

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

1 be accessed by a child;

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

4 (3) in the preceding year:

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

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

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

12 (b) An assessment under this section must:

13 (1) identify:

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

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

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

21 (2) assess:

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

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

27 (C) the manner in which the product, service, or

1 feature:

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

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

6 (c) For the purposes of this section:

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

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

12 (B) is routinely accessed by children;

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

15 (D) is marketed to children; or

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

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

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

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

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

1 feature is:

2 (A) a broadband service;

3 (B) a telecommunications service; or

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

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

11 Sec. 121.053. PROVISION OF ASSESSMENT TO ATTORNEY GENERAL.

12 (a) On the request of the attorney general, a person required to  
13 conduct a data protection impact assessment under Section 121.051  
14 shall, not later than the third business day after the person  
15 receives the request, provide a list of data protection impact  
16 assessments conducted by the person under Section 121.051. The  
17 list must include the product, service, or feature assessed and the  
18 date of the assessment.

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

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

27 Sec. 121.054. PROTECTION OF PERSONAL IDENTIFYING

1 INFORMATION. (a) A person required to conduct a data protection  
2 impact assessment under Section 121.051 shall:

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

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

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

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

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

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

25 (d) A person required to conduct a data protection impact  
26 assessment under Section 121.051 shall provide tools to help a  
27 child or the child's parent or guardian exercise privacy rights and

1 report concerns relating to privacy. A tool under this subsection  
2 must be prominently displayed, easily accessible, and responsive to  
3 requests by a child or the child's parent or guardian.

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

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

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

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

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

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

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

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

27 (b) A person required to conduct a data protection impact

1 assessment under Section 121.051 may not profile a child unless:

2 (1) the profiling is either:

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

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

6 (2) the person has implemented safeguards to prevent  
7 the child from accessing harmful content, as described by Section  
8 121.051(c).

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

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

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

26 SUBCHAPTER C. DATA PROTECTION WORK GROUP

27 Sec. 121.101. DATA PROTECTION WORK GROUP. (a) In this

1 section, "work group" means the work group established under this  
2 section.

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

- 7 (1) two members appointed by the governor;  
8 (2) two members appointed by the lieutenant governor;  
9 (3) two members appointed by the speaker of the house  
10 of representatives; and

11 (4) two members appointed by the attorney general.

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

- 14 (1) children's data privacy;  
15 (2) physical health;  
16 (3) mental health and well-being;  
17 (4) computer science; or  
18 (5) children's rights.

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

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

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



- 1           (1) identify products likely to be used by children;
- 2           (2) evaluate and prioritize the best interests of
- 3 children;
- 4           (3) evaluate the manner in which the best interests of
- 5 children may be furthered by the products in Subdivision (1);
- 6           (4) evaluate whether the risks posed by the products
- 7 in Subdivision (1) are proportional to the safeguards put in place
- 8 by businesses;
- 9           (5) suggest ways to assess and mitigate risks to
- 10 children that arise from the products identified under Subdivision
- 11 (1); and
- 12           (6) identify best methods of publishing privacy
- 13 information, terms of service, policies, and community standards
- 14 for a product in a clear and concise manner able to be understood by
- 15 a child.
- 16           (g) This section expires on January 1, 2033.

17                                   SUBCHAPTER D. ENFORCEMENT

18           Sec. 121.151. CIVIL PENALTY. (a) A person who violates

19 this chapter is liable to the state for a civil penalty in an amount

20 not to exceed:

21                   (1) \$2,500 for each child exposed to harmful content

22 as described by Section 121.051(c) as a result of a negligent

23 violation; and

24                   (2) \$7,500 for each child exposed to harmful content

25 as described by Section 121.051(c) as a result of an intentional

26 violation.

27           (b) The attorney general may bring suit to recover a civil

1 penalty imposed under this section. The attorney general may  
2 recover attorney's fees and costs incurred in bringing an action  
3 under this section.

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

5 (1) Travis County; or

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

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

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

18 (b) It shall be a complete defense to suit under Section  
19 121.151 if, not later than the 90th day after receiving a notice  
20 under Subsection (a), a person cures any violation of this chapter  
21 and provides notice to the attorney general of the measures taken to  
22 cure the violation and prevent further violations.

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

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

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