**** BILL NO. ****

INTRODUCED BY ****

BY REQUEST OF THE ****

A BILL FOR AN ACT ENTITLED: “AN ACT GENERALLY REVISING CONSUMER PROTECTION LAWS; ESTABLISHING DUTIES OF COVERED OPERATORS; REQUIRING SEPARATE AND INFORMED CONSENT; ESTABLISHING PENALTIES; PROVIDING DEFINITIONS; AND PROVIDING AN APPLICABILITY DATE.”

WHEREAS, social media use among minors is nearly universal, and a substantial portion of adolescents report using social media frequently throughout the day, such that the design of these services materially shapes how many young people spend significant amounts of their time; and

WHEREAS, many social media services present content to users through engagement-maximizing design features, including algorithmic recommendation systems, continuous or infinite scrolling, automatically playing content, and the prominent display of quantified engagement metrics, which are designed to increase the frequency and duration of use; and

WHEREAS, these design features operate regardless of the particular content displayed and function to prolong use and to reduce a user's ability to disengage; and

WHEREAS, increased and compulsive use of social media has been associated, in peer-reviewed research and in advisories issued by the United States Surgeon general and the American Psychological Association, with disruptions of sleep, attention, and in-person activity, and with elevated symptoms of anxiety and depression among some adolescents; and

WHEREAS, adolescents are, as a developmental matter, more sensitive to social feedback and less able to disengage from persuasive design than adults, so that features designed for adult users may present heightened risks when used by minors; and

WHEREAS, voluntary industry measures and existing parental controls have not proven sufficient to address the risks associated with engagement-maximizing design; and

WHEREAS, this act regulates the design and operation of addictive feeds and does not regulate,

restrict, or compel the content, viewpoint, or subject matter of any speech, and applies to the covered designed features regardless of the ideas or information conveyed; and

WHEREAS, frequent and unpredictable push notifications and alerts are designed to prompt minors to resume use of a service and are associated with disrupted sleep, diminished attention, and interruption of daily activities, and this act therefore prevents the ability for notification delivery to covered minors.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 6] may be cited as the "Limiting Internet Network Exploitation Impacting Non-adults Through Harmful Engagement by Social Addictive Negative Designs Act".

NEW SECTION. **Section 2. Purpose.** (1) The purpose of [sections 1 through 6] is to:

(a) prohibit covered operators from providing children under 18 with addictive feeds absent verifiable parental consent; and

(b) impose obligations on covered operators where the addictive feed is a significant part of their platform, and not on online services that provide such feeds as ancillary features or add-ons, or where users are on the feed for a relatively small portion of their time using the service.

(2) Nothing in [sections 1 through 6] prohibits minors viewing non-addictive feeds and any content available on social media platforms, such as feeds listed in chronological order, to ensure that children can still obtain all the core benefits of social media and does not limit social media companies' ability to moderate in good faith to protect children from harmful or otherwise objectionable content.

NEW SECTION. **Section 3. Definitions.** As used in [sections 1 through 6], unless the context clearly indicates otherwise, the following definitions apply:

(1) "Actual knowledge" means all information and inferences known to a covered operator relating to the age of a user, including but not limited to, self-identified age, an age signal received from an app store, and any age the covered operator has attributed to or associated with the user, for any purpose, including but

not limited to advertising, marketing, or product development purposes.

(2) "Addictive feed" means:

(a) except as otherwise provided in subsection (b), any feature, interface, surface, or content display mechanism, regardless of the name or label applied to it by the operator, that automatically presents, loads, or sequences content to a user and that incorporates the feature described in subsection(2)(a)(i), whether alone or in combination with one or more of the features described in subsections (2)(a)(ii) through 2(a)(iv):

(i) algorithmic recommendations, including but not limited to, any process, automated system, or computational mechanism that recommends, ranks, prioritizes, filters, sequences, or selects content for presentation to a user , including content originating from accounts, sources, or creators the user has chosen to follow or subscribe to, based, in whole or in part, on data collected from or about the user, whether linked to an account, a device, a session, or an inferred identity; inferences generated about the user's interests, characteristics, behavior, or predicted responses; or the user's past interactions with content, the platform, or other users;

(ii) infinite scroll, including, but not limited to, any design feature that automatically loads, renders, or presents content beyond content the user explicitly and specifically requested, searched for, or selected in the same session, including but not limited to infinite scroll, endless scroll, or any feature that eliminates or obscures a natural stopping point between discrete content items or pages;

(iii) auto-playing content, including, but not limited to, any design feature in which audio or video media begins playing without a discrete, affirmative user action to initiate playback of that specific media item, including auto-advance from one media item to the next, auto-looping of a single media item, and auto-initiation of playback upon page load or scroll-into-view; or

(iv) quantification of engagement, including, but not limited to, providing a visible count of how many likes, followers, comments, clicks, views, or reactions a user or a user-generated item has received.

