

GOVERNOR'S OFFICE DRAFT

4/25/2023

~~AN ACT BANNING TIKTOK IN MONTANA SOCIAL MEDIA APPLICATIONS THAT PROVIDE CERTAIN DATA TO FOREIGN ADVERSARIES; PROHIBITING A MOBILE APPLICATION STORE FROM OFFERING THE TIKTOK APPLICATION TO MONTANA USERS; PROVIDING FOR PENALTIES; PROVIDING FOR ENFORCEMENT AUTHORITY; PROVIDING DEFINITIONS; PROVIDING FOR CONTINGENT VOIDNESS; AND PROVIDING A DELAYED EFFECTIVE DATE.~~

~~WHEREAS, the People's Republic of China is an adversary foreign adversaries of the United States and Montana and has have an interest in gathering information about Montanans, Montana companies, and the intellectual property of social media users to engage in corporate and international espionage; and~~

~~WHEREAS, TikTok is a wholly owned subsidiary of ByteDance, a Chinese corporation; and~~

~~WHEREAS, the People's Republic of China exercises control and oversight over ByteDance, like other Chinese corporations, and can direct the company to share user information, including real-time physical locations of users; and~~

~~WHEREAS, TikTok gathers significant information from its users, accessing data against their will to share with the People's Republic of China; and~~

~~WHEREAS, TikTok fails to remove, and may even promote, dangerous content that directs minors to engage in dangerous activities, including but not limited to throwing objects at moving automobiles, taking excessive amounts of medication, lighting a mirror on fire and then attempting to extinguish it using only one's body parts, inducing unconsciousness through oxygen deprivation, cooking chicken in NyQuil, pouring hot wax on a user's face, attempting to break an unsuspecting passerby's skull by tripping him or her into landing face first into a hard surface, placing metal objects in electrical outlets, swerving cars at high rates of speed, smearing human feces on toddlers, licking doorknobs and toilet seats to place oneself at risk of contracting coronavirus, attempting to climb stacks of milk crates, shooting passersby with air rifles, loosening lug nuts on vehicles, and stealing utilities from public places; and~~

~~WHEREAS, TikTok's stealing a foreign adversary's collection and use of information and data from Montana social media users and its ability to share that data with the Chinese Communist Party unacceptably infringes on Montanans's constitutionally guaranteed individual right to privacy; and~~

~~WHEREAS, TikTok's continued operation in Montana serves as a valuable tool to the People's Republic of China to conduct corporate and international espionage in Montana and may allow the People's Republic of China to track the real-time locations of public officials, journalists, and other individuals adverse to the Chinese Communist Party's interests; and~~

~~WHEREAS, TikTok's allowance and promotion of dangerous challenges threatens the health and safety of Montanans.~~

WHEREAS, one of the government's chief responsibilities is keeping its citizens, including their sensitive data, safe and secure.

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

Section 1. Prohibition -- penalty -- enforcement -- definitions. (1) ~~TikTok~~ A social media application may not operate within the territorial jurisdiction of Montana. ~~An entity violates this prohibition when any of the following occurs within the territorial jurisdiction of Montana if the social media application allows:~~

(a) ~~the operation of tiktok by the company or users; or the collection of personal information or data; and~~

(b) ~~the option to download the tiktok mobile application by a mobile application store~~ the personal information or data to be provided to a foreign adversary or a person or entity located within a country designated as a foreign adversary.

(2) ~~An entity~~ A social media application that violates a provision of this section is liable in the amount of \$10,000 for each discrete violation and is liable for an additional \$10,000 each day thereafter that ~~the~~ each discrete violation continues.

(3) It is an affirmative defense to this section if the violating ~~entity~~ social media application could not have reasonably known that the violation occurred within the territorial jurisdiction of Montana.

(4) Penalties under this section do not apply ~~to law enforcement activities, national security interests and activities, security research activities, or essential government uses permitted by the governor on the information technology system of the state~~ where the government is performing essential functions as authorized under Montana law.

(5) Penalties in this section do not apply to users of ~~tiktok~~ a social media application subject to [Section 1].

(6) The department of justice shall enforce the provisions of this section.

(7) As used in this section, the following definitions apply:

(a) ~~"Discrete violation" means each time that a user accesses tiktok, is offered the ability to access tiktok, or is offered the ability to download tiktok~~ personal information or data is provided to or accessed by a foreign adversary.

(b) "Foreign adversary" means a foreign government or a foreign nongovernment person as determined by the federal secretary of commerce and as defined in 47 U.S.C. 1607(c)(2) and 15 CFR 7.4(a). The term includes an entity:

(i) that is directly or indirectly owned or controlled by a foreign adversary;

(ii) for which a majority of the ownership interest is directly or indirectly owned or controlled by an individual who is a citizen of a foreign adversary;

(iii) for which a majority of the ownership is directly or indirectly owned or controlled by an entity described in (7)(b)(i) or 7(b)(ii); or

(iv) that is organized under the laws of a foreign adversary.

~~(b) "Entity" means a mobile application store or tiktok.~~

(c) "Social media application" means a person or entity that owns or operates an internet-based electronic application through which content can be shared by users, including but not limited to commentary, videos, still photographs, blogs, video blogs, podcasts, and music. The term does not include internet service providers.

~~(c) "Mobile application" means a type of software program designed to run on a mobile device.~~

(d) "Territorial jurisdiction" means all places or persons within Montana subject to the criminal jurisdiction of Montana.

~~(e) "Tiktok" means the social networking service owned by the Chinese company bytedance limited or any successors.~~

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 30, chapter 14, and the provisions of Title 30, chapter 14, applies to [section 1].

Section 3. Severability. Each part of [this act] is severable. If any part of [this act] is invalid, illegal, or unenforceable, all valid parts remain in effect. If a part of [this act] is invalid in one or more of its applications, only those applications may be void and the remaining valid applications remain in effect as severable from the invalid applications and parts.

Section 4. Contingent voidness. ~~[This act] is void if tiktok is acquired by or sold to a company that is not incorporated in any other country designated as a foreign adversary in 15 C.F.R. 7.4 at the time tiktok is sold or acquired.~~

Section 5. Effective date. [This act] is effective January 1, 2024.

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