



Councilmember Sophie Hahn
City of Berkeley, District 5

CONSENT CALENDAR

June 28, 2022

To: Honorable Mayor and Members of the City Council

From: Councilmember Sophie Hahn (Author), Councilmember Susan Wengraf (Co-Sponsor)

Subject: Holding Social Media Companies Accountable for Impacts on Children: Supporting AB 2408 and AB 2273 (Wicks/Cunningham)

RECOMMENDATION

Send a letter in support of AB 2408 “Child users: addiction” and AB 2273 “The California Age-Appropriate Design Code Act” (Wicks/Cunningham) to forward to appropriate colleagues, expressing the City of Berkeley’s support for these bills, which would allow parents to sue social media platforms if their children become addicted and require tech firms to create child-safe producing by creating age-appropriate design code for websites and apps likely to be accessed by children.

FISCAL IMPACTS OF RECOMMENDATION

N/A

CURRENT SITUATION AND ITS EFFECTS

If passed, AB 2408 and AB 2273 (Wicks/Cunningham) would create new rules for tech firms designing products used by children to ensure greater data protections and safety protocols, such as having the strictest privacy settings enabled by default, to ensure apps minimize dangers to children and risk of harm or addiction. These bills also create a private right of action to allow parents to sue social media companies if their children become addicted and experience harm as a result.

BACKGROUND

Efforts to create child safe spaces on the internet have largely failed at the federal level. As home to all of the major social media and technology companies, California has a special responsibility to lead on protecting our children from harm caused by social media.

Last fall, a study leaked by a former employee of Facebook, which owns Instagram, documented a significant percentage of teen social media users experience negative

psychological impacts: 17% of girls said using social media makes eating disorders worse, and 13.5% of girls said it makes suicidal thoughts worse.¹

Academic research continues to identify the impacts of social media usage on young people. A four year study of Montreal teens published in the Canadian Journal of Psychiatry in 2019 found that social media was "very robustly" related to increases in depressive symptoms.²

According to National Public Radio, "Researchers found similar patterns in teens after watching television, but the difference, they explained, is that in TV, viewers often see idealized versions of life that are different from their own. But with platforms like Instagram, they are consuming idealized versions of their peers and that can trigger a comparison loop that can blur the lines of reality for adolescents whose brains are still developing."³

In May, both bills passed the Assembly with bi-partisan support and they are now being considered in the State Senate. The Legislative Findings for both of these bills more fully outline the many known, measurable harms the bills seek to address, copies of which are attached hereto.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE CHANGE

N/A

RATIONALE FOR RECOMMENDATION

Protecting the mental health and wellbeing of students and children is a top priority for the City of Berkeley.

ALTERNATIVE ACTIONS CONSIDERED

N/A

CONTACT PERSON

Councilmember Sophie Hahn, (510) 981-7150

Attachments:

1: Letter of Support

2: Bill Text AB 2408 (Wicks/Cunningham):

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB2408

3: Bill Text AB 2273 (Wicks/Cunningham):

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB2273The

¹ <https://www.sfchronicle.com/politics/article/California-could-be-first-state-to-hold-social-17215641.php>

² <https://journals.sagepub.com/doi/full/10.1177/0706743719885486>

³ <https://www.npr.org/2021/10/05/1043194385/whistleblowers-testimony-facebook-instagram>

Honorable Buffy Wicks and Honorable Jordan Cunningham
Members of the Assembly
Capitol Office
1021 O Street
Sacramento, CA 95814

Re: AB 2408 and AB 2273 – SUPPORT

The City of Berkeley strongly supports the passage of AB 2408 and AB 2273, which would enact crucially needed protections for our children as they use social media.

Academic studies document the negative impacts of social media on young people, including increased depression. The need for increased mental health services is evident in our community, in particular for young adults. In the wake of more than two difficult years sheltering in place to manage the COVID pandemic, students at Berkeley High School are lobbying the City Council for additional funds for mental health services. Recent tragedies have included the suicide of a High School Student, a shooting between High School students, and the arrest of a student who is alleged to have recruited friends and amassed weapons to perpetrate a mass shooting.

Big tech companies must be held accountable for the negative impacts of their products on youth; we cannot allow them to profit from creating and exacerbating mental health challenges. Berkeley strongly supports these measures to protect the mental health and well being of all children and teens.

