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To: Technology; Judiciary B

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1126

1 AN ACT TO CREATE THE "WALKER MONTGOMERY PROTECTING CHILDREN
2 ONLINE ACT" FOR THE PURPOSE OF PROTECTING MINOR CHILDREN FROM
3 ONLINE HARMFUL MATERIAL AND ACCESS TO SUCH MATERIAL; TO REQUIRE
4 DIGITAL SERVICE USERS TO REGISTER THEIR AGE; TO LIMIT THE
5 COLLECTION AND USE OF MINOR USERS' PERSONAL IDENTIFYING
6 INFORMATION; TO REQUIRE DIGITAL SERVICE PROVIDERS TO IMPLEMENT
7 SAFETY STRATEGIES TO PREVENT MINOR USERS' EXPOSURE TO HARMFUL
8 MATERIAL; TO AMEND SECTION 75-24-5, MISSISSIPPI CODE OF 1972, TO
9 PROVIDE THAT A VIOLATION OF THIS ACT IS AN UNFAIR AND DECEPTIVE
10 TRADE PRACTICE THAT IS ENFORCEABLE BY THE OFFICE OF THE ATTORNEY
11 GENERAL; AND FOR RELATED PURPOSES.

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

13 **SECTION 1.** This act shall be known and may be cited as the
14 "Walker Montgomery Protecting Children Online Act."

15 **SECTION 2.** For purposes of this act, the following words
16 shall have the meanings ascribed herein unless the context clearly
17 requires otherwise:

18 (a) "Digital service" means a website, an application,
19 a program, or software that collects or processes personal
20 identifying information with Internet connectivity.

21 (b) "Digital service provider" means a person who:

22 (i) Owns or operates a digital service;



23 (ii) Determines the purpose of collecting and
24 processing the personal identifying information of users of the
25 digital service; and

26 (iii) Determines the means used to collect and
27 process the personal identifying information of users of the
28 digital service.

29 (c) "Harmful material" means material that is harmful
30 to minors as defined by Section 11-77-3(d).

31 (d) "Known minor" means a child who is younger than
32 eighteen (18) years of age who has not had the disabilities of
33 minority removed for general purposes, and who the digital service
34 provider knows to be a minor.

35 (e) "Personal identifying information" means any
36 information, including sensitive information, that is linked or
37 reasonably linkable to an identified or identifiable individual.
38 The term includes pseudonymous information when the information is
39 used by a controller or processor in conjunction with additional
40 information that reasonably links the information to an identified
41 or identifiable individual. The term does not include
42 deidentified information or publicly available information.

43 **SECTION 3.** (1) This act applies only to a digital service
44 provider who provides a digital service that:

45 (a) Connects users in a manner that allows users to
46 socially interact with other users on the digital service;



47 (b) Allows a user to create a public, semi-public or
48 private profile for purposes of signing into and using the digital
49 service; and

50 (c) Allows a user to create or post content that can be
51 viewed by other users of the digital service, including sharing
52 content on:

53 (i) A message board;

54 (ii) A chat room; or

55 (iii) A landing page, video channel or main feed
56 that presents to a user content created and posted by other users.

57 (2) This act does not apply to:

58 (a) A digital service provider who processes or
59 maintains user data in connection with the employment, promotion,
60 reassignment or retention of the user as an employee or
61 independent contractor, to the extent that the user's data is
62 processed or maintained for that purpose;

63 (b) A digital service provider's provision of a digital
64 service that facilitates e-mail or direct messaging services, if
65 the digital service facilitates only those services; or

66 (c) A digital service provider's provision of a digital
67 service that:

68 (i) Primarily functions to provide a user with
69 access to news, sports, commerce or content primarily generated or
70 selected by the digital service provider; and



71 (ii) Allows chat, comment or other interactive
72 functionality that is incidental to the digital service.

73 (3) The Internet service provider, Internet service
74 provider's affiliate or subsidiary, search engine or cloud service
75 provider is not considered to be a digital service provider or to
76 offer a digital service if the Internet service provider or
77 provider's affiliate or subsidiary, search engine or cloud service
78 provider solely provides access or connection, including through
79 transmission, download, intermediate storage, access software or
80 other service, to an Internet website or to other information or
81 content:

82 (a) On the Internet; or

83 (b) On a facility, system or network not under the
84 control of the Internet service provider, provider's affiliate or
85 subsidiary, search engine or cloud service provider.

86 **SECTION 4.** (1) A digital service provider may not enter
87 into an agreement with a person to create an account with a
88 digital service unless the person has registered the person's age
89 with the digital service provider. A digital service provider
90 shall make commercially reasonable efforts to verify the age of
91 the person creating an account with a level of certainty
92 appropriate to the risks that arise from the information
93 management practices of the digital service provider.

94 (2) A digital service provider shall not permit an account
95 holder who is a known minor to be an account holder unless the



96 known minor has the express consent from a parent or guardian.
97 Acceptable methods of obtaining express consent of a parent or
98 guardian include any of the following:

99 (a) Providing a form for the minor's parent or guardian
100 to sign and return to the digital service provider by common
101 carrier, facsimile, or electronic scan;

102 (b) Providing a toll-free telephone number for the
103 known minor's parent or guardian to call to consent;

104 (c) Coordinating a call with a known minor's parent or
105 guardian over video conferencing technology;

106 (d) Collecting information related to the
107 government-issued identification of the known minor's parent or
108 guardian and deleting that information after confirming the
109 identity of the known minor's parent or guardian;

110 (e) Allowing the known minor's parent or guardian to
111 provide consent by responding to an email and taking additional
112 steps to verify the identity of the known minor's parent or
113 guardian; or

114 (f) Any other commercially reasonable method of
115 obtaining consent in light of available technology.

