



Utah's Approach to Protecting Minors from the

Harms of Social Media



Representative Jordan Teuscher

NCSL AI, Cybersecurity, and Privacy Task Force | August 4, 2024



A

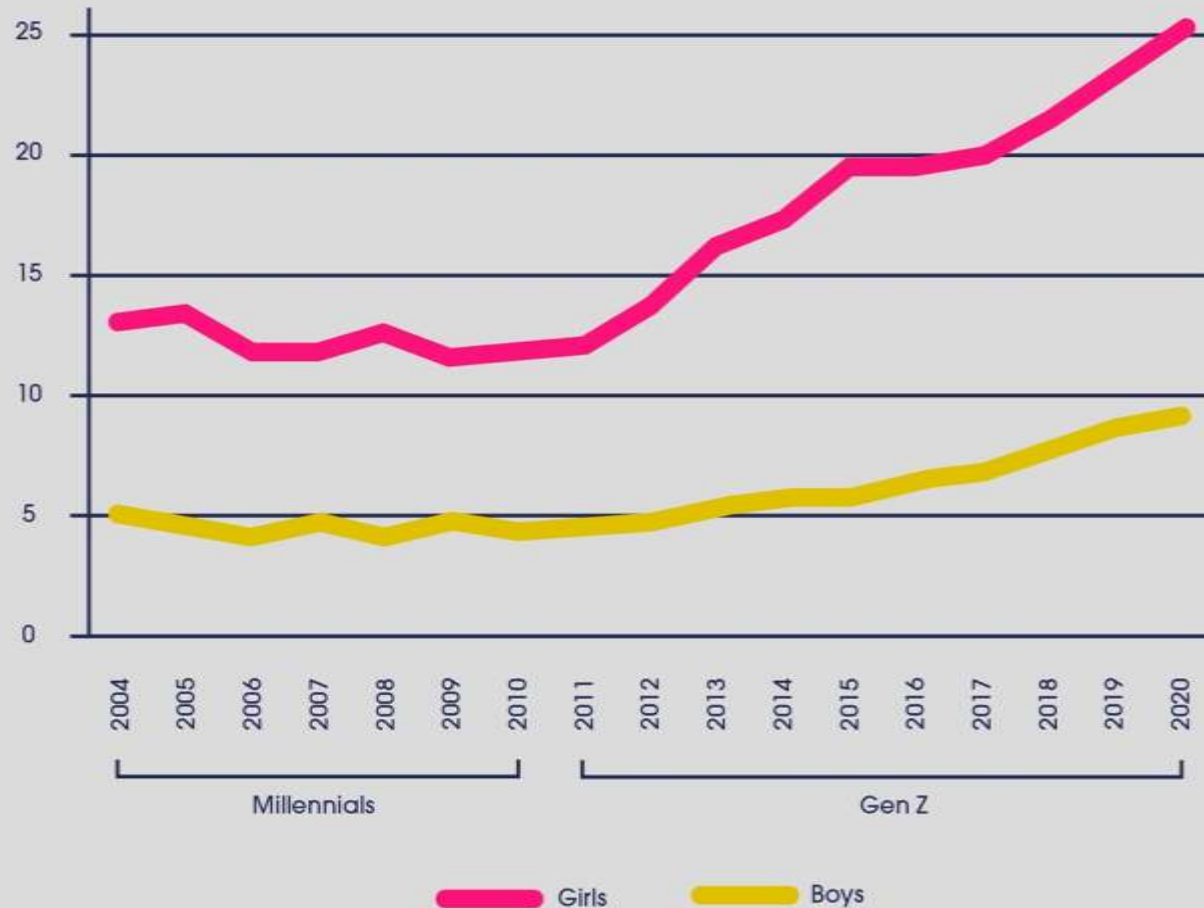
And while social media has eroded the art of association throughout society, it may be leaving its deepest and most enduring marks on adolescents. A surge in rates of anxiety, depression, and self-harm among American teens began suddenly in the early 2010s. (The same thing happened to Canadian and British teens, at the same time.) The cause is not known, but the timing points to social media as a substantial contributor—the surge began just as the large majority of American teens became daily users of the major platforms. Correlational and experimental studies back up the connection to depression and anxiety, as do reports from young people themselves, and from Facebook's own research, as reported by *The Wall Street Journal*.