The Berkeley City Council

Cc: Senator Nancy Skinner

CALIFORNIA LEGISLATURE— 2021–2022 REGULAR SESSION

ASSEMBLY BILL

NO. 2408

**Introduced by Assembly Members Cunningham and
Wicks**

February 17, 2022

An act to add Section 1714.48 to the Civil Code, relating to social media platforms.

LEGISLATIVE COUNSEL'S DIGEST

AB 2408, as amended, Cunningham. Child users: addiction.

Existing law, the California Consumer Privacy Act of 2018, prohibits a business from selling the personal information of a consumer if the business has actual knowledge that the consumer is less than 16 years of age, unless the consumer, in the case of a consumer at least 13 years of age and less than 16 years of age, or the consumer's parent or guardian, in the case of a consumer who is less than 13 years of age, has affirmatively authorized the sale of the consumer's personal information.

This bill, the Social Media Platform Duty to Children Act, would impose on an operator of a social media platform a duty not to addict, as defined, child users and would, among other things, prohibit a social media platform from addicting a child user by ~~any~~ *either* of certain means, including the use or sale of a child user's personal data. The act would authorize a person authorized to assert the legal rights of a child user who suffers injury as a result of a violation of the act to bring an action against a violator to recover or obtain certain relief, including a civil penalty of up to \$25,000 ~~per violation per calendar year.~~ *violation.*

DIGEST KEY

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

BILL TEXT

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. This act shall be known as the Social Media Platform Duty to Children Act.

SEC. 2. The Legislature finds and declares all of the following:

(a) California should take reasonable, proportional, and effective steps to ensure that its children are not harmed by addictions of any kind.

(b) A broad diversity of psychologists and psychiatrists in the field of addiction, as well as scientists, doctors, and other researchers, acknowledge the existence of social media addiction.

(1) Research using the Bergen Social Media Addiction Scale, a widely used measure of social media platform addiction, has found that social media platform addiction has a prevalence across the general population of about 5 percent.

(2) In people who become addicted, the brain's reward system is more active when using social media than it is in the brains of people who are not addicted. The result, according to health experts and researchers, is compulsive and excessive social media use.

(c) There is growing evidence that social media platform addiction is a particular problem, particularly among adolescent children.

(1) The largest social media platform company in the world's own secret internal research validates both the existence of social media addiction in children and that social media addiction hurts children. As an example, in September 2021, The Wall Street Journal published a series of articles referred to as "The Facebook Files." Those articles, citing a trove of internal documents obtained from Frances Haugen, a whistleblower, demonstrated the extent to which Facebook knew that its platforms cause significant harm to users, especially children.

(2) More specifically, as revealed by Haugen's sworn testimony before Congress and the accompanying secret research she revealed to The Wall Street Journal, "Facebook has studied a pattern that they call problematic use, what we might more commonly call addiction. It has a very high bar for what it believes [problematic use] is. It [means] you self-identify that you don't have control over your usage and that it is materially harming your health, your schoolwork or your physical health." ... "Facebook's internal research is aware that there are a variety of problems facing children on Instagram, they know that severe harm is happening to children."

(3) During whistleblower Haugen's sworn testimony to Congress, she revealed that, when it comes to meeting the platform's addiction-like definition of "problematic use": "Five to six percent of 14 year olds have the self-awareness to admit both those questions" that qualify a child as having problematic use.

(4) Five to six percent of Instagram's child users is millions of children, certainly many thousands of which reside in California.

(d) Social media platform addiction is more acute in girls than boys.

(1) Girls experience a higher prevalence of social media addiction than boys.

(2) Girls who admit to excessive social media platform use are two to three times more likely to report being depressed than girls who use social media platforms lightly.

(3) A March 2020 presentation posted by Facebook researchers to Facebook's internal message board reported that "66% of teen girls on IG experience negative social comparison (compared to 40% of teen boys)" and that "[a]spects of Instagram exacerbate each other to create a perfect storm."

(e) The business models of some social media platform companies financially motivate them to deploy design features that increase the likelihood of addiction among all users, including children.

(1) Instead of charging to sign up, social media platforms earn "substantially all" of their revenue through advertising.

