

HF2257 - 0 - Minnesota Age-Appropriate Design Code Act

Chief Author: **Kristin Bahner**
 Committee: **Commerce Finance And Policy**
 Date Completed: **3/10/2023 8:04:20 AM**
 Agency: **Attorney General**

State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact		X

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

State Cost (Savings) Dollars in Thousands	Biennium			Biennium	
	FY2023	FY2024	FY2025	FY2026	FY2027
General Fund	-	142	142	142	142
State Government Special Rev	-	-	(100)	(100)	(100)
Total	-	142	42	42	42
Biennial Total			184		84

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2023	FY2024	FY2025	FY2026	FY2027
General Fund	-	.4	.4	.4	.4
State Government Special Rev	-	-	-	-	-
Total	-	.4	.4	.4	.4

LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

LBO Signature: Susan Nelson **Date:** 3/10/2023 8:04:20 AM
Phone: 651-296-6054 **Email:** susan.nelson@lbo.mn.gov

State Cost (Savings) Calculation Details

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

*Transfers In/Out and Absorbed Costs are only displayed when reported.

State Cost (Savings) = 1-2		Biennium			Biennium	
Dollars in Thousands		FY2023	FY2024	FY2025	FY2026	FY2027
General Fund	-	142	142	142	142	142
State Government Special Rev	-	-	(100)	(100)	(100)	(100)
Total	-	142	42	42	42	42
	Biennial Total		184	84		84
1 - Expenditures, Absorbed Costs*, Transfers Out*						
General Fund	-	142	142	142	142	142
State Government Special Rev	-	-	-	-	-	-
Total	-	142	142	142	142	142
	Biennial Total		284	284		284
2 - Revenues, Transfers In*						
General Fund	-	-	-	-	-	-
State Government Special Rev	-	-	100	100	100	100
Total	-	-	100	100	100	100
	Biennial Total		100	200		200

Bill Description

The Act provides the Attorney General with enforcement authority over violations pursuant to section 8.31. The Act provides that a subject business that violates its provisions may be subject to an injunction, costs and fees, and civil penalties of not more than \$2,500 per affected child (for unintentional violations) and not more than \$7,500 per affected child (for intentional violations). Recovered costs, fees, or penalties must be deposited into a special revenue fund and are appropriated to the Attorney General’s Office to offset enforcement costs. The Act also provides that for businesses that are in substantial compliance with the data protection impact assessment provisions of the Act (325O.04, subd. 1(1)-(5)) must provide potential violating businesses with 90-day notice and opportunity to cure period before initiating an enforcement action.

This Bill would establish a new consumer protection act, entitled the Minnesota Age Appropriate Design Code Act (the “Act”), applicable to certain businesses (i.e., business that have annual gross revenues in excess of \$25 million; buy or receive the personal information of 50,000 or more concerns, households, or devices; or derives 50% or more of its annual revenues from selling consumers’ personal information). The Act requires such businesses to consider the best interests of children when designing, developing, and providing online services, products, or features and to prioritize the best interests of children over commercial interests.

The Act requires such businesses to undertake the following obligations:

complete, maintain, and biennially review a data protection impact assessment (i.e., a survey to assess and mitigate risks to children) for any and all offerings of any new online service, product, or feature to the public;

document any risk of material detriment to children that arises from the data management practices of the business and create a plan to mitigate or eliminate the risk before the product is offered to the public;

Promptly provide the Attorney General with a list of all data impact assessments the business has completed and copies of any data protection impact assessment;

estimate the age of child users with a reasonable level of certainty or apply private and data protections afforded to children or all consumers;

configure default privacy settings provided to children to a setting that offers a high level of privacy, unless the business can demonstrate a compelling reason that a different setting is in the best interests of children;

provide privacy information, terms of service, policies, and community standards in clear language suited to the age of children likely to access the online service, product, or feature;

if the service, product or feature allows parental monitoring or tracking, provide an obvious signal to the child when the child is being monitored or tracked;

enforce published terms, policies, and community standards, including privacy policies and policies concerning children; and

provide prominent, accessible, and responsive tools to help children exercise their privacy rights and report concerns.

The Act also prohibits the following practices by such businesses:

Using the personal information of any child in a way that the business knows, or has reason to know, is materially detrimental the physical health, mental health, or well-being of a child;

Profile a child by default (unless it can meet certain child safety requirements);

Collect, sell, share, or retain any personal information that is not necessary to provide the online service, product, or feature with which a child is actively and knowingly engaged (absent compelling reasons);

Use personal information for any reason other than a reason for which the personal information was collected, if the end user is a child (absent compelling reasons);

Collect, sell, or share any precise geolocation information of children by default unless strictly necessary to provide the service, product, or feature (and then only for the limited time the geolocation information is necessary);

Collect any precise geolocation information of a child without providing an obvious sign to the child that the collection is occurring;

Use dark patterns (i.e., manipulating, subverting, or impairing user autonomy, decision making, or choice) to lead or encourage children to provide personal information (beyond what is reasonably necessary), forego privacy protections, or to take any action that is materially detrimental to the child's physical health, mental health, or well-being;

Use any personal information collected to estimate age or age range for any purpose other than to full the requirements of the Act.

