88R7481 MLH-D

By:  Martinez Fischer H.B. No. 4948

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of Internet products, services, and features accessed by children; providing a civil penalty.

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

SECTION 1.  Subtitle C, Title 5, Business & Commerce Code, is amended by adding Chapter 121 to read as follows:

CHAPTER 121.  INTERNET PRODUCTS, SERVICES, AND FEATURES ACCESSED BY CHILDREN

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 121.001.  DEFINITIONS. In this chapter:

(1)  "Child" means an individual younger than 18 years of age.

(2)  "Consumer" has the meaning assigned by Section 20.01.

(3)  "Personal identifying information" has the meaning assigned by Section 521.002.

SUBCHAPTER B. DUTIES AND PROHIBITIONS

Sec. 121.051.  DATA PROTECTION IMPACT ASSESSMENT REQUIRED. (a) Except as provided by Subsection (d), a person shall conduct a data protection impact assessment to assess and mitigate risks posed to a child who accesses a product, service, or feature provided by the person if the person:

(1)  provides a product, service, or feature to a consumer in this state through an Internet website that is likely to be accessed by a child;

(2)  collects a consumer's personal identifying information; and

(3)  in the preceding year:

(A)  generated more than $25 million in annual gross revenue;

(B)  collected or used the personal identifying information of more than 50,000 consumers; or

(C)  generated more than half of the person's annual gross revenue from the collection and sale of a consumer's personal identifying information.

(b)  An assessment under this section must:

(1)  identify:

(A)  the purpose of the product, service, or feature;

(B)  the manner in which the product, service, or feature uses personal identifying information; and

(C)  any risks to children posed by the manner in which the product, service, or feature uses personal identifying information; and

(2)  assess:

(A)  whether the product, service, or feature poses a risk of exposing a child to harmful content;

(B)  whether the algorithms or advertising systems used by the product, service, or feature pose a risk of exposing a child to harmful content; and

(C)  the manner in which the product, service, or feature:

(i)  uses design features to increase or extend use of the product by a child; and

(ii)  collects and processes the child's personal identifying information.

(c)  For the purposes of this section:

(1)  a product, service, or feature is considered likely to be accessed by a child if the product, service, or feature:

(A)  is intended, wholly or partly, to be used by a child;

(B)  is routinely accessed by children;

(C)  is substantially similar to another product, service, or feature that is routinely accessed by children;

(D)  is marketed to children; or

(E)  has design elements that are known to interest children, including games, cartoons, music, and content pertaining to celebrities of interest to children; and

(2)  content is considered harmful if the content is reasonably likely to have a detrimental impact on a child's physical, mental, or emotional health.

(d)  This section does not apply to a person who:

(1)  is required to maintain and disseminate a privacy policy under the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Section 1320d et seq.); or

(2)  provides a product, service, or feature to a consumer through an Internet website if the product, service, or feature is:

(A)  a broadband service;

(B)  a telecommunications service; or

(C)  a service that involves the delivery or use of a physical product.

Sec. 121.052.  IMPACT MANAGEMENT PLAN REQUIRED. A person required to conduct a data protection impact assessment under Section 121.051 shall develop an impact management plan to mitigate or eliminate any risks identified in the assessment. The plan must include defined goals and a timeline to achieve those goals.

Sec. 121.053.  PROVISION OF ASSESSMENT TO ATTORNEY GENERAL. (a) On the request of the attorney general, a person required to conduct a data protection impact assessment under Section 121.051 shall, not later than the third business day after the person receives the request, provide a list of data protection impact assessments conducted by the person under Section 121.051. The list must include the product, service, or feature assessed and the date of the assessment.

(b)  On the request of the attorney general, a person required to conduct a data protection impact assessment under Section 121.051 shall, not later than the fifth business day after the person receives the request, provide a copy of a data protection impact assessment conducted by the person.

(c)  Production of a data protection impact assessment under this section does not constitute a waiver of attorney-client privilege or attorney work product protection.

Sec. 121.054.  PROTECTION OF PERSONAL IDENTIFYING INFORMATION. (a) A person required to conduct a data protection impact assessment under Section 121.051 shall:

(1)  estimate the age of an individual using a product, service, or feature, and, in the case of a child:

(A)  configure default settings of a product, service, or feature to a high level of privacy, unless the person can demonstrate a compelling reason that alternate settings are in the best interest of a child; and

(B)  provide privacy information, terms of service, policies, and community standards for a product, service, or feature in a clear and concise manner able to be understood by a child; or

(2)  apply the requirements of Subdivisions (1)(A) and (B) to all users of the product, service, or feature.

(b)  If a product, service, or feature allows for another person to monitor or track a child, a person required to conduct a data protection impact assessment under Section 121.051 shall ensure the product, service, or feature provides an obvious signal to a child when the product, service, or feature is monitoring or tracking the child.

(c)  A person required to conduct a data protection impact assessment under Section 121.051 shall enforce any terms, policies, and community standards established by the person, including any policies concerning use of a product by a child.

(d)  A person required to conduct a data protection impact assessment under Section 121.051 shall provide tools to help a child or the child's parent or guardian exercise privacy rights and report concerns relating to privacy. A tool under this subsection must be prominently displayed, easily accessible, and responsive to requests by a child or the child's parent or guardian.