(2) The more time users engage with the platform, the more ads users see, and the more valuable the advertising becomes.

(3) In this regard, addicted consumers are particularly profitable because their consumption behavior goes beyond normal engagement levels.

(4) User engagement does not distinguish between engagement that increases because it is enjoyable and enhances health and well-being and engagement that

increases because of addiction. In fact, many users spend even more time on social media when engaging with content that makes them subjectively unhappy or objectively unhealthier.

(5) For these profit-driven reasons, social media platform companies intentionally invent, design, and deploy features that are intended to make it hard for users to stop using the platform, including deploying techniques used in gambling and techniques that mask or avoid cues that might prompt a user to stop using.

(f) Companies that market high-volume addictive products, including tobacco, have a special incentive to addict young, potentially ~~life-long~~, *lifelong*, consumers.

(g) Adolescent children are at far greater risk than adults to becoming addicted to social media platforms.

(1) Adolescent children exhibit higher levels of stress and an increased proclivity toward taking risks.

(2) During adolescence, children's reward systems develop much faster, while their self-control systems, which are not fully developed until 21 years of age, lag behind. For this reason, rates of behavioral addictions are elevated in adolescence as compared to adulthood.

(3) Social media platform companies can use the data they collect on children to determine which children are most likely to be vulnerable to a given ad, thereby exacerbating the risks of addiction.

(4) As compared to adults, children are more susceptible to the pressures and influence of advertisements, less likely to recognize paid-for content, and less likely to understand how data is used for these purposes.

(h) Because their brains are still developing, children are at far greater risk of being harmed by social media platform addiction than adults. Addiction adversely influences the development of judgment, attention, and memory in the brain.

(1) Higher daily rates of checking social media platforms have been linked to a reduction in the volume of brain tissue that controls memory, emotions, speech, decisionmaking, and self-control.

(2) For this reason, reduction in this kind of brain tissue is in turn correlated with higher impulsivity, something with which children and adolescents are already susceptible by dint of their youth.

(3) Several studies have found links between spending time on social media platforms and rates of suicide and depression among teens.

(4) Numerous studies show that reducing social media platform use results in mental health benefits.

(5) Social media platform addiction can create a vicious cycle for shy and lonely youth. Discomfort with real-life interactions leads to internet interactions, isolation from real-world interaction causes loneliness, loneliness combined with social phobia motivate additional engagement online.

(i) When social media platform companies create, design, implement, or maintain features for users, including child users, on their social media platforms that the company knows or should know are addictive to children, they should be held liable for the harms that result.

(j) Other addictions, including gambling addictions, have had a demonstrable negative effect on state economies.

(k) California has a compelling interest in protecting the mental health of its children from social media platform addiction for, at a minimum, all of the following reasons:

(1) To prevent needless suffering to California children and their families.

(2) To ensure the capacity of all its children to fulfill their potential and to reach normal goals for social and educational achievement to the benefit of all Californians.

(3) To prevent the costs of treating mental health harms to children from being incurred by and shifted to California families, businesses, insurers, schools, and mental health professionals.

SEC. 3. Section 1714.48 is added to the Civil Code, to read:

1714.48. (a) For purposes of this section:

(1) "Addict" means to knowingly or negligently cause or contribute to addiction through any act or omission or any combination of acts or omissions.

(2) "Addiction" means use of one or more social media platforms that does both of the following:

(A) Indicates preoccupation or obsession with, or withdrawal or difficulty to cease or reduce use of, a social media platform despite the user's desire to cease or reduce that use.

(B) Causes or contributes to physical, mental, emotional, developmental, or material harms to the user.

(3) "Child user" means a person who uses a social media platform and is ~~not older~~ *younger* than ~~17~~ 18 years of age.

(4) "Personal data" means information that identifies a natural person or is linked or linkable to an identifiable natural person.

(5) (A) "Social media platform" means an internet service that meets both of the following criteria:

(i) (I) The internet service is a means by which content is generated by a user of the service, or uploaded to or shared on the service by a user of the service, that may be encountered by another user, or other users, of the service.

(II) For purposes of this subparagraph:

(ia) "Content" means anything communicated by means of an internet service, whether publicly or privately, including written material or messages, oral communications, photographs, videos, or visual images.

