The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL:	SB 868
INTRODUCER:	Senator Ingoglia
SUBJECT:	Social Media Use by Minors
DATE:	March 24, 2025
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McMillan	McKay	CM	**Pre-meeting**
2.			JU	
3.			RC	

I. Summary:

SB 868 requires social media platforms to disable end-to-end encryption or other data encryption features that restrict the accessibility of messages so that a minor's parent or legal guardian may view all messages and law enforcement may view messages relevant to a felony criminal investigation involving minors.

The bill takes effect July 1, 2025.

II. Present Situation:

Social Media Use for Minors

In 2024, the Florida Legislature passed a law limiting minors' access to social media platforms.[1] The law, in part, prohibits minors 13 years of age or younger from holding a social media account, and requires parental consent for 14 and 15 year olds to hold an account.[2]

Definitions

The law provides the following definitions:[3]

- "Account holder" means a resident who opens an account or creates a profile or is identified by the social media platform by a unique identifier while using or accessing a social media platform when the social media platform knows or has reason to believe the resident is located in Florida.
- "Daily active users" means the number of unique users in the United States who used the online forum, website, or application at least 80 percent of the days during the previous 12

[1] Ch. 2024-42, Laws of Fla.
[2] *See* 501.1736, F.S.
[3] Section 501.1736(1), F.S.

months, or if the online forum, website, or application did not exist during the previous 12 months, the number of unique users in the United States who used the online forum, website, or application at least 80 percent of the days during the previous month.

- "Resident" means a person who lives in Florida for more than 6 months of the year.
- "Social media platform" means an online forum, website, or application that satisfies each of the following criteria:
  - Allows users to upload content or view the content or activity of other users;
  - Ten percent or more of the daily active users who are younger than 16 years of age spend on average 2 hours per day or longer on the online forum, website, or application on the days when using the online forum, website, or application during the previous 12 months or, if the online forum, website, or application did not exist during the previous 12 months, during the previous month;
  - Employs algorithms that analyze user data or information on users to select content for users; and
  - Has any of the following addictive features:
    - Infinite scrolling, which means either continuously loading content, or content that loads as the user scrolls down the page without the need to open a separate page, or seamless content or the use of pages with no visible or apparent end or pagebreaks;
    - Push notifications or alerts sent by the online forum, website, or application to inform a user about specific activities or events related to the user's account;
    - Displays personal interactive metrics that indicate the number of times other users have clicked a button to indicate their reaction to content or have shared or reposted the content;
    - Auto-play video or video that begins to play without the user first clicking on the video or on a play button for that video; and
    - Live-streaming or a function that allows a user or advertiser to broadcast live video content in real-time.
  - The term does not include an online service, website, or application where the exclusive function is e-mail or direct messaging consisting of text, photographs, pictures, images, or videos shared only between the sender and the recipients, without displaying or posting publicly or to other users not specifically identified as the recipients by the sender.

Minors Under 14

For minors under 14 years of age, the law requires a social media platform to:[4]

- Prohibit a minor who is younger than 14 years of age from entering into a contract with a social media platform to become an account holder.
- Terminate any account held by an account holder younger than 14 years of age, including accounts that the social media platform treats or categorizes as belonging to an account holder who is likely younger than 14 years of age for purposes of targeting content or advertising.
  - The social media platform must provide 90 days for an account holder to dispute such termination. Termination must be effective upon the expiration of the 90 days if the account holder fails to effectively dispute the termination.

[4] Section 501.1736(2), F.S.

- Allow an account holder younger than 14 years of age to request to terminate the account. Termination must be effective within 5 business days after such request.
- Allow the confirmed parent or guardian of an account holder younger than 14 years of age to request the minor's account be terminated. Termination must be effective within 10 business days after such request.
- Permanently delete all personal information held by the social media platform relating to the terminated account, unless there are legal requirements to maintain such information.

