

# **BETTER FEEDS MODEL BILL**

## **Section 1. Findings and Declarations.**

Every day, billions of people scroll through social media feeds, search results, and streaming recommendations that shape what they see, read, and watch.

But the business interests of some tech companies incentivize them to gain as much of users' time and attention as possible, in order to generate more advertising revenue.

As a result, many online platforms design their algorithmic systems not to optimize user satisfaction, but rather to maximize predicted "engagement" to manipulate users into spending more time on their platforms than users would otherwise choose.

This approach has been linked to a range of individual and societal harms, for all consumers but especially children, including problematic overuse, increased rates of depression and anxiety, and increased polarization.

Without transparency around what platform algorithms are optimized for, independent experts are unable to provide the information consumers need to make informed decisions about what online services to use.

Publicizing the metrics online platforms use to evaluate their product teams would allow consumers to see what high-level objectives platforms' algorithms are designed to serve, without requiring disclosure of the large number of highly technical metrics platforms may use to evaluate their algorithms.

Requiring such disclosure will incentivize platforms to incorporate employee and team evaluation criteria that better align with user value, resulting in products that better serve consumers' interests.

Mandating that platforms conduct, and disclose the results of, assessments of the long-term effects of algorithmic changes to user value and wellbeing is important for

the public to be able to determine whether product changes are being made to serve their interests or undermine them.

For transparency to be meaningful, however, consumers must have genuine options.

Requiring platforms to provide users with default algorithmic recommendations optimized for users' own long-term value, rather than engagement, prioritizes what consumers value, while retaining their autonomy to choose alternatives if they wish.

## **Section 2. Definitions.**

As used in this article, the following terms have the following meanings:

- (a) "Accessible user interface" means an interface that requires minimal user interactions (such as clicks, taps, or similar) for a user to input data, make a choice, or take an action while using a covered online platform.
- (b) "Algorithmic recommender system" means a computational process used to determine the selection, order, rank, relative prioritization, or relative prominence of items provided to a user on an online platform, including search results, ranking, recommendations, display, or any other method of automated selection.
- (c) "Covered minors" means a user who a covered business knows or should have known, based on knowledge fairly implied under objective circumstances, is a minor.
- (d) "Covered business" means a sole proprietorship, limited liability company, corporation, association, or other legal entity that owns (including as a joint venture or partnership composed of businesses in which each has at least a 40% interest in the joint venture or partnership), operates, controls, or provides a covered online platform, except that a federal, state, tribal, or local government entity in the ordinary course of its operations shall not be considered a covered business.
- (e) "Covered online platform" means an online platform that:

- (1) Conducts business in this State; and
- (2) Uses one or more algorithmic recommender systems to determine the selection, order, rank, or relative prominence of items provided to a user in whole or in part based on the user's personal data, unless the data is:
  - (i) Based on user-selected settings, or technical information concerning the user's device; or
  - (ii) A search query, provided that the query is not associated with the user in the online platform's data storage and is only processed to convey items in direct response to the user's search.
- (f) "Default" means a preselected option adopted by a covered online platform for a specific service, product, or feature.
- (g) "Engagement" means a user interaction with items on a covered online platform, including clicks, taps, comments, reshares, watching, dwelling, indications of approval or disapproval (such as likes, dislikes, upvotes, or downvotes), or any other form of interaction.
- (h) "Engagement data" means information that a covered online platform collects about engagement on its platform, not including user survey data.
- (i) "High-value data" means any user-provided data or predictions from user survey data made by a covered online platform.
- (j) "Holdout group" means a group of users of a covered online platform that are exempted from the application of algorithmic recommender system design changes.
- (k) "Item" means any media eligible for display by a recommender system, which can include individual posts, accounts, groups, pages, channels, products, advertisements, text, images, videos, or audio files.

- (l) “Long-term holdout assessment” means a process in which a covered online platform maintains a holdout group for a duration of at least 12 months.
- (m) “Long-term user value” means outcomes that align with individual users’ deliberative, forward-looking preferences or aspirations as expressed to a covered online platform through high-value data.
- (n) “Long-term user value metrics” means the metrics a covered online platform uses to measure long-term user value.
- (o) “Online platform” means a website, online service, online application, or mobile application.
- (p) “Personal data” means any information, including derived data and unique identifiers, that is linked or reasonably linkable, alone or in combination with other information, to an identified or identifiable individual or a device that identifies or is linked or reasonably linkable to an individual.
- (q) “User” means a user of a covered online platform who is located in [insert name of jurisdiction], but does not include the operator of a covered online platform or a person acting as an agent of the operator of a covered online platform.
- (r) “User-provided data” means any of the following categories of information collected by a covered online platform:
- (1) Information expressly and explicitly provided by the user, including user preferences, settings, search queries, prompts, and any other information expressly and explicitly provided by the user that is not engagement data;
  - (2) User survey data;
  - (3) Indicators or ratings expressly and explicitly selected by the user that are not engagement data; or

- (4) Other categories of data or more specific definitions of the above categories of data as may be defined by [jurisdictional authority with rulemaking power] via rulemaking.
- (s) “User survey data” means user responses to questions that a covered online platform or a third party acting on the covered online platform’s behalf poses to users.
- (t) “Weights” means the individual numeric settings that control the output of a recommender system at a high level across a covered online platform’s user base, such as the relative contributions of different factors to an item’s ranking.