YEARS
E HAVE
TUPID



ga

Depression has doubled for U.S. teens



Rates of major depression roughly doubled, for boys and girls, from 2010 to 2020.

[Source: U.S. National Survey on Drug Use and Health](#)



ER visits for self-harm rose sharply over the last decade

Ages 10-19



Emergency room visits for self-harm by children and adolescents rose sharply over the last decade, particularly among young women.

[By The New York Times](#) | Source: [Centers for Disease Control and Prevention](#)



National data



Up to 95% of youth ages 13-17 report using a social media platform, with more than a third saying they use social media “almost constantly.”



Almost 60% of teen girls say they’ve been contacted on social media by a stranger in ways that made them feel uncomfortable.



Since the invention of social media, youth worldwide are feeling lonelier than ever before.



National data



When asked about the impact of social media on their body image, nearly half (46%) of youth aged 13-17 said social media makes them feel worse, 40% said it makes them feel neither better nor worse and only 14% said it makes them feel better. (U.S. Surgeon General)



CDC shows 57% of teen girls are persistently sad or hopeless.



Utah data



There is a strong relationship between screen time and lack of sleep, thoughts of suicide, and substance use.



Only 38.4% of youth got 8 or more hours of sleep on an average school night.



More youth are spending time on their electronic devices than ever before. Nearly 80% (79.8%) of youth spend 2 or more hours per school day playing Xbox, PlayStation, texting, or time on YouTube, Instagram, Facebook, etc. (not counting schoolwork).



Utah data



Almost 18% of youth seriously considered attempting suicide in the past year. Youth are resilient and can overcome mental health struggles with the right support, treatment, and resources.



About 21.6% of students in grades 8, 10, and 12 felt lonely and isolated often.

