

Senate Bill 196

Sponsored by Senator GORSEK (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires business that provides online product, service or feature that child is reasonably likely to access to identify, evaluate and mitigate risks to child from online product, service or feature. Restricts manner in which business may collect or use personal information of child.

Requires business that provides online product, service or feature that child is reasonably likely to access to complete and retain Data Protection Impact Assessment. Requires business to provide upon request completed assessment to Attorney General.

Authorizes Attorney General to bring action for injunctive relief, civil penalties or attorney fees and enforcement costs and disbursements against business for violations.

Establishes Task Force on Age-Appropriate Design. Requires task force to study how children access, use and are affected by online products, services and features and methods for mitigating risks.

Provides that requirements and restrictions become operative July 1, 2024.

Sunsets task force on January 2, 2025.

A BILL FOR AN ACT

1
2 Relating to business's use of age-appropriate design.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1. Age-Appropriate Design Code. Sections 1 to 8 of this 2023 Act shall be known**
5 **and may be cited as the "Age-Appropriate Design Code."**

6 **SECTION 2. Legislative findings. (1) The Legislative Assembly declares that children**
7 **should be afforded protections by online products, services or features specifically directed**
8 **at children and by all online products, services or features that children are reasonably likely**
9 **to access.**

10 **(2) The Legislative Assembly finds:**

11 **(a) When a business designs, develops or provides online products, services or features**
12 **that children are reasonably likely to access, the business should consider the best interests**
13 **of children.**

14 **(b) When the best interests of children and commercial interests conflict, businesses**
15 **should prioritize the privacy, safety and well-being of children over commercial interests.**

16 **SECTION 3. Definitions. As used in sections 1 to 8 of this 2023 Act:**

17 **(1) "Child" or "children" means an individual or individuals under 18 years of age, unless**
18 **otherwise specified.**

19 **(2) "Data Protection Impact Assessment" means a systematic survey to assess and mit-**
20 **igate risks arising from a business's data management practices as it relates to children who**
21 **are reasonably likely to access the business's online products, services or features.**

22 **(3) "Default" means a preselected user option adopted by a business for the business's**
23 **online product, service or feature.**

24 **(4) "Online product, service or feature" does not include:**

25 **(a) A broadband Internet access service;**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (b) A telecommunications service; or

2 (c) The delivery or use of a physical product.

3 (5) “Profile” or “profiling” means any form of automated processing of personal infor-
4 mation to evaluate, analyze or predict aspects, characteristics or traits of an individual, such
5 as the individual’s performance at work, economic situation, health, personal preferences,
6 interests, reliability, behavior, location or movements.

7 (6) “Reasonably likely to access” means a reasonable expectation that a child will access
8 an online product, service or feature.

9 SECTION 4. Reasonably likely to access; factors. The following factors shall be consid-
10 ered when determining whether a child is reasonably likely to access an online product,
11 service or feature:

12 (1) Whether the online product, service or feature is directed at children.

13 (2) Whether the online product, service or feature contains designs or elements that are
14 known to be attractive to children, such as games, cartoons, music or celebrities who appeal
15 to children.

16 (3) Whether the online product, service or feature is substantially similar to an online
17 product, service or feature that children routinely access.

18 (4) Whether any advertisements embedded in the online product, service or feature are
19 directed at children.

20 (5) The age demographics of the individuals who routinely access the online product,
21 service or feature.

22 SECTION 5. Online product, service or feature; requirements. A business that provides
23 an online product, service or feature that a child is reasonably likely to access:

24 (1) Shall:

25 (a) Before providing the online product, service or feature, complete a Data Protection
26 Impact Assessment for the online product, service or feature.

27 (b) Maintain a record of the Data Protection Impact Assessment completed under para-
28 graph (a) of this subsection and all related documentation for the duration the business is
29 providing the online product, service or feature.

30 (c) Review and update biennially the Data Protection Impact Assessment completed un-
31 der paragraph (a) of this subsection.

32 (d) Document any risk of material detriment to children arising from the business’s data
33 management practices identified in the Data Protection Impact Assessment completed under
34 paragraph (a) of this subsection.

35 (e)(A) Estimate with a reasonable level of certainty the appropriate age for a child to use
36 or access the online product, service or feature in consideration to any risks arising from
37 the business’s data management practices; or

38 (B) If unable to estimate with a reasonable level of certainty the appropriate age, apply
39 the highest level of privacy and data protections available to the online product, service or
40 feature.

41 (f) Configure all default privacy settings for children for the online product, service or
42 feature to the highest level of privacy and data protections available, unless the business can
43 demonstrate a compelling reason that a different default privacy setting is in the best in-
44 terests of children.

