

\_\_\_\_\_ LEGISLATURE

HB/SB No. XXXX

# Model Legislation: Social Media Algorithm Accountability Act

**Model Legislation to promote social media platform transparency and accountability with regard to how use of these platforms affects the mental and physical health of child users in this state.**

Referred to Committee On: \_\_\_\_\_

Introduced by: \_\_\_\_\_

## **Section 1: Purpose.**

Sections 1 to 8, inclusive, shall be known, and may be cited, as the "(State Name) Social Media Algorithm Accountability Act." The purpose of this Act is to promote social media platform transparency and accountability with regard to how use of these platforms affects the mental and physical health of child users in this state.

## **Section 2: Definitions.**

As used in this Chapter, the following words and terms shall have the following meanings:

- (a) "Algorithm" means a computational process that uses machine learning, natural language processing, artificial intelligence techniques, or other computational processing techniques of similar or greater complexity and that makes a decision or facilitates human decision-making with respect to users personal information, including to determine the provision of products or services or to rank, order, promote, recommend, amplify, or similarly determine the delivery or display of information to an individual. For purposes of this Act, an algorithm will refer to recommendation algorithms, also known as engagement-based algorithms, which passively populate a social media user's feed with content without any direct action or request by the user.
- (b) "Child" or "children," means a consumer or consumers who are under 18 years of age.
- (c) "Covered platform" means a social media platform that conducts business in this state or that produces products or services that are targeted to residents of this state and that during the preceding calendar year: (1) Controlled or processed the personal information of not less than one

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hundred thousand consumers, excluding personal information controlled or processed solely for the purpose of completing a payment transaction; or (2) controlled or processed the personal information of not less than twenty-five thousand consumers and derived more than twenty-five percent of their gross revenue from the sale of personal information.

(d) “Consumer” means a natural person who is a (State Name) resident, however identified, including by any unique identifier.

(e) “Design-related Harms to Children” means a covered platform’s product, service, or feature design that would result in a reasonably foreseeable risk of:

1. Consistent with evidence-informed medical information, the following mental health disorders: anxiety, depression, eating disorders, substance abuse disorders, and suicidal behaviors.
2. Patterns of use that indicate or encourage addiction-like behaviors in children.
3. Physical violence, online bullying, and harassment of children.
4. Sexual exploitation and abuse of children.
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 to children.
6. Predatory, unfair or deceptive marketing practices, or other financial harms to children.

(f) “Experts in the mental health and public policy fields” means:

1. academic experts, health professionals, and members of civil society with expertise in mental health, substance use disorders, and the prevention of harms to minors;
2. representatives in academia and civil society with specific expertise in privacy and civil liberties;
3. youth representation;
4. representatives of the National Telecommunications and Information Administration, the National Institute of Standards and Technology, the Federal Trade Commission, the Department of Justice, and the Department of Health and Human Services;
5. State attorneys general or their designees acting in State or local government; and
6. representatives of communities of socially disadvantaged individuals (as defined in section 8 of the Small Business Act (15 U.S.C. 637)).

(g) “Independent third-party auditor” means an auditing firm that has no affiliation with a covered platform as defined by this Chapter.

(h) “Likely to be accessed” means it is reasonable to expect, based on the following factors, that a covered platform would be accessed by children:

