



An Act

To restore parents' control over their children's online contracting.

TITLE I – GENERAL

Section 1. Short Title

This Act may be cited as the “Protecting Children from Unscrupulous Online Contracting Practices”

Section 2. Purpose

The purpose of this legislation is to protect children in the State of [XXXX] from entering into contracts online without adequate parental knowledge, input, or control.

[Blank State Code] is amended by adding Chapter [x] to read as follows:

Section 3. Definitions

In this chapter, the following terms shall be defined as follows:

- (a) “Account” means any website, application and similar electronic means by which users are able to create and share information, ideas, personal messages, and other content (including, without limitation, text, photos and videos) or to participate in social networking, gaming, or similar online service.
- (b) “Adult” means an individual who is 18 or older
- (c) “Child” means any individual under the age of XX (18) as defined by the laws of the State of [X].
- (d) “Informed consent” with respect to a child means:
 - (A) the consent of:
 - (i) both parents where two parents share legal custody of the child;
 - (ii) one parent where one parent has sole legal custody of the child;
 - (iii) the legal guardian where the child has one legal guardian;
 - (iv) both legal guardians where the child has co-legal guardians;

- (v) any state agency having legal custody of the child;
- (vi) both foster parents where the child has two foster parents sharing legal custody of the child; or
- (vii) one foster parent where the child has one foster parent exercising legal custody of the child;

(B) consent that is express and active;

(C) consent that is given independently by each parent, legal guardian, state agency, or foster parent; and

(D) consent is not to be effective for more than 365 days;

(e) “Interactive computer service” shall have the meaning as set forth in Title 47 of the United States Code, Section 230(f).

(f) “Internet content provider” shall have the meaning as set forth in Title 47 of the United States Code, Section 230(f).

(g) “Responsible adult” with respect to a child means any adult described in (d) whose consent is necessary with respect to the child;

TITLE II – PROVISIONS

Section 4. Application

An interactive computer service shall not enter a contract or other agreement with a child, within the State of [XX}, including allowing a child to open an account, without first getting informed consent from the child’s responsible adult or adults.

Section 5. Geographic Applicability of Chapter.

This chapter applies only with a respect to a child:

- (1) who is a permanent resident in this state;
- (2) who has resided in this state for more than a year; or
- (3) who has been sojourning in this state for at least 31 consecutive days.

Section 6. Informed Consent

A valid consent under this Chapter must be signed, stating the name and address of the responsible adult authorized to provide the consent. As long as an interactive computer service has a contract or agreement with a child to whom this Chapter applies, it must keep the original consent on file.

Section 7. Reliance On Representation of Responsible Adult.

An interactive computer service may rely on the representation of a child's responsible adult that the child has no other responsible adult, but:

- (1) only after that responsible adult has expressly and actively represented to the interactive computer service that the child has no other responsible adult; and
- (2) only after that responsible adult has expressly and actively represented to the interactive computer service that it will correct any such representation if it is or becomes inaccurate; but
- (3) provided that the interactive computer service or conduit may not rely on any representation that the child has no other responsible adult if the interactive computer service knows or reasonably should know that the representation is or has become inaccurate.

Section 8. Duty Regarding Consent.

In obtaining consent with respect to a child under this chapter, a person or entity seeking informed consent shall offer the responsible adult or adults the option to choose any period of time less than 365 days in which their consent will be effective.

Section 9. Intermediaries.

Nothing in this chapter shall bar the use of intermediaries to obtain or offer consent, including consent as to multiple children and multiple interactive computer services and conduits.

Section 10. Severability

(a) Mindful of *Leavitt v. Jane L.*, 518 U.S. 137 (1996), in which in the context of determining the severability of a state statute the United States Supreme Court held that an explicit statement of legislative intent is controlling, it is the intent of the legislature that every provision, section, subsection, sentence, clause, phrase, or word in this chapter, and every application of the provisions in this chapter, are severable from each other.

(b) If any application of any provision in this chapter to any person, group of persons, or circumstances is found by a court to be invalid or unconstitutional, the remaining applications of that provision to all other persons and circumstances shall be severed and may not be affected. All constitutionally valid applications of this chapter shall be severed from any applications that a court finds to be invalid, leaving the valid applications in force, because it is the legislature's intent and priority that the valid applications be allowed to stand alone. Even if a reviewing court finds that a substantial amount of the provision's applications are unconstitutional, judged in relation to the provision's plainly legitimate sweep, the applications that do not violate the constitution of this state and the constitution and laws of the United States shall be severed from the remaining applications and shall remain in force, and the provision shall be interpreted, as a matter of state law, as if the provision contained explicit language limiting its application to the persons, group of persons, or circumstances for which the statute's application does not violate the constitution of this state and the constitution and laws of the United States.

