

Amendment No.

CHAMBER ACTION

Senate

House

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Representative McFarland offered the following:

Amendment (with title amendment)

Remove lines 147-189 and insert:

Section 1. Effective July 1, 2023, section 112.23, Florida Statutes, is created to read:

112.23 Government-directed content moderation of social media platforms prohibited.-

(1) As used in this section, the term:

(a) "Governmental entity" means any officer or employee of a state, county, district, authority, municipality, department, agency, division, board, bureau, commission, or other separate unit of government created or established by law, and includes

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14 any other public or private entity acting on behalf of such
15 governmental entity.

16 (b) "Social media platform" means a form of electronic
17 communication through which users create online communities or
18 groups to share information, ideas, personal messages, and other
19 content.

20 (2) A governmental entity may not communicate with a
21 social media platform to request that it remove content or
22 accounts from the social media platform.

23 (3) A governmental entity may not initiate or maintain any
24 agreements or working relationships with a social media platform
25 for the purpose of content moderation.

26 (4) Subsections (2) and (3) do not apply if the
27 governmental entity or an officer or an employee acting on
28 behalf of a governmental entity is acting as part of any of the
29 following:

30 (a) Routine account management of the governmental
31 entity's account, including, but not limited to, the removal or
32 revision of the governmental entity's content or account or
33 identification of accounts falsely posing as a governmental
34 entity, officer, or salaried employee.

35 (b) An attempt to remove content that pertains to the
36 commission of a crime or violation of this state's public
37 records law.

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38 (c) An attempt to remove an account that pertains to the
39 commission of a crime or violation of this state's public
40 records law.

41 (d) An investigation or inquiry related to an effort to
42 prevent imminent bodily harm, loss of life, or property damage.

43 Section 2. Section 501.173, Florida Statutes, is created
44 to read:

45 501.173 Use of tracking technology; consumer consent.—

46 (1) DEFINITIONS.—As used in this section, the term:

47 (a) "Collect" means to buy, rent, gather, obtain, receive,
48 save, store, or access any tracking information pertaining to a
49 consumer.

50 (b) "Consent" means a clear affirmative act signifying a
51 consumer's freely given, specific, informed, express, and
52 unambiguous agreement to collect tracking information of the
53 consumer.

54 (c) "Consumer" means an identified natural person who
55 resides in or is domiciled in this state.

56 (d) "Department" means the Department of Legal Affairs.

57 (e) "Tracking entity" means a person, sole proprietorship,
58 partnership, limited liability company, corporation,
59 association, or legal entity organized or operated for the
60 profit or financial benefit of its shareholders or owners that
61 does business in this state and collects tracking information

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62 about consumers, or is the entity on behalf of which such
63 information is collected.

64 (f) "Tracking information" means:

65 1. Precise geolocation data, which means information which
66 enables the tracking entity to collect specific location data
67 which directly identifies the specific location of a consumer
68 with precision and accuracy within a radius of 1,750 feet.

69 2. Voice, photo, or sensory information, which means the
70 following information collected by the tracking entity and
71 linked to a consumer by the tracking entity:

72 a. Voice, spoken word or other sounds, voiceprint, or
73 voice recognition;

74 b. Photo, image, facial recognition, eye tracking, retina
75 imagery, or iris imagery;

76 c. Fingerprint, palm print, thermal imagery, skin
77 recognition, or skin temperature; and

78 d. Olfactory receptors and sense of smell.

79 (2) APPLICABILITY.—This section does not apply to:

80 (a) Compliance with federal, state, or local laws.

81 (b) Compliance with a civil, criminal, or regulatory
82 inquiry, investigation, subpoena, or summons by federal, state,
83 or local authorities.

84 (c) Cooperation with law enforcement agencies concerning
85 conduct or activity that the tracking entity reasonably and in

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86 good faith believes may violate federal, state, or local law or
87 is necessary to assure the physical security of persons.

88 (d) An identifier used for a consumer for the sole purpose
89 of alerting the tracking entity or any person whether such
90 consumer has consented to the collection of tracking
91 information.

92 (3) PROHIBITION OF SURVEILLANCE.—A tracking entity, may
93 not:

94 (a) Collect a consumer's tracking information without the
95 consumer's consent.

96 (b) Collect a consumer's tracking information while the
97 collecting technology is not in active use by the consumer
98 without the consumer's consent for continued collection.