(b) a feature, interface, surface, or content display mechanism is not an addictive feed if the content is presented to the user based solely on one or more of the following conditions:

(i) the recommendation, prioritization, or selection of content is determined by user-selected preferences, privacy or accessibility settings, or technical characteristics of the user's device, including user

survey responses or user ratings data;

(ii) the user has expressly and unambiguously requested:

(A) a specific item of content;

(B) content from a specific author, creator, source, or group that the user has subscribed to or followed, where the presentation of that content is not further ranked, filtered, or sequenced by a process described in subsection (a)(i); or

(C) results responsive to a specific search query entered by the user in the same session;

(iii) the content is a part of a direct and private communication;

(iv) the content is the next item in a predetermined, fixed sequence established by the original author, creator, or source, and that sequence has not been altered by a process described in subsection (a)(i);

(v) the recommendation, prioritization, filtering, selection or suppression of content is used solely to protect the safety of a user, including preventing or reducing exposure to self-harm, suicide, eating disorder, sexual exploitation, grooming, harassment, bullying or other unlawful or harmful content, and is not used to increase user engagement or time spent on the service; or

(vi) the recommendation, prioritization, or selection of content is necessary to comply with this section or any rules promulgated under this section.

(3) (a) "Addictive internet-based service or application" means an internet website, online service, online application, game, or mobile application that offers or provides a user an addictive feed as a significant part of the service.

(b) Online service does not include a telecommunications service, as defined in 47 U.S.C. 153 or a broadband internet access service, as defined in 47 C.F.R. 8.1(b).

(4) "Age signal" means a representation of a user's age or age category that is transmitted to a covered operator by an app store, operating system, or device, including a representation transmitted through an application programming interface.

(5) "App store" means a publicly available website, software application, or other electronic service that distributes software applications from the owner or developer of a software application to the user of a device.

(6) "Covered minor" means a resident of this state who is under 18 years of age, and who is a user

of an addictive internet-based service or application that a covered operator has actual knowledge is a minor.

(7) "Covered operator" means a person that operates or provides an addictive internet-based service or application.

(8) "Minor" means any person under 18 years of age.

(9) "Parent" means a parent or legal guardian of a minor.

(10) "Person" means any individual, partnership, association, corporation, or other entity.

(11) "User" means an individual who uses an addictive internet-based service or application and is not acting as a covered operator, or an agent or affiliate of a covered operator.

(12) "Verifiable parental consent" means:

(a) verifiable parental consent as defined in the Children's Online Privacy Protection Act, 15 U.S.C. § 6501(9), and as implemented through rules promulgated by the Federal Trade Commission at 16 C.F.R. Part 312, as amended; and

(b) any rules promulgated by the attorney general to identify methods of obtaining verifiable parental consent pursuant to [section 5].

NEW SECTION. **Section 4. Duties of Covered Operators -- separate and informed consent required.** (1) Subject to subsections (2) and (3) of this section, a covered operator may provide an addictive feed to a user if one of the following applies:

(a) The covered operator has actual knowledge that the user is not a minor; or

(b) The covered operator has obtained verifiable parental consent to provide an addictive feed to a covered minor; or

(c) The covered operator has no actual knowledge of the age of the user.

(2) A covered operator shall, by default, suppress the delivery of push notifications and alerts concerning an addictive feed to a covered minor.

(3) A covered operator is not required to collect information to determine the age of a user under subsection (1)(a).

(4) (a) If a covered operator collects information to determine the age of a user under subsection (1)(a), the covered operator shall not use that information for any purpose other than to determine the age of

the user. A covered operator shall delete any information collected to determine the age of the user under subsection (1)(a) immediately after an attempt to determine the age of the user, except if necessary to comply with applicable laws.

(b) A covered operator may rely on an age signal to determine whether a user is a covered minor and is not liable under [sections 1 through 6] for a violation arising solely from the inaccuracy of an age signal it relied on in good faith. Where an age signal, a self-declared age, or an age the operator has determined conflict, the operator shall use the youngest age.

(5) A covered operator shall not use information that is collected to obtain verifiable parental consent under subsection (1)(b) for any purpose other than to obtain verifiable parental consent. A covered operator shall delete information collected to obtain parental consent under subsection (1)(b) immediately after an attempt to obtain parental consent, except if necessary to comply with any applicable laws.

