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FISCAL IMPACT REPORT

SPONSOR <u>Sen. Munoz/Rep. Herndon</u>	LAST UPDATED _____
	ORIGINAL DATE <u>1/29/24</u>
SHORT TITLE <u>Age Appropriate Design Code Act</u>	BILL NUMBER <u>Senate Bill 68</u>
	ANALYST <u>Gaussoin</u>

REVENUE* (dollars in thousands)

Type	FY24	FY25	FY26	FY27	FY28	Recurring or Nonrecurring	Fund Affected
Civil Penalties			\$250.0 to \$750.0	\$250.0 to \$750.0	\$250.0 to \$750.0	Recurring	General Fund

Parentheses () indicate revenue decreases.

*Amounts reflect most recent analysis of this legislation.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
			\$450.0	\$450.0	Recurring	General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Agency Analysis Received From
 Office of Broadband Access and Expansion (OBAE)
 Attorney General (NMAG)
 Children, Youth and Families Department (CYFD)
 Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of Senate Bill 68

Senate Bill 68 (SB68) creates the Age Appropriate Design Code Act to protect the privacy and well-being of children who access online products and services. The bill would limit the ability of for-profit online companies to collect personal data on users under the age of 18, including location information, or use online marketing techniques to persuade or influence a child to disclose personal data or accidentally pay for a service via online prompts, pop ups, or blacked-out content.

It requires companies that directly or indirectly target children to conduct a data protection impact assessment, not subject to public records laws, for any publicly accessible online product that analyzes whether the product or service is in the “best interest of children,” defined as a product or service that “will not benefit the entity to the detriment of the child and will not result in physical or financial harm, psychological or emotional harm, a highly offensive intrusion on reasonable privacy expectations, or discrimination based on race, color, religion, national origin, disability, sex, or sexual orientation.

The bill gives the Attorney General (NMAG) authority to initiate actions against companies that violate the act and creates civil penalties of \$2,500 to \$7,500 per child per incident for companies that negligently or intentionally violate the provisions of the act.

The bill applies to online products or services with more than 100 thousand users or with fewer but which earn more than 25 percent of their income from selling personal information. In addition, the bill creates exceptions for children who deliberately seek out information and companies that collect health information and other generally protected data.

The effective date of this bill is July 1, 2025. The act would not apply to products or services no longer available online when the act went into effect.

FISCAL IMPLICATIONS

NMAG anticipates it will need a specialized investigator, an attorney with experience in online products and consumer protection, and a law clerk at a total cost, with salaries and benefits, of \$450 thousand a year.

SB68 provides for civil penalties of \$2,500 per child per incident for negligence violations, and \$7,500 per child per incident for intentional violations; however, estimating the potential for violations is difficult. Assuming 10 incidents involving 10 children in both categories produces an estimated revenue impact of \$250 thousand to \$750 thousand.

SIGNIFICANT ISSUES

Legal Questions. SB68 is similar to a California law that has been challenged in federal court on First Amendment grounds by a tech industry trade group that includes Amazon, AOL, Google, Meta, and TikTok. NMAG, which has filed an amicus brief in that case, indicates SB68 contains specific differences from the California law that address arguments raised in federal court.

The Supreme Court has recognized a legitimate government interest in protecting children from potentially harmful materials (*Ginsberg v. State of N.Y.*, 1968). But the court has also invalidated law regulating speech on the internet even where the stated purpose was the protection of children. For example, in *Reno v. American Civil Liberties Union*, 1997, the court unanimously held that the federal Communications Decency Act (CDA) violated the First Amendment because it amounted to a content-based blanket restriction of free speech.

To determine whether a content-based law passes constitutional muster, courts generally apply a legal standard called strict scrutiny, under which the government must show the law is the “least

restrictive means” of advancing a “compelling” governmental interest. (*Sable Commc’ns of Cal. v. FCC*, 492 U.S. 115, 126 (1989)). The Congressional Research Service writes the government “rarely prevails under strict scrutiny” and that lawmakers may consider “whether a contemplated regulation of speech may be content based and whether an exception to strict scrutiny might apply.”

However, SB68 contains language that specifically states the law does not require a covered entity to restrict access to online products or services, is not intended to limit children’s rights, and does not prevent or preclude a child from deliberately or independently searching for content. The bill primarily requires strict and transparent privacy standards and restricts marketing practices that allow for “accidental” purchases.

Health Concerns. Analysis from the Human Services Department (HSD) on the similar Senate Bill 319 of 2023 (SB319) notes using online services are known to adversely affect children’s mental health. According to an analysis in *Frontiers in Human Dynamics*, too much screen time could cause mental health burdens like:

- Anxiety,
- Depression,
- Attention deficit hyperactivity disorder,
- Concentration problems,
- Obsessive behaviors,
- Irritability,
- Isolation,
- Sleep problems,
- Screen and social media fatigue.

The Department of Health (DOH) in analysis on SB319 notes these online behavior impact New Mexico children. The analysis states:

In 2021, among New Mexico high school students; 72.3 percent spent three or more hours a day on an average school day in front of a screen, and 38.7 percent spent five or more hours a day on an average school day in front of a screen. In 2021, NM high school students who spent three or more hours a day in front of a screen were 31 percent less likely to get seven or more hours of sleep a night than students who spent less than three hours a day in front of a screen, 45 percent more likely to experience persistent sadness or hopelessness than students who spent less than three hours a day in front of a screen, 65 percent more likely to experience frequent mental distress than students who spent less than three hours a day in front of a screen, and 42 percent more likely to have attempted suicide in the past year than students who spent less than three hours a day in front of a screen.

The Surgeon General’s Youth Mental Health Advisory writes that online platforms take up an increasing share of people’s time, a trend exacerbated by the pandemic.

During the pandemic, the time teenagers spent in front of screens for activities not related to school more than doubled, from 3.8 to 7.7 hours per day. ... Most importantly, technology companies must step up and take responsibility for creating a safe digital environment for children and youth. Today, most companies are not transparent about the impact of their products, which prevents parents and young people from making

informed decisions and researchers from identifying problems and solutions. At a minimum, the public and researchers deserve much more transparency.

TECHNICAL ISSUES

NMAG raises concerns about clarity and suggests adding a comma after “service” in the phrase “online product, service, or feature” throughout the bill; however, Legislative Council Service bill drafting rules specifically exclude the so-called Oxford comma. NMAG also suggests the bill define “highly offensive,” “device,” “valuable consideration,” and “material.”

OTHER SUBSTANTIVE ISSUES

The Office of Broadband Access and Expansion (OBAE) reports companies operating in European Union countries are already required to provide data protection impact assessments, what OBAE called “a common security and compliance tool in Europe.”

NMAG raises concerns the bill assumes an element of knowledge to the child, but child is defined by the act as all minors under 18—therefore these sections attribute a knowledge element to potentially very young children.

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