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By:  Slawson H.B. No. 4412

A BILL TO BE ENTITLED

AN ACT

relating to online agreements between certain minors and certain digital service providers.

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. ONLINE AGREEMENTS BETWEEN MINORS AND 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.  PROHIBITION ON AGREEMENTS WITH CERTAIN MINORS; EXEMPTIONS. (a) Except as provided by this section, a digital service provider may not enter into an agreement with a minor.

(b)  For purposes of this section, an agreement includes:

(1)  a terms of service agreement;

(2)  a user agreement; and

(3)  the creation of an account for a digital service.

(c)  A digital service provider may enter into an agreement with a minor 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 agreement;

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

(5)  occurs before the agreement is entered into;

(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.

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.