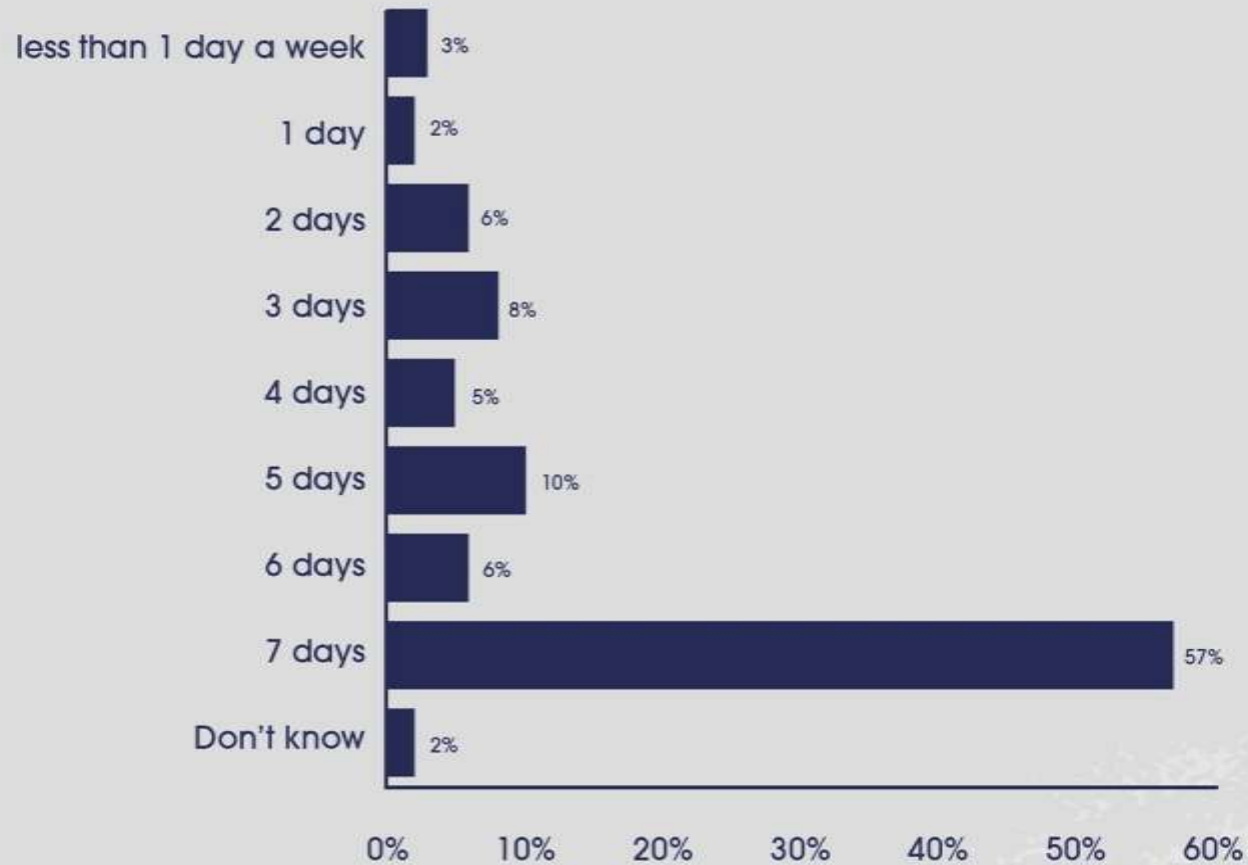


The CDC shows 57% of teen girls were persistently sad or hopeless in 2021. In Utah, 53% of female high school aged students had persistent feelings of sadness or hopelessness, an increase of 61% from 2009. Social media became prevalent between 2009-2010.

[Utah SHARP survey 2023](#)



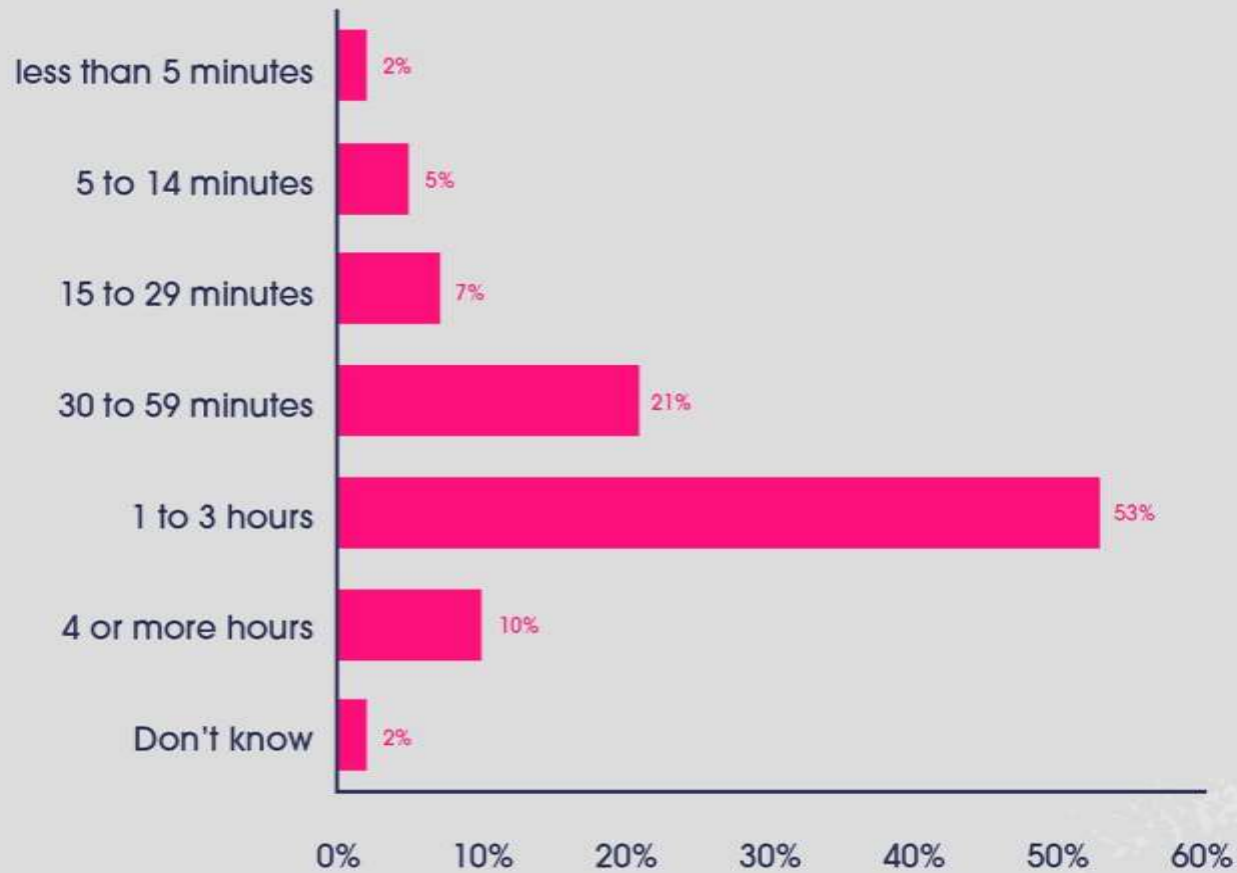
Utah parents report 57% of children use social media 7 days a week



