
HOUSE BILL 2442

State of Washington

66th Legislature

2020 Regular Session

By Representatives Leavitt, Hudgins, Kloba, and Smith

Read first time 01/14/20. Referred to Committee on Innovation, Technology & Economic Development.

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

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

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

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

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

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

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

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

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

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

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

36 (b) Firearms and other dangerous weapons, as defined in chapter
37 9.41 RCW;

38 (c) Ammunition or reloaded ammunition;

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

4 (e) Fireworks, as defined in RCW 70.77.126;

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

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

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

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

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

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

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

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

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

24 (o) Tanning in an ultraviolet tanning device, as defined in RCW
25 18.370.010;

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

29 (q) Tattooing, as defined in RCW 18.300.010;

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

32 (s) Lewd or obscene matter.

33 NEW SECTION. **Sec. 2.** (1) An operator of an internet web site,
34 online service, online application, or mobile application directed to
35 minors or an operator of an internet web site, online service, online
36 application, or mobile application that has actual knowledge that a
37 minor is using its internet web site, online service, online
38 application, or mobile application shall:

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

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

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

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

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

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

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

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

38 (d) The minor does not follow the instructions provided to the
39 minor pursuant to subsection (1)(c) of this section on how the minor
40 may request and obtain the removal of content or information posted

1 on the operator's internet web site, online service, online
2 application, or mobile application by the minor; or

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

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

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

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

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

17 NEW SECTION. **Sec. 3.** The definitions in this section apply
18 throughout this chapter unless the context clearly requires
19 otherwise.

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

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

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

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

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

12 NEW SECTION. **Sec. 4.** Nothing in this chapter requires an
13 operator of an internet web site, online service, online application,
14 or mobile application to collect or retain age information about
15 users.

16 NEW SECTION. **Sec. 5.** (1) The legislature finds that the
17 practices covered by this chapter are matters vitally affecting the
18 public interest for the purpose of applying the consumer protection
19 act, chapter 19.86 RCW. A violation of this chapter is not reasonable
20 in relation to the development and preservation of business and is an
21 unfair or deceptive act in trade or commerce and an unfair method of
22 competition for the purpose of applying the consumer protection act,
23 chapter 19.86 RCW.

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

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

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

32 NEW SECTION. **Sec. 6.** Sections 1 through 5 of this act
33 constitute a new chapter in Title 19 RCW.

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