SENATE BILL NO. 20

INTRODUCED BY D. ZOLNIKOV

BY REQUEST OF THE ENERGY AND TECHNOLOGY INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: “AN ACT GENERALLY REVISING CONSUMER PROTECTION LAWS; ESTABLISHING DUTIES OF COVERED OPERATORS WHO OPERATE OR PROVIDE AN ADDICTIVE INTERNET-BASED SERVICE OR APPLICATION; PROHIBITING COVERED OPERATORS FROM PROVIDING CHILDREN UNDER 18 YEARS OF AGE WITH ADDICTIVE FEEDS ABSENT VERIFIABLE PARENTAL CONSENT; REQUIRING SEPARATE AND INFORMED VERIFIABLE PARENTAL CONSENT; PROVIDING PENALTIES; PROVIDING RULEMAKING AUTHORITY; PROVIDING DEFINITIONS; AND PROVIDING AN APPLICABILITY DATE.”

WHEREAS, social media use among minors is nearly universal, and a substantial portion of adolescents report using social media frequently throughout the day, such that the design of these services materially shapes how many young people spend significant amounts of their time; and

WHEREAS, many social media services present content to users through engagement-maximizing design features, including algorithmic recommendation systems, continuous or infinite scrolling, content that plays automatically, and the prominent display of quantified engagement metrics, which are designed to increase the frequency and duration of use; and

WHEREAS, these design features operate regardless of the particular content displayed and function to prolong use and to reduce a user's ability to disengage; and

WHEREAS, increased and compulsive use of social media has been associated, in peer-reviewed research and in advisories issued by the United States surgeon general and the American Psychological Association, with disruptions of sleep, attention, and in-person activity and with elevated symptoms of anxiety and depression among some adolescents; and

WHEREAS, adolescents are developmentally more sensitive to social feedback and less able to disengage from persuasive design than adults, so that features designed for adult users may present heightened risks when used by minors; and

WHEREAS, voluntary industry measures and existing parental controls have not proven sufficient to address the risks associated with engagement-maximizing design; and

WHEREAS, this act regulates the design and operation of addictive feeds and does not regulate, restrict, or compel the content, viewpoint, or subject matter of any speech and applies to the covered designed features regardless of the ideas or information conveyed; and

WHEREAS, frequent and unpredictable push notifications and alerts are designed to prompt minors to resume use of a service and are associated with disrupted sleep, diminished attention, and interruption of daily activities, therefore this act prohibits push notification delivery to covered minors.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 6] may be cited as the "Limiting Internet Network Exploitation Impacting Nonadults Through Harmful Engagement by Social Addictive Negative Designs Act".

NEW SECTION. **Section 2. Purpose.** (1) The purpose of [sections 1 through 6] is to:

(a) prohibit covered operators from providing children under 18 years of age with addictive feeds absent verifiable parental consent; and

(b) impose obligations on a covered operator whose addictive feed is a significant part of the operator's addictive internet-based service or application and not on an online service that provides a feed as an ancillary feature or add-on or a feed that users spend a relatively small portion of their time using while accessing the service.

(2) [Sections 1 through 6] do not prohibit minors from viewing nonaddictive feeds and any content available on social media platforms, such as feeds listed in chronological order, to ensure that children can still obtain all the core benefits of social media. [Sections 1 through 6] do not limit social media companies' ability to moderate in good faith to protect children from harmful or otherwise objectionable content.

NEW SECTION. **Section 3. Definitions.** As used in [sections 1 through 6], unless the context clearly

indicates otherwise, the following definitions apply:

(1) "Actual knowledge" means all information and inferences known to a covered operator relating to the age of a user, including but not limited to a self-identified age, an age signal received from an app store, and any age the covered operator has attributed to or associated with the user for any purpose, including but not limited to advertising, marketing, or product development purposes.

(2) (a) "Addictive feed" means any feature, interface, surface, or content display mechanism, regardless of the name or label applied to it by the operator, that automatically presents, loads, or sequences content to a user and that incorporates algorithmic recommendations, including but not limited to any process, automated system, or computational mechanism that recommends, ranks, prioritizes, filters, sequences, or selects content for presentation to a user, including content originating from accounts, sources, or creators the user has chosen to follow or subscribe to based, in whole or in part, on data collected from or about the user, whether linked to an account, a device, a session, or an inferred identity, on inferences generated about the user's interests, characteristics, behavior, or predicted responses, or on the user's past interactions with the content, the platform, or other users.