Note: Percentages in this chart are based on respondents whose children use social media.



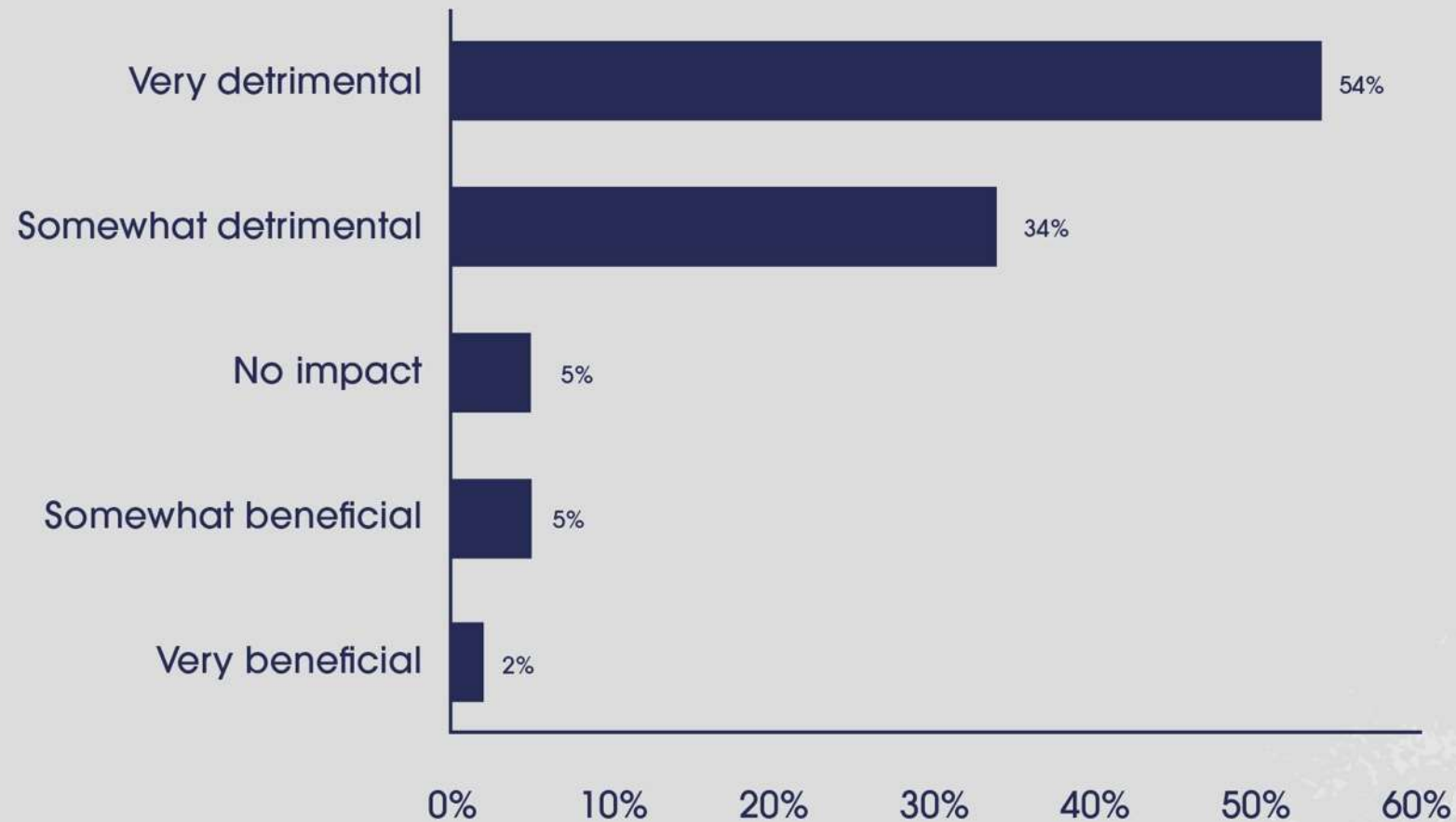
Utah parents report 76% of their children use social media in some capacity and 53% use it 1-3 hours a day