116 **SECTION 5.** (1) A digital service provider that enters into
117 an agreement with a known minor for access to a digital service
118 shall:



119 (a) Limit collection of the known minor's personal
120 identifying information to information reasonably necessary to
121 provide the digital service; and

122 (b) Limit use of the known minor's personal identifying
123 information to the purpose for which the information was
124 collected.

125 (2) A digital service provider that enters into an agreement
126 with a known minor for access to a digital service may not:

127 (a) Use the digital service to collect the known
128 minor's precise geolocation data;

129 (b) Use the digital service to display targeted
130 advertising involving harmful material to the known minor; or

131 (c) Share, disclose or sell the known minor's personal
132 identifying information unless required to:

133 (i) Comply with a civil, criminal or regulatory
134 inquiry, investigation, subpoena or summons by a governmental
135 entity;

136 (ii) Comply with a law enforcement investigation;

137 (iii) Detect, block or prevent the distribution of
138 unlawful, obscene or other harmful material to a known minor;

139 (iv) Block or filter spam;

140 (v) Prevent criminal activity; or

141 (vi) Protect the security of a digital service.

142 **SECTION 6.** In relation to a known minor's use of a digital
143 service, a digital service provider shall develop and implement a



144 strategy to prevent the known minor's exposure to harmful material
145 and other content that promotes, glorifies or facilitates:

- 146 (a) Suicide, self-harm or eating disorders;
- 147 (b) Substance abuse or use of illegal drugs;
- 148 (c) Stalking, bullying or harassment;
- 149 (d) Grooming, trafficking, child pornography or other
150 sexual exploitation or abuse;
- 151 (e) Incitement of violence; or
- 152 (f) Any other illegal activity.

153 **SECTION 7.** (1) Except as provided by subsection (2) of this
154 section, this act may not be construed as providing a basis for,
155 or being subject to, a private right of action for a violation of
156 this act.

157 (2) If a digital service provider violates this act, the
158 parent or guardian of a known minor affected by that violation may
159 bring a cause of action seeking:

- 160 (a) A declaratory judgment under Rule 57 of Mississippi
161 Rules of Civil Procedure; or
- 162 (b) An injunction against the digital service provider.

163 (3) A court may not certify an action brought under this
164 section as a class action.

165 **SECTION 8.** Section 75-24-5, Mississippi Code of 1972, is
166 amended as follows:

167 75-24-5. (1) Unfair methods of competition affecting
168 commerce and unfair or deceptive trade practices in or affecting



169 commerce are prohibited. Action may be brought under Section
170 75-24-5(1) only under the provisions of Section 75-24-9.

171 (2) Without limiting the scope of subsection (1) of this
172 section, the following unfair methods of competition and unfair or
173 deceptive trade practices or acts in the conduct of any trade or
174 commerce are hereby prohibited:

175 (a) Passing off goods or services as those of another;

176 (b) Misrepresentation of the source, sponsorship,
177 approval, or certification of goods or services;

178 (c) Misrepresentation of affiliation, connection, or
179 association with, or certification by another;

180 (d) Misrepresentation of designations of geographic
181 origin in connection with goods or services;

182 (e) Representing that goods or services have
183 sponsorship, approval, characteristics, ingredients, uses,
184 benefits, or quantities that they do not have or that a person has
185 a sponsorship, approval, status, affiliation, or connection that
186 he does not have;

187 (f) Representing that goods are original or new if they
188 are reconditioned, reclaimed, used, or secondhand;

189 (g) Representing that goods or services are of a
190 particular standard, quality, or grade, or that goods are of a
191 particular style or model, if they are of another;

192 (h) Disparaging the goods, services, or business of
193 another by false or misleading representation of fact;



194 (i) Advertising goods or services with intent not to
195 sell them as advertised;

196 (j) Advertising goods or services with intent not to
197 supply reasonably expectable public demand, unless the
198 advertisement discloses a limitation of quantity;

199 (k) Misrepresentations of fact concerning the reasons
200 for, existence of, or amounts of price reductions;

201 (l) Advertising by or on behalf of any licensed or
202 regulated health care professional which does not specifically
203 describe the license or qualifications of the licensed or
204 regulated health care professional;

205 (m) Charging an increased premium for reinstating a
206 motor vehicle insurance policy that was cancelled or suspended by
207 the insured solely for the reason that he was transferred out of
208 this state while serving in the United States Armed Forces or on
209 active duty in the National Guard or United States Armed Forces
210 Reserve. It is also an unfair practice for an insurer to charge
211 an increased premium for a new motor vehicle insurance policy if
212 the applicant for coverage or his covered dependents were
213 previously insured with a different insurer and canceled that
214 policy solely for the reason that he was transferred out of this
215 state while serving in the United States Armed Forces or on active
216 duty in the National Guard or United States Armed Forces Reserve.
217 For purposes of determining premiums, an insurer shall consider
218 such persons as having maintained continuous coverage. The



219 provisions of this paragraph (m) shall apply only to such
220 instances when the insured does not drive the vehicle during the
221 period of cancellation or suspension of his policy;

222 (n) Violating the provisions of Section 75-24-8; * * *

223 (o) Violating the provisions of Section 73-3-38 * * *;

224 and

225 (p) Violating provisions of Section 1 through 7 of this
226 act.

227 **SECTION 9.** This act shall take effect and be in force from
228 and after July 1, 2024.

