

BE IT ENACTED BY THE PEOPLE OF THE STATE OF COLORADO:

SECTION 1. SHORT TITLE. THE SHORT TITLE OF THIS ACT IS THE "JOSHUA BLACKLEDGE'S BILL".

SECTION 2. FINDINGS AND DECLARATION — SINGLE SUBJECT.

(1) THE PEOPLE OF THE STATE OF COLORADO FIND AND DECLARE THAT THE SINGLE SUBJECT OF THIS ACT IS PROTECTING MINORS FROM DIGITAL SEXUAL EXPLOITATION BY: (A) CREATING CRIMINAL OFFENSES FOR ONLINE GROOMING AND SEXTORTION; (B) ESTABLISHING DIGITAL PLATFORM CHILD SAFETY REQUIREMENTS RELATING TO MINOR ACCOUNTS AND EXPLOITATIVE CONTENT; (C) PROVIDING CIVIL REMEDIES FOR VICTIMS OF SPECIFIED VIOLATIONS; AND (D) CREATING A DEDICATED FUND TO SUPPORT CHILD DIGITAL SAFETY EDUCATION, PREVENTION, AND ENFORCEMENT SUPPORT.

SECTION 3. In Colorado Revised Statutes, 18-6-403, add (1.7), (2)(f.5), (2)(g.5), (3)(e), (3)(f), and (4.5), amend (5)(a), and add (5)(c) as follows:

18-6-403. Sexual exploitation of a child — legislative declaration — definitions — penalties.

(1.7) DECLARATION OF PURPOSE. THE PEOPLE OF COLORADO FIND AND DECLARE THAT EMERGING DIGITAL TECHNOLOGIES, INCLUDING ARTIFICIAL INTELLIGENCE AND ONLINE COMMUNICATION PLATFORMS, POSE UNPRECEDENTED THREATS TO THE SAFETY AND WELL-BEING OF MINORS. THIS SECTION IS INTENDED TO CRIMINALIZE PREDATORY CONDUCT, INCLUDING ONLINE GROOMING AND SEXTORTION, THAT TARGETS MINORS THROUGH ONLINE COMMUNICATIONS. THE PEOPLE FURTHER INTEND THAT THE OFFENSES OF ONLINE GROOMING AND SEXTORTION ARE DISTINCT FROM OTHER FORMS OF SEXUAL EXPLOITATION OF A CHILD IN THIS SECTION AND FROM THE OFFENSE OF INTERNET SEXUAL EXPLOITATION OF A CHILD IN SECTION 18-3-405.4, AS THEY FOCUS ON PREPARATORY DIGITAL COMMUNICATIONS AND COERCIVE TACTICS THAT MAY NOT RESULT IN THE ACTUAL PRODUCTION OF MATERIAL OR IN-PERSON MEETINGS BUT STILL HARM CHILDREN.

(2) As used in this section, unless the context otherwise requires:

(f.5) "ONLINE GROOMING" MEANS A COURSE OF CONDUCT CONSISTING OF TWO OR MORE ONLINE COMMUNICATIONS WITH A CHILD IN WHICH A PERSON SEEKS TO ESTABLISH TRUST, FRIENDSHIP, AUTHORITY, OR AN ONGOING RELATIONSHIP FOR THE PURPOSE OF SEXUAL ABUSE OR SEXUAL EXPLOITATION OF THE CHILD, INCLUDING BY CAUSING, INDUCING, ENTICING, PERSUADING, SOLICITING, OR ATTEMPTING TO CAUSE, INDUCE, ENTICE, PERSUADE, OR SOLICIT THE CHILD TO ENGAGE IN EXPLICIT SEXUAL CONDUCT OR TO CREATE, PRODUCE, SEND, SHARE, OR MAKE ACCESSIBLE SEXUALLY EXPLOITATIVE MATERIAL.