(b) The term includes the feature described in subsection (2)(a) alone or in combination with one or more of the following features:

(i) infinite scroll, including but not limited to any design feature that automatically loads, renders, or presents content beyond the content the user explicitly and specifically requested, searched for, or selected in the same session, including but not limited to endless scroll or any feature that eliminates or obscures a natural stopping point between discrete content items or pages;

(ii) content that plays automatically, including but not limited to any design feature in which audio or video media begins playing without a discrete, affirmative user action to initiate playback of that specific media item, including automatic advancement from one media item to the next, automatic looping of a single media item, and automatic initiation of playback when the page is loaded or when the page is scrolled into view; or

(iii) quantification of engagement, including but not limited to providing a visible count of how many likes, followers, comments, clicks, views, or reactions a user or a user-generated item has received.

(c) The term does not apply to a feature, interface, surface, or content display mechanism if its

content is presented to the user on one or more of the following conditions:

(i) the recommendation, prioritization, or selection of content is determined by user-selected preferences, privacy or accessibility settings, or technical characteristics of the user's device, including user survey responses or user ratings data;

(ii) the user has expressly and unambiguously requested:

(A) specific content;

(B) content from a specific author, creator, source, or group that the user has subscribed to or followed in which the presentation of that content is not further ranked, filtered, or sequenced by a process described in subsections (2)(a) and (2)(b); or

(C) results to a specific search query entered by the user in the same session;

(iii) the content is a part of a direct and private communication;

(iv) the content is the next item in a predetermined, fixed sequence established by the original author, creator, or source, and that sequence has not been altered by a process described in subsections (2)(a) and (2)(b);

(v) the recommendation, prioritization, filtering, selection, or suppression of content is used solely to protect the safety of a user, including preventing or reducing exposure to self-harm, suicide, eating disorders, sexual exploitation, grooming, harassment, bullying, or other unlawful or harmful content, and is not used to increase user engagement or time spent on the service; or

(vi) the recommendation, prioritization, or selection of content is necessary to comply with this section or any rules promulgated under [sections 1 through 6].

(3) (a) "Addictive internet-based service or application" means an internet website, online service, online application, game, or mobile application that offers or provides a user an addictive feed as a significant part of the service.

(b) The term does not include a telecommunications service as defined in 47 U.S.C. 153 or a broadband internet access service as defined in 47 CFR 8.1(b).

(4) "Age signal" means a representation of a user's age or age category that is transmitted to a covered operator by an app store, operating system, or device, including a representation transmitted through an application programming interface.

(5) "App store" means a publicly available website, software application, or other electronic service that distributes software applications from the owner or developer of a software application to the user of a device.

(6) "Covered minor" means a resident of this state who is under 18 years of age and who is a user of an addictive internet-based service or application whose covered operator has actual knowledge that the user is a minor.

(7) "Covered operator" means a person that operates or provides an addictive internet-based service or application.

(8) "Minor" means any individual under 18 years of age.

(9) "Parent" means a parent or legal guardian of a minor.

(10) "Person" means any individual, partnership, association, corporation, or other entity.

(11) "User" means an individual who uses an addictive internet-based service or application and who is not acting as a covered operator or as an agent or affiliate of a covered operator.

(12) "Verifiable parental consent" has the same meaning as provided in:

(a) the Children's Online Privacy Protection Act under 15 U.S.C. 6501(9) and as implemented through rules promulgated by the federal trade commission in 16 CFR, part 312, as amended; and

(b) any rules promulgated by the attorney general to identify methods of obtaining verifiable parental consent pursuant to [section 5].

NEW SECTION. **Section 4. Duties of covered operators -- separate and informed verifiable parental consent required.** (1) Subject to subsections (2) and (3) of this section, a covered operator may provide an addictive feed to a user if the covered operator:

(a) has actual knowledge that the user is not a minor;

(b) has obtained verifiable parental consent to provide an addictive feed to a covered minor; or

(c) has no actual knowledge of the age of the user.

(2) A covered operator shall, by default, suppress the delivery of push notifications and alerts concerning an addictive feed to a covered minor.

(3) A covered operator is not required to collect information to determine the age of a user under

subsection (1)(a).

(4) (a) If a covered operator collects information to determine the age of a user under subsection (1)(a), the covered operator may not use that information for any purpose other than to determine the age of the user. A covered operator shall delete any information collected to determine the age of the user under subsection (1)(a) immediately after an attempt to determine the age of the user, except if necessary to comply with applicable laws.

(b) A covered operator may rely on an age signal to determine whether a user is a covered minor. A covered operator is not liable under [sections 1 through 6] for a violation arising solely from the inaccuracy of an age signal it relied on in good faith. When an age signal, a self-declared age, or an age the covered operator has determined conflict, the covered operator shall use the youngest age.

(5) A covered operator may not use information that is collected to obtain verifiable parental consent under subsection (1)(b) for any purpose other than to obtain verifiable parental consent. A covered operator shall delete information collected to obtain verifiable parental consent under subsection (1)(b) immediately after an attempt to obtain verifiable parental consent, except if necessary to comply with any applicable laws.