(ib) "Content that may be encountered by another user, or other users, of a service" includes content that is capable of being shared with a user by operation of a functionality of the service that allows the sharing of content.

(ic) "Encounter" means to read, view, hear, or otherwise experience content.

(ii) The internet service is controlled by a business entity that generated at least one hundred million dollars (\$100,000,000) in gross revenue during the preceding calendar year.

(B) "Social media platform" does not include any of the following:

(i) An email service, if emails are the only user-generated content enabled by the service.

(ii) An SMS and MMS service, if SMS or MMS messages are the only user-generated content enabled by the service.

(iii) A service offering only one-to-one live aural communications.

(iv) An internal business service that is an internal resource or tool for a business or nonprofit organization in which the services is not available to children in the general public.

(v) A service, including a comment section on a digital news internet website or a consumer review of a product and service on an online commerce internet website, with functionalities that allow users to communicate only in any of the following ways:

(I) Posting comments or reviews relating to content produced and published by the provider of the service or by a person acting on behalf of the provider of the service.

(II) Sharing comments or reviews described in subclause (I) on a different internet service.

(III) Expressing a view on comments or reviews described in subclause (I), or on content mentioned in subparagraph (A), by means of any of the following:

(ia) Applying a "like" or "dislike" button or other button of that nature.

(ib) Applying an emoji or symbol of any kind.

(ic) Engaging in yes or no voting.

(id) Rating or scoring the content, or the comments or reviews, in any way.

(vi) An internet-based subscription streaming service offered to consumers for the exclusive purpose of transmitting licensed media, including audio or video files, in a continuous flow from the internet-based service to the end user.

(vii) A service that operates for the sole purpose of cloud storage or shared document or file collaboration.

(viii) A service that operates for the sole purpose of providing general or tailored internet search services.

(b) ~~An~~ *In accordance with Section 1714, an* operator of a social media platform has a duty not to addict child users. ~~A~~ *An operator of a* social media ~~platform's duty not to addict child users includes a duty not to addict child users by any platform shall be found to have violated their duty if the social media platform is found to have addicted a child user by either~~ of the following means:

(1) The use or sale of a child user's personal data.

~~(2) The child user's engagement in the platform's products or services, including through the use of notifications soliciting child users to access those products or services, or permissions or advertising related to those products or services.~~

~~(3)~~

(2) The development, design, implementation, or maintenance of a design, feature, or affordance.

(c) (1) A person authorized to assert the legal rights of a child user who suffers injury as a result of a violation of this section may bring an action against a violator to recover or obtain any of the following relief:

(A) (i) Actual damages.

(ii) In a class action, the amount of damages awarded pursuant to this subparagraph shall not be less than one thousand dollars (\$1,000) per member of the class.

(B) A civil penalty of up to twenty-five thousand dollars (\$25,000) per ~~violation per calendar year.~~ *violation.*

(C) Injunctive relief.

(D) Punitive damages.

(E) An award of litigation costs and no more than twice the amount of reasonable attorney's fees to a prevailing plaintiff.

(F) Any other relief that the court deems proper.

~~(2) In an action pursuant to this subdivision in which the plaintiff has shown, by a preponderance of the evidence, that the defendant addicted a child in violation of subdivision (b), the defendant shall have the burden of proving, by a preponderance of the evidence, that the extent of the injury or injuries alleged in the action were not, in whole or in part, caused or exacerbated by the defendant's violation.~~

~~(3)~~

~~(2)~~ (A) A knowing or willful violation of this section shall subject the violator to an additional civil penalty not to exceed two hundred fifty thousand dollars (\$250,000) per ~~violation per calendar year.~~ *violation.*

(B) A civil penalty pursuant to this paragraph shall not be treated as an offset against an award of damages caused by the same knowing or willful violation in an action pursuant to this subdivision.

~~(4)~~

~~(3)~~ (A) A social media platform that, before January 1, 2023, developed, designed, implemented, or maintained features that were known, or should have been known, by the platform to be addictive to child users shall be liable for all damages to child users that are, in whole or in part, caused by the platform's features, including, but not limited to, suicide, mental illness, eating disorders, emotional distress, and costs for medical care, including care provided by licensed mental health professionals.

