holder to repeatedly check and engage with the social media service.

(11) "Resident" means the same as that term is defined in Section 53-3-102.

(12) "Social media company" means an entity that owns or operates a social media service.

(13) (a) "Social media service" means a website or application that:

(i) is open to the public and consists primarily of content that is user-generated and not produced by the social media company;

(ii) permits an individual to register as an account holder, establish an account, or create a profile that is made visible to the general public or a set of other users defined by the account holder for the purpose of allowing account holders to create, share, and view user-generated content through such an account or profile;

(iii) allows account holders to post content and interact with content generated by other account holders; and

(iv) enables account holders to create online communities or groups and communicate with account holders.

(b) "Social media service" does not include:

(i) email;

(ii) cloud storage; or

(iii) document viewing, sharing, or collaboration services.

(14) "User" means an individual who accesses or uses an algorithmically curated social media service.

(15) (a) "Utah account holder" means a person who is a Utah resident and an account holder.

(b) "Utah account holder" includes a Utah minor account holder.

(16) "Utah minor account holder" means a Utah account holder who is a minor.

Section 2. Section **78B-3-1102** is enacted to read:

78B-3-1102. Legislative Findings.

The Legislature finds that:

(1) social media services utilize curation algorithms and engagement driven design elements to maximize user engagement;

(2) minors are particularly vulnerable to manipulation by the use of curation algorithms and engagement driven design elements;

(3) a minor's excessive use of an algorithmically curated social media service is likely to cause adverse mental health outcomes in minors, regardless of the content being viewed;

(4) the risk of an adverse mental health outcome resulting from the excessive use of an algorithmically curated social media service increases when a minor uses the service for more than three hours per day, or during regular sleeping hours;

(5) algorithmically curated social media services are designed without sufficient tools to allow adequate parental oversight, exposing minors to risks that could be mitigated with additional parental control;

(6) protecting minors from the risks associated with the use of algorithmically curated social media services requires intervention at a societal level, informed by expertise in technology, psychology, and youth mental health;

(7) the state has a long-established role and responsibility in implementing protections and regulations to safeguard the health and welfare of minors;

(8) the state has enacted safeguards around products and activities that pose risks to minors, including regulations on motor vehicles, medications, and products and services targeted to children;

(9) any adverse mental health outcomes for minors that are linked to the excessive use

of algorithmically curated social media services are a serious public health concern for the state; and

(10) the state has a compelling interest to protect minors in the state against adverse mental health outcomes.

Section 3. Section **78B-3-1103** is enacted to read:

78B-3-1103. Private right of action.

(1) A Utah minor account holder or a Utah minor account holder's parent may bring a cause of action against a social media company in court for an adverse mental health outcome arising, in whole or in part, from the minor's excessive use of the social media company's algorithmically curated social media service.

(2) To recover damages in a cause of action brought under this section, a person bringing the cause action must demonstrate:

(a) that the Utah minor account holder has been diagnosed by a licensed mental health care provider with an adverse mental health outcome; and

(b) that the adverse mental health outcome was caused by the Utah minor account holder's excessive use of an algorithmically curated social media service.

(3) Except as provided in Subsection (4), a person who brings an action described in Subsection (1), is entitled to a rebuttable presumption that:

(a) the Utah minor account holder's adverse mental health outcome was caused, in whole or in part, by the Utah minor account holder's excessive use of the algorithmically curated social media service; and

(b) the Utah minor account holder's excessive use of the algorithmically curated social media service was caused, in whole or in part, by the algorithmically curated social media service's curation algorithm and engagement driven design elements.

(4) A social media company that complies with the provisions of Section 78B-11-1104 is entitled to a rebuttable presumption that:

(a) the Utah minor account holder's adverse mental health outcome was not caused, in whole or in part, by the Utah minor account holder's excessive use of the algorithmically curated social media service; and

(b) the Utah minor account holder's excessive use of the algorithmically curated social media service was not caused, in whole or in part, by the algorithmically curated social media

service's curation algorithm and engagement driven design elements.