Note: Percentages in this chart are based on respondents whose children use social media.



88% of Utah parents believe social media has a detrimental impact on the mental health and well-being of children



Note: Percentages in this chart are based on respondents whose children use social media.





Enrolled Copy

H.B. 311

SOCIAL MEDIA USAGE AMENDMENTS

2023 GENERAL SESSION
STATE OF UTAH

Chief Sponsor: Jordan D. Teuscher

Senate Sponsor: Kirk A. Cullimore

Cosponsors:	Joseph Elison	Carol S. Moss
Cheryl K. Acton	Katy Hall	Doug Owens
Carl R. Albrecht	Jon Hawkins	Thomas W. Peterson
Melissa G. Ballard	Ken Ivory	Candice B. Pieracci
Stewart E. Barlow	Colin W. Jack	Susan Pulsipher
Gay Lynn Bennion	Tim Jimenez	Angela Romero
Bridger Bolinder	Dan N. Johnson	Robert M. Spendlove
Brady Brammer	Marsha Judkins	Keven J. Stratton
Joel K. Briscoe	Brian S. King	Mark A. Strong
Jefferson S. Burton	Michael L. Kohler	R. Neil Walter
Kay J. Christofferson	Quinn Kotter	Mark A. Whantley
Tyler Clancy	Trevor Lee	Stephen L. Whyte
James Cobb	Anthony E. Loubet	
Paul A. Cutler	Steven J. Lund	
Jennifer Dailey-Provost	Ashlee Matthews	

LONG TITLE

General Description:

This bill regulates social media companies and the use and design of social media platforms.

Highlighted Provisions:

This bill:

Enrolled Copy

S.B. 152

SOCIAL MEDIA REGULATION AMENDMENTS

2023 GENERAL SESSION
STATE OF UTAH

Chief Sponsor: Michael K. McKell

House Sponsor: Jordan D. Teuscher

LONG TITLE

General Description:

This bill enacts provisions related to the regulation of social media companies and social media platforms.

