By:  Slawson H.B. No. 18

A BILL TO BE ENTITLED

AN ACT

relating to the protection of minors from harmful, deceptive, or unfair trade practices in connection with the use of certain digital services.

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

SECTION 1.  Subtitle A, Title 11, Business & Commerce Code, is amended by adding Chapter 509 to read as follows:

CHAPTER 509. COLLECTION OR USE OF MINORS' PERSONAL IDENTIFYING INFORMATION BY DIGITAL SERVICE PROVIDERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 509.001.  DEFINITIONS. In this chapter:

(1)  "Digital service" means a website, an application, a program, or software that performs collection or processing functions with Internet connectivity.

(2)  "Digital service provider" means a person who owns or operates a digital service.

(3)  "Minor" means a child who is at least 13 years of age but younger than 18 years of age.

(4)  "Personal identifying information" means any information linked or reasonably linked to a specific minor, including:

(A)  a name, account name, alias, or online identifier;

(B)  a home or other physical address;

(C)  an Internet Protocol (IP) address or e-mail address;

(D)  a social security number;

(E)  a telephone number;

(F)  a driver's license number or state identification card number;

(G)  a passport number;

(H)  physical characteristics or description;

(I)  race, ethnicity, or national origin;

(J)  religion or faith;

(K)  sex, gender, or sexual orientation;

(L)  family status;

(M)  disability status;

(N)  political affiliation;

(O)  commercial information, including:

(i)  records relating to personal property;

(ii)  products or services the minor purchased, obtained, or considered; or

(iii)  other histories, interests, or tendencies in consumption;

(P)  biometric information;

(Q)  device identifiers, online identifiers, persistent identifiers, or digital fingerprinting information;

(R)  Internet, browsing, or search history, including any information relating to a minor's use of an Internet website;

(S)  geolocation information;

(T)  audio, electronic, visual, thermal, olfactory, or similar information, including facial recognition;

(U)  educational information;

(V)  health information;

(W)  the contents of, attachments to, and parties to text messages, e-mails, voicemails, audio conversations, and video conversations;

(X)  financial information, including:

(i)  bank account numbers;

(ii)  credit card numbers;

(iii)  debit card numbers;

(iv)  insurance policy numbers; or

(v)  information related to the balance of any financial accounts; or

(Y)  any inferences drawn from personal identifying information that might identify a minor's traits, characteristics, or trends.

Sec. 509.002.  APPLICABILITY. (a) This chapter applies to a digital service provider that:

(1)  collects or processes the personal identifying information of minors; and

(2)  either:

(A)  targets minors; or

(B)  knows or should know that the digital service appeals to minors.

(b)  For purposes of Subsection (a):

(1)  a digital service targets or appeals to minors if:

(A)  the digital service contains subject matter that is tailored toward minors, including:

(i)  animated characters;

(ii)  instruction or activities intended for minors;

(iii)  music or audio popular among minors;

(iv)  images containing:

(a)  models who are minors; or

(b)  celebrities who are minors or who are popular among minors;

(v)  colloquial use of language that is common among minors; or

(vi)  advertisements intended for minors; or

(B)  empirical evidence obtained by the digital service provider, an advertiser, the press, third-party complaints, or another entity that conducts privacy and security impact assessments demonstrates that:

(i)  many users of the digital service are minors; or

(ii)  the intended audience for the digital service is minors; and

(2)  a digital service does not target or appeal to minors by referring or linking to a digital service that targets or appeals to minors.

SUBCHAPTER B. DIGITAL SERVICE PROVIDER DUTIES AND PROHIBITIONS

Sec. 509.051.  DIGITAL SERVICE PROVIDER DUTY TO PREVENT HARM. (a) A digital service provider shall prevent physical, emotional, and developmental harm to a minor using a digital service, including:

(1)  self harm, suicide, eating disorders, and other similar behaviors;

(2)  substance abuse and patterns of use that indicate addiction;

(3)  bullying and harassment;

(4)  sexual exploitation, including enticement, grooming, trafficking, abuse, and child pornography;

(5)  advertisements for products or services that are unlawful for a minor, including illegal drugs, tobacco, gambling, pornography, and alcohol; and

(6)  predatory, unfair, or deceptive marketing practices.

(b)  A digital service provider shall ensure that a minor is not exposed to a type of harm described by Subsection (a).

Sec. 509.052.  PROHIBITION ON COLLECTION OF PERSONAL IDENTIFYING INFORMATION; EXEMPTIONS. (a) Except as provided by this section, a digital service provider may not collect a minor's personal identifying information.

(b)  A digital service provider may collect a minor's personal identifying information for employment purposes.

(c)  A digital service provider may collect a minor's personal identifying information if the minor's parent or guardian consents in a manner that:

(1)  is specific, informed, and unambiguous;

(2)  takes into account:

(A)  the minor's age; and

(B)  the minor's developmental and cognitive needs and capabilities;

(3)  is for only a single specific act of collection or processing of personal identifying information;

(4)  occurs in the absence of any financial or other incentive;

(5)  occurs before the collection or processing of the minor's personal identifying information;

(6)  occurs in a time, place, and manner that the minor's parent or guardian would expect the consent to be sought; and

(7)  is not deceptive or coercive.