(5) If a court or fact finder finds that a Utah minor account holder suffered any adverse mental health outcome as a result of the Utah minor account holder's use of a social media company's algorithmically curated social media service, the person seeking relief is entitled to:

(a) an award of reasonable attorney fees and court costs; and

(b) an amount equal to the greater of:

(i) $10,000 for each adverse mental health outcome incidence; or

(ii) the amount of actual damages.

(6) A social media company may not be held liable under this part:

(a) based on the content of material posted by users of the algorithmically curated social media service; or

(b) for declining to restrict access to or modify user posts based solely on the content of those posts.

(7) Nothing in this part shall displace any other available remedies or rights authorized under the laws of this state or the United States.

Section 4. Section **78B-3-1104** is enacted to read:

78B-3-1104. Affirmative defense.

(1) A person is not entitled to the rebuttable presumption described in Subsection 78B-11-1103(3), and a social media company is entitled to the rebuttable presumption described in Subsection 78B-11-1103(4), if the social media company demonstrates to the court that the social media company:

(a) limits a Utah minor account holder's use of the algorithmically curated social media service to no more than three hours in a 24 hour period across all devices;

(b) restricts a Utah minor account holder from accessing the algorithmically curated social media service between the hours of 10:30 p.m. and 6:30 a.m.;

(c) requires the parent or legal guardian of the minor to consent to a Utah minor account holder's use of the algorithmically curated social media service;

(d) disables engagement driven design elements for a Utah minor account holder's account; and

(e) displays content on a Utah minor account holder's account in the order it was posted, showing newer posts after older posts in a first posted, first shown manner, rather than

using algorithms or user interactions to determine order.

(2) A social media company may utilize settings that are enabled at the device level to impose the requirements described in Subsection (1).

(3) Notwithstanding Subsection (2), a social media company remains liable to ensure that the Utah minor account holder's account is subject to the restrictions of Subsection (1).

Section 5. Section **78B-3-1105** is enacted to read:

78B-3-1105. Waiver prohibited.

A waiver or limitation, or a purported waiver or limitation, of any of the following is void as unlawful, is against public policy, and a court or arbitrator may not enforce or give effect to the waiver, notwithstanding any contract or choice-of-law provision in a contract:

(1) a protection or requirement provided under this chapter;

(2) the right to cooperate with or file a complaint with a government agency;

(3) the right to a private right of action as provided under this chapter; or

(4) the right to recover actual damages, statutory damages, civil penalties, costs, or fees as allowed by this chapter.

Section 6. Section **78B-3-1106** is enacted to read:

78B-3-1106. Severability.

(1) If any provision of this chapter or the application of any provision to any person or circumstance is held invalid by a final decision of a court of competent jurisdiction, the remainder of this chapter shall be given effect without the invalid provision or application.

(2) The provisions of this chapter are severable.

Section 7. **Repealer.**

This bill repeals:

Section **13-63-101**, **Definitions.**

Section **13-63-102**, **Age requirements for use of social media platform -- Parental consent -- Rulemaking authority of division.**

Section **13-63-103**, **Prohibition on data collection for certain accounts -- Prohibition on advertising -- Use of information -- Search results -- Directed content.**

Section **13-63-104**, **Parental access to social media account.**

Section **13-63-105**, **Limited hours of access for minors -- Parental access and options.**

Section **13-63-201**, **Investigative powers of the division.**

Section **13-63-202**, **Enforcement powers of the division.**

Section **13-63-203**, **Division report.**

Section **13-63-301**, **Private right of action.**

Section **13-63-401**, **Social media platform design regulations -- Enforcement and auditing authority -- Penalties.**

Section **13-63-501**, **Private right of action for harm to a minor -- Rebuttable presumption of harm and causation.**

Section **13-63-601**, **Waiver prohibited.**

Section **13-63-701**, **Severability.**

Section 8. **Effective date.**

(1) Except as provided in Subsection (2), this bill takes effect on May 1, 2024.

(2) The actions affecting the following sections take effect on October 1, 2024:

(a) Section 78B-3-1101;

(b) Section 78B-3-1102;

(c) Section 78B-3-1103;

(d) Section 78B-3-1104;

(e) Section 78B-3-1105; and

(f) Section 78B-3-1106.