Minors 14 or 15 Years of Age

For minors who are 14 or 15 years of age, the law provides the following:[5]

- Requires a social media platform to prohibit a minor who is 14 or 15 years of age from entering into a contract with a social media platform to become an account holder, unless the minor's parent or guardian provides consent for the minor to become an account holder.
- Terminate any account held by an account holder who is 14 or 15 years of age, including accounts that the social media platform treats or categorizes as belonging to an account holder who is likely 14 or 15 years of age for purposes of targeting content or advertising, if the account holder's parent or guardian has not provided consent for the minor to create or maintain the account.
  - The social media platform must provide 90 days for an account holder to dispute such termination. Termination must be effective upon the expiration of the 90 days if the account holder fails to effectively dispute the termination.
- Allow an account holder who is 14 or 15 years of age to request to terminate the account. Termination must be effective within 5 business days after such request.
- Allow the confirmed parent or guardian of an account holder who is 14 or 15 years of age to request that the minor's account be terminated. Termination must be effective within 10 business days after such request.
- Permanently delete all personal information held by the social media platform relating to the terminated account, unless there are legal requirements to maintain such information.

If a court enjoins the enforcement of the provisions for minors 14 or 15 years of age, or such provision caused a court to otherwise enjoin enforcement of any other of the provisions, then the provision is severed, and the following comes into effect:[6]

- A social media platform must prohibit a minor who is 14 or 15 years of age from entering into a contract with a social media platform to become an account holder.
- A social media platform must:
  - Terminate any account held by an account holder who is 14 or 15 years of age, including accounts that the social media platform treats or categorizes as belonging to an account holder who is likely 14 or 15 years of age for purposes of targeting content or advertising. The social media platform must provide 90 days for an account holder to dispute such termination. Termination must be effective upon the expiration of 90 days if the account holder fails to effectively dispute the termination.
  - Allow an account holder who is 14 or 15 years of age to request to terminate the account. Termination must be effective within 5 business days after such request.

[5] Section 501.1736(3), F.S.
[6] Section 501.1736(4), F.S.

- Allow the confirmed parent or guardian of an account holder who is 14 or 15 years of age to request that the minor's account be terminated. Termination must be effective within 10 business days after such request.
- Permanently delete all personal information held by the social media platform relating to the terminated account, unless there are legal requirements to maintain such information.

Violations and Enforcement

Knowing or reckless violation of the requirements for minor users under 14 years of age or the requirements for minor users under 16 years of age by a social media platform is an unfair and deceptive trade practice actionable under the Florida Deceptive and Unfair Trade Practices Act (FDUTPA) solely by the Department of Legal Affairs (DLA).[7] In addition to other FDUTPA remedies, the DLA may collect a civil penalty of up to $50,000 per violation and reasonable attorney fees and court costs. When the social media platform's failure to comply with such requirements is a consistent pattern of knowing or reckless conduct, punitive damages may be assessed against the social media platform.[8]

A social media platform that knowingly or recklessly violates the requirements for minor users under 14 years of age or the requirements for minor users under 16 years of age is liable to such minor account holder, including court costs and reasonable attorney fees as ordered by the court. Claimants may be awarded up to $10,000 in damages. Such an action must be brought within 1 year from the date the complainant knew, or reasonably should have known, of the alleged violation.[9]

Actions may only be brought on behalf of a resident minor,[10] and do not preclude any other available remedy at law or equity against such social media platform.[11]

For purposes of bringing an action, a social media platform that allows a minor account holder younger than 14 years of age or a minor account holder who is 14 or 15 years of age to create an account on such platform is considered to be both engaged in substantial and not isolated activities within Florida and operating, conducting, engaging in, or carrying on a business and doing business in Florida, and is therefore subject to the jurisdiction of the courts of Florida.[12]

DLA Subpoena Power

If, by its own inquiry or as a result of complaints, the DLA has reason to believe that an entity or person has engaged in, or is engaging in, an act or practice that violates the bill, the DLA may administer oaths and affirmations, subpoena witnesses or matter, and collect evidence. Within 5 days, excluding weekends and legal holidays, after the service of a subpoena or at any time before the return date specified therein, whichever is longer, the party served may file in the circuit court in the county in which it resides or in which it transacts business and serve upon the enforcing authority a petition for an order modifying or setting aside the subpoena. The

[7] Section 501.1736(5), F.S.
[8] *Id.*
[9] Section 501.1736(6), F.S.
[10] *Id*.
[11] Section 501.1736(9), F.S.
[12] Section 501.1736(7), F.S.

petitioner may raise any objection or privilege which would be available upon service of such subpoena in a civil action. The subpoena must inform the party served of its rights.[13]

If the matter that the DLA seeks to obtain by subpoena is located outside of Florida, the entity or person subpoenaed may make it available to the DLA or its representative to examine the matter at the place where it is located. The DLA may designate representatives, including Florida officials where the matter is located, to inspect the matter on its behalf, and may respond to similar requests from officials of other states.[14]

