



Sen. Sue Rezin

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1 AMENDMENT TO SENATE BILL 1126

2 AMENDMENT NO. _____. Amend Senate Bill 1126 by replacing
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the
5 Illinois Age-Appropriate Design Code Act.

6 Section 5. Definitions. As used in this Act:

7 "Child" or "children", unless otherwise specified, means a
8 consumer or consumers who are under 18 years of age.

9 "Data protection impact assessment" means a systematic
10 survey to assess and mitigate risks that arise from the data
11 management practices of the business to children who are
12 reasonably likely to access the online service, product, or
13 feature at issue that arises from the provision of that online
14 service, product, or feature.

15 "Default" means a preselected option adopted by the
16 business for the online service, product, or feature.

1 "Likely to be accessed by children" means it is reasonable
2 to expect, based on the following indicators, that the online
3 service, product, or feature would be accessed by children:

4 (1) the online service, product, or feature is
5 directed to children as defined by the Children's Online
6 Privacy Protection Act (15 U.S.C. 6501 et seq.);

7 (2) the online service, product, or feature is
8 determined, based on competent and reliable evidence
9 regarding audience composition, to be routinely accessed
10 by a significant number of children;

11 (3) an online service, product, or feature with
12 advertisements marketed to children;

13 (4) an online service, product, or feature that is
14 substantially similar or the same as an online service,
15 product, or feature subject to paragraph (2);

16 (5) an online service, product, or feature that has
17 design elements that are known to be of interest to
18 children, including, but not limited to, games, cartoons,
19 music, and celebrities who appeal to children; and

20 (6) a significant amount of the audience of the online
21 service, product, or feature is determined, based on
22 internal company research, to be children.

23 "Online service, product, or feature" does not mean any of
24 the following:

25 (1) a broadband Internet access service;

26 (2) a telecommunications service; or

1 (3) the delivery or use of a physical product.

2 "Profiling" means any form of automated processing of
3 personal information that uses personal information to
4 evaluate certain aspects relating to a natural person,
5 including analyzing or predicting aspects concerning a natural
6 person's performance at work, economic situation, health,
7 personal preferences, interests, reliability, behavior,
8 location, or movements.

9 Section 10. Requirements for businesses that provide an
10 online service to children.

11 (a) A business that provides an online service, product,
12 or feature likely to be accessed by children shall take all of
13 the following actions:

14 (1) Before any new online services, products, or
15 features are offered to the public, complete a data
16 protection impact assessment for any online service,
17 product, or feature likely to be accessed by children and
18 maintain documentation of this assessment as long as the
19 online service, product, or feature is likely to be
20 accessed by children. A business shall biennially review
21 all data protection impact assessments. The data
22 protection impact assessment required by this paragraph
23 shall identify the purpose of the online service, product,
24 or feature, how it uses children's personal information,
25 and the risks of material detriment to children that arise

1 from the data management practices of the business. The
2 data protection impact assessment shall address, to the
3 extent applicable, all of the following:

4 (A) whether the design of the online product,
5 service, or feature could harm children, including by
6 exposing children to harmful, or potentially harmful,
7 content on the online product, service, or feature;

8 (B) whether the design of the online product,
9 service, or feature could lead to children
10 experiencing or being targeted by harmful, or
11 potentially harmful, contacts on the online product,
12 service, or feature;

13 (C) whether the design of the online product,
14 service, or feature could permit children to witness,
15 participate in, or be subject to harmful, or
16 potentially harmful, conduct on the online product,
17 service, or feature;

18 (D) whether the design of the online product,
19 service, or feature could allow children to be party
20 to or exploited by a harmful, or potentially harmful,
21 contact on the online product, service, or feature;

22 (E) whether algorithms used by the online product,
23 service, or feature could harm children;

24 (F) whether targeted advertising systems used by
25 the online product, service, or feature could harm
26 children;

1 (G) whether and how the online product, service,
2 or feature uses system design features to increase,
3 sustain, or extend use of the online product, service,
4 or feature by children, including the automatic
5 playing of media, rewards for time spent, and
6 notifications; and

7 (H) whether, how, and for what purpose the online
8 product, service, or feature collects or processes
9 sensitive personal information of children.

