

HF2257 - 2E - Minnesota Age-Appropriate Design Code Act

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 Committee: **Commerce Finance And Policy**  
 Date Completed: **3/1/2024 9:53:09 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)	Biennium			Biennium		
	Dollars in Thousands	FY2023	FY2024	FY2025	FY2026	FY2027
General Fund	-	-	-	142	142	
Other Misc. Special Revenue	-	-	-	-	(100)	
<b>Total</b>	-	-	-	<b>142</b>	<b>42</b>	
<b>Biennial Total</b>						<b>184</b>

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2023	FY2024	FY2025	FY2026	FY2027
General Fund	-	-	-	-	-
Other Misc. Special Revenue	-	-	-	-	-
<b>Total</b>	-	-	-	-	-

**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:** 3/1/2024 9:53:09 AM  
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**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.

<b>State Cost (Savings) = 1-2</b>		<b>Biennium</b>			<b>Biennium</b>	
<b>Dollars in Thousands</b>	<b>FY2023</b>	<b>FY2024</b>	<b>FY2025</b>	<b>FY2026</b>	<b>FY2027</b>	
General Fund	-	-	-	142	142	
Other Misc. Special Revenue	-	-	-	-	(100)	
<b>Total</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>142</b>	<b>42</b>	
<b>Biennial Total</b>			<b>-</b>			<b>184</b>
<b>1 - Expenditures, Absorbed Costs*, Transfers Out*</b>						
General Fund	-	-	-	142	142	
Other Misc. Special Revenue	-	-	-	-	-	
<b>Total</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>142</b>	<b>142</b>	
<b>Biennial Total</b>			<b>-</b>			<b>284</b>
<b>2 - Revenues, Transfers In*</b>						
General Fund	-	-	-	-	-	
Other Misc. Special Revenue	-	-	-	-	100	
<b>Total</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>100</b>	
<b>Biennial Total</b>			<b>-</b>			<b>100</b>

**Bill Description**

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 consumers, households, or devices; or derives 50% or more of its annual revenues from selling consumers’ personal information). The Act imposes a duty for businesses to comply with the duty to act in the best interests of children and have a plan to ensure that all their online products, services, or features are designed and offered in a manner consistent with the best interests of children reasonably likely to access the online product, service, or feature.

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 negligent 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, the Attorney General must provide potential violating businesses with 90-day notice and opportunity to cure period before initiating an enforcement action.

The Act requires subject businesses to undertake the following obligations:

- complete, maintain, and modify a data protection impact assessment (i.e., a survey to assess and mitigate risks to children) for any new online service, product, or feature reasonably likely to be accessed by children;
- Promptly provide the Attorney General with copies of any data protection impact assessment;
- configure default privacy settings provided to children to a setting that offers the highest 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 and prominent language suited to the age of children likely to access the online service, product, or feature; 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 subject businesses:

- Process the personal data of any child in a way that is inconsistent with the best interests of children reasonably likely

- to access the online service, product, or feature;
- Profile a child by default (unless it can meet certain child safety requirements);
- Process any personal data that is not reasonably necessary to provide an online service, product, or feature with which a child is actively and knowingly engaged;
- If the end user is a child, process personal data for any reason other than a reason for which that personal data was collected;
- Process any precise geolocation information of children by default unless the collection is strictly necessary to provide the service, product, or feature (and then only for the limited time the geolocation information is necessary);
- Process 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 cause children to provide personal data (beyond what is reasonably necessary), forego privacy protections, or to take any action that the business knows or has reason to know is not in the best interests of children reasonably likely to access the online service, product, or feature; or
- Allow a child's parent, guardian, or any other consumer to monitor the child's online activity or track the child's location, without providing an obvious signal to the child when the child is being monitored or tracked.

### **Assumptions**

The AGO's enforcement activities will begin on July 1, 2025 (beginning of FY2026), which is the Act's effective date. It is estimated that, beginning in Fiscal Year 2026, the AGO 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 Fiscal Year 2026. The AGO anticipates it will require expert services relating to at least one enforcement case per fiscal year (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 FY26 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 #1).

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 #2), 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 that has sued Meta (Facebook) and is investigating TikTok for engaging in conduct and practices targeting youth with dark patterns and employing designs that knowingly addict and harm children. For example, the Meta enforcement action alleges that Facebook implemented techniques and design features 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 Fiscal Year 2026. 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. Indeed, the enforcement resources projected to be required to enforce a similar law by the California Attorney General's Office exceed the AGO's assumptions herein. See 7/29/22 California Senate Committee on Appropriations, available at: see reference #3.

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 3250.05(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 FY27, and therefore does not project revenue in FY26. Starting in FY27, 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 starting in FY27.

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.

The Attorney General's Office estimates that it will expend 500 hours of attorney time and 100 hours of legal assistant (investigator/other staff) time per fiscal year.

**Expenditure and/or Revenue Formula**

Expenditures:

	Hourly Billing Rate	Hours	Total Cost to AGO [hours x billing rate]
Attorney, [list attorney division]	\$163	500	\$81,500
Legal assistant, [Investigator/other non-attorney staff]	\$103	100	\$10,300
<i>Other - Expert fees</i>			\$50,000
			\$141,800

<b>Total</b>			
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Revenue received:

<i>Source of revenue: litigation, recovery, fines, etc.</i>	Total Amount received	Amount to General Fund	Amount To Other Source: [Consumers/special fund/agency, etc]	Amount To AGO
<i>Fees and civil penalties</i>	\$100,000 (beginning FY27)		New enforcement fund pursuant to Act	Special revenue fund to AGO for enforcement of Act
<b>Total</b>				<b>\$100,000</b>

**Long-Term Fiscal Considerations**

n/a

**Local Fiscal Impact**

n/a

**References/Sources**

Reference #1: 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](https://www.ftc.gov/system/files/ftc_gov/pdf/P214800%20Dark%20Patterns%20Report%209.14.2022%20-%20FINAL.pdf).

Reference #2: Bark 2021 Annual Report, available at: [bark.us/annual-report-2021/](http://bark.us/annual-report-2021/)

Reference #3: [https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill\\_id=202120220AB2273](https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220AB2273) (noting that California AGO projected needing 1 FTE supervising attorney; 4 FTE attorneys; 2 program analysts; and 3 legal secretaries to enforce California's Age Appropriate Design Code Act).

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