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THIRD READING

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Bill No: AB 2273  
Author: Wicks (D), Cunningham (R) and Petrie-Norris (D), et al.  
Amended: 8/22/22 in Senate  
Vote: 21

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SENATE JUDICIARY COMMITTEE: 9-1, 6/28/22  
AYES: Umberg, Caballero, Cortese, Durazo, Hertzberg, McGuire, Stern,  
Wieckowski, Wiener  
NOES: Jones  
NO VOTE RECORDED: Borgeas

SENATE APPROPRIATIONS COMMITTEE: 5-0, 8/11/22  
AYES: Portantino, Bradford, Laird, McGuire, Wieckowski  
NO VOTE RECORDED: Bates, Jones

ASSEMBLY FLOOR: 72-0, 5/26/22 - See last page for vote

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**SUBJECT:** The California Age-Appropriate Design Code Act

**SOURCE:** 5Rights Foundation  
Common Sense

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**DIGEST:** This bill establishes the California Age-Appropriate Design Code Act, placing a series of obligations and restrictions on businesses that provide online services, products, or features likely to be accessed by children.

*Senate Floor Amendments* of 8/22/22 refine definitions within the bill, exempt a variety of online products and services, amend timelines, and expand the right to cure.

**ANALYSIS:**

Existing law:

- 1) Establishes the federal Children’s Online Privacy Protection Act (COPPA) to provide protections and regulations regarding the collection of personal information from children under the age of 13. (15 U.S.C. § 6501 et seq.)

- 2) Requires, pursuant to the Parent's Accountability and Child Protection Act, a person or business that seeks to sell a product or service in California that is illegal to sell to a minor to, notwithstanding any general term or condition, take reasonable steps, as specified, to ensure that the purchaser is of legal age at the time of purchase or delivery, including, but not limited to, verifying the age of the purchaser. (Civ. Code § 1798.99.1(a)(1).)
- 3) Establishes the Privacy Rights for California Minors in the Digital World (PRCMDW), which prohibits an operator of an internet website, online service, online application, or mobile application ("operator") from various activities, including knowingly using, disclosing, compiling, or allowing a third party to use, disclose, or compile, the personal information of a minor with actual knowledge that the use, disclosure, or compilation is for the purpose of marketing or advertising specified products or services to that minor, where the website, service, or application is directed to minors or there is actual knowledge that a minor is using the website, service, or application. (Bus. & Prof. Code § 22580.)
- 4) Establishes the California Consumer Privacy Act (CCPA), which grants consumers certain rights with regard to their personal information. (Civ. Code § 1798.100 et seq.) Establishes the California Privacy Rights Act of 2020 (CPRA), which amends the CCPA. (Civ. Code § 798.100 et seq.; Proposition 24 (2020).)
- 5) Prohibits a business from selling or sharing the personal information of consumers if the business has actual knowledge that the consumer is a minor under 16 years of age, unless the consumer has authorized the sale or sharing. A business that willfully disregards the consumer's age shall be deemed to have had actual knowledge of the consumer's age. (Civ. Code § 1798.120.)

This bill:

- 1) Requires a business that provides an online service, product, or feature likely to be accessed by children ("covered business") to take specified actions, including to:
  - a) undertake a Data Protection Impact Assessment for any online service, product, or feature likely to be accessed by children, as specified;
  - b) estimate the age of child users 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;
- c) 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 online service, product, or feature;
  - d) if the online service, product, or feature allows the child's parent, guardian, or any other consumer to monitor the child's online activity or track the child's location, provide an obvious signal to the child when the child is being monitored or tracked;
  - e) enforce published terms, policies, and community standards established by the business, including, but not limited to, privacy policies and those concerning children; and
  - f) provide prominent, accessible, and responsive tools to help children, or if applicable their parent or guardian, exercise their privacy rights and report concerns.
- 2) Provides that a covered business shall not engage in specified activity, including:
- a) using the personal information of any child in a way that the business knows or has reason to know is materially detrimental to the physical health, mental health, or well-being of a child;
  - b) profiling a child by default, except as specified;
  - c) collecting, selling, sharing, or retaining any personal information that is not necessary to provide an online service, product, or feature with which a child is actively and knowingly engaged, except as specified;
  - d) using the personal information of a child for any reason other than a reason for which that personal information was collected, except as specified;
  - e) collecting, selling, or sharing any precise geolocation information of children by default unless the collection of that precise geolocation information is strictly 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; and
  - f) collecting, selling, or sharing any precise geolocation information without providing an obvious sign to the child for the duration of that collection that precise geolocation information is being collected.
- 3) Exempts from the definition specified broadband internet access services, telecommunications services, and the delivery or use of a physical product.

