

SENATE BILL REPORT

HB 2442

As Reported by Senate Committee On:
Environment, Energy & Technology, February 27, 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: Passed House: 2/18/20, 96-1.

Committee Activity: Environment, Energy & Technology: 2/25/20, 2/27/20 [DPA-WM, DNP, w/oRec].

Brief Summary of Amended Bill

- Prohibits online operators from marketing or advertising specified products and services to minors.
- Restricts certain online advertising practices based on a minor's personal information.
- Provides minors the right to remove information posted online.
- Authorizes enforcement solely by the attorney general under the Consumer Protection Act.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.

Signed by Senators Carlyle, Chair; Lovelett, Vice Chair; Sheldon, Assistant Ranking Member, Energy & Technology; Brown, Das, Hobbs, Liias, McCoy, Nguyen, Rivers, Stanford and Wellman.

Minority Report: Do not pass.

Signed by Senators Ericksen, Ranking Member; Fortunato, Assistant Ranking Member, Environment.

Minority Report: That it be referred without recommendation.

Signed by Senator Short.

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.

Staff: Angela Kleis (786-7469)

Background: Federal Regulation. Congress enacted the Children's Online Privacy Protection Act (COPPA) in 1998. COPPA required the Federal Trade Commission to issue and enforce regulations concerning children's online privacy. COPPA imposes certain requirements on operators of online services directed to children under 13 years of age, and on operators of online services that have actual knowledge that they are collecting personal information online from a child under 13 years of age.

Consumer Protection Act. The Consumer Protection Act (CPA) prohibits unfair methods of competition or unfair or deceptive practices in the conduct of any trade or commerce. A person injured by a violation of the CPA may bring a civil action for injunctive relief, recovery of actual damages, and reasonable attorneys' fees. The courts may increase awarded damages by up to three times the actual damages sustained. The attorney general (AG) is authorized to investigate and prosecute claims under the CPA on behalf of the state or individuals in the state.

Summary of Amended Bill: Marketing and Advertising Restrictions. An operator of an online application may not market or advertise specified products and services to a minor if:

- its application is directed to minors; or
- it has actual knowledge that its application is being used by a minor and the marketing or advertising is directed to that minor based on information collected about the minor.

An operator of an online application directed to minors or an operator who has actual knowledge that a minor is using their application may not knowingly disclose the personal information of a minor for the purposes of marketing and advertising specified products and services.

The marketing and advertising restrictions apply to several specified products and services, such as alcohol, firearms, tobacco, vapor products, tanning, and lottery tickets.

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

If an operator uses an advertising service, an operator is deemed in compliance if the operator notifies the advertising service that its application is directed to minors. If an advertising service is notified, it may not market or advertise specified products and services to minors.

The marketing and advertising restrictions 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.

Removal of Content. An operator of an online application directed to minors or an operator who has actual knowledge that a minor is using their application has the following obligations with regards to content posted by a registered user that is a minor:

- permit the removal of content; and

- provide notice that a minor may request the removal content, including instructions on how to make such a request.

An operator or third party is not required to erase content under certain circumstances, such as federal or state law requires the content to be maintained, the operator anonymizes the content so that the minor cannot be individually identified, or the minor received compensation for providing the content.

Compliance. An operator is deemed in compliance if the operator makes the content invisible to other users even if the content remains on the operator's servers, or if the post remains visible because a third party has copied the content despite the operator making the original post invisible.

Enforcement. A violation of the act is an unfair or deceptive act in trade or commerce and an unfair method of competition for applying the CPA and enforced solely by the AG.

Definitions. Minor means a natural person under 18 years of age who resides in Washington State.

EFFECT OF ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE AMENDMENT(S):

- Removes enforcement provisions related to prescribed penalties and court authority to award costs and fees to a plaintiff who prevails in an action.
- Provides that this chapter may be enforced solely by the attorney general under the consumer protection act.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on House Bill: *The committee recommended a different version of the bill than what was heard.* PRO: We need to protect children online because they are online for various purposes at a young age. This bill pairs with COPPA by helping ensure that children are not targeted with harmful ads and that advertisers do not collect their data.

OTHER: This bill is similar to California legislation. However, it includes a private right of action, which opens companies up to lawsuits because of incidental use of a family computer.

Persons Testifying: PRO: Representative Mari Leavitt, Prime Sponsor.

OTHER: Rose Feliciano, Internet Association.

Persons Signed In To Testify But Not Testifying: No one.