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**HOUSE BILL 2442**

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**State of Washington 66th Legislature 2020 Regular Session**

**By** Representatives Leavitt, Hudgins, Kloba, and Smith

AN ACT Relating to privacy rights for Washington minors; and adding a new chapter to Title 19 RCW.

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

NEW SECTION. **Sec.**  (1) An operator of an internet web site, online service, online application, or mobile application directed to minors may not market or advertise a product or service described in subsection (7) of this section on its internet web site, online service, online application, or mobile application directed to minors.

(2) An operator of an internet web site, online service, online application, or mobile application may not market or advertise a product or service described in subsection (7) of this section to a minor who the operator has actual knowledge is using its internet web site, online service, online application, or mobile application and is a minor, if the marketing or advertising is specifically directed to that minor based upon information specific to that minor including, but not limited to, the minor's profile, activity, address, or location information sufficient to establish a contact with a minor, and excluding internet protocol address and product identification numbers for the operation of a service.

(3) An operator of an internet web site, online service, online application, or mobile application is deemed in compliance with subsection (2) of this section if the operator takes reasonable actions in good faith designed to avoid marketing or advertising under the circumstances prohibited in subsection (2) of this section.

(4) An operator of an internet web site, online service, online application, or mobile application directed to minors or an operator who has actual knowledge that a minor is using the operator's internet web site, online service, online application, or mobile application may not knowingly use, disclose, compile, or allow a third party to use, disclose, or compile, the personal information of a minor if the use, disclosure, or compilation is for the purpose of marketing or advertising products or services described in subsection (7) of this section to that minor.

(5)(a) With respect to marketing or advertising provided by an advertising service, the operator of an internet web site, online service, online application, or mobile application directed to minors is deemed in compliance with subsection (1) of this section if the operator notifies the advertising service, in the manner required by the advertising service, that the internet web site, online service, online application, or mobile application is directed to minors.

(b) If an advertising service is notified pursuant to (a) of this subsection, the advertising service may not market or advertise a product or service described in subsection (7) of this section on the operator's internet web site, online service, online application, or mobile application directed to minors.

(6) The marketing and advertising restrictions in subsections (1) through (4) of this section do not apply to the incidental placement of products or services embedded in content if the content is not distributed by or at the direction of the operator primarily for the purposes of marketing and advertising of the products and services described in subsection (7) of this section.

(7) The marketing and advertising restrictions in this section apply to the following products and services:

(a) Alcoholic beverages, as defined in RCW 82.08.0293;

(b) Firearms and other dangerous weapons, as defined in chapter 9.41 RCW;

(c) Ammunition or reloaded ammunition;

(d) Any air gun, including any air pistol or air rifle, designed to propel a BB, pellet, or other projectile by the discharge of compressed air, carbon dioxide, or other gas;

(e) Fireworks, as defined in RCW 70.77.126;

(f) Aerosol container of paint that is capable of defacing property;

(g) Etching cream or any caustic cream, gel, liquid, or solution capable of defacing, damaging, or destroying property by means of a chemical action;

(h) Any tobacco, tobacco products, cigarette, or cigarette papers, or blunt wraps, or any other preparation of tobacco, or any other instrument or paraphernalia that is designed for the smoking or ingestion of tobacco or tobacco products;

(i) Any cannabis, cannabis product, cannabis business, or any instrument or paraphernalia that is designed for the smoking or ingestion of cannabis or cannabis products;

(j) Vapor products, as defined in RCW 70.345.010;

(k) Any controlled substance, as defined in RCW 69.50.101;

(l) Drug paraphernalia, as defined in RCW 69.50.102;

(m) Salvia divinorum or Salvinorin A, or any substance or material containing Salvia divinorum or Salvinorin A;

(n) Dietary supplements, as defined in RCW 82.08.0293, containing ephedrine group alkaloids;

(o) Tanning in an ultraviolet tanning device, as defined in RCW 18.370.010;

(p) Body branding or any process in which a mark or marks are burned into human skin tissue with a hot iron or other instrument, with the intention of leaving a permanent scar;

(q) Tattooing, as defined in RCW 18.300.010;

(r) Tickets or shares in a lottery game or state lottery, as defined in RCW 67.70.010; or

(s) Lewd or obscene matter.

