Committee/Subcommittee hearing bill:  Regulatory Reform & Economic Development Subcommittee
Representative McFarland offered the following:

Amendment (with title amendment)
Between lines 1025 and 1026, insert:
Section 4. Section 501.1735, Florida Statutes, is created to read:
501.1735 Protection of Children in Online Spaces.—
(1) DEFINITIONS.— As used in this section, the term:
(a) "Child" or "Children" means a consumer or consumers who are under 18 years of age.
(b) "Dark pattern" means a user interface designed or manipulated with the substantial effect of subverting or impairing user autonomy, decision-making or choice and includes,
but is not limited to, any practice the Federal Trade Commission refers to as a "dark pattern."

(c) "Online platform" includes social media platforms as defined in s. 112.23 and online gaming platforms.

(d) "Personal information" means the same as in s. 501.173.

(e) "Profile" or "profiling" means any form of automated processing performed on personal information to evaluate, analyze or predict personal aspects related to a child’s economic situation, health, personal preferences, interests, reliability, behavior, location or movements.

(f) "Precise geolocation data" means the same as in s. 501.173.

(g) "Substantial harm or privacy risk to children" means the processing of personal information in a manner that may result in any reasonably foreseeable substantial physical injury, economic injury, or offensive intrusion into the privacy expectations of a reasonable child under the circumstances, including:

1. Mental health disorders or associated behaviors, including the promotion or exacerbation of self-harm, suicide, eating disorders, and substance use disorders;

2. Patterns of use that indicate or encourage addiction-like behaviors;

3. Physical violence, online bullying, and harassment;
4. Sexual exploitation, including enticement, sex trafficking, and sexual abuse and trafficking of online sexual abuse material;

5. Promotion and marketing of narcotic drugs (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), tobacco products, gambling, or alcohol; and

6. Predatory, unfair, or deceptive marketing practices, or other financial harms.

(2) An online platform that provides an online service, product, game, or feature likely to be predominantly accessed by children may not:

(a) Process the personal information of any child if the online platform has actual knowledge or willfully disregards that the processing may result in substantial harm or privacy risk to children.

(b) Profile a child unless both of the following criteria are met:

1. The online platform can demonstrate it has appropriate safeguards in place to protect children.

2. Either of the following is true:

   a. Profiling is necessary to provide the online service, product, or feature requested and only with respect to the aspects of the online service, product, or feature with which the child is actively and knowingly engaged.
b. The online platform can demonstrate a compelling reason that profiling does not pose a substantial harm or privacy risk to children.

(c) Collect, sell, share, or retain any personal information that is not necessary to provide an online service, product, or feature with which a child is actively and knowingly engaged, or as described below, unless the online platform can demonstrate a compelling reason that the collecting, selling, sharing, or retaining of the personal information does not pose a substantial harm or privacy risk to children likely to routinely access the online service, product, or feature.

(d) Use personal information of a child for any reason other than a reason for which that personal information was collected, unless the online platform can demonstrate a compelling reason that use of the personal information does not pose a substantial harm or privacy risk to children.

(e) Collect, sell, or share any precise geolocation data of children unless the collection of that precise geolocation data is strictly necessary for the online platform to provide the service, product, or feature requested and then only for the limited time that the collection of precise geolocation data is necessary to provide the service, product, or feature.

(f) Collect any precise geolocation data of a child without providing an obvious sign to the child for the duration
of that collection that precise geolocation data is being collected.

(g) Use dark patterns to lead or encourage children to provide personal information beyond what is reasonably expected to provide that online service, product, game, or feature, to forego privacy protections, or to take any action that the online platform has actual knowledge or willfully disregards may result in substantial harm or privacy risk to children.

(h) Use any personal information collected to estimate age or age range for any other purpose or retain that personal information longer than necessary to estimate age. Such age estimate shall be proportionate to the risks and data practice of an online service, product, or feature.

(3) If an online platform processes personal information pursuant to this section, the online platform bears the burden of demonstrating that such processing is not in violation of this section.

(4) An online platform that violates subsection (2) is subject to enforcement actions in s. 501.173, and such enforcement actions are the exclusive remedy. This section does not establish a private cause of action.

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T I T L E  A M E N D M E N T

Between lines 73 and 74, insert:
Amendment No. 3

creates s. 501.1735, F.S.; providing operating requirements for
certain online platforms who are likely to be predominantly
accessed by children; providing enforcement;