

HOUSE BILL REPORT

HB 2442

As Passed House:
February 18, 2020

Title: An act relating to privacy rights for Washington minors.

Brief Description: Regulating online services and applications that are directed at minors.

Sponsors: Representatives Leavitt, Hudgins, Kloba and Smith.

Brief History:

Committee Activity:

Innovation, Technology & Economic Development: 1/21/20, 1/24/20 [DP].

Floor Activity:

Passed House: 2/18/20, 96-1.

Brief Summary of Bill

- Prohibits online operators from marketing or advertising specified products and services to minors.
- Restricts certain online advertising practices based on the personal information of minors.
- Provides minors the right to request and obtain removal of information posted online.
- Provides that violations are enforceable under the Consumer Protection Act and subject to civil penalties and statutory damages.

HOUSE COMMITTEE ON INNOVATION, TECHNOLOGY & ECONOMIC DEVELOPMENT

Majority Report: Do pass. Signed by 9 members: Representatives Hudgins, Chair; Kloba, Vice Chair; Smith, Ranking Minority Member; Boehnke, Assistant Ranking Minority Member; Entenman, Slatter, Tarleton, Van Werven and Wylie.

Staff: Yelena Baker (786-7301).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The federal Children's Online Privacy Protection Act of 1998 (COPPA) regulates the collection and use of children's information online. The COPPA requires an operator of a website directed to children under 13 years of age, or an operator of a website that has actual knowledge that it is collecting personal information from a child under 13 years of age, to provide notice of what information is being collected and how that information is being used. In addition, online operators must obtain verifiable parental consent for the collection, use, or disclosure of personal information from children.

The state Consumer Protection Act (CPA) prohibits unfair methods of competition and unfair or deceptive practices in the conduct of any trade or commerce. A private person or the Attorney General may bring a civil action to enforce the provisions of the CPA. A person or entity found to have violated the CPA is subject to treble damages and attorney's fees.

Summary of Bill:

Restrictions on advertising to minors and requirements related to removal of online content posted by minors are imposed on operators of an Internet website, online service, online application, or mobile application.

Products and services subject to advertising restrictions are specified and include alcohol, tobacco, vapor products, firearms and other dangerous weapons, certain dietary supplements, tanning services, and lottery tickets. "Minor" means a Washington resident under 18 years of age.

Advertising Restrictions on Operators of Websites or Online Services Directed to Minors.

An operator of a website or online service directed to minors may not market or advertise specified products and services to minors.

An operator is deemed in compliance if the operator notifies the advertising service that the Internet website, online service, online application, or mobile application is directed to minors. If notified by an operator, an advertising service may not market or advertise specified products and services on the operator's website or online service directed to minors.

An operator of a website or online service directed to minors may not knowingly use or disclose, or allow a third party to use or disclose, the personal information of a minor if the use or disclosure is for the purpose of marketing or advertising of the specified products or services.

Advertising Restrictions on Operators of Other Websites or Online Service.

An operator of a website or online service may not market or advertise specified products and services to a minor if:

- the operator has actual knowledge the minor is using its website or online service; and
- the marketing or advertising is specifically directed to that minor based on the minor's information.

An operator is deemed in compliance if the operator takes reasonable actions in good faith designed to avoid marketing or advertising under the prohibited circumstances.

An operator that has actual knowledge a minor is using its website or online service may not knowingly use or disclose, or allow a third party to use or disclose, the personal information of a minor if the use or disclosure is for the purpose of marketing or advertising of the specified products or services.

Removal of Content or Information Related to Minors.

An operator of a website or online service directed to minors, or an operator that has actual knowledge a minor is using its website or online service, must permit a minor to remove or to request and obtain removal of content or information posted on the operator's website or online service. Notice and clear instructions on how a minor may remove or request and obtain removal of content or information must also be provided.

An operator is deemed in compliance if it renders the content or information posted by a minor 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 remains visible because a third party has copied or reposted the content or information posted by the minor.

An operator or a third party is not required to erase or otherwise eliminate content or information if:

- a federal or state law requires maintaining of the content or information;
- the content or information was stored or posted by a third party;
- the operator anonymizes the content or information posted by a minor so that the minor cannot be individually identified;
- a minor does not follow the instructions on how to remove or request and obtain removal of content or information; or
- a minor has received compensation or other consideration for providing the content.

Enforcement.

A violation of these provisions is enforceable under the state Consumer Protection Act and subject to a civil penalty of up to \$2,500 per violation in actions brought by the Attorney General. An individual may bring a civil action to recover actual damages, but not less than liquidated damages of \$2,500 per violation. A court must award costs and reasonable attorney's fees to a prevailing plaintiff.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) An important component to the larger privacy conversation, this bill protects minors from specified dangerous or age-inappropriate advertising content and addresses the issue of using minors' data for targeted advertising. These protections are in addition to existing federal law and codify the best practices that most online providers already follow.

The bill gives minors the right to delete content posted online and provides good exceptions to that right, such as when content has been reposted by parties. Children need the freedom to try new things and find their voice without the fear of having a permanent online record.

(Opposed) None.

Persons Testifying: Representative Leavitt, prime sponsor; and Joseph Jerome, Common Sense Media.

Persons Signed In To Testify But Not Testifying: None.