### **Section 3. Applicability.**

- (a) The requirements of this article are in addition to and shall not limit or restrict in any way the application of other laws, including statutes, regulations, and common law, of [State]. In the event of a conflict between this article and one or more other laws, the law that affords the greatest protection to consumers shall control.
- (b) Nothing in this article should be construed in a manner inconsistent with the First Amendment of the United States Constitution or Section 230 of Title 47 of the United States Code.

### **Section 4. Design Transparency.**

- (a) A covered online platform that deploys an algorithmic recommender system shall prominently and conspicuously provide on its website, service, or application:
  - (1) A list of each algorithmic recommender system in use by the covered online platform;
  - (2) A description of each input to each algorithmic recommender system and the source of the data of each input; and

- (3) The weights used in each algorithmic recommender system, categorized into four quartile groups according to each weight's relative importance in contributing to the system's output.
- (b) The Attorney General [or relevant state agency] shall, on or before [date], adopt rules to further clarify the information required to be disclosed under subsection (a) of this Section.
- (c) A covered online platform shall disclose, on an annual basis, the high-level objectives, key results, and performance metrics it uses to evaluate product teams responsible for algorithmic recommender system design.

## **Section 5. User Choice and Defaults.**

- (a) For all services, products, and features where a covered online platform makes use of an algorithmic recommender system that uses personal data, the algorithmic recommender system shall be configured, by default, to maximize one or more long-term user value metrics.
- (b) A covered online platform shall provide an accessible user interface that enables users to expressly and unambiguously communicate their preferences about the types of items to be recommended and to be blocked in the output of the covered online platform's algorithmic recommender systems. The covered online platform shall take all reasonable steps to ensure that the output of its algorithmic recommender systems is consistent with those preferences.
- (c) A covered online platform shall not withhold, degrade, lower the quality, or increase the price of any product, service, or feature, other than as necessary for compliance with the provisions of this article or any rules or regulations promulgated pursuant to this article, to a user due to the user's exercise of any rights contained in this article, including the user's selection of any algorithmic recommender system

option or expressed preferences about types of items to be recommended or blocked.

## **Section 6. Covered Minors.**

Any algorithmic recommender system that uses personal data and is provided by a covered online platform to a covered minor shall be configured, by default, to maximize one or more long-term user value metrics applicable to minors.

## **Section 7. Long-Term Assessments.**

(a) A covered online platform shall maintain at least one holdout group and make all changes to the design of an algorithmic recommender system subject to a long-term holdout assessment, subject to rules promulgated by the Attorney General [or relevant state agency] under subsection (c) of this Section.

(b) On an annual basis, a covered online platform shall make publicly available in a location that is easily accessible a Long-Term Holdout Assessment Disclosure that includes:

- (1) The covered online platform's long-term user value metrics;
- (2) The aggregate, anonymized measurements of each metric across the holdout group(s);
- (3) The aggregate, anonymized measurements of each metric across the rest of the user base of the covered online platform.

(c) The Attorney General [or relevant state agency] shall, on or before [date], adopt rules for the operation of long-term holdout assessments as required under this Section, including:

- (1) The construction of holdout groups when carrying out long-term holdout assessments under this section;
  - (2) The requirements for Long-Term Holdout Assessment Disclosures as required under subsection (b) of this Section; and
  - (3) In the Attorney General's [or relevant state agency's] discretion, exempting from the long-term holdout assessment requirements in this Section any change to the design of an algorithmic recommender system that serves to reduce or prevent direct and immediate harms to users without increasing user engagement or revenue for the covered business.
- (d) A covered business operating a covered online platform shall, at its own expense and at least once a year, obtain an independent audit of the long-term holdout assessments on its platform and of the Long-Term Holdout Assessment Disclosure. To comply with this requirement:
- (1) The independent auditor preparing reports under this subsection must follow inspection and consultation practices designed to ensure that reports are comprehensive and accurate; and
  - (2) The covered online platform must provide to the independent auditor full and complete cooperation and access to information and operations required to ensure that the report is comprehensive and accurate.

## **Section 8. Enforcement.**

- (a) A covered business that violates this article, or rules adopted pursuant to this article, commits an unfair and deceptive act in commerce in violation of [state UDAP statute].
- (b) Enforcement by Attorney General. The Attorney General [or relevant state agency] shall have the authority to adopt rules implementing this article, and shall



have the same authority under this article to conduct civil investigations, bring civil actions, impose penalties, and remedy violations as under [state UDAP statute].

(c) Private right of action. Any violation by a covered business of this article, or rules adopted pursuant to this article, shall constitute an injury to a user, entitling the user to the remedies available under [state UDAP statute] and:

- (1) Monetary damages of \$5,000 per user per violation, as adjusted annually to reflect an increase in the Consumer Price Index, or actual damages, whichever is greater;
- (2) For reckless or knowing violations of the statute, punitive damages of \$7,000 per violation, as adjusted annually to reflect an increase in the Consumer Price Index, or actual damages, whichever is greater;
- (3) Reasonable attorney's fees and litigation costs; and
- (4) Other relief, including injunctive or declaratory relief, as the State or federal court may deem appropriate.

## **Section 9. Severability.**

If any clause, sentence, paragraph, subdivision, section, or part of this article shall be adjudged by a court of competent jurisdiction to be invalid, such invalidation shall be strictly restricted only to the clause, sentence, paragraph, subdivision, section, or part that has been adjudged invalid and shall not affect, impair, or invalidate any other provision of this article that can be given effect without the invalidated portions. It is the intent of the legislature that this article would have been enacted even if such invalid provisions had not been included herein.