- 4) Delays operative date of the above to July 1, 2024.
- 5) Establishes the Children’s Data Protection Working Group to report on the best practices for the implementation of the bill. The working group members are to be appointed as specified. The Attorney General may adopt regulations.
- 6) Provides for enforcement through civil actions brought by the Attorney General. The bill provides businesses in violation with a 90-day right to cure, as specified.

### **Comments**

The General Data Protection Regulation (GDPR) is a regulation in European Union law on data protection and privacy. The law that implemented the GDPR in the United Kingdom included an amendment that effectuated the requirement to offer children-specific protections and required the Information Commissioner to introduce an Age Appropriate Design Code to set standards that make online services’ use of children’s data “age appropriate”: “The Children’s code (or the Age appropriate design code) contains 15 standards that online services need to follow. This ensures they are complying with [their] obligations under data protection law to protect children’s data online.”

This bill, modeled after the Age Appropriate Design Code recently enacted in the United Kingdom, institutes a series of obligations and restrictions on businesses that provide an online service, product, or feature likely to be accessed by a child. The bill additionally establishes a working group to evaluate best practices for the implementation of the bill's provisions. The bill grants the Attorney General sole authority to bring enforcement actions and to adopt regulations.

According to the author, “While existing federal and state privacy laws offer important protections that guard children’s privacy, there is no coherent, comprehensive law that protects children under 18 from goods, services, and products that endanger their welfare. As a result, online goods, services, and products that are likely to be accessed by kids have been loaded with adult design principals that do not factor in the unique needs of young minds, abilities, and sensibilities, nor offer the highest privacy protections by design and by default. As a result, children under 18 face a number of adverse impacts due to their interactions with online world, including bullying, mental health challenges, and addictive behaviors.”

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee:

- DOJ: The Department of Justice (DOJ) reports costs of \$2.4 million in Fiscal Year (FY) 2024-25 and \$2.3 million in FY 2025-26 and annually thereafter (General Fund). The bill would also generate revenue to the DOJ in an unknown amount, resulting from penalty assessments of up to \$7,500 per affected child, to be deposited into the Consumer Privacy Fund with the intent they be used to offset costs incurred by the DOJ.
- CCPA: The CCPA reports total costs of \$1.05 million the first year, and \$752 thousand ongoing to convene the task force, issue and update regulations, and review Data Protection Impact Assessments (General Fund).
- Judicial Branch: Unknown cost pressures due to increased court workload (Special Fund – Trial Court Trust Fund, General Fund).

**SUPPORT:** (Verified 8/22/22)

5Rights Foundation (co-source)  
Common Sense (co-source)  
Attorney General Rob Bonta  
Accountable Tech  
ADL West  
Alcohol Justice  
American Academy of Pediatrics, California  
Avaaz  
California Federation of Teachers, AFL-CIO  
California Lawyers Association, Privacy Law Section  
California Public Interest Research Group  
Center for Countering Digital Hate  
Center for Digital Democracy  
Center for Humane Technology  
Children and Screens  
City of Berkeley  
Consumer Federation of America  
Consumer Federation of California  
Do Curious Inc.  
Eating Disorders Coalition  
Epic  
Fair Vote  
Fairplay  
Je Suis Lá