99 (4) ENFORCEMENT AND IMPLEMENTATION BY THE DEPARTMENT.—

100 (a) Any violation of this section is an unfair and
101 deceptive trade practice actionable under part II of chapter 501
102 solely by the department against a tracking entity. If the
103 department has reason to believe that any tracking entity is in
104 violation of this section, the department, as the enforcing
105 authority, may bring an action against such tracking entity for
106 an unfair or deceptive act or practice. For the purpose of
107 bringing an action pursuant to this section, ss. 501.211 and
108 501.212 do not apply. In addition to other remedies under part
109 II of chapter 501, the department may collect a civil penalty of
110 up to \$50,000 per violation of this section. Civil penalties may

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111 be tripled for any violation involving a Florida consumer who
112 the tracking entity has actual knowledge is under 18 years of
113 age.

114 (b) After the department has notified a tracking entity in
115 writing of an alleged violation, the department may in its
116 discretion grant a 45-day period to cure the alleged violation.
117 If the violation is cured to the satisfaction of the department
118 and proof of such cure is provided to the department, the
119 department may not bring an action for the alleged violation but
120 in its discretion may issue a letter of guidance that indicates
121 that the tracking entity will not be offered a 45-day cure
122 period for any future violations. If the tracking entity fails
123 to cure the violation within 45 calendar days, the department
124 may bring an action against the tracking entity for the alleged
125 violation.

126 (c) Any action brought by the department may be brought
127 only on behalf of a Florida consumer.

128 (d) The department may adopt rules to implement this
129 section, including standards for consent, enforcement, data
130 security, and authorized persons who may act on a consumer's
131 behalf.

132 (e) Liability for a tort, contract claim, or consumer
133 protection claim that is unrelated to an action brought under
134 this subsection does not arise solely from the failure of a
135 tracking entity to comply with this section.

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136 (f) This section does not establish a private cause of
137 action.

138 (5) JURISDICTION.—For purposes of bringing an action
139 pursuant to subsection (4), any person who meets the definition
140 of tracking entity which collects the tracking information or
141 precise geolocation data of Florida consumers pursuant to
142 subsection (3) is considered to be both engaged in substantial
143 and not isolated activities within this state and operating,
144 conducting, engaging in, or carrying on a business, and doing
145 business in this state, and is therefore subject to the
146 jurisdiction of the courts of this state.

147 Section 3. Section 501.1735, Florida Statutes, is created
148 to read:

149 501.1735 Protection of children in online spaces.—

150 (1) DEFINITIONS.—As used in this section, the term:

151 (a) "Child" or "children" means a consumer or consumers
152 who are under 18 years of age.

153 (b) "Collect" has the same meaning as in s. 501.173(1).

154 (c) "Dark pattern" means a user interface designed or
155 manipulated with the substantial effect of subverting or
156 impairing user autonomy, decision-making, or choice and
157 includes, but is not limited to, any practice the Federal Trade
158 Commission refers to as a dark pattern.

159 (d) "Department" means the Department of Legal Affairs.

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160 (e) "Online platform" means a social media platform as
161 defined in s. 112.23(1), online game, or online gaming platform.

162 (f) "Personal information" means information that is
163 linked or reasonably linkable to an identified or identifiable
164 child, including biometric information and unique identifiers to
165 the child.

166 (g) "Precise geolocation data" means information
167 identified through technology which enables the online platform
168 to collect specific location data which directly identifies the
169 specific location of a child with precision and accuracy within
170 a radius of 1,750 feet.

171 (h) "Processing" means any operation or set of operations
172 performed on personal information or on sets of personal
173 information, regardless of whether by automated means.

174 (i) "Profile" or "profiling" means any form of automated
175 processing performed on personal information to evaluate,
176 analyze, or predict personal aspects relating to the economic
177 situation, health, personal preferences, interests, reliability,
178 behavior, location, or movements of a child.

179 (j) "Sell" means to sell, rent, release, disclose,
180 disseminate, make available, transfer, or otherwise communicate
181 orally, in writing, or by electronic or other means, a child's
182 personal information or information that relates to a group or
183 category of children by an online platform to another online

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184 platform or an affiliate or third party for monetary or other
185 valuable consideration.

186 (k) "Share" means to share, rent, release, disclose,
187 disseminate, make available, transfer, or access a child's
188 personal information for advertising or marketing. The term
189 includes:

190 1. Allowing a third party to advertise or market based on
191 a child's personal information without disclosure of the
192 personal information to the third party.

193 2. Monetary transactions, nonmonetary transactions, and
194 transactions for other valuable consideration between an online
195 platform and a third party for advertising or marketing.