(g.5) "SEXTORTION" MEANS USING THREATS, BLACKMAIL, COERCION, OR DECEPTION TO CAUSE, INDUCE, ENTICE, PERSUADE, SOLICIT, OR ATTEMPT TO CAUSE, INDUCE, ENTICE, PERSUADE, OR SOLICIT A CHILD TO CREATE, PRODUCE, SEND, SHARE, OR MAKE ACCESSIBLE SEXUALLY EXPLOITATIVE MATERIAL OR TO ENGAGE IN EXPLICIT SEXUAL CONDUCT.

(3) A person commits sexual exploitation of a child if, for any purpose, the person knowingly:

(e) ENGAGES IN ONLINE GROOMING; OR

(f) COMMITS SEXTORTION.

(4.5) EXCEPTIONS AND LIMITATIONS. THE OFFENSES DESCRIBED IN SUBSECTIONS (3)(E) AND (3)(F) OF THIS SECTION DO NOT APPLY TO:

(a) A PEACE OFFICER, OR A PERSON ACTING AT THE DIRECTION OF A PEACE OFFICER, WHO ENGAGES IN CONDUCT OR COMMUNICATIONS IN THE COURSE OF AN OFFICIAL INVESTIGATION OR OPERATION, INCLUDING UNDERCOVER COMMUNICATIONS; OR

(b) A JUVENILE WHO IS UNDER SIXTEEN YEARS OF AGE AT THE TIME OF THE CONDUCT, UNLESS THE CONDUCT INVOLVES COERCION, BLACKMAIL, THREATS, DECEPTION, OR DISTRIBUTION FOR COMMERCIAL GAIN.

(5) Penalties.

(a) EXCEPT AS PROVIDED IN PARAGRAPHS (B) AND (C) OF THIS SUBSECTION (5), SEXUAL EXPLOITATION OF A CHILD IS A CLASS 3 FELONY.

(b) (EXISTING TEXT REMAINS UNCHANGED.)

(c) SEXUAL EXPLOITATION OF A CHILD PURSUANT TO SUBSECTION (3)(E) OR (3)(F) OF THIS SECTION IS A CLASS 4 FELONY.

SECTION 4. In Colorado Revised Statutes, add part 19 to article 1 of title 6 as follows:

PART 19

DIGITAL PLATFORM CHILD SAFETY REQUIREMENTS

6-1-1901. Definitions.

(1) As used in this part 19, unless the context otherwise requires:

(a) "ACCOUNT" MEANS A USER PROFILE, REGISTRATION, OR IDENTIFIER THAT ALLOWS A PERSON TO CREATE, SHARE, RECEIVE, OR VIEW CONTENT OR COMMUNICATIONS ON A DIGITAL PLATFORM.

(b) "DEVICE" MEANS A PHONE, TABLET, COMPUTER, GAMING SYSTEM, OR OTHER HARDWARE CAPABLE OF ACCESSING A DIGITAL PLATFORM.

(c) "DIGITAL PLATFORM" MEANS ANY WEBSITE, APPLICATION, OR ONLINE SERVICE ACCESSIBLE IN COLORADO THAT PERMITS USER ACCOUNTS, CONTENT SHARING, OR MESSAGING BETWEEN USERS.

(d) "END-TO-END ENCRYPTION" MEANS A COMMUNICATION METHOD WHERE ONLY THE COMMUNICATING USERS CAN READ THE CONTENTS OF THE COMMUNICATIONS.

(e) "EXPLOITATIVE CONTENT" MEANS:

(I) SEXUALLY EXPLOITATIVE MATERIAL, AS DEFINED IN SECTION 18-6-403 (2)(j);

(II) A PERFORMANCE INVOLVING A CHILD ENGAGED IN EXPLICIT SEXUAL CONDUCT, AS DESCRIBED IN SECTION 18-6-403 (3)(d); OR

(III) CONTENT OR COMMUNICATIONS THAT SOLICIT, ATTEMPT TO SOLICIT, OR COERCE A MINOR TO PRODUCE SEXUALLY EXPLOITATIVE MATERIAL OR TO ENGAGE IN EXPLICIT SEXUAL CONDUCT, INCLUDING CONDUCT DESCRIBED IN SECTION 18-6-403 (3)(e) AND (3)(f).