Assumptions

The AGO estimates that it will expend 100 hours of investigator time monitoring compliance with the Act's newly enacted obligations and prohibitions each fiscal year. The AGO estimates that it will also expend 500 attorney hours initiating investigations and enforcement action(s) pursuant to section 8.31 as it identifies suspected violations each fiscal year. The AGO also anticipates expert costs starting in FY25. The AGO anticipates it will incur \$50,000 in each investigation/enforcement action it conducts (i.e., expert expends 250 hours at a rate of \$200 per hour). Thus, the AGO anticipates it will incur approximately \$50,000 in expert expenses pursuant to investigations/enforcement actions in FY25 and beyond.

Protecting the best interests of children from the detrimental effects of online services, products, or features is a large and ongoing problem. For example, FTC research indicates that dark pattern practices have been deployed in children's gaming apps, leading to harms such as unauthorized charges and preventing consumer cancellation attempts (see reference). Increasing research shows that large social media platforms such as Facebook and TikTok employ practices and techniques that negatively impact children and youth, including physical and mental health harms such as depression, eating disorders, and even suicide. For example, a report from one parental control app (see reference), which analyzed more than 3.4 billion messages across texts, email, apps, and social media platforms found that:

- 70% of tweens and 91% of teens encountered nudity or content of a sexual nature;
- 75% of tweens and 93% of teens engaged in conversations surrounding drugs/alcohol;
- 72% of tweens and 85% of teens experienced bullying as a bully, victim, or witness;
- 43% of tweens and 75% of teens were involved in a self-harm/suicidal situation.

The AGO is currently participating in a bipartisan coalition of attorneys' general to investigate Facebook and TikTok's practices in targeting youth with dark patterns and failure to take appropriate steps to protect children from harmful, adult content. The investigation includes the techniques Facebook used to increase the frequency and duration of engagement by young users and the resulting harms caused by such extended engagement with its social media platform.

The AGO estimates that after enactment of the Act and for the foreseeable future, its investigators will expend approximately 100 hours each fiscal year monitoring compliance with the Act and identifying potential violations of the Act. Subsequently, the AGO will seek to gain compliance with the Act's requirements and initiate investigations into violations. The AGO estimates that at least one matter will progress to a formal investigation and/or litigation that attorneys in its consumer protection section will expend at least 500 hours on each fiscal year, beginning in FY24. Based on past hours expended in other consumer protection enforcement actions brought by the AGO, to the extent investigations for violations of the Act proceed to litigation, 500 attorney hours each fiscal year is likely an underestimate of hours that will actually be expended.

In addition to an injunction, the AGO can recover attorney's fees and costs of investigation if successful in proving violations of the Act, as well as civil penalties under the Act. Under the terms of the Act, recoveries of civil penalties, costs and fees, must be deposited in a special revenue fund appropriated to the attorney general to offset incurred enforcement costs. (Section 325O.05(b)). Recognizing the uncertainties inherent in any litigation, and the uncertainties of predicting the fiscal year of recovery of such funds (which necessarily is at the end of litigation), the AGO assumes that recovery of fees and civil penalties will begin in FY25, and therefore does not project revenue in FY24. Starting in FY25, the AGO assumes it will bring and successfully litigate or settle at least one case each fiscal year that will provide revenue to the State, in addition to addressing the violation. The AGO estimates in each case it will, at a minimum, recover its costs and fees and civil penalties in the amount of \$100,000. Thus, revenue of \$100,000 per year is projected started in FY25.

In any given enforcement action, the AGO successfully brings, it can recover costs (including any expert costs) in addition to attorney's fees and civil penalties of up to \$2,500 - \$7,500 per affected child (based on whether such violations were intentional or not). It is expected that any violation would involve numerous children. Thus, for example, in any single enforcement action, which could involve hundreds or thousands of violations, an award of civil penalties alone could greatly exceed \$50,000. Thus, while the AGO typically obtains substantial civil penalties where allowed by law; for purposes of preparing this fiscal note, the revenue projections are measured.

Expenditure and/or Revenue Formula

The Office of the Attorney General uses billing rates to calculate revenue and costs. The billing rates effective from July 1, 2024–June 30, 2025 are \$163/hour for attorneys and \$103/hour for legal assistants (including investigators, paralegals, mediators, financial analysts, and support staff). The billable hour rate reflects the cost of providing legal services. One FTE is 1500 billable hours per year.

AGO Expenditures:

	Hourly Billing Rate	Hours	Total Cost to AGO
Attorney, [division]	\$163	500	\$81,500
Legal assistant, [Investigator/other non-attorney staff]	\$103	100	\$10,300
Other (Expert)	\$200	250	\$50,000
Total	N/A		\$141,800

Revenue received: Beginning FY25

	Total Amount received	To General Fund	To Other: [Consumers/special fund/agency, may need to add columns]	To AGO
<i>e.g., litigation recovery</i>	\$100,000	(_____)	(_____)	\$100,000
Total				\$100,000

Long-Term Fiscal Considerations

n/a

Local Fiscal Impact

n/a

References/Sources

FTC Staff Report, Bringing Dark Patterns to Light (Sept. 2022), available at:

https://www.ftc.gov/system/files/ftc_gov/pdf/P214800%20Dark%20Patterns%20Report%209.14.2022%20-%20FINAL.pdf.

Bark 2021 Annual Report, available at: bark.us/annual-report-2021/

Agency Contact: Laura Sayles

Agency Fiscal Note Coordinator Signature: Laura Capuana

Phone: 651-402-2213

Date: 3/10/2023 7:52:36 AM

Email: laura.capuana@ag.state.mn.us