Upon failure of an entity or person without lawful excuse to obey a subpoena and upon reasonable notice to all persons affected, the DLA may apply to the circuit court for an order compelling compliance.[15]

The DLA may request that an entity or person that refuses to comply with a subpoena on the ground that testimony or matter may incriminate the entity or person being ordered by the court to provide the testimony or matter. Except in a prosecution for perjury, an entity or individual that complies with a court order to provide testimony or matter after asserting a valid privilege against self-incrimination must not have the testimony or matter so provided, or evidence derived therefrom, received against the entity or person in any criminal investigation or proceeding.[16]

Any entity or person upon whom a subpoena is served must comply with the terms of the subpoena unless otherwise provided by order of the court. Failure to appear is punishable as a civil penalty up to $5,000 per week, including attorney's fees, and costs.[17]

Recent Cases

In October 2024, two internet-industry groups filed a federal lawsuit challenging the constitutionality of Florida's law limiting minors' access to social media platforms. The Computer & Communications Industry Association and NetChoice, whose members include tech giants such as Google and Meta Platforms, alleged that the law violated their First Amendment rights and that parents have control of their children's social-media use.[18]

In March 2025, the motion for preliminary injunction was denied. The order did not include a ruling on the First Amendment issue. The order was instead based on the decision that the plaintiffs did not "show a substantial likelihood demonstrating standing" that at least one of the group members "will suffer irreparable injury" without an injunction. The effective date of the law was supposed to be January 1, 2025; however, in November the State agreed not to enforce it until the ruling occurred.[19]

[13] Section 501.1736(10), F.S.
[14] *Id.*
[15] *Id.*
[16] *Id.*
[17] *Id.*
[18] Computer & Communications Industry Association and NetChoice v. Uthmeier, Case No.: 4:24-cv-00438-MW-MAF. The case is in the US District Court, Northern District of Florida.
[19] *Id.*

Disappearing Messages

According to the National Law Review, "ephemeral messages are self-destructing messages with no backup or archiving option. Unlike a typical text message that is sent and remains on a user's and receiver's phone until manually deleted, ephemeral messages delete themselves after a set time. Some examples of platforms that offer this type of feature are Signal, WhatsApp, WeChat, and Snapchat."[20]

Disappearing messages have been found to be harmful to children. In 2020, when Facebook introduced disappearing messages, Anna Edmundson, the NSPCC's head of policy, expressed concerns, stating: "Despite its age restriction, many under-16s use WhatsApp and disappearing messages could put children at greater risk of harm, by providing groomers with yet another tool to avoid detection and erase evidence."[21]
Some of the risks to children of disappearing messages include: cyberbullying, sexting, grooming, inadequate oversight, false sense of security and privacy, and inappropriate content.[22]

End-to-end Encryption

Advancements in technology create both opportunity and challenges for law enforcement.[23] A challenge that law enforcement officials cite as preventing investigations is end-to-end encryption or "warrant-proof" encryption.[24] Companies employing this type of encryption have emphasized that they do not hold encryption keys to unlock or decrypt the devices or communication.[25] Because of these challenges, law enforcement prefers "front door" access, which means there is clear understanding of when they are accessing a device.[26] A "front door" could be opened with a "key" once law enforcement demonstrates a lawful basis for access, however, this has the potential to lead to exploitation by hackers, criminals, and other malicious actors.[27]

Florida Deceptive and Unfair Trade Practices Act (FDUTPA)

The FDUTPA is a consumer and business protection measure that prohibits unfair methods of competition, and unconscionable, deceptive, or unfair acts or practices in the conduct of trade or commerce.[28] The FDUTPA was modeled after the Federal Trade Commission Act.[29]