(B) A social media platform shall not be held liable for a violation under this paragraph if, by April 1, 2023, the platform ceases development, design, implementation, or maintenance of features that were known, or should have been known, by the platform to be addictive to child users.

(d) An operator of a social media platform shall not be subject to a civil penalty pursuant to subdivision (c) ~~if, before engaging in a practice that led to that violation,~~ *if* the operator did both of the following:

(1) Instituted and maintained a program of at least quarterly audits of its practices, designs, features, and affordances to detect practices or features that have the potential to cause or contribute to the addiction of child users.

(2) Corrected, within 30 days of the completion of an audit described in paragraph (1), any practice, design, feature, or affordance discovered by the audit to present more than a de minimis risk of violating this section.

(e) The provisions of this section are cumulative to any other duties or obligations imposed under other law.

(f) This section shall not be construed to impose liability for a social media platform for content that is generated by a user of the service, or uploaded to or shared on the service by a user of the service, that may be encountered by another user, or other users, of the service.

(g) This section shall not be construed to negate or limit a cause of action that may have existed against an operator of a social media platform under the law as it existed before the effective date of this section.

(h) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

(i) A waiver of this section is unenforceable as void against public policy.

CALIFORNIA LEGISLATURE— 2021–2022 REGULAR SESSION

ASSEMBLY BILL

NO. 2273

**Introduced by Assembly Members ~~Wicks and Cunningham~~
*Wicks, Cunningham, and Petrie-Norris***

(Coauthors: Senators Allen and Newman)

February 16, 2022

An act to add Title 1.81.46 (*commencing with Section 1798.99.28*) to Part 4 of Division 3 of the Civil Code, relating to consumer privacy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2273, as amended, Wicks. The California Age-Appropriate Design Code Act.

(1) Existing law, the California Privacy Rights Act of 2020, approved by the voters as Proposition 24 at the November 3, 2020, statewide general election, establishes the California Privacy Protection Agency. Existing law vests the agency with full administrative power, authority, and jurisdiction to implement and enforce the California Consumer Privacy Act of 2018, and requires the agency to be governed by a board. Existing law requires businesses to protect consumer privacy and information, make certain disclosures to consumers regarding a consumer's rights under the act in a specified manner, and disclose to consumers that a consumer has the right to request specific pieces of information, including the categories of information those businesses have collected about that consumer.

Existing law, the Parent's Accountability and Child Protection Act, requires a person or business that conducts business in California and that seeks to sell specified products or services to take reasonable steps to ensure that the purchaser is of legal age at the time of purchase or delivery, including verifying the age of the purchaser. Existing law prohibits a person or business that is required to comply with these

provisions from retaining, using, or disclosing any information it receives in an effort to verify age from a purchaser or recipient for any *other* purpose, except as specified, and subjects a business or person that violates these provisions to a civil penalty.

Commencing

This bill would enact the California Age-Appropriate Design Code Act, which, commencing July 1, 2024, ~~this bill~~ would require a business that ~~creates goods, services, or product features~~ provides an online service, product, or feature likely to be accessed by ~~children~~ a child to comply with specified ~~standards, including considering the best interests of children likely to access that good, service, or product feature when designing, developing, and providing that good, service, or product feature,~~ requirements, including configuring all default privacy settings offered by the online service, product, or feature to the settings that offer a high level of privacy protection offered by the business, and providing privacy information, terms of service, policies, and community standards concisely, prominently, and using clear language suited to the age of children likely to access ~~that good, service, or product~~ that online service, product, or feature. The bill would prohibit a business that provides ~~a good, service, or product~~ an online service, product, or feature likely to be accessed by ~~children~~ a child from taking proscribed action, ~~such as collecting or using data it collects on consumers who are children,~~ including using the personal information of a child for any reason other than the reason or reasons for which the personal information was collected.

This bill would require the ~~agency~~ California Privacy Protection Agency to establish and convene the California Children’s Data Protection Taskforce to evaluate best practices for the implementation of these provisions, and to provide support to businesses, as specified. The bill would require the agency’s board to appoint the members of the taskforce by April 1, 2023, and would require those members to have certain expertise, including in the areas of privacy and children’s rights. The bill would require the taskforce to make prescribed recommendations on best practices, including identifying ~~goods, services, and product~~ online services, products, or features likely to be accessed by children. By April 1, 2024, the bill would require the agency, in consultation with the taskforce, to adopt ~~regulations and publish guidelines,~~ regulations, as necessary.

