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**SUBSTITUTE HOUSE BILL 1697**

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**State of Washington**

**67th Legislature**

**2022 Regular Session**

**By** House Consumer Protection & Business (originally sponsored by Representatives Leavitt, Ramel, Berg, Callan, Slatter, and Pollet)

1 AN ACT Relating to privacy rights for Washington minors; and  
2 adding a new chapter to Title 19 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

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

1 (3) An operator of an internet website, online service, online  
2 application, or mobile application is deemed in compliance with  
3 subsection (2) of this section if the operator takes reasonable  
4 actions in good faith designed to avoid marketing or advertising  
5 under the circumstances prohibited in subsection (2) of this section.

6 (4) An operator of an internet website, online service, online  
7 application, or mobile application directed to minors or an operator  
8 who has actual knowledge that a minor is using the operator's  
9 internet website, online service, online application, or mobile  
10 application may not knowingly use, disclose, compile, or allow a  
11 third party to use, disclose, or compile, the personal information of  
12 a minor if the use, disclosure, or compilation is for the purpose of  
13 marketing or advertising products or services described in subsection  
14 (7) of this section to that minor.

15 (5)(a) With respect to marketing or advertising provided by an  
16 advertising service, the operator of an internet website, online  
17 service, online application, or mobile application directed to minors  
18 is deemed in compliance with subsection (1) of this section if the  
19 operator notifies the advertising service, in the manner required by  
20 the advertising service, that the internet website, online service,  
21 online application, or mobile application is directed to minors.

22 (b) If an advertising service is notified pursuant to (a) of this  
23 subsection, the advertising service may not market or advertise a  
24 product or service described in subsection (7) of this section on the  
25 operator's internet website, online service, online application, or  
26 mobile application directed to minors.

27 (6) The marketing and advertising restrictions in subsections (1)  
28 through (4) of this section do not apply to the incidental placement  
29 of products or services embedded in content if the content is not  
30 distributed by or at the direction of the operator primarily for the  
31 purposes of marketing and advertising of the products and services  
32 described in subsection (7) of this section.

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

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

36 (b) Firearms and other dangerous weapons, as defined in chapter  
37 9.41 RCW;

38 (c) Ammunition or reloaded ammunition;

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

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

5 (f) Etching cream or any caustic cream, gel, liquid, or solution  
6 capable of defacing, damaging, or destroying property by means of a  
7 chemical action;

8 (g) Any tobacco, tobacco products, cigarette, or cigarette  
9 papers, or blunt wraps, or any other preparation of tobacco, or any  
10 other instrument or paraphernalia that is designed for the smoking or  
11 ingestion of tobacco or tobacco products;

12 (h) Any cannabis, cannabis product, cannabis business, or any  
13 instrument or paraphernalia that is designed for the smoking or  
14 ingestion of cannabis or cannabis products;

15 (i) Vapor products, as defined in RCW 70.345.010;

16 (j) Any controlled substance, as defined in RCW 69.50.101;

17 (k) Drug paraphernalia, as defined in RCW 69.50.102;

18 (l) Salvia divinorum or Salvinorin A, or any substance or  
19 material containing Salvia divinorum or Salvinorin A;

20 (m) Dietary supplements, as defined in RCW 82.08.0293, containing  
21 ephedrine group alkaloids;

22 (n) Tanning in an ultraviolet tanning device, as defined in RCW  
23 18.370.010;

24 (o) Body branding or any process in which a mark or marks are  
25 burned into human skin tissue with a hot iron or other instrument,  
26 with the intention of leaving a permanent scar;

27 (p) Tattooing, as defined in RCW 18.300.010;

28 (q) Tickets or shares in a lottery game or state lottery, as  
29 defined in RCW 67.70.010; or

30 (r) Lewd or obscene matter.

