

Senate Amendments to House Bill No. 1126

TO THE CLERK OF THE HOUSE:

THIS IS TO INFORM YOU THAT THE SENATE HAS ADOPTED THE AMENDMENTS SET OUT BELOW:

AMENDMENT NO. 1

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

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

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

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

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

23 (i) Owns or operates a digital service;

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

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

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

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

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

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

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

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

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

54 (i) A message board;

55 (ii) A chat room; or

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

58 (2) This act does not apply to:

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

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

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

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

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

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

82 other service, to an internet website or to other information or
83 content:

84 (a) On the internet; or

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

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

96 (2) A digital service provider shall not permit an account
97 holder who is a known minor to be an account holder unless the
98 known minor has the express consent from a parent or guardian.
99 Acceptable methods of obtaining express consent of a parent or
100 guardian include any of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

138 (ii) Comply with a law enforcement investigation;

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

141 (iv) Block or filter spam;

142 (v) Prevent criminal activity; or

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

144 **SECTION 6.** (1) Except as provided by subsection (2) of this
145 section, this act may not be construed as providing a basis for,
146 or being subject to, a private right of action for a violation of
147 this act.

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

151 (a) A declaratory judgment under Rule 57 of Mississippi
152 Rules of Civil Procedure; or

153 (b) An injunction against the digital service provider.

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

156 **SECTION 7.** Section 75-24-5, Mississippi Code of 1972, is
157 amended as follows:

158 75-24-5. (1) Unfair methods of competition affecting
159 commerce and unfair or deceptive trade practices in or affecting
160 commerce are prohibited. Action may be brought under Section
161 75-24-5(1) only under the provisions of Section 75-24-9.

162 (2) Without limiting the scope of subsection (1) of this
163 section, the following unfair methods of competition and unfair or
164 deceptive trade practices or acts in the conduct of any trade or
165 commerce are hereby prohibited:

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

167 (b) Misrepresentation of the source, sponsorship,
168 approval, or certification of goods or services;

169 (c) Misrepresentation of affiliation, connection, or
170 association with, or certification by another;

171 (d) Misrepresentation of designations of geographic
172 origin in connection with goods or services;

173 (e) Representing that goods or services have
174 sponsorship, approval, characteristics, ingredients, uses,
175 benefits, or quantities that they do not have or that a person has
176 a sponsorship, approval, status, affiliation, or connection that
177 he does not have;

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

180 (g) Representing that goods or services are of a
181 particular standard, quality, or grade, or that goods are of a
182 particular style or model, if they are of another;

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

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

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

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

192 (l) Advertising by or on behalf of any licensed or
193 regulated health care professional which does not specifically
194 describe the license or qualifications of the licensed or
195 regulated health care professional;

196 (m) Charging an increased premium for reinstating a
197 motor vehicle insurance policy that was cancelled or suspended by
198 the insured solely for the reason that he was transferred out of
199 this state while serving in the United States Armed Forces or on
200 active duty in the National Guard or United States Armed Forces
201 Reserve. It is also an unfair practice for an insurer to charge
202 an increased premium for a new motor vehicle insurance policy if
203 the applicant for coverage or his covered dependents were
204 previously insured with a different insurer and canceled that
205 policy solely for the reason that he was transferred out of this
206 state while serving in the United States Armed Forces or on active
207 duty in the National Guard or United States Armed Forces Reserve.
208 For purposes of determining premiums, an insurer shall consider

209 such persons as having maintained continuous coverage. The
210 provisions of this paragraph (m) shall apply only to such
211 instances when the insured does not drive the vehicle during the
212 period of cancellation or suspension of his policy;

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

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

215 and

216 (p) Violating the provisions of Sections 1 through 6 of
217 this act.

218 **SECTION 8.** Section 97-5-31, Mississippi Code of 1972, is
219 amended as follows:

220 97-5-31. As used in Sections 97-5-33 through 97-5-37, the
221 following words and phrases shall have the meanings given to them
222 in this section:

223 (a) "Child" means any individual who has not attained
224 the age of eighteen (18) years and is an identifiable child.

225 (b) "Sexually explicit conduct" means actual, morphed
226 or simulated:

227 (i) Oral genital contact, oral anal contact, or
228 sexual intercourse as defined in Section 97-3-65, whether between
229 persons of the same or opposite sex;

230 (ii) Bestiality;

231 (iii) Masturbation;

232 (iv) Sadistic or masochistic abuse;

233 (v) Lascivious exhibition of the genitals or pubic
234 area of any person; or

235 (vi) Fondling or other erotic touching of the
236 genitals, pubic area, buttocks, anus or breast.

237 (c) "Producing" means producing, directing,
238 manufacturing, issuing, publishing, morphing or advertising.

239 (d) "Visual depiction" includes, without limitation,
240 developed or undeveloped film and video tape or other visual
241 unaltered, altered or morphed reproductions by computer and
242 technology.

243 (e) "Computer" has the meaning given in Title 18,
244 United States Code, Section 1030.

245 (f) "Morphed image" means any visual depiction or
246 representation, including any photograph, film, video, picture, or
247 computer or computer-generated image or picture, whether made or
248 produced by electronic, mechanical, simulated or other means, of
249 sexually explicit conduct, where such visual depiction or
250 representation has been created, adapted, or modified to appear an
251 identifiable minor is engaging in sexual conduct or sexually
252 explicit activity to appearing in a state of sexually explicit
253 nudity.

254 (* * *g) "Simulated" means any depicting of the
255 genitals or rectal areas that gives the appearance of sexual
256 conduct or incipient sexual conduct.

257 (h) "Identifiable child" means a child who was a minor
258 at the time the image was created, adapted, or modified or whose
259 image as a child was used in the creating, adapting or modifying
260 of the image; and is recognizable as an actual child by the

261 child's face, likeness, or other distinguishing characteristic,
262 such as a unique birthmark or other recognizable feature. The
263 provisions of this paragraph (h) shall not be construed to require
264 proof of the actual identity of the identifiable child.

265 **SECTION 9.** This act shall take effect and be in force from
266 and after July 1, 2024, and shall stand repealed on June 30, 2024.

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**

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 AMEND SECTION 75-24-5, MISSISSIPPI CODE OF 1972,
7 TO PROVIDE THAT A VIOLATION OF THIS ACT IS AN UNFAIR AND DECEPTIVE
8 TRADE PRACTICE THAT IS ENFORCEABLE BY THE OFFICE OF THE ATTORNEY
9 GENERAL; TO AMEND SECTION 97-5-31, MISSISSIPPI CODE OF 1972, TO
10 INCLUDE MORPHED IMAGES OF DEPICTING MINOR CHILDREN IN EXPLICIT
11 NATURE IN THE CRIME OF CHILD EXPLOITATION; AND FOR RELATED
12 PURPOSES.

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Amanda White
Secretary of the Senate