

Date of Hearing: April 23, 2019

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Ed Chau, Chair

AB 1138 (Gallagher) – As Amended April 12, 2019

SUBJECT: Social media: the Parent’s Accountability and Child Protection Act

SUMMARY: This bill would, among other things, prohibit a person or business that conducts business in California, and that operates a social media website or application, from allowing a person under 16 years of age to create an account with the website or application unless the website or application obtains the consent of the person’s parent or guardian before creating the account. Specifically, **this bill would:**

- 1) Prohibit a person or business that conducts business in California, and that operates a social media website or application, from allowing a person under 16 years of age to create an account with the website or application unless the website or application obtains the consent of the person’s parent or guardian before creating the account.
- 2) Require the Department of Justice (DOJ), by January 1, 2020, to establish guidelines specifying the means by which a social media website or application is required to obtain consent from a parent or guardian before the creation of an account by a person under 16 years of age.
- 3) Define “social media” to mean an electronic service or account held open to the general public to post, in either a public or semi-public page dedicated to a particular user, electronic content or communication, including, but not limited to, videos, still photographs, or messages, intended to facilitate the sharing of information, ideas, personal messages, and other content. Social media does not include the public or semipublic page of a person, where any posted electronic content or communication may be reasonably attributed to the person to whom that page belongs or is assigned.

EXISTING LAW:

- 1) Provides that, among other rights, all people have an inalienable right to pursue and obtain privacy. (Cal. Const., art. I, Sec. 1.)
- 2) Requires, pursuant to the federal Children’s Online Privacy Protection Act (COPPA), that an operator of an internet website or online service directed to a child, as defined, or an operator of an internet website or online service that has actual knowledge that it is collecting personal information from a child to provide notice of what information is being collected and how that information is being used, and to give the parents of the child the opportunity to refuse to permit the operator’s further collection of information from the child. (15 U.S.C. Sec. 6502.)
- 3) Prohibits, pursuant to the Privacy Rights for Minors in the Digital World, the operator of an internet website, online service, online application, or mobile application from:
 - marketing or advertising a product or service to a minor, if the minor cannot legally purchase the product or participate in the service in the State of California; or

- using, disclosing, or compiling, or knowingly allowing a third party to use, disclose, or compile, the personal information of a minor for the purpose of marketing goods or services that minors cannot legally purchase or engage in in the State of California. (Bus. & Prof. Code Sec. 22580.)
- 4) Requires an operator of an internet website, online service, online application, or mobile application to do all of the following:
- permit a minor who is a user of the operator's internet website, service, or application to remove content or information submitted to or posted on the operator's website, service or application by the user;
 - provide notice to a minor who is the user of the operator's internet website, service, or application that the minor may remove content or information submitted to or posted on the operator's website, service, or application by the user; and,
 - provide notice to a minor who is the user of the operator's internet website, service, or application that the removal described above does not ensure complete or comprehensive removal of the content or information. (Bus. & Prof. Code Sec. 22581.)
- 5) Establishes the California Consumer Privacy Act of 2018 (CCPA) and provides various rights to consumers pursuant to the act. Subject to various general exemptions, a consumer has, among other things:
- the right to know what PI a business collects about consumers, as specified, including the categories of third parties with whom the business shares PI;
 - the right to know what PI a business sells about consumers, as specified, including the categories of PI that the business sold about the consumer and the categories of third parties to whom the PI was sold, by category or categories of PI for each third party to whom the PI was sold;
 - the right to access the specific pieces of information a business has collected about the consumer;
 - the right to delete information that a business has collected from the consumer;
 - the right to opt-out of the sale of the consumer's PI if over 16 years of age, and the right to opt-in if the consumer is a minor (as exercised by the parent if the minor is under 13, or as exercised by the minor if the minor is between ages 13 and 16); and, the right to equal service and price, despite exercising any of these rights. (Civ. Code Sec. 1798.100 et seq.)
- 6) Authorizes, subject to certain exceptions, a minor to make a contract in the same manner as an adult, subject to disaffirmance. (Fam. Code Sec. 6700.)
- 7) Provides that a contract entered into by a minor may not be disaffirmed if all of the following are satisfied:

- The contract is to pay the reasonable value of things necessary for the support of the minor or the minor's family.
- These things have been actually furnished to the minor or to the minor's family.
- The contract is entered into by the minor when not under the care of a parent or guardian able to provide for the minor or the minor's family. (Fam. Code Sec. 6712.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Purpose of this bill:** This bill seeks to ensure that children are protected from dangerous online predators, this bill would require social media websites and applications to obtain parental consent before allowing a minor under 16 years of age to create an account. This is an author-sponsored bill.

