

HB 2442 - S COMM AMD

By Committee on Environment, Energy & Technology

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** (1) An operator of an internet web site,
4 online service, online application, or mobile application directed to
5 minors may not market or advertise a product or service described in
6 subsection (7) of this section on its internet web site, online
7 service, online application, or mobile application directed to
8 minors.

9 (2) An operator of an internet web site, online service, online
10 application, or mobile application may not market or advertise a
11 product or service described in subsection (7) of this section to a
12 minor who the operator has actual knowledge is using its internet web
13 site, online service, online application, or mobile application and
14 is a minor, if the marketing or advertising is specifically directed
15 to that minor based upon information specific to that minor
16 including, but not limited to, the minor's profile, activity,
17 address, or location information sufficient to establish a contact
18 with a minor, and excluding internet protocol address and product
19 identification numbers for the operation of a service.

20 (3) An operator of an internet web site, online service, online
21 application, or mobile application is deemed in compliance with
22 subsection (2) of this section if the operator takes reasonable
23 actions in good faith designed to avoid marketing or advertising
24 under the circumstances prohibited in subsection (2) of this section.

25 (4) An operator of an internet web site, online service, online
26 application, or mobile application directed to minors or an operator
27 who has actual knowledge that a minor is using the operator's
28 internet web site, online service, online application, or mobile
29 application may not knowingly use, disclose, compile, or allow a
30 third party to use, disclose, or compile, the personal information of
31 a minor if the use, disclosure, or compilation is for the purpose of

1 marketing or advertising products or services described in subsection
2 (7) of this section to that minor.

3 (5) (a) With respect to marketing or advertising provided by an
4 advertising service, the operator of an internet web site, online
5 service, online application, or mobile application directed to minors
6 is deemed in compliance with subsection (1) of this section if the
7 operator notifies the advertising service, in the manner required by
8 the advertising service, that the internet web site, online service,
9 online application, or mobile application is directed to minors.

10 (b) If an advertising service is notified pursuant to (a) of this
11 subsection, the advertising service may not market or advertise a
12 product or service described in subsection (7) of this section on the
13 operator's internet web site, online service, online application, or
14 mobile application directed to minors.

15 (6) The marketing and advertising restrictions in subsections (1)
16 through (4) of this section do not apply to the incidental placement
17 of products or services embedded in content if the content is not
18 distributed by or at the direction of the operator primarily for the
19 purposes of marketing and advertising of the products and services
20 described in subsection (7) of this section.

21 (7) The marketing and advertising restrictions in this section
22 apply to the following products and services:

23 (a) Alcoholic beverages, as defined in RCW 82.08.0293;

24 (b) Firearms and other dangerous weapons, as defined in chapter
25 9.41 RCW;

26 (c) Ammunition or reloaded ammunition;

27 (d) Any air gun, including any air pistol or air rifle, designed
28 to propel a BB, pellet, or other projectile by the discharge of
29 compressed air, carbon dioxide, or other gas;

30 (e) Fireworks, as defined in RCW 70.77.126;

31 (f) Aerosol container of paint that is capable of defacing
32 property;

33 (g) Etching cream or any caustic cream, gel, liquid, or solution
34 capable of defacing, damaging, or destroying property by means of a
35 chemical action;

36 (h) Any tobacco, tobacco products, cigarette, or cigarette
37 papers, or blunt wraps, or any other preparation of tobacco, or any
38 other instrument or paraphernalia that is designed for the smoking or
39 ingestion of tobacco or tobacco products;

1 (i) Any cannabis, cannabis product, cannabis business, or any
2 instrument or paraphernalia that is designed for the smoking or
3 ingestion of cannabis or cannabis products;

4 (j) Vapor products, as defined in RCW 70.345.010;

5 (k) Any controlled substance, as defined in RCW 69.50.101;

6 (l) Drug paraphernalia, as defined in RCW 69.50.102;

7 (m) Salvia divinorum or Salvinorin A, or any substance or
8 material containing Salvia divinorum or Salvinorin A;

9 (n) Dietary supplements, as defined in RCW 82.08.0293, containing
10 ephedrine group alkaloids;

11 (o) Tanning in an ultraviolet tanning device, as defined in RCW
12 18.370.010;

13 (p) Body branding or any process in which a mark or marks are
14 burned into human skin tissue with a hot iron or other instrument,
15 with the intention of leaving a permanent scar;

16 (q) Tattooing, as defined in RCW 18.300.010;

17 (r) Tickets or shares in a lottery game or state lottery, as
18 defined in RCW 67.70.010; or

19 (s) Lewd or obscene matter.