NEW SECTION. **Sec.**  (1) An operator of an internet web site, online service, online application, or mobile application directed to minors or an operator of an internet web site, online service, online application, or mobile application that has actual knowledge that a minor is using its internet web site, online service, online application, or mobile application shall:

(a) Permit a minor who is a registered user of the operator's internet web site, online service, online application, or mobile application to remove or to request and obtain removal of content or information posted on the operator's internet web site, online service, online application, or mobile application by the minor;

(b) Provide notice to a minor who is a registered user of the operator's internet web site, online service, online application, or mobile application that the minor may remove or request and obtain removal of content or information posted on the operator's internet web site, online service, online application, or mobile application by the minor;

(c) Provide clear instructions to a minor who is a registered user of the operator's internet web site, online service, online application, or mobile application on how the minor may remove or request and obtain the removal of content or information posted on the operator's internet web site, online service, online application, or mobile application by the minor; and

(d) Provide notice to a minor who is a registered user of the operator's internet web site, online service, online application, or mobile application that the removal pursuant to (a) of this subsection does not ensure complete or comprehensive removal of the content or information posted on the operator's internet web site, online service, online application, or mobile application by the minor.

(2) An operator or a third party is not required to erase or otherwise eliminate content or information in any of the following circumstances:

(a) Any other provision of federal or state law requires the operator or third party to maintain the content or information;

(b) The content or information was stored or posted on the operator's internet web site, online service, online application, or mobile application by a third party other than the minor, who is a registered user, including any content or information posted by the minor and stored, republished, or reposted by the third party;

(c) The operator anonymizes the content or information posted by the minor who is a registered user, so that the minor cannot be individually identified;

(d) The minor does not follow the instructions provided to the minor pursuant to subsection (1)(c) of this section on how the minor may request and obtain the removal of content or information posted on the operator's internet web site, online service, online application, or mobile application by the minor; or

(e) The minor has received compensation or other consideration for providing the content.

(3) Nothing in this section limits the authority of a law enforcement agency to obtain any content or information from an operator as authorized by law or pursuant to a court order.

(4) An operator is deemed in compliance with this section if:

(a) The operator renders the content or information posted by a minor, who is a registered user, no longer visible to other users of the service and the public even if the content or information remains on the operator's servers; or

(b) Despite the operator's making invisible the original posting by a minor, who is a registered user, the posting remains visible because a third party has copied the posting or reposted the content or information posted by the minor.

NEW SECTION. **Sec.**  The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Internet web site, online service, online application, or mobile application directed to minors" mean an internet web site, online service, online application, or mobile application, or a portion thereof, that is created for the purpose of reaching an audience that is predominately comprised of minors, and is not intended for a more general audience comprised of adults. An internet web site, online service, online application, or mobile application, or a portion thereof, is not deemed to be directed at minors solely because it refers or links to an internet web site, online service, online application, or mobile application directed to minors by using information location tools, including a directory, index, reference, pointer, or hypertext link.

(2) "Marketing or advertising" means, in exchange for monetary compensation, to make a communication to one or more individuals or to arrange for the dissemination to the public of a communication the primary purpose of which is to encourage recipients to purchase or use a product or service described in the communication.

(3) "Minor" means a natural person under eighteen years of age who resides in Washington state.

(4) "Operator" means any person or entity that owns an internet web site, online service, online application, or mobile application. "Operator" does not include any third party that operates, hosts, or manages, but does not own, an internet web site, online service, online application, or mobile application on the owner's behalf or processes information on the owner's behalf.

(5) "Posted" means content or information that can be accessed by a user in addition to the minor who posted the content or information, whether the user is a registered user or not, of the internet web site, online service, online application, or mobile application where the content or information is posted.

NEW SECTION. **Sec.**  Nothing in this chapter requires an operator of an internet web site, online service, online application, or mobile application to collect or retain age information about users.

NEW SECTION. **Sec.**  (1) The legislature finds that the practices covered by this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. A violation of this chapter is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW.

(2) In any action brought by the attorney general to enforce this chapter, a violation of this chapter is subject to a civil penalty of two thousand five hundred dollars for each violation of this chapter.

(3) An individual prevailing in an action under this chapter may recover actual damages, but not less than liquidated damages of two thousand five hundred dollars per violation.

(4) A court shall award costs and reasonable attorneys' fees to a plaintiff who prevails in an action under this chapter.

NEW SECTION. **Sec.**  Sections 1 through 5 of this act constitute a new chapter in Title 19 RCW.

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