

MISSISSIPPI LEGISLATURE
2024 Regular Session
To: Technology; Judiciary B
By: Representatives Ford (73rd), Nelson, Byrd

House Bill 1126

(As Sent to Governor)

AN ACT TO CREATE THE "WALKER MONTGOMERY PROTECTING CHILDREN ONLINE ACT" FOR THE PURPOSE OF PROTECTING MINOR CHILDREN FROM ONLINE HARMFUL MATERIAL AND ACCESS TO SUCH MATERIAL; TO REQUIRE DIGITAL SERVICE USERS TO REGISTER THEIR AGE; TO LIMIT THE COLLECTION AND USE OF MINOR USERS' PERSONAL IDENTIFYING INFORMATION; TO REQUIRE DIGITAL SERVICES PROVIDERS TO DEVELOP AND IMPLEMENT A STRATEGY TO PREVENT OR MITIGATE CERTAIN HARMS TO MINORS; TO AMEND SECTION 75-24-5, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A VIOLATION OF THIS ACT IS AN UNFAIR AND DECEPTIVE TRADE PRACTICE THAT IS ENFORCEABLE BY THE OFFICE OF THE ATTORNEY GENERAL; TO AMEND SECTION 97-5-31, MISSISSIPPI CODE OF 1972, TO INCLUDE MORPHED IMAGES OF DEPICTING MINOR CHILDREN IN EXPLICIT NATURE IN THE CRIME OF CHILD EXPLOITATION; AND FOR RELATED PURPOSES.

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

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

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

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

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

- (i) Owns or operates a digital service;
- (ii) Determines the purpose of collecting and
processing the personal identifying information of users of the

digital service; and

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

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

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

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

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

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

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

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

- (i) A message board;
- (ii) A chat room; or
- (iii) A landing page, video channel or main feed that presents to a user content created and posted by other users.

(2) This act does not apply to:

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

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

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

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

- (ii) Allows chat, comment or other interactive functionality that is incidental to the digital service; or

(d) A digital service provider's provision of a digital service that primarily functions to provide a user with access to career development opportunities, including:

- (i) Professional networking;
- (ii) Job skills;
- (iii) Learning certifications;
- (iv) Job posting; and
- (v) Application services.

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

(a) On the Internet; or

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

SECTION 4. (1) A digital service provider may not enter into an agreement with a person to create an account with a digital service unless the person has registered the person's age with the digital service provider. A digital service provider shall make commercially reasonable efforts to verify the age of the person creating an account with a level of

certainty appropriate to the risks that arise from the information management practices of the digital service provider.

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

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

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

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

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

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

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

SECTION 5. (1) A digital service provider that enters into an agreement with a known minor for access to a digital

service shall:

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

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

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

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

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

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

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

- (ii) Comply with a law enforcement investigation;

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

- (iv) Block or filter spam;

- (v) Prevent criminal activity; or

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

SECTION 6. (1) In relation to a known minor's use of a digital service, a digital service provider shall make commercially reasonable efforts to develop and implement a strategy to prevent or mitigate the known minor's exposure to harmful material and other content that promotes or facilitates the following harms to minors:

(a) Consistent with evidence-informed medical information, the following: self-harm, eating disorders, substance use disorders, and suicidal behaviors;

(b) Patterns of use that indicate or encourage substance abuse or use of illegal drugs;

(c) Stalking, physical violence, online bullying, or harassment;

(d) Grooming, trafficking, child pornography, or other sexual exploitation or abuse;

(e) Incitement of violence; or

(f) Any other illegal activity.

(2) Nothing in subsection (1) shall be construed to require a digital service provider to prevent or preclude:

(a) Any minor from deliberately and independently searching for, or specifically requesting, content; or

(b) The digital service provider or individuals on the digital service from providing resources for the prevention or mitigation of the harms described in subsection (1), including evidence-informed information and clinical resources.

SECTION 7. (1) Except as provided by subsection (2) of this section, this act may not be construed as providing a basis

for, or being subject to, a private right of action for a violation of this act.

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

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

(b) An injunction against the digital service provider.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(m) Charging an increased premium for reinstating a motor vehicle insurance policy that was cancelled or suspended

by the insured solely for the reason that he was transferred out of this state while serving in the United States Armed Forces or on active duty in the National Guard or United States Armed Forces Reserve. It is also an unfair practice for an insurer to charge an increased premium for a new motor vehicle insurance policy if the applicant for coverage or his covered dependents were previously insured with a different insurer and canceled that policy solely for the reason that he was transferred out of this state while serving in the United States Armed Forces or on active duty in the National Guard or United States Armed Forces Reserve. For purposes of determining premiums, an insurer shall consider such persons as having maintained continuous coverage.

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

(n) Violating the provisions of Section 75-24-

8; * * *

(o) Violating the provisions of Section 73-3-

38 * * *;

(p) Violating any of the provisions of Sections 1 through 6 of House Bill No. 728, 2024 Regular Session, as approved by the Governor; and

(q) Violating any of the provisions of Sections 1 through 7 of this act.

SECTION 9. Section 97-5-31, Mississippi Code of 1972, is amended as follows:

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

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

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

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

(ii) Bestiality;

(iii) Masturbation;

(iv) Sadistic or masochistic abuse;

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

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

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

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

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

(f) "Morphed image" means any visual depiction or representation, including any photograph, film, video, picture,

or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, simulated or other means, of sexually explicit conduct, where such visual depiction or representation has been created, adapted, or modified to appear an identifiable minor is engaging in sexual conduct or sexually explicit activity to appearing in a state of sexually explicit nudity.

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

(h) "Identifiable child" means a child who was a minor at the time the image was created, adapted, or modified or whose image as a child was used in the creating, adapting or modifying of the image; and is recognizable as an actual child by the child's face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature. The provisions of this paragraph (h) shall not be construed to require proof of the actual identity of the identifiable child.

SECTION 10. This act shall take effect and be in force from and after July 1, 2024.