2) **Author's statement:** According to the author:

Currently, many social media sites do not have age requirements to use their platforms. When minors create accounts without their parent's knowledge, those parents do not have the opportunity to discuss how to safely use these media sites. While many people recognize the potential employment issues facing people who use social media inappropriately, social media can also be used by various groups and individuals to target minors. Groups ranging from extremist organizations to child-predators have been found on social media sites, such as Facebook, luring minors into their folds.

According to a 2013 report published by the New England Journal of Public Policy, "25% of the sex crimes committed against minors and reported to police involve statutory rape. Online relationships accounted for about 7% of arrests for statutory rape in 2000, and arrests of online predators in 2006 accounted for about 1% of all arrests for sex crimes committed against children and youths." (Wolak, Janis; Evans, Lindsey; Nguyen, Stephanie; and Hines, Denise A. (2013) "Online Predators: Myth versus Reality," New England Journal of Public Policy: Vol. 25: Iss. 1, Article 6.))

Further, according to a study published by the Journal of Strategic Security, "People living in the U.S. and other Western countries, where the Internet is available to the entire population, are more likely to be recruited and radicalized via the Internet. Al-Qaida focuses its attention on recruiting young people from the West to help them transport materials, act as suicide bombers, or do what they can for the cause. Some overseas terrorist websites cater to children by using cartoons and entertaining media to transmit their terrorist ideology. Al-Qaida's efforts to recruit and radicalize Westerners are evident in their online magazine, Inspire, intended for young men in English-speaking countries to self-radicalize and become one of the multitudes of homegrown terrorists who will carry out attacks against the West, especially in the United States." (Journal of Strategic Security (c) 2011 ISSN: 1944-0464 eISSN: 1944-0472)

These studies demonstrate that the subversion of social media sites for unseemly gains is present, and that minors are being targeted. AB 1138 is one way in which we can empower parents and help prevent minors from falling victim.

- 3) **Social media presents both benefits and risks for children:** This bill seeks to further protect children from dangerous individuals and predators online by requiring parental consent before an online social media account may be created for a child under the age of 16. The author cites two studies in support of this bill. One study which details how extremist groups use social media websites to recruit and communicate with children and another which discusses sexual predators and internet-initiated sex crimes. (*See Comment 2, above.*) While it is not disputed that social media websites and applications can be used for such nefarious purposes, it must also be recognized that the social media has benefits as well. As noted by an article summarizing recent research on the effects of social media on minors conducted by the Laureate Institute for Brain Research in Tulsa, Oklahoma:

“The most important thing is that not all screen media is bad if you want to put it in a nutshell,” said lead author Dr. Martin Paulus. “There's a lot of pre-existing biases that if we expose kids to media, something terrible is going to happen. What we show is that's not the case.”

Paulus and his team analyzed data on 4,500 young participants which included how much time they spent in front of screens, what types of media they were exposed to, and details about their health and family life.

Among children aged 9 and 10, those who texted and used social media were associated with higher levels of physical activity, lesser family conflict, and fewer sleep problems. On the flip side, children who used more of all general media (internet, television, video games) were associated with negative effects such as family conflict and disturbed sleep.

One possible explanation, Paulus said, was the amplified power of communication granted by social media. (Bharanidharan, *Can Social Media Have Health Benefits For Children?* Medical Daily (Jun. 20, 2018).)