(6) This section does not require a covered operator to give a parent who grants verifiable parental consent under subsection (1)(b) any additional or special access to or control over the data or accounts of the parent's child.

(7) Except when necessary to comply with [sections 1 through 6] or rules promulgated in accordance with [sections 1 through 6], a covered operator may not withhold, degrade, lower the quality, or increase the price of a product, service, or feature for a user because a user exercises the rights provided by [sections 1 through 6] or because of any restrictions provided by [sections 1 through 6].

(8) Verifiable parental consent under subsection (1)(b) does not waive, release, limit, or serve as a defense to a claim that a parent of a minor or a user who is a minor or was a minor at the time of using the addictive internet-based service or application might have against a covered operator regarding harm to the physical health or mental health of the minor.

(9) (a) Verifiable parental consent to provide an addictive feed to a covered minor must be obtained separately and specifically for that purpose. Consent to any of the following does not constitute

verifiable parental consent to provide an addictive feed:

(i) downloading, installing, or purchasing a software application;

(ii) making a purchase within a software application;

(iii) creating an account or registering as a user; or

(iv) accepting the terms of service or entering into any other contract.

(b) Before obtaining verifiable parental consent under subsection (1)(b), a covered operator shall clearly and conspicuously disclose to the parent in plain language and separately from any other term or disclosure:

(i) which of the features is incorporated in the addictive feed, as defined in [section 3];

(ii) that the covered minor may access and use the addictive internet-based service or application without an addictive feed; and

(iii) that verifiable parental consent may be withdrawn at any time and the method for withdrawing consent.

(c) A covered operator may not:

(i) bundle a request for verifiable parental consent under subsection (1)(b) with a request for any other consent, agreement, or acceptance of terms;

(ii) condition access to the addictive internet-based service or application, or to any material functionality of the service other than the addictive feed, on verifiable parental consent under subsection (1)(b);

(iii) present verifiable parental consent under subsection (1)(b) as preselected, prechecked, or accepted by default; or

(iv) present the option to grant verifiable parental consent with greater prominence than an option without consent.

(d) The method for withdrawing verifiable parental consent must be at least as easy to use as the method by which consent was given. Upon withdrawal of verifiable parental consent, a covered operator shall cease providing the addictive feed to the covered minor.

(10) Nothing in [sections 1 through 6] may be construed to conflict with the Children's Online Privacy Protection Act, 15 U.S.C. 6501 through 6506, or regulations promulgated under that act.

NEW SECTION. **Section 5. Enforcement -- penalty -- rulemaking.** (1) The attorney general has exclusive authority and may use the duties and powers provided by Title 30, chapter 14, parts 1 and 2, to enforce violations pursuant to [sections 1 through 6].

(2) The attorney general shall post on the attorney general's website:

(a) information relating to:

(i) the responsibilities of a covered operator pursuant to [sections 1 through 6]; and

(ii) a user's rights pursuant to [sections 1 through 6]; and

(b) an online mechanism through which a user may submit a complaint regarding a covered operator or an addictive internet-based service or application to the attorney general.

(3) If the attorney general has reasonable cause to believe that a person has engaged in or is engaging in a violation of [sections 1 through 6], the attorney general may issue a civil investigative demand pursuant to 30-14-113.

(4) On or before October 1, 2028, the attorney general shall promulgate rules to implement [sections 1 through 6]. No liability under [sections 1 through 6] may be enforced until the rules have been promulgated, including but not limited to rules establishing methods for obtaining verifiable parental consent pursuant to [section 4].

(5) Following a civil investigative demand, if a covered operator is found in violation of [sections 1 through 6], the attorney general may bring civil action seeking one or more of the following:

(a) a civil fine of not more than $5,000 for each violation. Each instance of conduct prohibited under this section constitutes a separate violation. When prohibited conduct affects more than one covered minor, each covered minor affected constitutes a separate violation.

(b) actual damages;

(c) injunctive or declaratory relief;

(d) destruction of information obtained in violation of [sections 1 through 6]; and

(e) any other relief that the court considers appropriate.

(6) The attorney general shall deposit a civil penalty collected under this section in a state special revenue account to the credit of the department of justice pursuant to 30-14-143.

NEW SECTION. **Section 6. Statute of limitations.** Actions brought by the attorney general to enforce [sections 1 through 6] are subject to the statute of limitations pursuant to 27-2-231.

NEW SECTION. **Section 7. Codification instruction.** [Sections 1 through 6] are intended to be codified as a new part in Title 30, chapter 14, and the provisions of Title 30, chapter 14, apply to [sections 1 through 6].

NEW SECTION. **Section 8. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 9. Applicability.** [This act] applies to the duties imposed by [section 4] beginning 9 months after rules promulgated by the attorney general under [section 5] become final.

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