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AB-2511 The Parent's Accountability and Child Protection Act. (2017-2018)

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Assembly Bill No. 2511

CHAPTER 872

An act to add Title 1.81.45 (commencing with Section 1798.99.1) to Part 4 of Division 3 of the Civil Code, relating to business.

[Approved by Governor September 28, 2018. Filed with Secretary of State September 28, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2511, Chau. The Parent's Accountability and Child Protection Act.

Existing law prohibits an operator of an Internet Web site, online service, online application, or mobile application, as specified, from marketing or advertising specified types of products or services to a minor. Existing law also makes it unlawful for any person to sell specified products or services to a minor or requires permission from a parent or legal guardian in order to sell to a minor. Under existing law, generally a minor may make a contract in the same manner as an adult.

This bill, commencing on January 1, 2020, would require a person or business that conducts business in California and that seeks to sell specified products or services, to take reasonable steps, as specified, to ensure that the purchaser is of legal age at the time of purchase or delivery, including, but not limited to, verifying the age of the purchaser. The bill would prohibit a person or business that is required to comply with these provisions from retaining, using, or disclosing any information it receives in an effort to verify age from a purchaser or recipient for any purpose other than complying with these provisions, California law, or a state or federal court order. The bill would specify that a business or person that violates these provisions is subject to a civil penalty not exceeding \$7,500 for each violation.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Title 1.81.45 (commencing with Section 1798.99.1) is added to Part 4 of Division 3 of the Civil Code, to read:

TITLE 1.81.45. The Parent's Accountability and Child Protection Act

1798.99.1. (a) (1) A person or business that conducts business in California, and that seeks to sell any product or service in or into California that is illegal under state law to sell to a minor, as described in subdivisions (b) and (c), shall, notwithstanding any general term or condition, take reasonable steps to ensure that the purchaser is of legal age at the time of purchase or delivery, including, but not limited to, verifying the age of the purchaser.

(2) Reasonable steps as used in paragraph (1) for the purchase of items described in subdivision (b) include, but are not limited to, any of the following:

(A) Requiring the purchaser or recipient to input, scan, provide, or display a government-issued identification, provided that the person or business complies with all laws governing the retention, use, and disclosure of personally identifiable information, including, but not limited to, subdivision (a) of Section 1749.65, paragraphs (3) to (7), inclusive, of subdivision (b) of, and subdivisions (c) to (f), inclusive, of, Section 1798.90, paragraph (1) of subdivision (a) of Section 1798.90.1, Sections 1798.29, 1798.81.5, and 1798.82, and Sections 22575 to 22579, inclusive, of the Business and Professions Code.

(B) Requiring the purchaser to use a nonprepaid credit card for an online purchase.

(C) Implementing a system that restricts individuals with accounts designated as minor accounts from purchasing the products listed in subdivision (b).

(D) Shipping the product or service to an individual who is of legal age.

(3) Reasonable steps as used in paragraph (1) for the purchase of items described in subdivision (c) include, but are not limited to, any of the following:

(A) Requiring the purchaser or recipient to input, scan, provide, or display a government-issued identification, provided that the person or business complies with all laws governing the retention, use, and disclosure of personally identifiable information, including, but not limited to, subdivision (a) of Section 1749.65, paragraphs (3) to (7), inclusive, of subdivision (b) of, and subdivisions (c) to (f), inclusive, of, Section 1798.90, paragraph (1) of subdivision (a) of Section 1798.90.1, Sections 1798.29, 1798.81.5, and 1798.82, and Sections 22575 to 22579, inclusive, of the Business and Professions Code.

(B) Shipping the product or service to an individual who is of legal age.

(4) Reasonable steps as used in paragraph (1) shall not include consent obtained through the minor.

(5) A seller's reasonable and good faith reliance on bona fide evidence of the purchaser or recipient's age shall constitute an affirmative defense to any action under this subdivision.

(6) A person or business required to comply with this section shall not retain, use, or disclose any information it receives from a purchaser or recipient in an effort to verify age pursuant to this section for any purpose other than as required to comply with, or as needed to demonstrate compliance with, this section, California law, or a state or federal court order.

(b) Products or services that are illegal to sell to a minor under state law that are subject to subdivision (a) include all of the following:

(1) An aerosol container of paint that is capable of defacing property, as referenced in Section 594.1 of the Penal Code.

(2) Etching cream that is capable of defacing property, as referenced in Section 594.1 of the Penal Code.

(3) Dangerous fireworks, as referenced in Sections 12505 and 12689 of the Health and Safety Code.

(4) Tanning in an ultraviolet tanning device, as referenced in Sections 22702 and 22706 of the Business and Professions Code.

(5) Dietary supplement products containing ephedrine group alkaloids, as referenced in Section 110423.2 of the Health and Safety Code.

(6) Body branding, as referenced in Sections 119301 and 119302 of the Health and Safety Code.

(c) Products or services that are illegal to sell to a minor under state law that are subject to subdivision (a) include all of the following:

(1) Firearms or handguns, as referenced in Sections 16520, 16640, and 27505 of the Penal Code.

(2) A BB device, as referenced in Sections 16250 and 19910 of the Penal Code.

(3) Ammunition or reloaded ammunition, as referenced in Sections 16150 and 30300 of the Penal Code.

(4) Any tobacco, cigarette, cigarette papers, blunt wraps, any other preparation of tobacco, any other instrument or paraphernalia that is designed for the smoking or ingestion of tobacco, products prepared from tobacco, or any controlled substance, as referenced in Division 8.5 (commencing with Section 22950) of the Business and Professions Code, and Sections 308, 308.1, 308.2, and 308.3 of the Penal Code.

(5) Electronic cigarettes, as referenced in Section 119406 of the Health and Safety Code.

(6) A less lethal weapon, as referenced in Sections 16780 and 19405 of the Penal Code.

(d) In an action brought by a public prosecutor, a business or person that violates this section shall be subject to a civil penalty not exceeding seven thousand five hundred dollars (\$7,500) for each violation.

(e) The provisions of this section do not apply to a business that is regulated by state or federal law providing greater protection to personal information or requiring greater age verification than provided by this section in regard to the subjects addressed by this section. Compliance with state or federal law shall be deemed compliance with this section with regard to those subjects. This subdivision does not relieve a business from a duty to comply with any other requirements of other state and federal law regarding the protection and privacy of personal information or age verification.

(f) For purposes of this section, a government-issued identification means any of the following:

(1) A document issued by a federal, state, county, or municipal government, or subdivision or agency thereof, including, but not limited to, an identification card or a valid motor vehicle operator's license, including licenses issued pursuant to Section 12801.9 of the Vehicle Code, that contains the name, date of birth, description, and picture of the person.

(2) A valid passport issued by the United States or by a foreign government.

(3) A valid identification card issued to a member of the United States Armed Forces that includes the date of birth and picture of the person.

(4) A valid consular identification document.

(5) An identification card issued by a federally recognized tribal government.

(g) This section shall become operative on January 1, 2020.