

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

- 1 address;
2 (D) a social security number;
3 (E) a telephone number;
4 (F) a driver's license number or state
5 identification card number;
6 (G) a passport number;
7 (H) physical characteristics or description;
8 (I) race, ethnicity, or national origin;
9 (J) religion or faith;
10 (K) sex, gender, or sexual orientation;
11 (L) family status;
12 (M) disability status;
13 (N) political affiliation;
14 (O) commercial information, including:
15 (i) records relating to personal property;
16 (ii) products or services the minor
17 purchased, obtained, or considered; or
18 (iii) other histories, interests, or
19 tendencies in consumption;
20 (P) biometric information;
21 (Q) device identifiers, online identifiers,
22 persistent identifiers, or digital fingerprinting information;
23 (R) Internet, browsing, or search history,
24 including any information relating to a minor's use of an Internet
25 website;
26 (S) geolocation information;
27 (T) audio, electronic, visual, thermal,

- 1 olfactory, or similar information, including facial recognition;
2 (U) educational information;
3 (V) health information;
4 (W) the contents of, attachments to, and parties
5 to text messages, e-mails, voicemails, audio conversations, and
6 video conversations;
7 (X) financial information, including:
8 (i) bank account numbers;
9 (ii) credit card numbers;
10 (iii) debit card numbers;
11 (iv) insurance policy numbers; or
12 (v) information related to the balance of
13 any financial accounts; or
14 (Y) any inferences drawn from personal
15 identifying information that might identify a minor's traits,
16 characteristics, or trends.

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

- 19 (1) collects or processes the personal identifying
20 information of minors; and
21 (2) either:
22 (A) targets minors; or
23 (B) knows or should know that the digital service
24 appeals to minors.

25 (b) For purposes of Subsection (a):

- 26 (1) a digital service targets or appeals to minors if:
27 (A) the digital service contains subject matter

1 that is tailored toward minors, including:

2 (i) animated characters;

3 (ii) instruction or activities intended for
4 minors;

5 (iii) music or audio popular among minors;

6 (iv) images containing:

7 (a) models who are minors; or

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

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

12 (vi) advertisements intended for minors; or

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

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

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

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

24 SUBCHAPTER B. DIGITAL SERVICE PROVIDER DUTIES AND PROHIBITIONS

25 Sec. 509.051. PROHIBITION ON AGREEMENTS WITH CERTAIN
26 MINORS; EXEMPTIONS. (a) Except as provided by this section, a
27 digital service provider may not enter into an agreement with a

1 minor.

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

3 (1) a terms of service agreement;

4 (2) a user agreement; and

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

6 (c) A digital service provider may enter into an agreement
7 with a minor if the minor's parent or guardian consents in a manner
8 that:

9 (1) is specific, informed, and unambiguous;

10 (2) takes into account:

11 (A) the minor's age; and

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

14 (3) is for only a single specific agreement;

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

17 (5) occurs before the agreement is entered into;

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

21 (7) is not deceptive or coercive.

22 SUBCHAPTER C. ENFORCEMENT

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

26 (b) Notwithstanding Sections 41.003 and 41.004, Civil
27 Practice and Remedies Code, a parent or guardian who prevails in an

1 action under this section is entitled to receive:

2 (1) injunctive relief;

3 (2) actual damages;

4 (3) punitive damages;

5 (4) reasonable attorney's fees;

6 (5) court costs; and

7 (6) any other relief the court deems appropriate.

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

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

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