

SPONSOR: Rep. Scott & Rep. Heffernan & Rep. Paradee & Sen. Townsend
Reps. Baumbach, Dukes, Hudson, Jaques, Osienski, Potter, M. Smith; Sen. Sokola

HOUSE OF REPRESENTATIVES
147th GENERAL ASSEMBLY

HOUSE BILL NO. 261

AN ACT TO AMEND TITLE 6 OF THE DELAWARE CODE RELATING TO CHILD ONLINE PROTECTION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Chapter 12C. Child Online Protection Act.

§ 1201C. Short title.

This chapter shall be known and may be cited as the “Child Online Protection Act.”

§ 1202C. Definitions.

For purposes of this chapter, the following definitions shall apply:

(1) “Child” means a person who has not reached the age of 18 years.

(2) “Content” means information of any kind. The term includes text, images, audio, video, or other information.

(3) “Geolocation data” means information that is, in whole or part, generated by, derived from, or obtained by the operation of an electronic device that can be used to identify the past, present, or future location of an electronic device or a person, or both.

(4) “Internet website, online service, online application, or mobile application directed to children” means an Internet website, online service, online application, or mobile application, or portion thereof, that is created for the purpose of reaching an audience that is predominately comprised of children, and is not intended for a more general audience comprised of adults. The term does not include an Internet website, online service, online application, or mobile application, or a portion thereof, solely because it links to an Internet website, online service, online application, or mobile application using information location tools, including a directory, index, reference, pointer, or hypertext link.

(5) “Market or advertise” or “marketing or advertising” means making a communication or arranging for a communication to be made, in exchange for monetary compensation, about a product or service the primary purpose of which is to encourage recipients of the communication to purchase or use the product or service.

(6) “Operator” means a person who owns an Internet website, online service, online application, or mobile application. It does not include a third party that operates, hosts, or manages, but does not own, an Internet website, online service, online application, or mobile application on the owner’s behalf or processes information on the owner’s

behalf.

(7) “Personally identifiable information” means any information about a person that permits the physical or online identifying or contacting of a person. The term includes a person’s first and last name or first initial and last name in combination with any one or more of the following:

- a. a home or other physical address, including street name and name of a city or town;
- b. an e-mail address;
- c. a telephone number;
- d. a social security number, driver’s license number, passport number, or alien registration number;
- e. geolocation data;
- f. DNA or other genetic material;
- g. any other identifier that permits the physical or online identifying or contacting of a person.

(8) “Posted” means content that can be accessed by a user in addition to the child who provided the content, whether the user is a registered user or not of the Internet website, online service, online application, or mobile application to which the content is provided.

(9) “Remove” or “removing” means to render content that is posted by a person who is a registered user no longer visible to others and to delete content posted by a person who is a registered user from the operator’s servers.

§ 1203C. Removal of content posted by a person as a child.

(a) An operator of an Internet website, online service, online application, or mobile application directed to children or an operator of an Internet website, online service, online application, or mobile application who has actual knowledge that a child is using its Internet website, online service, online application, or mobile application must:

(1) Permit a person who is a registered user of the operator’s Internet website, online service, online application, or mobile application to remove, or request the operator remove, content posted on the operator’s Internet website, online service, online application, or mobile application by the person as a child.

(2) Provide notice to a person who is a registered user of the operator’s Internet website, online service, online application, or mobile application that the person may remove, or request the operator remove, content posted on the operator’s Internet website, online service, online application, or mobile application by the person as a child.

(3) Provide notice to a person who is a registered user of the operator’s Internet website, online service, online application, or mobile application that the removal process described by paragraph (a)(1) of this subsection does not ensure complete or comprehensive removal of the content posted on the operator’s Internet website, online service, online application, or mobile application by the person as a child.

(4) Provide clear instructions to a person who is a registered user of the operator’s Internet website, online service, online application, or mobile application on how the child may remove, or request the operator remove, content posted on the operator’s Internet website, online service, online application, or mobile application by the person as a child.

(b) An operator of an Internet website, online service, online application, or mobile application directed to children

or an operator of an Internet website, online service, online application, or mobile application who has actual knowledge that a child is using its Internet website, online service, online application, or mobile application is not required to allow a person to remove, or request the operator remove, content posted on the operator's Internet website, online service, online application, or mobile application by the person as a child in any of the following circumstances:

(1) When federal or state law requires the operator to maintain the content.

(2) When a person, other than a person who is a registered user, posted the content to the operator's Internet website, online service, online application, or mobile application or the content was reposted by the person.

(3) When the operator anonymizes the content posted by a person who is a registered user so that the person cannot be individually identified.

(4) When the person who is a registered user does not follow the instructions provided to the person pursuant to (a)(3) of this subsection.

(c) This section shall not be construed to limit the authority of a law enforcement officer, as defined in § 222 of Title 11, to obtain any content from an operator as authorized by law or pursuant to an order of a court of competent jurisdiction.

(d) An operator shall be deemed compliant with this section if, despite removing the content posted by a person who is a registered user, the content remains visible because another person has copied the content or reposted the content posted by the person as a child.