10 (2) Document any risk of material detriment to
11 children that arises from the data management practices of
12 the business identified in the data protection impact
13 assessment required by paragraph (1) and create a timed
14 plan to mitigate or eliminate the risk before the online
15 service, product, or feature is accessed by children.

16 (3) Within 3 business days of a written request by the
17 Attorney General, provide to the Attorney General a list
18 of all data protection impact assessments the business has
19 completed.

20 (4) For any data protection impact assessment
21 completed as required by paragraph (1), make the data
22 protection impact assessment available, within 5 business
23 days, to the Attorney General pursuant to a written
24 request. To the extent any information contained in a data
25 protection impact assessment disclosed to the Attorney
26 General includes information subject to attorney-client

1 privilege or work product protection, disclosure required
2 by this paragraph shall not constitute a waiver of that
3 privilege or protection.

4 (5) Estimate the age of child users with a reasonable
5 level of certainty appropriate to the risks that arise
6 from the data management practices of the business or
7 apply the privacy and data protections afforded to
8 children to all consumers.

9 (6) Configure all default privacy settings provided to
10 children by the online service, product, or feature to
11 settings that offer a high level of privacy, unless the
12 business can demonstrate a compelling reason that a
13 different setting is in the best interests of children.

14 (7) Provide any privacy information, terms of service,
15 policies, and community standards concisely, prominently,
16 and using clear language suited to the age of children
17 likely to access that online service, product, or feature.

18 (8) If the online service, product, or feature allows
19 the child's parent, guardian, or any other consumer to
20 monitor the child's online activity or track the child's
21 location, provide an obvious signal to the child when the
22 child is being monitored or tracked.

23 (9) Enforce published terms, policies, and community
24 standards established by the business, including, but not
25 limited to, privacy policies and those concerning
26 children.

1 (10) Provide prominent, accessible, and responsive
2 tools to help children, or if applicable their parents or
3 guardians, exercise their privacy rights and report
4 concerns.

5 (b) A business that provides an online service, product,
6 or feature likely to be accessed by children shall not take any
7 of the following actions:

8 (1) Use the personal information of any child in a way
9 that the business knows, or has reason to know, is
10 materially detrimental to the physical health, mental
11 health, or well-being of a child.

12 (2) Profile a child by default unless the following
13 criteria are met:

14 (A) the business can demonstrate it has
15 appropriate safeguards in place to protect children;
16 and

17 (B) either of the following is true:

18 (i) profiling is necessary to provide the
19 online service, product, or feature requested and
20 only with respect to the aspects of the online
21 service, product, or feature with which the child
22 is actively and knowingly engaged; or

23 (ii) the business can demonstrate a compelling
24 reason that profiling is in the best interests of
25 children.

26 (3) Collect, sell, share, or retain any personal

1 information that is not necessary to provide an online
2 service, product, or feature with which a child is
3 actively and knowingly engaged unless the business can
4 demonstrate a compelling reason that the collecting,
5 selling, sharing, or retaining of the personal information
6 is in the best interests of children likely to access the
7 online service, product, or feature.

8 (4) If the end user is a child, use personal
9 information for any reason other than a reason for which
10 that personal information was collected, unless the
11 business can demonstrate a compelling reason that use of
12 the personal information is in the best interests of
13 children.

14 (5) Collect, sell, or share any precise geolocation
15 information of children by default unless the collection
16 of that precise geolocation information is strictly
17 necessary for the business to provide the service,
18 product, or feature requested and then only for the
19 limited time that the collection of precise geolocation
20 information is necessary to provide the service, product,
21 or feature.

22 (6) Collect any precise geolocation information of a
23 child without providing an obvious sign to the child for
24 the duration of that collection that precise geolocation
25 information is being collected.

26 (7) Use dark patterns to lead or encourage children to

1 provide personal information beyond what is reasonably
2 expected to provide that online service, product, or
3 feature to bypass privacy protections, or to take any
4 action that the business knows, or has reason to know, is
5 materially detrimental to the child's physical health,
6 mental health, or well-being.

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

12 (c) A data protection impact assessment conducted by a
13 business for the purpose of compliance with any other law
14 complies with this Section if the data protection impact
15 assessment meets the requirements of this Act. A single data
16 protection impact assessment may contain multiple similar
17 processing operations that present similar risks only if each
18 relevant online service, product, or feature is addressed.