45 (g) Provide any privacy information, terms of service, policies and community standards

1 concisely, prominently and with clear language suited for the age of children reasonably
2 likely to access the online product, service or feature.

3 (h) Provide an obvious signal to a child accessing the online product, service or feature
4 when the child is being monitored or tracked, if the online product, service or feature allows
5 a parent, guardian or another user to monitor the child's online activity or track the child's
6 location.

7 (i) Enforce published terms, policies and community standards established by the busi-
8 ness.

9 (j) Provide prominent, accessible and responsive tools for exercising privacy rights and
10 reporting concerns to a child accessing the online product, service or feature, or if appro-
11 priate, the child's parent or guardian.

12 (2) May not:

13 (a) Use the personal information of a child in a manner that the business knows, or has
14 reason to know, is materially detrimental to the physical or mental health or well-being of
15 the child.

16 (b) Profile a child by default, unless the business can demonstrate:

17 (A) Appropriate safeguards are in place to protect children; and

18 (B)(i) Profiling is necessary to provide the requested online product, service or feature
19 and is limited to aspects of the online product, service or feature in which the child is ac-
20 tively and knowingly engaged; or

21 (ii) A compelling reason that profiling is in the best interests of children.

22 (c) Collect, sell, share or retain any personal information of a child that is not necessary
23 to provide the online product, service or feature unless the business can demonstrate a
24 compelling reason that collecting, selling, sharing or retaining the personal information is in
25 the best interests of children.

26 (d) Use personal information of a child for any reason except for the reason for which
27 the personal information was collected, unless the business can demonstrate a compelling
28 reason that use of the personal information is in the best interests of children.

29 (e) Collect, sell or share any precise geolocation information of a child by default unless
30 the collection of the precise geolocation is strictly necessary for the business to provide the
31 requested online product, service or feature and collection of the precise geolocation is lim-
32 ited to the period of time the precise geolocation is necessary to provide the online product,
33 service or feature.

34 (f) Collect any precise geolocation information of a child unless the business provides an
35 obvious signal to the child that the information is being collected for the duration the busi-
36 ness is collecting the precise geolocation information.

37 (g) Implement a user interface that is designed to manipulate a child to provide personal
38 information.

39 (h) Encourage a child to provide personal information that is not necessary to provide
40 the online product, service or feature.

41 (i) Take any action that the business knows, or has reason to know, is materially detri-
42 mental to a child's physical or mental health or well-being.

43 (j) Use any personal information the business has collected to estimate the age or age
44 range of a child for any purpose other than providing the online product, service or feature
45 or retain the personal information longer than necessary to estimate the age or age range

1 of a child.

2 **SECTION 6. Data Protection Impact Assessment.** A completed Data Protection Impact
3 Assessment required under section 5 of this 2023 Act must:

4 (1) Identify:

5 (a) The purpose or function of an online product, service or feature;

6 (b) How the online product, service or feature uses the personal information of a child;
7 and

8 (c) The risks of material detriment to the physical or mental health or well-being of a
9 child who accesses the online product, service or feature.

10 (2) Evaluate and mitigate:

11 (a) Whether the design of or an algorithm used by the online product, service or feature
12 could result in a child who accesses the online product, service or feature to:

13 (A) Access harmful content;

14 (B) Make contact or interact with individuals who may be harmful; and

15 (C) Witness, participate in or be subject to harmful conduct;

16 (b) Whether any advertisements embedded in the online product, service or feature could
17 harm a child who accesses the online product, service or feature;

18 (c) Whether the design of the online product, service or feature increases, sustains or
19 extends a child's use of the online product, service or feature; and

20 (d) Whether and to what amount the online product, service or feature collects, pro-
21 cesses and retains a child's personal information.

22 **SECTION 7. Attorney General; access to assessments.** (1) Upon written request by the
23 Attorney General, a business shall provide the Attorney General:

24 (a) Within three business days, a list of all Data Protection Impact Assessments the
25 business has completed pursuant to section 5 of this 2023 Act.

26 (b) Within five business days, a copy of each completed Data Protection Impact Assess-
27 ment.

28 (2)(a) A Data Protection Impact Assessment provided to the Attorney General pursuant
29 to this section is confidential and exempt from public disclosure.

30 (b) The provision of a Data Protection Impact Assessment to the Attorney General pur-
31 suant to this section does not constitute a waiver of any existing privilege or protection.