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

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

205 2. Patterns of use that indicate or encourage addictive
206 behaviors;

207 3. Physical violence, online bullying, and harassment;

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208 4. Sexual exploitation, including enticement, sex
209 trafficking, and sexual abuse and trafficking of online sexual
210 abuse material;

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

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

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

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

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

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

227 2.a. Profiling is necessary to provide the online service,
228 product, or feature requested for the aspects of the online
229 service, product, or feature with which the child is actively
230 and knowingly engaged; or

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231 b. The online platform can demonstrate a compelling reason
232 that profiling does not pose a substantial harm or privacy risk
233 to children.

234 (c) Collect, sell, share, or retain any personal
235 information that is not necessary to provide an online service,
236 product, or feature with which a child is actively and knowingly
237 engaged unless the online platform can demonstrate a compelling
238 reason that collecting, selling, sharing, or retaining the
239 personal information does not pose a substantial harm or privacy
240 risk to children.

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

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

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

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256 (g) Use dark patterns to lead or encourage children to
257 provide personal information beyond what personal information
258 would otherwise be reasonably expected to be provided for that
259 online service, product, game, or feature; to forego privacy
260 protections; or to take any action that the online platform has
261 actual knowledge of or willfully disregards that may result in
262 substantial harm or privacy risk to children.

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

268 (3) BURDEN OF PROOF.—If an online platform processes
269 personal information pursuant to subsection (2), the online
270 platform bears the burden of demonstrating that such processing
271 does not violate subsection (2).

272 (4) ENFORCEMENT AND IMPLEMENTATION BY THE DEPARTMENT.—

273 (a) Any violation of subsection (2) is an unfair and
274 deceptive trade practice actionable under part II of chapter 501
275 solely by the department against an online platform. If the
276 department has reason to believe that an online platform is in
277 violation of subsection (2), the department, as the enforcing
278 authority, may bring an action against such online platform for
279 an unfair or deceptive act or practice. For the purpose of
280 bringing an action pursuant to this section, ss. 501.211 and

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281 501.212 do not apply. In addition to other remedies under part
282 II of chapter 501, the department may collect a civil penalty of
283 up to \$50,000 per violation of this section. Civil penalties may
284 be tripled for any violation involving a Florida child who the
285 online platform has actual knowledge is under 18 years of age.

286 (b) After the department has notified an online platform
287 in writing of an alleged violation, the department may in its
288 discretion grant a 45-day period to cure the alleged violation.
289 If the violation is cured to the satisfaction of the department
290 and proof of such cure is provided to the department, the
291 department may not bring an action for the alleged violation but
292 in its discretion may issue a letter of guidance that indicates
293 that the online platform will not be offered a 45-day cure
294 period for any future violations. If the online platform fails
295 to cure the violation within 45 calendar days, the department
296 may bring an action against the online platform for the alleged
297 violation.

298 (c) Any action brought by the department may be brought
299 only on behalf of a Florida child.

300 (d) The department may adopt rules to implement this
301 section.

302 (e) Liability for a tort, contract claim, or consumer
303 protection claim that is unrelated to an action brought under
304 this subsection does not arise solely from the failure of an
305 online platform to comply with this section.

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306 (f) This section does not establish a private cause of
307 action.

308 (5) JURISDICTION.—For purposes of bringing an action
309 pursuant to this section, any person who meets the definition of
310 online platform which operates an online service, product, game,
311 or feature likely to be predominantly accessed by children and
312 accessible by Florida children located in this state is
313 considered to be both engaged in substantial and not isolated
314 activities within this state and operating, conducting, engaging
315 in, or carrying on a business, and doing business in this state,
316 and is therefore subject to the jurisdiction of the courts of
317 this state.

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

320 Remove line 10 and insert:
321 providing exceptions; creating s. 501.173, F.S.;

322 defining terms; providing applicability; prohibiting a

323 tracking entity from collecting certain consumer

324 information without the consumer's authorization;

325 authorizing the Department of Legal Affairs to bring

326 an action under the Florida Deceptive and Unfair Trade

327 Practices Act and to adopt rules; providing for civil

328 penalties; providing that the department may grant a

329 tracking entity a timeframe to cure any violations;

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331 providing jurisdiction; creating s. 501.1735, F.S.;

332 providing definitions; prohibiting certain conduct by

333 an online platform that provides online services,

334 products, games, or features likely to be

335 predominantly accessed by children; providing

336 exceptions; providing for enforcement; providing

337 construction; authorizing the department to bring an

338 action under the Florida Deceptive and Unfair Trade

339 Practices Act; providing for civil penalties;

340 providing that the department may grant an online

341 platform a timeframe to cure any violations; providing

342 jurisdiction; providing directives to the

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