19 Section 15. Children's Data Protection Working Group.

20 (a) The Children's Data Protection Working Group is hereby
21 created to deliver a report to the General Assembly, as
22 described in subsection (e), regarding best practices for the
23 implementation of this Act.

24 (b) Working Group members shall consist of residents of
25 this State with expertise in at least 2 of the following areas:

- 1 (1) children's data privacy;
- 2 (2) physical health;
- 3 (3) mental health and well-being;
- 4 (4) computer science; and
- 5 (5) children's rights.

6 (c) The Working Group shall select a chairperson and a
7 vice chairperson from among its members and shall consist of
8 the following 8 members:

- 9 (1) two members appointed by the Governor;
- 10 (2) two members appointed by the President of the
11 Senate;
- 12 (3) two members appointed by the Speaker of the House
13 of Representatives; and
- 14 (4) two members appointed by the Attorney General.

15 (d) The Working Group shall take input from a broad range
16 of stakeholders, including from academia, consumer advocacy
17 groups, and small, medium, and large businesses affected by
18 data privacy policies and shall make recommendations to the
19 General Assembly on best practices regarding, at minimum, all
20 of the following:

- 21 (1) identifying online services, products, or features
22 likely to be accessed by children;
- 23 (2) evaluating and prioritizing the best interests of
24 children with respect to their privacy, physical health,
25 and mental health and well-being and evaluating how those
26 interests may be furthered by the design, development, and

1 implementation of an online service, product, or feature;

2 (3) ensuring that age assurance methods used by
3 businesses that provide online services, products, or
4 features likely to be accessed by children are
5 proportionate to the risks that arise from the data
6 management practices of the business, privacy protective,
7 and minimally invasive;

8 (4) assessing and mitigating risks to children that
9 arise from the use of an online service, product, or
10 feature; and

11 (5) publishing privacy information, policies, and
12 standards in concise, clear language suited for the age of
13 children likely to access an online service, product, or
14 feature.

15 (e) On or before January 1, 2024, and every 2 years
16 thereafter, the Working Group shall submit a report to the
17 General Assembly regarding the recommendations described in
18 subsection (d).

19 (f) The members of the Working Group shall serve without
20 compensation but shall be reimbursed for all necessary
21 expenses actually incurred in the performance of their duties.

22 (g) The Working Group is dissolved, and this Section is
23 repealed, on January 1, 2030.

24 Section 20. Data protection impact assessment.

25 (a) A business shall complete a data protection impact

1 assessment on or before July 1, 2024, for any online service,
2 product, or feature likely to be accessed by children offered
3 to the public before July 1, 2024.

4 (b) This Section does not apply to an online service,
5 product, or feature that is not offered to the public on or
6 after July 1, 2024.

7 Section 25. Violations; civil penalties

8 (a) Any business that violates this Act shall be subject
9 to an injunction and liable for a civil penalty of not more
10 than \$2,500 per affected child for each negligent violation or
11 not more than \$7,500 per affected child for each intentional
12 violation, that shall be assessed and recovered only in a
13 civil action brought by the Attorney General.

14 (b) If a business is in substantial compliance with the
15 requirements of paragraphs (1) through (4) of subsection (a)
16 of Section 10, the Attorney General shall provide written
17 notice to the business, before initiating an action under this
18 Act, identifying the specific provisions of this Act that the
19 Attorney General alleges have been or are being violated.

20 (c) If, within 90 days after the notice required by
21 subsection (b), the business cures any noticed violation and
22 provides the Attorney General a written statement that the
23 alleged violations have been cured, and sufficient measures
24 have been taken to prevent future violations, the business
25 shall not be liable for a civil penalty for any violation cured

1 under this subsection.

2 (d) Any penalties, fees, and expenses recovered in an
3 action brought under this Act shall be deposited into the
4 General Revenue Fund.

5 (e) Nothing in this Act shall be interpreted to serve as
6 the basis for a private right of action under this Act or any
7 other law.

8 (f) The Attorney General may solicit broad public
9 participation and adopt regulations to clarify the
10 requirements of this Act.".