Highlighted Provisions:

This bill:

- defines terms;
- enacts the Utah Social Media Regulation Act;
- requires a social media company to verify the age of a Utah resident seeking to maintain or open a social media account;
- requires a social media company to obtain the consent of a parent or guardian before a Utah resident under the age of 18 may maintain or open an account;
- prohibits a social media company from permitting a Utah resident to open an account if that person does not meet age requirements under state or federal law;
- requires that for accounts held by a Utah minor, certain social media companies:
 - shall prohibit direct messaging with certain accounts;
 - may not show the minor's account in search results;
 - may not display advertising;
 - may not collect, share, or use personal information from the account, with certain exceptions:
 - may not target or suggest ads, accounts, or content; and
 - shall limit hours of access, subject to parental or guardian direction;
 - requires a social media company to provide a parent or guardian access to the

Sharing the message

The screenshot shows the Utah Department of Health & Human Services website. At the top left, the logo for 'UTAH An official website' and 'Utah Department of Health & Human Services' is visible. Below the logo is a navigation bar with links for 'Home', 'Surgeon General's recommendations', 'Resources', and 'En Español'. A search icon is on the right. The main content area features a large image of a young woman with a distressed expression. Overlaid on this image is a pink banner with the text 'Unmask the dangers of social media' in yellow and white. Below the image, the text reads: 'Social media can connect us to a world of opportunities, but what if it's harming our children?'. A short paragraph follows: 'Your child's brain is developing rapidly, making them more susceptible to the harms of social media. And though they might put on a brave face, they could be hurting underneath. It's time to unmask the harms of social media.' Another paragraph mentions a 'surgeon general advisory on social media and youth mental health'. A blue box contains a quote: 'Up to 95% of youth ages 13-17 report using a social media platform, with more than a third saying they use social media "almost constantly."' The bottom of the page has a paragraph about the growing concern for children and teens using social media.



socialharms.utah.gov



@utahdhhs







NetChoice challenges Utah Social Media Regulation Act in lawsuit

The Utah Social Media Regulation Act is set to go into effect on March 1, 2024

Published: Dec 18, 2023, 6:12 p.m. MST



Case 2:23-cv-00911 Document 1 Filed 12/18/23 PageID.1 Page 1 of 58

David C. Reymann (8495)
Kade N. Olsen (17775)
PARR BROWN GEE & LOVELESS, P.C.
101 South 200 East, Suite 700
Salt Lake City, UT 84111
(801) 257-7939
dreymann@parrbrown.com
kolsen@parrbrown.com

Steven P. Lehotsky*
Scott A. Keller*
Jeremy Evan Maltz*
LEHOTSKY KELLER COHN LLP
200 Massachusetts Avenue, NW
Washington, DC 20001
(512) 693-8350
steve@lkcfirm.com
scott@lkcfirm.com
jeremy@lkcfirm.com

**(motions for admission
pro hac vice forthcoming)*

Todd Disher*
Joshua P. Morrow*
Alexis Swartz*
LEHOTSKY KELLER COHN LLP
408 W. 11th Street, 5th Floor
Austin, TX 78701
(512) 693-8350
todd@lkcfirm.com
josh@lkcfirm.com
alexis@lkcfirm.com

Attorneys for Plaintiff NetChoice, LLC

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

NETCHOICE, LLC,

Plaintiff,

v.

**SEAN D. REYES, in his official
capacity as Attorney General of Utah,**

**KATHERINE HASS, in her official
capacity as Director of the Division of Consumer
Protection of the Utah Department
of Commerce,**

Defendants.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Case No. _____

1 **SOCIAL MEDIA REGULATION AMENDMENTS**
 2 2024 GENERAL SESSION
 3 STATE OF UTAH

4 **Chief Sponsor: Michael K. McKell**

5 House Sponsor: Jordan D. Teuscher

6 **LONG TITLE**

7 **General Description:**

8 This bill enacts provisions related to age assurance and protecting minors in the Utah Minor
 9 Protection in Social Media Act (Act).