(c) If any court declares or finds a provision of this chapter facially unconstitutional, when discrete applications of that provision can be enforced against a person, group of persons, or circumstances without violating the constitution of this state and the constitution and laws of the United States, those applications shall be severed from all remaining applications of the provision, and the provision shall be interpreted by every state and federal court, as a matter of state law, as if the provision contained explicit language limiting its application to the persons, group of persons, or circumstances for which the provision's application will not violate the constitution of this state and the constitution and laws of the United States.

(d) The legislature further declares that it would have enacted this chapter, and each constitutional provision, section, subsection, sentence, clause, phrase, or word, and all constitutional applications of this chapter, irrespective of the fact that any discrete provision, section, subsection, sentence, clause, phrase, or word, or applications of this chapter, were to be declared unconstitutional or severed from the remainder of the chapter's provisions and applications.

(e) If any provision of this chapter is found by any court to be unconstitutionally vague, then the applications of that provision that do not present constitutional vagueness problems shall be severed and remain in force.

(f) No court may decline to enforce the severability requirements of Subsections (a), (b), (c), (d), and (e) on the ground that severance would rewrite the statute or involve the court in legislative or lawmaking activity. A court that declines to enforce or enjoins a state official from enforcing a statutory provision is never rewriting the statute, as the statute continues to contain the exact same words as it did before the court's decision. A judicial injunction or declaration of unconstitutionality:

- (1) is nothing more than an edict prohibiting enforcement that may subsequently be vacated by a later court if that court has a different understanding of the requirements of the constitution of this state or the constitution or laws of the United States;
- (2) is not a formal amendment of the language in a statute; and
- (3) no more rewrites a statute than a decision by the executive not to enforce a duly enacted statute in a limited and defined set of circumstances.

Section 11. Limitation On Effect Of Chapter.

(a) Nothing in this chapter shall be construed to treat any interactive computer service as a publisher.

(b) This chapter does not subject a conduit to any cause of action or liability to the extent it is protected from causes of action or liability by federal law.

(c) Compliance with this chapter shall not excuse any person from any other legal duties or relieve any person from any other legal remedies.

(d) No violation of this chapter may be used to justify or trigger the enforcement of any other law or any type of adverse consequence under any other law, except as provided in this chapter; provided, that this section does not preclude the enforcement of any other law or regulation against conduct that is independently prohibited by such other law or regulation and that would remain prohibited by such other law or regulation in the absence of this chapter.

(e) This chapter's prohibitions do not apply in cases to the extent they would violate the doctrine on the dormant Commerce Clause enunciated by the Supreme Court of the United States.

Section 12. Waiver And Estoppel Prohibited.

(a) A waiver, purported waiver, or estoppel of a person's right to bring a civil action under this chapter, or of any remedy or any other protection provided by this chapter, is void as unlawful and against public policy, and a court or arbitrator may not enforce or give effect to such a waiver or estoppel, notwithstanding any choice-of-law or other provision in any contract or other agreement.

(b) The waiver and estoppel prohibition described by Subsection (a) shall not apply to contractual waivers to the extent any such application of the prohibition would impair the obligation of contract in violation of the constitution of this state or of the United States.

(c) The waiver and estoppel prohibition described by Subsection (a) is a public-policy limitation on contractual and other waivers or estoppels of the highest importance and interest to this state, and this state is exercising and enforcing this prohibition to the full extent permitted by the constitutions of this state and the United States.

Section 13. Remedies.

(a) Any responsible adult with respect to a child may bring a civil action sounding in tort against any person for violating this chapter with respect to the child. The plaintiff shall recover damages with respect to each such child in an amount of \$5,000 per day per contract or other agreement, prohibited by this chapter.

(b) If a defendant is found liable in any civil action under this chapter, the plaintiff may recover costs and reasonable and necessary attorney's fees.

(c) A user may bring an action under this section regardless of whether another court has declared any provision of this chapter unconstitutional unless that court decision is binding on the court in which the action is brought.

(d) Nonmutual issue preclusion and nonmutual claim preclusion are not defenses to an action brought under this section.

(e) Notwithstanding any other law:

(1) the requirements of this chapter shall be enforced exclusively through the private civil actions described in this section; and

(2) no direct or indirect enforcement of this chapter may be taken or threatened by the state, a political subdivision, a district attorney, or an executive or administrative officer or employee of this state against any person or entity, in any manner whatsoever, except as provided in this section.

Section 14. Jury Trial.

- (a) In any action brought under this chapter, the plaintiff shall have the right to a jury trial.
- (b) In any jury trial brought under this chapter, the jury shall decide both liability and any damages as well as the question of whether an interactive computer service has “knowledge” or “constructive knowledge.”

Section 15. Void Arrangements. Any contract, agreement, or other arrangement made or entered in violation of this chapter shall be contrary to law and public policy and shall be void and unenforceable.

Section 16. Chapter XX, as added by this Act, applies only to an action taken on or after the effective date of this Act.

Section 17. This Act takes effect on the ____ day after the last day of the legislative session.