Joan Ganz Cooney Center - Sesame Workshop  
LiveMore ScreenLess  
Log Off  
Lookup  
Me2b Alliance  
National Hispanic Media Coalition  
NEDA  
Oakland Privacy  
Omidyar Network  
Outschool, Inc.  
Parents Together Action  
Protect Young Eyes  
Public Health Advocates  
Real Facebook Oversight Board  
Remind  
Reset Tech  
Roblox Corporation  
Smart Digital Kids  
Sum of Us  
Tech Oversight Project  
The Children's Partnership  
The Signals Network  
The Social Dilemma  
Tiramisu  
Ultraviolet  
Two individuals

**OPPOSITION:** (Verified 8/22/22)

California Chamber of Commerce  
California Manufacturing and Technology Association  
Entertainment Software Association  
MPA - the Association of Magazine Media  
TechNet

**ARGUMENTS IN SUPPORT:** One of the two individuals in support, Tim Kendall, the first Director of Monetization at Facebook, writes:

“I know from experience that tech workers want to innovate and design products differently to prioritize well-being over profit. But until the profit motive changes, design will be at the expense of our collective well-being, especially our kids’. To

change the incentives, we need our political leaders to act. And we need solutions that work.

The world's largest tech companies have already said that the Age Appropriate Design Code, law in the United Kingdom, is spurring positive change. Just last month, a senior Google official told the UK Parliament, "The Age Appropriate Design Code has helped us determine new ways to keep our users safe."

Wouldn't they want to ensure California kids, kids in the United States, are safe as well? By taking some very basic steps – like restricting the collection of kids' data, requiring high privacy settings by default, and providing young people clear resources to report abusive users or block unpleasant content – the State of California can protect the health and wellbeing of millions of young people in our state.

We need lawmakers to regulate in order to shift the incentive structure of the tech industry. Historically, the regulation and enforcement of laws has been a primary catalyst in spurring innovation in virtually every new technology this country has seen. There is no doubt that regulating safer children's experiences online will lead to all kinds of technological innovation.

The California Age Appropriate Design Code Act – already in practice in the UK – gives us the opportunity to usher in a new era of innovative product design that considers, rather than monetizes, the next generation."

**ARGUMENTS IN OPPOSITION:** A coalition of industry groups, including the Entertainment Software Association, argues:

"In order to ensure our companies are able to implement this bill effectively we suggest aligning the scope of AB 2273 with existing law and definitions, namely by changing "likely to be accessed by a child" to "directed to children". "Likely to be accessed by a child" is an overinclusive standard and would capture far more websites and platforms than necessary and subject them to this bill's requirements. It is also an unfamiliar standard that will present problems for companies trying to determine whether they are in the scope of the bill.

"Directed to children" on the other hand is a term and scope that online services are familiar with as it is defined in COPPA, which companies have been implementing and complying with since its passage over 20 years ago. Similarly,

we suggest aligning the definition of “child” with COPPA as a person under the age of 13.”

ASSEMBLY FLOOR: 72-0, 5/26/22

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Bigelow, Bloom, Boerner Horvath, Mia Bonta, Bryan, Calderon, Carrillo, Cervantes, Chen, Cooley, Cooper, Cunningham, Megan Dahle, Davies, Flora, Mike Fong, Fong, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gray, Grayson, Haney, Holden, Irwin, Jones-Sawyer, Kalra, Lackey, Lee, Levine, Low, Maienschein, Mathis, Mayes, McCarty, Medina, Mullin, Muratsuchi, Nazarian, Nguyen, Patterson, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Seyarto, Smith, Stone, Ting, Valladares, Villapudua, Voepel, Waldron, Ward, Akilah Weber, Wicks, Wilson, Wood, Rendon

NO VOTE RECORDED: Berman, Choi, Daly, Gipson, Kiley, O'Donnell

Prepared by: Christian Kurpiewski / JUD. / (916) 651-4113  
8/23/22 13:23:20

\*\*\*\* END \*\*\*\*