31 NEW SECTION. **Sec. 2.** (1) An operator of an internet website,  
32 online service, online application, or mobile application directed to  
33 minors or an operator of an internet website, online service, online  
34 application, or mobile application that has actual knowledge that a  
35 minor is using its internet website, online service, online  
36 application, or mobile application shall:

37 (a) Permit a minor who is a registered user of the operator's  
38 internet website, online service, online application, or mobile  
39 application to remove or to request and obtain removal of content or

1 information posted on the operator's internet website, online  
2 service, online application, or mobile application by the minor;

3 (b) Provide notice to a minor who is a registered user of the  
4 operator's internet website, online service, online application, or  
5 mobile application that the minor may remove or request and obtain  
6 removal of content or information posted on the operator's internet  
7 website, online service, online application, or mobile application by  
8 the minor;

9 (c) Provide clear instructions to a minor who is a registered  
10 user of the operator's internet website, online service, online  
11 application, or mobile application on how the minor may remove or  
12 request and obtain the removal of content or information posted on  
13 the operator's internet website, online service, online application,  
14 or mobile application by the minor; and

15 (d) Provide notice to a minor who is a registered user of the  
16 operator's internet website, online service, online application, or  
17 mobile application that the removal pursuant to (a) of this  
18 subsection does not ensure complete or comprehensive removal of the  
19 content or information posted on the operator's internet website,  
20 online service, online application, or mobile application by the  
21 minor.

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

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

27 (b) The content or information was stored or posted on the  
28 operator's internet website, online service, online application, or  
29 mobile application by a third party other than the minor, who is a  
30 registered user, including any content or information posted by the  
31 minor and stored, republished, or reposted by the third party;

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

35 (d) The minor does not follow the instructions provided to the  
36 minor pursuant to subsection (1)(c) of this section on how the minor  
37 may request and obtain the removal of content or information posted  
38 on the operator's internet website, online service, online  
39 application, or mobile application by the minor; or

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

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

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

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

11 (b) Despite the operator's making invisible the original posting  
12 by a minor, who is a registered user, the posting remains visible  
13 because a third party has copied the posting or reposted the content  
14 or information posted by the minor.

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

18 (1) "Internet website, online service, online application, or  
19 mobile application directed to minors" mean an internet website,  
20 online service, online application, or mobile application, or a  
21 portion thereof, that is created for the purpose of reaching an  
22 audience that is predominately comprised of minors, and is not  
23 intended for a more general audience comprised of adults. An internet  
24 website, online service, online application, or mobile application,  
25 or a portion thereof, is not deemed to be directed at minors solely  
26 because it refers or links to an internet website, online service,  
27 online application, or mobile application directed to minors by using  
28 information location tools, including a directory, index, reference,  
29 pointer, or hypertext link.

30 (2) "Marketing or advertising" means, in exchange for monetary  
31 compensation, to make a communication to one or more individuals or  
32 to arrange for the dissemination to the public of a communication the  
33 primary purpose of which is to encourage recipients to purchase or  
34 use a product or service described in the communication.

35 (3) "Minor" means a natural person under 18 years of age who  
36 resides in Washington state.

37 (4) "Operator" means any person or entity that owns an internet  
38 website, online service, online application, or mobile application.  
39 "Operator" does not include: (a) Any third party that operates,

1 hosts, or manages, but does not own, an internet website, online  
2 service, online application, or mobile application on the owner's  
3 behalf or processes information on the owner's behalf; or (b) a  
4 person or entity that is: (i) A covered entity as defined by the  
5 health insurance portability and accountability act of 1996 and  
6 related regulations; (ii) a health care facility or health care  
7 provider as defined in RCW 70.02.010; or (iii) a program or a  
8 qualified service organization as defined by 42 C.F.R. Part 2,  
9 established pursuant to 42 U.S.C. Sec. 290dd-2".

10 (5) "Posted" means content or information that can be accessed by  
11 a user in addition to the minor who posted the content or  
12 information, whether the user is a registered user or not, of the  
13 internet website, online service, online application, or mobile  
14 application where the content or information is posted.

15 NEW SECTION. **Sec. 4.** Nothing in this chapter requires an  
16 operator of an internet website, online service, online application,  
17 or mobile application to collect or retain age information about  
18 users.

19 NEW SECTION. **Sec. 5.** (1) The legislature finds that the  
20 practices covered by this chapter are matters vitally affecting the  
21 public interest for the purpose of applying the consumer protection  
22 act, chapter 19.86 RCW. A violation of this chapter is not reasonable  
23 in relation to the development and preservation of business and is an  
24 unfair or deceptive act in trade or commerce and an unfair method of  
25 competition for the purpose of applying the consumer protection act,  
26 chapter 19.86 RCW.

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

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

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