10 **Highlighted Provisions:**

11 This bill:

- 12 • defines terms;
- 13 • requires social media companies to verify a new account holder's age using an approved
 14 system;
- 15 • requires a social media service to:
 - 16 • enable maximum default privacy settings on a Utah minor account holder's account;
 - 17 • provide supervisory tools and verifiable parental consent mechanisms on a Utah
 18 minor account holder's account; and
 - 19 • provide confidentiality protections for minors' data;
 - 20 • establishes the Division of Consumer Protection's enforcement powers relating to the
 21 Act;
 - 22 • provides compliance safe harbors when social media companies implement approved
 23 systems for age assurance and verifiable parental consent; and
 - 24 • contains a severability clause.

25 **Money Appropriated in this Bill:**

26 None

27 **Other Special Clauses:**

28 This bill provides a special effective date.

29 This bill provides a coordination clause.

30 **Utah Code Sections Affected:**

1 **SOCIAL MEDIA AMENDMENTS**
 2 2024 GENERAL SESSION
 3 STATE OF UTAH

4 **Chief Sponsor: Jordan D. Teuscher**

5 Senate Sponsor: Kirk A. Cullimore

6 **LONG TITLE**

7 **General Description:**

8 This bill concerns harm to minors from social media.

9 **Highlighted Provisions:**

10 This bill:

- 11 • defines terms;
- 12 • amends the criminal offense of electronic communication harassment and creates a civil
 13 cause of action to address certain conduct involving minors;
- 14 • enacts legislative findings regarding potential harms of excessive social media use by
 15 minors;
- 16 • allows a private right of action related to harms to minors from excessive social media
 17 use and establishes related provisions;
- 18 • establishes an affirmative defense for a social media company to defend against the
 19 private right of action;
- 20 • prohibits waivers of rights and protections; and
- 21 • makes technical and conforming changes.

22 **Money Appropriated in this Bill:**

23 None

24 **Other Special Clauses:**

25 This bill provides a special effective date.

26 **Utah Code Sections Affected:**

27 AMENDS:

28 76-9-201 (Effective 05/01/24), as last amended by Laws of Utah 2023, Chapter 111

29 ENACTS:

30 78B-3-1101 (Effective 10/01/24), Utah Code Annotated 1953

Senate Bill 194



- Enacts an **age assurance process** so that social media platforms can identify minors.
- Requires **default privacy settings** for a minor account holder that defaults to only allow direct messages and visibility between accounts that are connected.
- **Protects minor's personal information** by requiring reasonable security measures and encryption.
- **Disables search engine indexing** of minor accounts.
- **Disables features that lead to excessive use**, including autoplay, perpetual scrolling, and push notifications.
- Requires social media companies to offer **supervisory tools** to oversee minor accounts, including:
 - Setting time limits
 - Scheduling mandatory breaks
 - Viewing total and daily average use time
 - Seeing connected accounts
- **Prevents** collecting and selling data on minors without consent from a verifiable parent or legal guardian.

House Bill 464



- Provides a **rebuttable presumption of harm** to minors using social media platforms with curated algorithms and engagement-driven design features
- Creates a **private right of action** for minors and their parents to hold social media companies liable for the harm addictive algorithms have caused children through a private right of action
- Allows social media companies to legally **overcome the assumption** that their products cause harm if they:
 - Obtain parental consent for a minor’s use of the platform
 - Remove features causing excessive use: autoplay, perpetual scrolling, and push notifications
 - Limit a minor’s time on the platform
 - No more than 3 hours/day
 - No access between 10:30 pm – 6:30 am

NetChoice v. Reyes

Case 2:23-cv-00911-AMA-CMR Document 52 Filed 05/03/24 PageID.418 Page 1 of 49

David C. Reymann (8495)
Kade N. Olsen (17775)
PARR BROWN GEE & LOVELESS, P.C.
101 South 200 East, Suite 700
Salt Lake City, UT 84111
(801) 257-7939
dreymann@parrbrown.com
kolsen@parrbrown.com