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1. The covered platform is directed to children as defined by the Children’s Online Privacy Protection Act (15 U.S.C. Sec. 6501 et seq.).
  2. The covered platform is determined based on audience composition where children comprise at least 8% of its audience.
  3. The covered platform is paid for by advertisements on its platform that are marketed to children.
  4. The covered platform is substantially similar or the same as a covered platform that satisfies paragraph (2).
  5. A significant amount of the audience of the covered platform, 8% or more, is determined, based on internal company research, to be children.
- (i) “Process” or “processing” means any operation or set of operations performed, whether by manual or automated means, on personal information or on sets of personal information, such as the collection, use, storage, disclosure, analysis, deletion or modification of personal information.
- (j) “Personal information” means any information that is linked or reasonably linkable to an identified or identifiable individual.
- (k) “Social media platform” means a public or semipublic internet-based service or application that has users in (State Name) and that meets both of the following criteria:
1. A substantial function of the service or application is to connect users in order to allow users to interact socially with each other within the service or application.
  2. The service or application uses recommendation algorithms to disseminate content to users.
    - A. A service or application that provides email or direct messaging services shall not be considered to meet this criterion on the basis of that function alone.
    - B. A service or application that is an internet search engine or a website whose primary purpose is e-commerce, which would include the buying, selling, or exchange of goods or services over the internet, including business-to-business, business-to-consumer, and consumer-to-consumer transactions, shall not be considered to meet this criterion on the basis of that function alone.
  3. The service or application allows users to do all of the following:
    - A. Construct a profile for purposes of signing into and using the service or application.
    - B. Populate a list of other users with whom an individual shares a social connection within the system.
    - C. Create or post content viewable by other users, including, but not limited to, on message boards, in chat rooms, or through a landing page or main feed that presents the user with content generated by other users.

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## Section 3: Office of Social Media Transparency and Accountability.

- (a) The Office of Social Media Transparency and Accountability (hereinafter “Office”) shall be created within the Office of the Attorney General to receive, review, and maintain the reports from covered platforms, to enforce the requirements of this Chapter, and to adopt regulations to clarify the requirements of this Chapter.
- (b) On or before January 31 following each year in which a social media platform meets the definition of a covered platform, as provided in this Chapter, the social media platform shall register with the Office by providing the following:
  - (1) A registration fee in an amount determined by the Office of the Attorney General, not to exceed the reasonable costs of establishing and maintaining the Office; and
  - (2) The name of the social media platform and its primary physical, email, and internet website addresses.
- (c) The Office shall by July X, 202X empanel an Advisory Council of experts in the mental health and public policy fields as defined in section 2(f) to identify the ways covered platforms’ design practices potentially cause design-related harms to children.
- (d) By July X, 202X, the Office must promulgate regulations based on the cumulation of the potential design-related harms identified by the processes of subsection (c) that set forth the specific design-related harms that must be examined by the algorithm risk audits required under this Chapter.
- (e) The Office shall compile a list of approved, independent third-party auditors and be charged with assigning independent third-party auditors to conduct algorithm risk audits of covered platforms.

## Section 4: Transparency Reports.

- (a) Beginning on January X, 202X covered platforms shall annually generate and submit a transparency report to the Office that contains all of the following:
  - 1. An assessment of whether the platform is likely to be accessed by children;
  - 2. A description of the covered platform’s commercial interests in use of the platform by children;
  - 3. The number of individuals using the covered platform reasonably believed, based on existing data, to be children in the United States, disaggregated by the age ranges of 0-5, 6-9, 10-12, 13-15, and 16-18;
  - 4. The median and mean amounts of time spent on the platform by children in the United States who have accessed the platform during the reporting year on a daily, weekly, and monthly basis, disaggregated by the age ranges of 0-5, 6-9, 10-12, 13-15, and 16-18;

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5. A description of each system design feature covered platforms use to increase, sustain, or extend use of a product or service by users, including automatic playing of media, rewards for time spent, and notification delivery, and how each feature increases, sustains, or extends use;
6. A description of each product, service, or feature of a covered platform that collects or processes personal information, for what purpose the product, service, or feature collects or processes information, and whether and how the data collection or processing may cause reasonably foreseeable risk of design-related harms to children;
7. The total number of complaints received regarding the design-related harms described in section 2(e), disaggregated by category of harm; and
8. A description of the mechanism by which the public may submit complaints, the internal processes for handling complaints, and any automated detection mechanisms for design-related harms to children, including the rate, timeliness, and effectiveness of responses.