~~This bill would state the intent of the Legislature to subsequently create legislation to enforce this title.~~

(2) The California Privacy Rights Act of 2020 authorizes the Legislature to amend the act to further the purposes and intent of the act by a majority vote of both houses of the Legislature, as specified.

This bill would declare that its provisions further the purposes and intent of the California Privacy Rights Act of 2020.

DIGEST KEY

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

BILL TEXT

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. (a) The Legislature hereby finds and declares all of the following:

(1) The United Nations Convention on the Rights of the Child recognizes that children need special safeguards and care in all aspects of their lives.

(2) As children spend more of their time interacting with the ~~digital~~ *online* world, the impact of the design of ~~digital~~ *online* products and services on children's well-being has become a focus of significant concern.

(3) There is bipartisan agreement at the international level, in both the United States and in the State of California, that more needs to be done to create a safer online space for children to learn, explore, and play.

(4) Lawmakers around the globe have taken steps to enhance privacy protections for children on the understanding that, in relation to data protection, greater privacy necessarily means greater security and well-being.

(5) Children should be afforded protections not only by ~~digital~~ *online* products and services specifically directed at them, but by all ~~digital~~ *online* products and services they are likely to access.

(6) In 2019, 81 percent of voters said they wanted to prohibit companies from collecting personal information about children without parental consent, and a 2018 poll of Californian parents and teens found that only 36 percent of teenagers and 32 percent of parents say that social networking internet websites do a good job explaining what they do with users' data.

(7) While it is clear that the same data protection regime may not be appropriate for children of all ages, children of all ages should nonetheless be afforded privacy and protection, and ~~digital~~ *online* products and services should adopt data protection

regimes appropriate for children of the ages likely to access those products and services.

(8) Products and services that are likely to be accessed by children should offer ~~high~~ *strong* privacy protections by design and by ~~default.~~ *default, including by disabling features that profile children using their previous behavior, browsing history, or assumptions of their similarity to other children, to offer detrimental material.*

(9) Ensuring robust privacy protections for children by design is consistent with the intent of the Legislature in passing the California Consumer Privacy Act of 2018, and with the intent of the people of the State of California in passing the California Privacy Rights Act of 2020, which finds and declares that children are particularly vulnerable from a negotiating perspective with respect to their privacy rights.

(b) Therefore, it is the intent of the Legislature to promote privacy protections for children pursuant to the California Age-Appropriate Design Code Act.

~~SEC. 2. Title 1.81.46 (commencing with Section 1798.99.30) is added to Part 4 of Division 3 of the Civil Code, immediately following Title 1.81.45, to read:~~

SEC. 2. *Title 1.81.46 (commencing with Section 1798.99.28) is added to Part 4 of Division 3 of the Civil Code, to read:*

TITLE 1.81.46. The California Age-Appropriate Design Code Act

1798.99.28. This chapter shall be known, and may be cited, as the California Age-Appropriate Design Code Act.

1798.99.29. The Legislature declares that children should be afforded protections not only by online products and services specifically directed at them, but by all online products and services they are likely to access and makes the following findings:

(a) Companies that develop and provide online services, products, or features that children are likely to access should consider the best interests of children when designing, developing, and providing that service, product, or feature.

(b) If a conflict arises between commercial interests and the best interests of children, companies should prioritize the privacy, safety, and well-being of children over commercial interests.

1798.99.30. ~~For~~ *(a) For purposes of this title, the definitions in Section 1798.140 shall apply unless otherwise specified in this title.*

(b) For the purposes of this title, the following terms apply:

~~(a)~~

(1) "Agency" means the California Privacy Protection Agency, as established by the California Privacy Rights Act of 2020, approved by the voters as Proposition 24 at the November 3, 2020, statewide general election.

(b)

(2) "Board" means the agency's board, as established in Section 1798.199.10.

(c)

(3) "Child" or "children," unless otherwise specified, mean a consumer or consumers who is under 18 years of age.