(d)  A digital service provider may collect a minor's personal identifying information without the consent of the minor's parent or guardian if:

(1)  the personal identifying information is a form of online contact information that:

(A)  is used to respond to a single specific request made by the minor;

(B)  is not used to contact the minor in any other way; and

(C)  is not retained by the digital service provider once a response has been made;

(2)  the personal identifying information is for the purpose of receiving consent under Subsection (c) and is not retained by the digital service provider after:

(A)  the minor's parent or guardian gives consent under Subsection (c); or

(B)  eight hours after the personal identifying information is collected; or

(3)  the personal identifying information is necessary to respond to judicial process or comply with a law enforcement agency on a matter related to public safety.

(e)  A digital service provider that collects a minor's personal identifying information with the consent of the minor's parent or guardian shall set the minor's digital service to the strongest settings available to protect the minor from harm, as described by Section 509.051(a).

Sec. 509.053.  PARENTAL TOOLS. (a) A digital service provider shall make available to each parent or guardian who gives consent under Section 509.052 parental tools to allow the parent or guardian to supervise the minor's use of the digital service.

(b)  Parental tools under this section must allow a parent or guardian to:

(1)  control the minor's privacy and account settings, including the settings described by Section 509.052(e);

(2)  restrict the ability of a minor to make purchases and financial transactions;

(3)  monitor the amount of time the minor spends using the digital service; and

(4)  disable any default parental controls placed on the digital service.

Sec. 509.054.  ACCESS TO PERSONAL IDENTIFYING INFORMATION. (a) A minor or minor's parent or guardian may submit a request to a digital service provider to access the minor's personal identifying information.

(b)  A digital service provider shall establish and make available a simple and easily accessible method by which a minor or a minor's parent or guardian may make a request for information under this section.

(c)  The method established under Subsection (b) must allow a minor or minor's parent or guardian to access:

(1)  all of the minor's personal identifying information in the digital service provider's possession that the provider has collected or processed, organized by:

(A)  type of personal identifying information; and

(B)  purpose for which the digital service provider processed each type of personal identifying information;

(2)  the name of each third party to which the digital service provider disclosed the personal identifying information, if applicable;

(3)  each source other than the minor from which the digital service provider obtained the minor's personal identifying information;

(4)  the length of time for which the digital service provider will retain the minor's personal identifying information;

(5)  any index or score assigned to the minor as a result of the personal identifying information, including whether the digital service provider created the index or score and, if not, who created the index or score;

(6)  the manner in which the digital service provider uses an index or score under Subdivision (5);

(7)  a method by which a minor or minor's parent or guardian may:

(A)  dispute the accuracy of any personal identifying information collected or processed by the digital service provider; and

(B)  request that the digital service provider correct any personal identifying information collected or processed by the digital service provider; and

(8)  a method by which a minor or minor's parent or guardian may request that the digital service provider delete any personal identifying information collected or processed by the digital service provider.

(d)  If a digital service provider receives a request under Subsection (c)(7), the digital service provider shall, not later than the 45th day after the request is made:

(1)  determine whether the relevant personal identifying information is inaccurate or incomplete; and

(2)  make any corrections necessary.

(e)  If a digital service provider receives a request under Subsection (c)(8), the digital service provider shall delete the personal identifying information specified by the request not later than the 45th day after the request is made.

Sec. 509.055.  ADVERTISING AND MARKETING DUTIES. A digital service provider that allows advertisers to advertise to minors on the digital service shall disclose in a clear and accessible manner:

(1)  the name of each product, service, or brand advertising on the digital service;

(2)  the subject matter of each advertisement or marketing material on the digital service;

(3)  if the digital service provider or advertiser targets advertisements to minors on the digital service, the reason why each advertisement has been targeted to a minor;

(4)  the way in which a minor's personal identifying information leads to each advertisement targeted to the minor; and

(5)  whether certain media on the digital service are advertisements.

Sec. 509.056.  USE OF ALGORITHMS. A digital service provider that uses algorithms to automate the suggestion, promotion, or ranking of information to minors on the digital service shall:

(1)  ensure that the algorithm does not interfere with the digital service provider's duties under Section 509.051; and

(2)  disclose in the digital service provider's terms of service, in a clear and accessible manner:

(A)  an overview of the manner in which the digital service uses algorithms to provide information to minors;

(B)  an overview of the manner in which those algorithms use the personal identifying information of minors;

(C)  options available to a minor and a minor's parent or guardian to modify the results of information provided by the algorithm, including the ability to opt out of or down-rank certain information; and

(D)  the ability minors have to opt out of using the algorithm.

Sec. 509.057.  PROHIBITION ON LIMITING OR DISCONTINUING DIGITAL SERVICE. A digital service provider may not limit or discontinue a digital service provided to a minor because the minor or minor's parent or guardian withholds or withdraws consent to the collection or processing of any personal identifying information not required to provide the digital service.

SUBCHAPTER C. ENFORCEMENT

Sec. 509.101.  CIVIL ACTION; LIABILITY. (a) A minor's parent or guardian may bring an action against a digital service provider for a violation of this chapter.

(b)  Notwithstanding Sections 41.003 and 41.004, Civil Practice and Remedies Code, a parent or guardian who prevails in an action under this section is entitled to receive:

(1)  injunctive relief;

(2)  actual damages;

(3)  punitive damages;

(4)  reasonable attorney's fees;

(5)  court costs; and

(6)  any other relief the court deems appropriate.

(c)  A violation of this chapter constitutes an injury in fact to the minor.

Sec. 509.102.  DECEPTIVE TRADE PRACTICE. A violation of this chapter is a false, misleading, or deceptive act or practice as defined by Section 17.46(b). In addition to any remedy under this chapter, a remedy under Subchapter E, Chapter 17, is also available for a violation of this chapter.

SECTION 2.  This Act takes effect September 1, 2024.