(e) Subsection (a) of this section shall apply to a person who is a registered user of an Internet website, online service, online application, or mobile application directed to children or an Internet website, online service, online application, or mobile application whose operator has actual knowledge that a child is using its Internet website, online service, online application, or mobile application and resides in Delaware at the time of registration and at the time the person removes, or requests the operator remove, content posted on the operator's Internet website, online service, online application, or mobile application by the person as a child.

§ 1204C. Prohibitions on marketing or advertising to a child.

(a) An operator of an Internet website, online service, online application, or mobile application directed to children may not market or advertise a product or service described in subsection (f) of this section on its Internet website, online service, online application, or mobile application.

(b) An operator of an Internet website, online service, online application, or mobile application who has actual knowledge that a child is using its Internet website, online service, online application, or mobile application may not market or advertise a product or service described in subsection (f) of this section to the child, if the marketing or advertising is specifically directed to the child based upon the child's personally identifiable information. The operator shall be deemed to be in compliance with this subsection if it takes reasonable actions in good faith designed to avoid marketing or advertising as prohibited by this subsection.

(c) An operator of an Internet website, online service, online application, or mobile application directed to children or an operator of an Internet website, online service, online application, or mobile application who has actual knowledge that a child is using its Internet website, online service, online application, or mobile application may not knowingly use, disclose,

compile, or allow another to use, disclose, or compile, the personally identifiable information of a child with actual knowledge that the use, disclosure, or compilation is for the purpose of marketing or advertising products or services to that child that are described in (f) of this section.

(d) The prohibitions described in subsections (a), (b), and (c) of this section do not apply to the incidental placement of products or services embedded in content if the content is not distributed by or at the direction of the operator primarily for the purposes of marketing or advertising products or services described in subsection (f) of this section.

(e) An operator of an Internet website, online service, online application, or mobile application directed to children shall be deemed to be in compliance with subsection (a) of this section, with respect to marketing or advertising provided by an advertising service, if the operator notifies the advertising service, in the manner required by the advertising service, that the Internet website, online service, online application, or mobile application is directed to children. If the advertising service is notified that the Internet website, online service, online application, or mobile application is directed to children, the advertising service may not market or advertise a product or service on the operator's Internet website, online service, online application, or mobile application that is described in subsection (f) of this section.

(f) The marketing or advertising prohibitions described in this section shall apply to the following products or services:

(1) Alcoholic liquor as defined in § 101 of Title 4.

(2) Tobacco products, smokeless tobacco products, or moist snuff as defined in § 5301 of Title 30.

(3) Tobacco substitutes.

(4) Firearm as defined in § 222 of Title 11, ammunition for a firearm, or BB guns.

(5) Firearm training course as referenced in § 1441 of Title 11.

(6) Electronic control devices as defined in § 222 of Title 11.

(7) Graffiti implements as referenced in § 812 of Title 11.

(8) Fireworks as defined in § 6901 of Title 16.

(9) Tanning equipment or device or tanning facility as defined in § 3002D of Title 16.

(10) Dietary supplement products containing ephedrine group alkaloids.

(11) Lottery, internet lottery, internet table games, internet ticket games, internet video lottery, sports lottery, table game, video lottery, or video lottery facility as defined in § 4803 of Title 29.

(12) Salvia divinorum or Salvinorin A, or any substance or material containing Salvia divinorum or Salvinorin A as referenced in § 4714 of Title 16.

(13) Body-piercing as defined in § 1114 of Title 11.

(14) Branding as defined in § 1114 of Title 11.

(15) Tattoos as defined in § 1114 of Title 11.

(16) Drug paraphernalia as defined in § 4701 of Title 16.

(17) Tongue-splitting as defined in § 1114A of Title 11.

(18) Sexually-oriented material as defined in § 1602 of Title 24.

§ 1205C. Age verification; required.

An operator of an Internet website, online service, online application, or mobile application directed to children or an operator of an Internet website, online service, online application, or mobile application who has actual knowledge that a child is using its Internet website, online service, online application, or mobile application that collects personally identifiable information from a child must establish an age verification system that can be reasonably expected to identify the age of the child who is a prospective or registered user.

§ 1206C. Enforcement.

Non-compliance with this chapter is deemed to be a violation of the Consumer Fraud Act, §§ 2511-2527 of this title.

Section 2. This Act becomes effective 1 year after its enactment into law.

SYNOPSIS

This bill requires an operator of an Internet website, online service, online application, or mobile application who has actual knowledge that a child is using its Internet website, online service, online application, or mobile application to permit a person who is a registered user to remove, or request the operator remove, content posted by the person when the person was a child, except in certain circumstances. The operator would be required to provide notice of this feature and instructions on how to remove the content.

Additionally, this bill prohibits the operator of an Internet website, online service, online application, or mobile application directed to children from marketing or advertising certain products or services on its website and this prohibition is extended to advertising services contracted by such an operator. The bill would also prohibit an operator who has actual knowledge that a child is using its Internet website, online service, online application, or mobile application from using a child's personally identifiable information to direct marketing or advertising of certain products or services to the child.

Further, this bill requires an operator to establish an age verification system.

Finally, this bill empowers the Attorney General to enforce these provisions subject to the Attorney General's powers regarding consumer protection and consumer fraud. Enforcement by private right of action is contemplated to the extent allowable by the Consumer Fraud Act.

This bill becomes effective 1 year after its enactment into law.