Similarly, Common Sense Media encourages parents to discover the ways social a force for good in the lives of kids and teens. Common Sense argues that social media helps kids engage in social justice, strengthens friendships, offers a sense of belonging, and helps them express themselves. “From sexting to cyberbullying to [fear of missing out], social media sure has its share of negatives. But, if it's all bad, how did 2,000 students protest their school system's budget cuts? How are teens leading the charge against cyberbullying? How did they organize a national school walkout day to protest gun laws? Easy: savvy use of social media. For a few years now, many teens have been saying that social media - despite its flaws - is mostly positive. And new research is shedding light on the good things that can happen when kids connect, share, and learn online. As kids begin to use tools such as Instagram, Snapchat, Twitter, and even YouTube in earnest, they're learning the responsibility that comes with the power to broadcast to the world. You can help nurture the positive aspects by accepting how important social media is for kids and helping them find ways for it to add real value to their lives.” (Knorr, *5 Reasons You Don't Need to Worry About Kids and Social Media* (Mar. 14, 2018) Common Sense Media <[https://www. commonsense media.org/blog/5-reasons-you-dont-need-to-worry-about-kids-and-social-media](https://www.common sense media.org/blog/5-reasons-you-dont-need-to-worry-about-kids-and-social-media)> [as of Apr. 8, 2019].)

Indeed, one article provided by the author as justification for this bill purports that media reports of sexual predators online are overstated.

As early as 2011, the American Academy of Pediatrics (AAP) has been seeking to educate parents on the benefits of social media, and how parents can help their children navigate the world online.

Social media sites allow teens to accomplish online many of the tasks that are important to them offline: staying connected with friends and family, making new friends, sharing pictures, and exchanging ideas. Social media participation also can offer adolescents deeper benefits that extend into their view of self, community[.] [...]

Many parents today use technology incredibly well and feel comfortable and capable with the programs and online venues that their children and adolescents are using. Nevertheless, some parents may find it difficult to relate to their digitally savvy youngsters online for several reasons. Such parents may lack a basic understanding of these new forms of socialization, which are integral to their children's lives. They frequently do not have the technical abilities or time needed to keep pace with their children in the ever-changing Internet landscape. In addition, these parents often lack a basic understanding that kids' online lives are an extension of their offline lives. The end result is often a knowledge and technical skill gap between parents and youth, which creates a disconnect in how these parents and youth participate in the online world together. (O'Keeffe and Clarke-Pearson, *The Impact of Social Media on Children, Adolescents, and Families* AAP (Mar. 28, 2011).)

The Consumer Attorneys of California write in support:

According to a study published by the University of Leeds, over-engaging on internet websites that "serve to replace normal social function may be linked to psychological disorders like depression and addiction." As social media use increases amongst minors, the vast majority of minors (90%) recognize that online harassment is a problem that affects people their age, and recent polling finds that 59% of minors, as defined, have personally experienced abusive online behaviors.

By ensuring that parents have the opportunity to discuss the potential dangers of social media, AB 1138 will help proactively inform minors about safe social media use.

- 4) **Federal and state law protect minors' information online, but distinguish between children under 13 years of age and those over 13 years of age:** Enacted in 1998, the federal Child's Online Privacy Protection Act of 1998 (COPPA), requires the Federal Trade Commission (FTC) to issue and enforce a rule (the Rule) concerning children's online privacy. The FTC notes that:

The primary goal of COPPA and the Rule is to place parents in control over what information is collected from their young children online. The Rule was designed to protect children under age 13 while accounting for the dynamic nature of the internet. The Rule applies to operators of commercial websites and online services directed to children under 13 that collect, use, or disclose personal information from children, and operators of general audience websites or online services with actual knowledge that they are collecting, using, or disclosing personal information from children under 13. (FTC, *Frequently Asked Questions about the Children's Online Privacy Protection Rule* <<http://www.ftc.gov/privacy/coppafaqs.shtm>> [as of Apr. 6, 2019].)

On December 19, 2012, the FTC announced final amendments to the COPPA rule in order to strengthen privacy protections for children and to give parents greater control over personal information that online services may collect from children. The New York Times' December 19, 2012, article entitled "New Online Privacy Rules for Children" reported:

In an era of widespread photo sharing, video chatting and location-based apps, the revised children's privacy rule makes clear that companies must obtain parental consent before collecting certain details that could be used to identify, contact or locate a child. These include photos, video and audio as well as the location of a child's mobile device.