~~(d) "Dark pattern" has the same meaning as defined in subdivision (l) of Section 1798.140.~~

(e)

(4) "Data Protection Impact Assessment" means a systematic survey to assess and mitigate risks to children who are *reasonably* likely to access the ~~good, service, or product~~ *service, product, or* feature at issue that arises from the provision of that ~~good, service, or product~~ *service, product, or* feature in accordance with specifications promulgated by the California Children's Data Protection Taskforce established pursuant to Section 1798.99.32.

(5) *"Default" means a preselected option adopted by the business for the online service, product, or feature.*

(f)

(6) "Likely to be accessed by a child" means it is reasonable to expect, based on ~~the known audience~~, the nature of the content, the associated marketing, ~~or~~ the online context, *or academic or internal research*, that the ~~good, service, or product~~ *feature is more likely than not to* ~~service, product, or feature would~~ be accessed by children.

~~(g) "Personal information" has the same meaning as defined in subdivision (v) of Section 1798.140.~~

~~(h) "Sensitive personal information" has the same meaning as defined in subdivision (ae) of Section 1798.140.~~

(i)

(7) "Taskforce" means the California Children's Data Protection Taskforce as established by Section 1798.99.32.

1798.99.31. (a) A business that provides ~~a good, service, or product~~ *an online service, product, or* feature likely to be accessed by a child shall comply with all of the following:

~~(1) Consider the best interests of children likely to access that good, service, or product feature when designing, developing, and providing that good, service, or~~

~~product feature, and, when in conflict with commercial interests, design, develop, and provide that good, service, or product feature in the manner that prioritizes the privacy, safety, and well-being of children.~~

~~(2)~~

~~(1) Undertake a Data Protection Impact Assessment for any good, service, or product online service, product, or feature likely to be accessed by a child and maintain documentation of this assessment as long as the good, service, or product online service, product, or feature is likely to be accessed by a child. A report of the assessment must be provided to the agency within 12 months of the implementation of this act and reviewed every 24 months or before any new features are offered to the public.~~

~~(3)~~

~~(2) Establish the age of consumers with a reasonable level of certainty appropriate to the risks that arise from the data management practices of the business, or apply the privacy and data protections afforded to children to all consumers.~~

~~(4) Maintain the highest level of privacy possible for children by default, including, but not limited to, disabling profiling, unless the business can demonstrate a compelling reason that a different default setting is in the best interests of children likely to access that good, service, or product feature.~~

~~(3) Configure all default privacy settings offered by the online service, product, or feature to the settings that offer a high level of privacy protection offered by the business.~~

~~(5)~~

~~(4) Provide any privacy information, terms of service, policies, and community standards concisely, prominently, and using clear language suited to the age of children likely to access that good, service, or product online service, product, or feature.~~

~~(6)~~

~~(5) If the good, service, or product online service, product, or feature allows the child's parent, guardian, or any other consumer to monitor the child's online activity or track their location, provide an obvious signal to the child when they are being monitored or tracked.~~

~~(7) Universally uphold~~

~~(6) Enforce published terms, policies, and community standards established by the business, including, but not limited to, privacy policies and those concerning children.~~

~~(8)~~

(7) Provide prominent, accessible, and responsive tools to help ~~children~~ *children, or where applicable their parent or guardian*, exercise their privacy rights and report concerns.

(b) A business that provides ~~a good, service, or product~~ *an online service, product, or* feature likely to be accessed by a child shall not take any of the following actions:

(1) Use the personal information of any child in a way that ~~is demonstrably harmful~~ *the business knows or has reason to know the online service, product, or feature more likely than not causes or contributes to a more than de minimis risk of harm* to the physical health, mental health, or well-being of a child.

(2) Profile a child by default.

~~(2) Collect and~~

(3) Collect, sell, share, or retain any personal information that is not necessary to provide ~~a good, service, or product~~ *a service, product, or* feature with which a child is actively and knowingly engaged.

~~(3)~~

(4) If a business does not have actual knowledge of the age of a consumer, it shall ~~neither collect nor~~ *not collect, share, sell, or* retain any personal information that is not necessary to provide a ~~good, service, or product~~ *service, product, or* feature with which a consumer is actively and knowingly engaged.

~~(4)~~

(5) Use the personal information of a child for any reason other than the reason or reasons for which that personal information was collected. If the business does not have actual knowledge of the age of the consumer, the business shall not use any personal information for any reason other than the reason or reasons for which that personal information was collected.