(b) The Office and the records generated by the requirements of section 4 are subject to the (State Name) Public Records Law. However, to the extent any information contained within a report required by this section is trade secret, proprietary or privileged, covered platforms may request such information be redacted from the copy of the report that is obtainable under the public records law. The Office will conduct a confidential, in-camera review of requested redactions to determine whether the information is trade secret, proprietary or privileged information that should not be made accessible for public review. All information from the copy of the report submitted to the Office, including redactions, will be maintained by a covered platform in their internal records.

### **Section 5: Algorithm Risk Audits.**

- (a) By July X, 202X, all covered platforms must submit a preliminary report to the Office.
1. The preliminary report must be prepared by an independent third-party auditor identified in section 3(e).
  2. The Office must consult with independent third-party auditors and covered platforms to determine what data covered platforms must provide to independent third-party auditors to produce the preliminary reports.
  3. The preliminary report must describe each product, service, or feature that uses an algorithm to curate content displayed to users, the purpose for which the product, service, or feature uses an algorithm, and measure whether, how, and to what extent the covered platform's algorithmic design may cause reasonably foreseeable risk of design-related harms to children as identified in section 2(e) of this Chapter.
- (b) After a covered platform has submitted a preliminary report, the covered platform may agree that the Office will consult with independent third-party auditors and the covered platform to set benchmarks the covered platform must meet to reduce the design-related harms, identified in

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section 2(e) of this Chapter, on its platform as indicated in the preliminary report required under subsection (a) of this section.

1. Upon agreement, each covered platform shall thereafter use an independent third-party auditor to produce biannual reports detailing the following:
  - A. Steps taken to mitigate design-related harm on its platform, including implementation of any systems used to meet benchmarks; and
  - B. Measurements indicating the reduction in design-related harm as a result of these systems.
2. In the case the covered platform has failed to meet the benchmarks, upon agreement its biannual report must also include:
  - A. A mitigation plan detailing changes the platform intends to take to ensure future compliance with benchmarks; and
  - B. A written explanation regarding the reasons the benchmarks were not met.

(c) The Office and the records generated by the requirements of section 4 are subject to the (State Name) Public Records Law. However, to the extent any information contained within a report required by this section is trade secret, proprietary or privileged, covered platforms may request such information be redacted from the copy of the report that is obtainable under the public records law. The Office will conduct a confidential, in-camera review of requested redactions to determine whether the information is trade secret, proprietary or privileged information that should not be made accessible for public review. All information from the copy of the report submitted to the Office, including redactions, will be maintained by a covered platform in their internal records.

## **Section 6: Other Remedies.**

If a covered platform should choose not to consult with independent third-party auditors to set benchmarks it must meet to reduce the design-related harms, identified in section 2(e) of this Act, on its platform as indicated in the preliminary reports required under section 5(a), an attorney general is not precluded from pursuing any other legal remedy available at law to mitigate harms.

## **Section 7: Enforcement.**

- (a) A covered platform that violates the provisions of this Chapter shall be subject to an injunction and liable for a civil penalty not to exceed twenty-five thousand dollars (\$25,000) per violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of (State Name) by the Attorney General.
- (b) A covered platform shall be considered in violation of the provisions of this Chapter for any of the following:

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1. Fails to register with the Office as required by Section 3.
2. Materially omits or misrepresents required information in a report submitted pursuant to Sections 4 and 5.
3. Fails to timely submit to the Office a report required pursuant to Sections 4 and 5.

(c) In assessing the amount of a civil penalty pursuant to this section, the court shall consider whether the covered platform made a reasonable, good faith attempt to comply with the provisions of this Chapter.

(d) Any penalties, fees, and expenses recovered in an action brought under this Chapter shall be collected by the Office of the Attorney General with the intent that they be used to fully offset costs in connection with the enforcement of this Chapter and to promote the positive mental health outcomes of the children of (State Name).

## **Section 8: Severability.**

If any provision of this Act, or any application of such provision to any person or circumstance, is held to be unconstitutional, the remainder of this Act and the application of this Act to any other person or circumstance shall not be affected.