While the new rule strengthens such safeguards, it could also disrupt online advertising. Websites and online advertising networks often use persistent identification systems — like a cookie in a person's browser, the unique serial number on a mobile phone, or the I.P. address of a computer — to collect information about a user's online activities and tailor ads for that person.

The new rule expands the definition of personal information to include persistent IDs if they are used to show a child behavior-based ads. It also requires third parties like ad networks and social networks that know they are operating on children's sites to notify and obtain consent from parents before collecting such personal information. And it makes children's sites responsible for notifying parents about data collection by third parties integrated into their services. (Singer, *New Online Privacy Rules for Children*, The New York Times (Dec. 19, 2012) <<https://www.nytimes.com/2012/12/20/technology/ftc-broadens-rules-for-online-privacy-of-children.html>> [as of Apr. 6, 2019].)

In an effort to further protect minors online, the Legislature subsequently passed SB 568 (Steinberg, Ch. 336, Stats. 2013), known as Privacy Rights for California Minors in the Digital World, which prohibits the operator of an internet website or other online service or mobile application from marketing or advertising a product or service to a minor if the minor cannot legally purchase the product or participate in the service in California, or, compiling personal information (PI) to market those products or services. That law also permits a minor to remove content or information posted to a website or service, as specified.

SB 568 was opposed by the Center for Democracy and Technology who took issue with the bill's limitation that a website must be *directed* to minors for the provisions of the bill to apply. SB 568, now codified beginning at Business and Professions Code Section 22580, provides that a site or service is "directed to minors" if it is "created for the purpose of reaching an audience that is *predominantly* composed of minors, and is not intended for a more general audience comprised of adults." (Emphasis added.) The definition adds that a site or service would not be deemed to be "directed at minors" merely because it contained links to sites or services that were directed to minors.

Further protecting the rights of minors, last year the Legislature enacted the CCPA which provides various rights to consumers related to the sale of their PI, as defined. Relevant to this bill, the CCPA prohibits any business, as defined, from selling the PI of minors 16 years of age and under, without the prior opt-in consent to the sale of the information. For minors between the ages of 13 and 16, the minor can opt-in to the sale of their information on their

own. For minors under 13, only the parent can opt-in to the sale of the minor's information. (Civ. Code Sec. 1798.120.)

While there are various definitions of "social media" found in existing law, arguably none are a good fit for this particular legislation. As amended on April, 11, 2019, this bill would define "social media" to mean an electronic service or account held open to the general public to post, in either a public or semi-public page dedicated to a particular user, electronic content or communication, including, but not limited to, videos, still photographs, or messages, intended to facilitate the sharing of information, ideas, personal messages, and other content. This definition is identical to one provided in AB 1316, another bill by the same author, also in this Committee.

This definition is arguably more appropriate than definitions of "social media" found elsewhere in law, in that it is not broad enough to capture routine communications (such as texts), or websites that require an account but are not held open to the general public, like a child's "mychart" account, where medical information is stored and accessed. That being said, this bill is arguably broader than both COPPA and SB 568 in that it would apply to *any* social media website, not just those directed at children. On the one hand, to the extent that the bill offers children additional protection, such a broad application may be a beneficial addition to existing law. On the other hand, to the extent that this bill would interfere with other rights afforded to minors, as discussed more below, the author may wish to consider narrowing the bill to appropriately balance competing interests and rights.

Equality California, writing in opposition to this bill, argues:

For many LGBTQ youth, online resources can serve as a lifeline. Although parental consent can be used to protect teens, many parents who do not support their child's LGBTQ status could use this discretion against them, hindering their children from accessing vital resources online.

Requiring parental consent for use of online services is particularly problematic in the cases of LGBTQ youth who live in abusive or unsupportive environments and seek peer support and counseling services online. [...] Protecting user privacy and confidentiality can be fundamental for the mental health and well-being of LGBTQ youth who are not in stable and supportive households. For these youth, a safe and healthy environment often depends on privacy and access to community resources.