20 NEW SECTION. **Sec. 2.** (1) An operator of an internet web site,
21 online service, online application, or mobile application directed to
22 minors or an operator of an internet web site, online service, online
23 application, or mobile application that has actual knowledge that a
24 minor is using its internet web site, online service, online
25 application, or mobile application shall:

26 (a) Permit a minor who is a registered user of the operator's
27 internet web site, online service, online application, or mobile
28 application to remove or to request and obtain removal of content or
29 information posted on the operator's internet web site, online
30 service, online application, or mobile application by the minor;

31 (b) Provide notice to a minor who is a registered user of the
32 operator's internet web site, online service, online application, or
33 mobile application that the minor may remove or request and obtain
34 removal of content or information posted on the operator's internet
35 web site, online service, online application, or mobile application
36 by the minor;

37 (c) Provide clear instructions to a minor who is a registered
38 user of the operator's internet web site, online service, online
39 application, or mobile application on how the minor may remove or

1 request and obtain the removal of content or information posted on
2 the operator's internet web site, online service, online application,
3 or mobile application by the minor; and

4 (d) Provide notice to a minor who is a registered user of the
5 operator's internet web site, online service, online application, or
6 mobile application that the removal pursuant to (a) of this
7 subsection does not ensure complete or comprehensive removal of the
8 content or information posted on the operator's internet web site,
9 online service, online application, or mobile application by the
10 minor.

11 (2) An operator or a third party is not required to erase or
12 otherwise eliminate content or information in any of the following
13 circumstances:

14 (a) Any other provision of federal or state law requires the
15 operator or third party to maintain the content or information;

16 (b) The content or information was stored or posted on the
17 operator's internet web site, online service, online application, or
18 mobile application by a third party other than the minor, who is a
19 registered user, including any content or information posted by the
20 minor and stored, republished, or reposted by the third party;

21 (c) The operator anonymizes the content or information posted by
22 the minor who is a registered user, so that the minor cannot be
23 individually identified;

24 (d) The minor does not follow the instructions provided to the
25 minor pursuant to subsection (1)(c) of this section on how the minor
26 may request and obtain the removal of content or information posted
27 on the operator's internet web site, online service, online
28 application, or mobile application by the minor; or

29 (e) The minor has received compensation or other consideration
30 for providing the content.

31 (3) Nothing in this section limits the authority of a law
32 enforcement agency to obtain any content or information from an
33 operator as authorized by law or pursuant to a court order.

34 (4) An operator is deemed in compliance with this section if:

35 (a) The operator renders the content or information posted by a
36 minor, who is a registered user, no longer visible to other users of
37 the service and the public even if the content or information remains
38 on the operator's servers; or

39 (b) Despite the operator's making invisible the original posting
40 by a minor, who is a registered user, the posting remains visible

1 because a third party has copied the posting or reposted the content
2 or information posted by the minor.

3 NEW SECTION. **Sec. 3.** The definitions in this section apply
4 throughout this chapter unless the context clearly requires
5 otherwise.

6 (1) "Internet web site, online service, online application, or
7 mobile application directed to minors" mean an internet web site,
8 online service, online application, or mobile application, or a
9 portion thereof, that is created for the purpose of reaching an
10 audience that is predominately comprised of minors, and is not
11 intended for a more general audience comprised of adults. An internet
12 web site, online service, online application, or mobile application,
13 or a portion thereof, is not deemed to be directed at minors solely
14 because it refers or links to an internet web site, online service,
15 online application, or mobile application directed to minors by using
16 information location tools, including a directory, index, reference,
17 pointer, or hypertext link.

18 (2) "Marketing or advertising" means, in exchange for monetary
19 compensation, to make a communication to one or more individuals or
20 to arrange for the dissemination to the public of a communication the
21 primary purpose of which is to encourage recipients to purchase or
22 use a product or service described in the communication.

23 (3) "Minor" means a natural person under eighteen years of age
24 who resides in Washington state.

25 (4) "Operator" means any person or entity that owns an internet
26 web site, online service, online application, or mobile application.
27 "Operator" does not include any third party that operates, hosts, or
28 manages, but does not own, an internet web site, online service,
29 online application, or mobile application on the owner's behalf or
30 processes information on the owner's behalf.

31 (5) "Posted" means content or information that can be accessed by
32 a user in addition to the minor who posted the content or
33 information, whether the user is a registered user or not, of the
34 internet web site, online service, online application, or mobile
35 application where the content or information is posted.

36 NEW SECTION. **Sec. 4.** Nothing in this chapter requires an
37 operator of an internet web site, online service, online application,

1 or mobile application to collect or retain age information about
2 users.

3 NEW SECTION. **Sec. 5.** (1) The legislature finds that the
4 practices covered by this chapter are matters vitally affecting the
5 public interest for the purpose of applying the consumer protection
6 act, chapter 19.86 RCW. A violation of this chapter is not reasonable
7 in relation to the development and preservation of business and is an
8 unfair or deceptive act in trade or commerce and an unfair method of
9 competition for the purpose of applying the consumer protection act,
10 chapter 19.86 RCW.

11 (2) This chapter may be enforced solely by the attorney general
12 under the consumer protection act, chapter 19.86 RCW.

13 NEW SECTION. **Sec. 6.** Sections 1 through 5 of this act
14 constitute a new chapter in Title 19 RCW."

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15 On page 1, line 1 of the title, after "minors;" strike the
16 remainder of the title and insert "and adding a new chapter to Title
17 19 RCW."

EFFECT: Removes enforcement provisions related to prescribed penalties and court authority to award costs and fees to a plaintiff who prevails in an action.

Provides that this chapter may be enforced solely by the attorney general under the consumer protection act.

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