32 **SECTION 8. Action by Attorney General; civil penalty; injunction.** (1) The Attorney
33 General may bring an action, in the name of the state, for a violation of section 5 of this 2023
34 Act seeking:

35 (a) Injunctive relief to restrain a business from providing an online product, service or
36 feature;

37 (b) To recover civil penalties in amounts provided in subsection (2) of this section; or

38 (c) To recover attorney fees and other enforcement costs and disbursements.

39 (2) Civil penalties for a violation of section 5 of this 2023 Act are as follows:

40 (a) For each negligent violation, up to \$2,500 per child who accessed the online product,
41 service or feature; or

42 (b) For each intentional violation, up to \$7,500 per child who accessed the online product,
43 service or feature.

44 (3) All sums of moneys from penalties received by the Department of Justice under a
45 judgment, settlement or compromise in an action or potential action brought under this

1 section, shall, upon receipt, be deposited with the State Treasurer to the credit of the De-
2 partment of Justice Protection and Education Revolving Account established pursuant to
3 ORS 180.095.

4 **SECTION 9. Task Force on Age-Appropriate Design.** (1) The Task Force on Age-
5 Appropriate Design is established.

6 (2) The task force consists of eight members appointed as follows:

7 (a) The President of the Senate, in consultation with the Senate Minority Leader, shall
8 appoint two voting members who are members of the public. The two members appointed
9 under this paragraph may not be from the same political party.

10 (b) The Speaker of the House of Representatives, in consultation with the House Minority
11 Leader, shall appoint two voting members who are members of the public. The two members
12 appointed under this paragraph may not be from the same political party.

13 (c) The Governor shall appoint three voting members.

14 (d) The Attorney General shall appoint one ex officio, nonvoting member.

15 (3) All voting members of the task force must have an expertise in one or more of the
16 following areas:

17 (a) Children's physical health and development.

18 (b) Children's mental and emotional health and development.

19 (c) Children's legal rights.

20 (d) Data privacy.

21 (e) Computer and Internet science.

22 (4) The task force shall study best practices for the following:

23 (a) Identifying online products, services or features that children are reasonably likely
24 to access.

25 (b) Evaluating and prioritizing the best interests of children with respect to privacy,
26 physical and mental health and well-being.

27 (c) Evaluating how the design, development and implementation of an online product,
28 service or feature may affect, positively or negatively, the best interests of children with
29 respect to privacy, physical and mental health and well-being.

30 (d) Ensuring that a business that provides an online product, service or feature that a
31 child is reasonably likely to access uses methods to mitigate risks to children arising from
32 the business's data management practices.

33 (e) Assessing and mitigating risks to children that arise during the use of a business's
34 online products, services or features.

35 (f) Publishing privacy information, policies and standards in concise, clear language
36 suitable for the age of children reasonably likely to access an online product, service or
37 feature.

38 (5) A majority of the voting members of the task force constitutes a quorum for the
39 transaction of business.

40 (6) Official action by the task force requires the approval of a majority of the voting
41 members of the task force.

42 (7) The task force shall elect one of its members to serve as chairperson.

43 (8) If there is a vacancy for any cause, the appointing authority shall make an appoint-
44 ment to become immediately effective.

45 (9) The task force shall meet at times and places specified by the call of the chairperson

1 or of a majority of the voting members of the task force.

2 (10) The task force may adopt rules necessary for the operation of the task force.

3 (11) The task force shall submit a report in the manner provided by ORS 192.245, and
4 may include recommendations for legislation, to an interim committee of the Legislative
5 Assembly related to information and technology management no later than September 15,
6 2024.

7 (12) The Legislative Policy and Research Office shall provide staff support to the task
8 force.

9 (13) Members of the task force who are not members of the Legislative Assembly are not
10 entitled to compensation or reimbursement for expenses and serve as volunteers on the task
11 force.

12 (14) All agencies of state government, as defined in ORS 174.111, are directed to assist
13 the task force in the performance of the duties of the task force and, to the extent permitted
14 by laws relating to confidentiality, to furnish information and advice the members of the task
15 force consider necessary to perform their duties.

16 (15) As used in this section, “children,” “online product, service or feature” and “rea-
17 sonably likely to access” have the meanings given those terms in section 3 of this 2023 Act.

18 SECTION 10. Task force sunset. Section 9 of this 2023 Act is repealed on January 2, 2025.

19 SECTION 11. Operative date. Sections 1 to 8 of this 2023 Act become operative on July
20 1, 2024.

21 SECTION 12. The section captions used in this 2023 Act are provided only for the con-
22 venience of the reader and do not become part of the statutory law of this state or express
23 any legislative intent in the enactment of this 2023 Act.

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