Staff further notes that requiring parental consent before a minor, 16 years of age and younger, can create a social media account will not necessarily ensure that parents have conversations with children about how to protect themselves from predators online. Requiring parental consent before minors can establish social media accounts will also not limit or otherwise target the number of predators online. Additionally, given the benefits that social media can offer to minors, requiring social media companies to obtain parental consent may have the unintended consequence of denying the benefits of social media to minors, especially teenagers who have certain rights related to speech and the ability to contract, among others. The following amendment would require social media companies to obtain parental consent prior to creating an account for a minor under 13 years, which is consistent both with COPPA and the CCPA. This should help ensure that parents have a better opportunity to give young children more supervision if they are engaging on social media,

while also recognizing the stages by which minors are able to exercise their rights as they approach adulthood.

Suggested amendment:

Change the operative age of the bill from “a person under 16 years of age” to “a person under 13 years of age.”

- 5) **Amendment would ensure that social media companies have time to implement guidance established by the DOJ:** As recently amended, this bill would require the DOJ to establish guidelines by January 1, 2021, specifying the means by which a social media website or application is required to obtain consent from a parent prior to creating a social media account for a minor. As drafted, the bill would require social media companies to comply with the provisions of the bill *before* the DOJ has established the relevant guidelines. As a practical matter, this would create uncertainty for social media companies and could subject some to liability, despite taking steps to honor the spirit of the law. The following amendment would instead require social media companies to comply with the provisions of the bill by July 1, 2021, thereby giving them six months to implement the guidelines established by the DOJ.

Author’s amendment:

Require compliance by social media companies with the provisions of the bill on or after July 1, 2021.

Last year this Committee heard AB 2511 (Chau, Ch. 872, Stats. 2018) which similarly dealt with minors’ internet use and sought to require parental consent prior to social media companies being able to use minors’ information or content, as specified. As noted by the opposition (a coalition of organizations, including the California Chamber of Commerce, TechNet, CompTIA, and the Internet Association, and the Personal Insurance Federation of California) to AB 2511, requiring parental consent could ultimately “require a website to collect and validate detailed personal information about teen users and their parents. Accurately confirming specific individuals online requires significant resources and would require gathering more granular information on users, which can run counter to overall privacy online.”

Additionally, staff notes that, among other rights, minors have the right to contract. With regard to contracts, minors generally can engage in contracts the same way that adults can, but can disaffirm those contracts for specified reasons. As a practical matter, this means that while minors can enforce contracts against others, they can also unwind them if enforcing that contract would be unfair or unconscionable to the minor. (*See, e.g., Fam. Code Secs. 6700 and 6712.*) To the extent that this bill would make contracts that apply to minors more readily enforceable (because a *parent* actually consented to a social media website’s terms and conditions when they approved the creation of the child’s account), the current version of this bill may have the unintended consequence of being less protective than existing law. (*See discussion of COPPA in Comment 4, above.*)

It should also be noted that, as a general matter, rights do not exist in a vacuum. The constitutional rights of minors have to be balanced with the fundamental rights of parents to

direct the education and upbringing of their children, and to protect their children's right to privacy. Given these respective rights of children and parents, and the potential privacy concerns raised by authentication and verification requirements, noted above, requiring guidance from the DOJ should help ensure that all the competing rights of children, parents, and business alike are carefully balanced against the technology available to achieve the requirements set forth by this bill.

- 6) **Related legislation:** AB 1665 (Chau) would prohibit a person or business that operates an internet website or application that seeks to use a minor's name, picture, or any information about the minor on a social media internet website, or application, as specified, from doing so without obtaining prior parental consent.
- 7) **Prior legislation:** AB 2511 (Chau, Ch. 872, Stats. 2018) required a person or business who seeks to sell certain products or services that are illegal to sell to a minor under state law, take reasonable steps 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.

SB 568 (Steinberg, Ch. 336, Stats. 2013) *See* Comment 4.

REGISTERED SUPPORT / OPPOSITION:

Support

Consumer Attorneys of California

Opposition

Equality California

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