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[20] Michelle A. Freeman, *Disappearing Messages, Unofficial Communications Platforms and Ever-Increasing Scrutiny by Regulators*, The National Law Review (Oct. 7, 2024), *available at* , https://natlawreview.com/article/disappearing-messages-unofficialcommunications-platforms-and-ever-increasing (last visited Mar. 24, 2025).
[21] Mobicip, *Gone in a Flash: How Disappearing Messages Can Impact Your Child's Online Safety* (May 13, 2024), *available at* https://www.mobicip.com/blog/gone-flash-how-disappearing-messages-can-impact-your-childs-online-safety (last visited Mar. 24, 2025).
[22] *Id*.
[23] Congressional Research Service, *Law Enforcement and Technology: The "Lawful Access" Debate* (January 6, 2025), *available at* https://www.congress.gov/crs-product/IF11769 (last visited Mar. 24, 2025).
[24] *Id*.
[25] *Id*.
[26] *Id*.
[27] *Id*.
[28] Section 501.202, F.S.
[29] *See* 15 U.S.C. s. 45; *see also* D. Matthew Allen, et. al., *The Federal Character of Florida's Deceptive and Unfair Trade Practices Act*, 65 U. MIAMI L. REV. 1083 (Summer 2011).

The DLA or the state attorney's office in the judicial circuit affected or where the violation occurs may bring actions on behalf of consumers or governmental entities when it serves the public interest.[30] The state attorney's office may enforce violations of the FDUTPA if the violations take place within its jurisdiction. The department has enforcement authority when: the violation is multi-jurisdictional; the state attorney defers to the department in writing; or the state attorney fails to act within 90 days after a written complaint is filed.[31] In certain circumstances, consumers may also file suit through private actions.[32]

The department and the state attorney's office have powers to investigate the FDUTPA claims, which include:[33]

- Administering oaths and affirmations.
- Subpoenaing witnesses or matter.
- Collecting evidence.

The department and the state attorney's office may seek the following remedies:[34]

- Declaratory judgments.
- Injunctive relief.
- Actual damages on behalf of consumers and businesses.
- Cease and desist orders.
- Civil penalties of up to $10,000 per willful violation.

The FDUTPA may not be applied to certain entities in certain circumstances, including:[35]

- Any person or activity regulated under laws administered by the Office of Insurance Regulation or the Department of Financial Services.
- Banks, credit unions, and savings and loan associations regulated by the Office of Financial Regulation or federal agencies.

III. Effect of Proposed Changes:

The bill requires social media platforms to disable end-to-end encryption or other data encryption features that restrict the accessibility of messages so that a minor's parent or legal guardian may view all messages and law enforcement may view messages relevant to a felony criminal investigation involving minors.

The bill takes effect July 1, 2025.

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[30] Sections 501.203(2) and 501.207(1)(c) and (2), F.S.; *see also* David J. Federbush, *FDUTPA for Civil Antitrust Additional Conduct, Party, and Geographic Coverage; State Actions for Consumer Restitution*, 76 FLA. BAR J. 52 (Dec. 2002), available at https://www.floridabar.org/the-florida-bar-journal/fdutpa-for-civil-antitrust-additional-conduct-party-and-geographic-coverage-state-actions-for-consumer-restitution/ (analyzing the merits of FDUPTA and the potential for deterrence of anticompetitive conduct in Florida) (last visited Mar. 24, 2025).

[31] Section 501.203(2), F.S.

[32] Section 501.211, F.S.

[33] Section 501.206(1), F.S.

[34] Sections 501.207(1), 501.208, and 501.2075, F.S. Civil Penalties are deposited into general revenue. Enforcing authorities may also request attorney fees and costs of investigation or litigation. Section 501.2105, F.S.

[35] Section 501.212(4), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

State Authority to Regulate to Protect Minors

The U.S. Supreme Court has determined that the state has a "compelling interest in protecting the physical and psychological well-being of minors," which "extends to shielding minors from the influence of literature that is not obscene by adult standards."[36] In doing so, however, the means must be narrowly tailored to achieve that end so as not to unnecessarily deny adults access to material which is constitutionally protected indecent material.[37]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Social media platforms will be required to disable end-to-end encryption or other data encryption features that restrict the accessibility of messages so that a minor's parent or legal guardian may view all messages and law enforcement may view messages.

C. Government Sector Impact:

The bill may result in an unknown increase in civil penalties collected by the Department of Legal Affairs, and regulatory costs to the Department of Legal Affairs to enforce the bill.

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[36] *Sable Commc's of California, Inc*., 492 U.S. at 126.

[37] *Ashcroft*, 542 U.S. at 666; *Cashatt v. State*, 873 So. 2d 430, 434 (Fla. 1st DCA 2004); *but see Erznoznik*, 422 U.S. at 213 (determining that the city's regulation was overly broad).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends section 501.1736 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.