Steven P. Lehotsky*
Scott A. Keller*
Jeremy Evan Maltz*
LEHOTSKY KELLER COHN LLP
200 Massachusetts Avenue, NW
Washington, DC 20001
(512) 693-8350
steve@lkcfirm.com
scott@lkcfirm.com
jeremy@lkcfirm.com
* (admitted pro hac vice)

Todd Disher*
Joshua P. Morrow*
Alexis Swartz*
LEHOTSKY KELLER COHN LLP
408 W. 11th Street, 5th Floor
Austin, TX 78701
(512) 693-8350
todd@lkcfirm.com
josh@lkcfirm.com
alexis@lkcfirm.com

Attorneys for Plaintiff NetChoice, LLC

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

NETCHOICE, LLC,

Plaintiff,

v.

SEAN D. REYES, in his official
capacity as Attorney General of Utah,

KATHERINE HASS, in her official
capacity as Director of the Division of
Consumer Protection of the Utah
Department of Commerce,

Defendants.

PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION

Case No. 2:23-cv-00911-AMA-CMR

Judge Ann Marie McHff Allen

Magistrate Judge Cecilia M. Romero

- Multiple substantive provisions of the Act's restrictions on speech independently are preempted under 47 U.S.C. § 230
- The Act violates the First Amendment and Due Process Clause
 - Because it is directed at “social media companies” it is content-, speaker-, and viewpoint-based = strict scrutiny
 - The Act is not properly tailored to meet any sufficient governmental interest.
 - “Social Media Company” is unconstitutionally vague
- Multiple substantive provisions of the Act independently violate the First Amendment and the Due Process Clause
 - Restricts minors' ability to share expression absent parental consent violate the First Amendment
 - Prohibits specific means of disseminating speech on minors' accounts.
 - Age Assurance violates First Amendment
- “Undefined data collection” and use regulations are unconstitutionally vague in violation of the First Amendment and Due Process Clause

Section 230 Claims DISMISSED

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

NETCHOICE, LLC,

Plaintiff,

v.

SEAN D. REYES, in his official capacity as
Attorney General of Utah, and KATHERINE
HASS, in her official capacity as Director of
the Division of Consumer Protection of the
Utah Department of Commerce,

Defendants.

MEMORANDUM DECISION AND
ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS

Case No. 2:23-cv-00911-RJS-CMR

Chief Judge Robert J. Shelby

Magistrate Judge Cecilia M. Romero

This case arises out of Plaintiff NetChoice, LLC's challenge to the Utah Minor Protection in Social Media Act (the Act).¹ Among other causes of action, NetChoice claims Section 230 of the Communications Decency Act (CDA) preempts certain provisions of the Act. Now before the court is Defendants Sean D. Reyes and Katherine Hass' Motion to Dismiss that claim.² For the reasons explained below, Defendants' Motion is GRANTED.

BACKGROUND³

A. The Parties

Plaintiff NetChoice is a District of Columbia nonprofit trade association for internet

¹ Utah Code §§ 13-71-101 to 401.

² Dkt. 59, Defendants' Motion to Dismiss for Failure to State a Claim and Alternatively in Support (Motion to Dismiss).

³ Because this case is before the court on a motion to dismiss, it accepts as true all well-pleaded factual allegations contained in NetChoice's First Amended Complaint. See *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

“The dispositive question is whether the Act’s prohibitions on autoplay, seamless pagination, and notifications treat NetChoice members as the publisher or speaker of the third-party content they disseminate. The court concludes they do not. The Act’s prohibitions focus solely on the conduct of the covered website—the website’s use of certain design features on minors’ accounts—and impose liability irrespective of the content those design features may be used to disseminate. In other words, the prohibitions do not impose liability on NetChoice members based on their role as a publisher of third-party content because the potential liability has no connection to that content. Accordingly, the challenged provisions fall outside the scope of Section 230’s protections and are not inconsistent with it.”

Let's discuss