(6) This section does not require a covered operator to give a parent who grants verifiable parental consent under subsection (1)(b) any additional or special access to or control over the data or accounts of the parent's child.

(7) A covered operator shall not withhold, degrade, lower the quality, or increase the price of a product, service, or feature, other than as necessary to comply with this part or rules promulgated in accordance with this section, for a user because of an individual availing themselves of the rights provided by this part or due to any restrictions provided by this part.

(8) Verifiable parental consent under subsection 1(b) does not waive, release, limit, or serve as a defense to a claim that a parent of a minor or a user who is a minor or was a minor at the time of using the addictive internet-based service or application, might have against a covered operator regarding harm to the physical health or mental health of the user.

(9) (a) Verifiable parental consent to provide an addictive feed to a covered minor must be obtained separately and specifically for that purpose. Consent to any of the following does not constitute verifiable parental consent to provide an addictive feed:

(i) downloading, installing, or purchasing a software application;

(ii) making a purchase within a software application;

(iii) creating an account or registering as a user; or

(iv) accepting terms of service or entering into any other contract.

(b) Before obtaining verifiable consent under subsection 1(b), a covered operator shall clearly and conspicuously disclose to the parent, in plain language and separately from any other term or disclosure:

(i) which of the features described in [section 3(2)(a)] the addictive feed incorporates;

(ii) that the covered minor may access and use the addictive internet-based service or application without an addictive feed; and

(iii) that consent may be withdrawn at any time and the method for withdrawing consent.

(c) A covered operator may not:

(i) bundle a request for consent under subsection (1)(b) with a request for any other consent, agreement, or acceptance of terms;

(ii) condition access to the addictive internet-based service or application, or to any material functionality of the service other than the addictive feed, on consent under subsection (1)(b);

(iii) present consent under subsection (1)(b) as preselected, prechecked, or accepted by default; or

(iv) present the option to grant consent with greater prominence than the option without consent.

(d) The method for withdrawing consent must be at least as easy to use as the method by which consent was given. Upon withdrawal of consent, a covered operator shall cease providing the addictive feed to the covered minor.

(10) Nothing in [sections 1 through 6] may be construed to conflict with the Children's Online Privacy Protection Act, 15 U.S.C. 6501 through 6506, or regulations promulgated under that act.

NEW SECTION. **Section 5. Enforcement--penalty--rulemaking.** (1) The attorney general has exclusive authority and may use the duties and powers provided by Title 30, chapter 14, parts 1 and 2, to enforce violations pursuant to this part.

(2) The attorney general shall post on the attorney general's website:

(a) information relating to:

(i) the responsibilities of a covered operator pursuant to this part; and

(ii) a user's rights pursuant to this part; and

(b) an online mechanism through which a user may submit a complaint regarding a covered

operator or an addictive internet-based service or application to the attorney general.

(3) If the attorney general has reasonable cause to believe that a person has engaged in or is engaging in a violation of this part, the attorney general may issue a civil investigative demand pursuant to 30-14-113.

(4) On or before October 1, 2028, the attorney general shall promulgate rules to implement this part. No liability under this part may be enforced until the rules have been promulgated, including, but not limited to, rules establishing methods for obtaining verifiable parental consent pursuant to [section 4].

(5) Following a civil investigative demand, if a covered operator is found in violation of this part, the attorney general may bring civil action seeking one or more of the following:

(a) a civil fine of not more than $5,000.00 per violation. Each instance of conduct prohibited under this section constitutes a separate violation. Where prohibited conduct affects more than one covered minor, each covered minor affected constitutes a separate violation;

(b) actual damages;

(c) injunctive or declaratory relief;

(d) destruction of information obtained in violation of this part; and

(e) any other relief that the court considers appropriate.

(6) The attorney general shall deposit a civil penalty collected under this section to a special revenue account to the credit of the department pursuant to 30-14-143.

NEW SECTION. **Section 6. Statute of limitations.** Actions brought by the department to enforce this part are subject to the statute of limitations pursuant to 27-2-231.

NEW SECTION. **Section 7. Codification instruction.** [Sections 1 through 6] are intended to be codified as a new part of Title 30, chapter 14, and the provisions of Title 30, chapter 14, apply to [sections 1 through 6].

NEW SECTION. **Section 8. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,

the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 9. Applicability.** [This act] applies to the duties imposed by [section 4] beginning 9 months after rules promulgated by the attorney general under [section 5] become final.

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