Sec. 121.055.  IMPROPER USE OF PERSONAL IDENTIFYING INFORMATION. (a) A person required to conduct a data protection impact assessment under Section 121.051 may not use a child's personal identifying information for any purpose that is not:

(1)  necessary to provide a product, service, or feature; or

(2)  the reason for which the person collected the personal identifying information.

(b)  A person required to conduct a data protection impact assessment under Section 121.051 may not use a child's personal identifying information in a manner that could:

(1)  expose the child to harmful content, as described by Section 121.051(c); or

(2)  be detrimental to the physical or mental health and well-being of the child.

(c)  This section does not affect the ability of a person to which this chapter applies to disclose personal identifying information in a manner necessary to comply with a request by a governmental entity or law enforcement.

Sec. 121.056.  IMPROPER PROFILING OF CHILD. (a) In this section, "profile" means the automated process of using personal identifying information to analyze specific aspects of an individual's demographic characteristics.

(b)  A person required to conduct a data protection impact assessment under Section 121.051 may not profile a child unless:

(1)  the profiling is either:

(A)  necessary to provide a product, service, or feature; or

(B)  in the best interests of the child; and

(2)  the person has implemented safeguards to prevent the child from accessing harmful content, as described by Section 121.051(c).

Sec. 121.057.  IMPROPER USE OF GEOLOCATION DATA. (a) A person required to conduct a data protection impact assessment under Section 121.051 may not collect the precise geolocation data of a child unless the business's product, service, or feature provides an obvious sign to the child for the duration of the collection process that the child's precise geolocation data is being collected.

(b)  A person required to conduct a data protection impact assessment under Section 121.051 may not collect, use, or sell the precise geolocation data of a child unless the collection, use, or sale is necessary for the person to provide a product, service, or feature to the child.

Sec. 121.058.  USE OF DECEPTIVE DESIGN ELEMENTS PROHIBITED. A person required to conduct a data protection impact assessment under Section 121.051 may not use deceptive design elements intended to induce a child to provide more personal identifying information than is necessary under this chapter.

SUBCHAPTER C. DATA PROTECTION WORK GROUP

Sec. 121.101.  DATA PROTECTION WORK GROUP. (a) In this section, "work group" means the work group established under this section.

(b)  The consumer protection division of the attorney general's office shall establish a work group to promote business practices that protect the personal identifying information of consumers. The work group consists of:

(1)  two members appointed by the governor;

(2)  two members appointed by the lieutenant governor;

(3)  two members appointed by the speaker of the house of representatives; and

(4)  two members appointed by the attorney general.

(c)  To be eligible to serve as a member of the work group, a person must have expertise in two or more of the following areas:

(1)  children's data privacy;

(2)  physical health;

(3)  mental health and well-being;

(4)  computer science; or

(5)  children's rights.

(d)  A member of the work group receives no compensation for serving on the work group but may be reimbursed for travel or other expenses incurred while conducting the business of the work group.

(e)  The work group shall solicit input from stakeholders and prepare recommendations for the legislature on ways to protect the personal identifying information of children in this state.

(f)  Not later than January 1 of each odd-numbered year, the work group shall submit to the legislature a report of the work group's findings and recommendations. The report must:

(1)  identify products likely to be used by children;

(2)  evaluate and prioritize the best interests of children;

(3)  evaluate the manner in which the best interests of children may be furthered by the products in Subdivision (1);

(4)  evaluate whether the risks posed by the products in Subdivision (1) are proportional to the safeguards put in place by businesses;

(5)  suggest ways to assess and mitigate risks to children that arise from the products identified under Subdivision (1); and

(6)  identify best methods of publishing privacy information, terms of service, policies, and community standards for a product in a clear and concise manner able to be understood by a child.

(g)  This section expires on January 1, 2033.

SUBCHAPTER D. ENFORCEMENT

Sec. 121.151.  CIVIL PENALTY. (a) A person who violates this chapter is liable to the state for a civil penalty in an amount not to exceed:

(1)  $2,500 for each child exposed to harmful content as described by Section 121.051(c) as a result of a negligent violation; and

(2)  $7,500 for each child exposed to harmful content as described by Section 121.051(c) as a result of an intentional violation.

(b)  The attorney general may bring suit to recover a civil penalty imposed under this section. The attorney general may recover attorney's fees and costs incurred in bringing an action under this section.

(c)  The action may be brought in a district court in:

(1)  Travis County; or

(2)  a county in which any part of the violation or threatened violation occurs.

(d)  The attorney general shall deposit a civil penalty collected under this section in the state treasury to the credit of the general revenue fund.

Sec. 121.152.  REQUIRED NOTICE. (a) If a person who violates this chapter is in substantial compliance with the requirements under Sections 121.051, 121.052, and 121.053, the attorney general shall, before bringing suit under Section 121.151, issue a notice to the person identifying the provisions of this chapter that the attorney general alleges to have been violated by the person.

(b)  It shall be a complete defense to suit under Section 121.151 if, not later than the 90th day after receiving a notice under Subsection (a), a person cures any violation of this chapter and provides notice to the attorney general of the measures taken to cure the violation and prevent further violations.

Sec. 121.153.  NO PRIVATE CAUSE OF ACTION. Nothing in this chapter may be construed to create a private cause of action for a violation of this chapter.

Sec. 121.154.  RULES. The attorney general shall adopt rules to implement this chapter.

SECTION 2.  This Act takes effect September 1, 2023.