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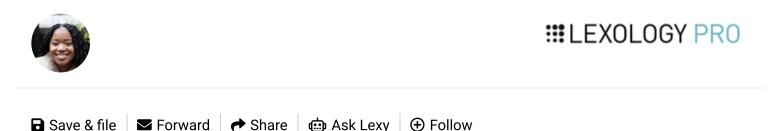
Vermont enacts children's online privacy law that may muddle corporate compliance

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Vermont's new law requires companies to determine if their online services are "reasonably likely to be accessed" by minors, a requirement that might be too vague and spur litigation.

The Vermont Age-Appropriate Design Code Act 2025 was enacted on 12 June 2025. The legislation is scheduled to go into effect on 1 January 2027.

Key takeaways   ⌃

- The Vermont Age-Appropriate Design Code covers businesses, that amongst other criteria, provides online products, services or features that "are reasonably likely to be accessed by a minor"
- The law is scheduled to go into effect on 1 January 2027
- The law sets a duty of care, data minimisation and age-assurance requirements for covered entities

Key requirements

Entities that fall under the scope of the Vermont Age-Appropriate Design Code Act include any business that generates most of its annual revenue from online services – the legislation does not set a specific monetary or data collection threshold. The entity must also provide online products, services or features that are "reasonably likely" to be accessed by individuals younger than 18.

Lowenstein Sandler partner Kathleen McGee told Lexology PRO that companies may struggle to determine if their online services or products are reasonably likely to be accessed by minors 17 or younger.

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"The reasonable standard that Vermont is promulgating I consider it a broader standard because you don't have to have actually designed the content to appeal to, for example, a 15-year-old but you do have to consider if it's reasonable to assume that a 15-year-old would be interested in that content," said McGee. "Fifteen-year-olds, 16-year-olds and 17-year-olds can be interested in a lot of content that is created for adults. The question becomes where do we draw the line for our client."

McGee said such a standard may spark a legal challenge.

"I think it will be harder for companies to decipher whether or not content that can appeal to tweens, teens and young adults would fall within the ambit of this Vermont law. I could foresee that being the basis for a challenge," she said.

However, Vermont isn't the first to set such a standard.

"Vermont is the latest state to enact stringent limits for online services that are reasonably likely to be accessed by users under the age of 18, joining (for example) California, Florida, Connecticut, Maryland, and New York," said Covington & Burling partner Lindsey Tonsager in a statement provided to Lexology PRO.

Vermont also sets a "duty of care" for covered entities processing minors' data. Vermont provides that entities should not design their online services, products and features or use minors' personal data which could result in:

- emotional distress;
- compulsive use of the online service, product or feature by a minor; or
- discrimination against a minor.

Additionally, covered entities must adopt data minimisation practices. According to the law, covered businesses cannot collect, retain or share covered minors' data unless it's necessary to provide an online service, product or feature that the minor has "actively and knowingly engaged."

Nebraska's recently enacted Age-Appropriate Online Design Code Act 2025 includes a similar requirement but such obligations are burdensome, Hunton Andrews Kurth counsel Jenna Rode told Lexology PRO.

"The requirement to only collect, use and disclose personal data from minors as necessary to provide the online service with which the minor is actively engaged is very stringent, and likely will require covered businesses to review their data processing practices and privacy notices to ensure that the businesses

process only the personal data required to provide the online service to minor users," Rode said.

Rode also noted that the legislation's age-assurance method is a unique requirement.

"Covered businesses will need to implement age-assurance mechanisms for all users of online services reasonably accessed by minors, which likely will be a new requirement for most covered businesses," she wrote.

Under the Vermont legislation, minors are consumers a covered business "actually knows" is a minor or labels as a minor in accordance with the law's age-assurance methods. The Vermont Attorney General's Office must adopt additional privacy protections for age assurance data and other rules by 1 January 2027.

Could the legislation be successfully challenged?

While some of the law's requirements mirror other children's data privacy laws, Vermont lawmakers also worked to ensure the legislation avoids the legal pitfalls similar laws have faced.

The law's sponsor and Vermont Representative Monique Priestley told Lexology PRO, "I spent all last summer and this year, as court battles were playing out on age-appropriate design code acts around the country, [working on the legislation] . . . all the First Amendment concerns and court battles have been taken care of in this version."

An earlier iteration of the law was included in Vermont's data consumer protection bill that was vetoed in 2024. At the time, the governor said he vetoed the legislation in part because state lawmakers should draft a kids' data privacy law based on the outcome of the First Amendment battle over the California Age-Appropriate Design Code Act 2022.

In a statement provided to Lexology PRO, Net Choice, a Big Tech association that is challenging California's, Maryland's and other states' children online privacy laws, said Vermont's law was unconstitutional.

"Vermont's S.69, like California's recently enjoined Speech Code, presents significant constitutional problems," wrote NetChoice state and federal affairs director Amy Bos. "It will impose a censorship regime on online speech, violating the First Amendment rights of both websites and their users. It also imposes vague obligations and unconstitutional age-assurance requirements that courts have ruled will burden protected speech."

Documents

Vermont Age-Appropriate Design Code Act.pdf   ↓