~~(5)~~

(6) Notwithstanding Section 1798.120, ~~disclose share or sell~~ the personal information of any child unless ~~the business can demonstrate a compelling reason that disclosure of that personal information is in the best interests of the child.~~ *the sharing or selling of that personal information is necessary to provide the online service, product, or feature as permitted by paragraphs (1) to (4), inclusive, of subdivision (a) of Section 1798.145.*

~~(6) Collect any precise geolocation information by default, unless the business can demonstrate a compelling reason that doing so would be in the best interests of the child.~~

(7) Collect, sell, or share any precise geolocation information of children by default unless the collection of that precise geolocation information is necessary to provide the service, product, or feature requested and then only for the limited time that the collection of precise geolocation information is necessary to provide the service, product, or feature.

~~(7)Collect~~

(8) Collect, sell, or share any precise geolocation information without providing an obvious sign to the ~~consumer~~ child for the duration of that collection that precise geolocation information is being collected.

~~(8)Collect any sensitive personal information by default, unless the business can demonstrate a compelling reason that the collection of sensitive personal information by default is in the best interests of a child.~~

*(9) Use dark patterns or other techniques to lead or encourage consumers to provide personal information beyond what is *reasonably expected for the service the child is accessing and* necessary to provide that ~~good, service, or product feature, service or product~~ to forego privacy protections, or to otherwise take any action that ~~is demonstrably harmful to the consumer's~~ *the business knows or has reason to know the online service or product more likely than not causes or contributes to a more than de minimis risk of harm to the child's* physical health, mental health, or well-being.*

(10) Use any personal information collected or processed to establish age or age range for any other purpose, or retain that personal information longer than necessary to establish age. Age assurance shall be proportionate to the risks and data practice of a service, product, or feature.

(c) This section shall become operative on July 1, 2024.

1798.99.32. (a) The agency shall establish and convene a taskforce, the California Children's Data Protection Taskforce, to evaluate best practices for the implementation of this title, and to provide support to businesses, with an emphasis on small and medium businesses, to comply with this title.

(b) By April 1, 2023, the board shall appoint members of the taskforce. Taskforce members shall consist of Californians with expertise in the areas of privacy, physical health, mental health, and well-being, technology, and children's rights.

(c) The taskforce shall make recommendations on best practices regarding, but not limited to, all of the following:

(1) Identifying ~~goods, services, and product~~ *online services, products, or* features likely to be accessed by children.

(2) Evaluating and prioritizing the best interests of children with respect to their privacy, health, and well-being, and issuing guidance to businesses on how ~~to incorporate those interests into~~ *those interests may be furthered by* the design, development, and implementation of ~~a good, service, or product~~ *an online service, product, or* feature.

~~(3) Determining the level of certainty with which it is necessary to establish the age of a consumer appropriate to the risks that arise from the data management practices of a business.~~

~~(4) Determining whether a reason is sufficiently compelling to warrant practices that are not consistent with the default setting, data collection, and data disclosure practices prescribed by this title.~~

(3) Ensuring that age verification methods used by businesses that provide online services, products, or features likely to be accessed by children are proportionate to the risks that arise from the data management practices of the business, privacy protective, and minimally invasive.

~~(5)~~

~~(4) Assessing and mitigating risks to children that arise from the use of~~ *a good, service, or product* *an online service, product, or* feature, including specific ~~items for the systematic survey necessary~~ *issues businesses must address* to perform a Data Protection Impact Assessment.

~~(6)~~

~~(5) Publishing privacy information, policies, and standards in concise, clear language suited for the age of children likely to access that~~ *good, service, or product feature.* *service or product.*

~~(d) By April 1, 2024, the agency, in consultation with the taskforce, shall adopt regulations and publish guidelines,~~ *regulations,* as necessary, to effectuate the purposes of this ~~title in a manner consistent, and to the extent possible, with international frameworks for the protection of the privacy and well-being of children.~~ *title.*

~~1798.99.33. It is the intent of the Legislature to create subsequent legislation to enforce this title.~~

SEC. 3. The Legislature finds and declares that this act furthers the purposes and intent of the California Privacy Rights Act of 2020.