(f) "GEO-MASKING" MEANS ACCOUNT-LEVEL OPTIONS THAT ALLOW A MINOR TO PREVENT THE DISPLAY, SHARING, OR ASSOCIATION OF THE MINOR'S PRECISE LOCATION DATA WITH THE MINOR'S ACCOUNT OR COMMUNICATIONS, AND TO EXCLUDE SPECIFIED CITIES, TOWNS, STATES, COUNTRIES, OR GEOGRAPHIC AREAS FROM BEING ASSOCIATED WITH THE MINOR'S ACCOUNT OR LOCATION DATA.

(g) "MINOR" MEANS AN INDIVIDUAL UNDER EIGHTEEN YEARS OF AGE.

(h) "PARENTAL CONSENT" MEANS VERIFIED PERMISSION FROM A PARENT OR LEGAL GUARDIAN FOR A MINOR'S CREATION OR USE OF AN ACCOUNT ON A DIGITAL PLATFORM.

(i) "SCREENSHOT ALERT" MEANS A NOTIFICATION TO THE SENDER THAT CONTENT IN A MESSAGE HAS BEEN CAPTURED, INCLUDING THROUGH SCREENSHOTS, PHOTOS, VIDEOS, OR SCREEN RECORDINGS OF THE CONTENT.

6-1-1902. Requirements.

(1) A digital platform operating in Colorado that permits minors to create or maintain accounts shall:

(a) VERIFY USER AGE BEFORE PERMITTING AN INDIVIDUAL TO CREATE AN ACCOUNT AND SHALL OBTAIN PARENTAL CONSENT BEFORE PERMITTING A MINOR TO CREATE OR CONTINUE TO USE AN ACCOUNT. A PLATFORM IS NOT LIABLE FOR GOOD-FAITH ERRORS IN AGE VERIFICATION OR CONSENT DETERMINATION IF THE PLATFORM USES COMMERCIALY REASONABLE VERIFICATION METHODS;

(b) LIMIT THE NUMBER OF ACCOUNTS THAT MAY BE CREATED OR ACCESSED ON A SINGLE DEVICE TO A COMMERCIALY REASONABLE NUMBER DETERMINED BY THE PLATFORM AND REASONABLY DESIGNED TO PREVENT EVASION OF CHILD SAFETY MEASURES;

(c) MAINTAIN AND ENFORCE BANS ON DEVICES AND ACCOUNTS USED FOR PROHIBITED CONDUCT, INCLUDING VIOLATIONS OF THIS PART 19 OR THE PLATFORM'S TERMS RELATING TO CHILD SAFETY. BANS SHALL BE ENFORCED FOR A COMMERCIALY REASONABLE DURATION BASED ON THE SEVERITY OF THE VIOLATION AND MAY APPLY TO A DEVICE, AN ACCOUNT, OR A USER. A PLATFORM SHALL PROVIDE A REASONABLE PROCESS FOR USERS TO DISPUTE AND APPEAL BANS;

(d) PROVIDE SCREENSHOT ALERTS AND GEO-MASKING OPTIONS FOR MINORS' ACCOUNTS, AND PROVIDE END-TO-END ENCRYPTION FOR DIRECT COMMUNICATIONS INVOLVING MINORS' ACCOUNTS, EXCEPT TO THE EXTENT DOING SO WOULD PREVENT THE PLATFORM FROM COMPLYING WITH A LAWFUL ORDER OR LEGAL OBLIGATION; AND

(e) REMOVE REPORTED EXPLOITATIVE CONTENT WITHIN TWENTY-FOUR HOURS AFTER RECEIPT OF A REPORT AND A GOOD-FAITH DETERMINATION BY THE PLATFORM THAT THE CONTENT MEETS THE DEFINITION OF EXPLOITATIVE CONTENT.

(2) NOTHING IN THIS PART 19 REQUIRES A DIGITAL PLATFORM TO MONITOR PRIVATE COMMUNICATIONS PROACTIVELY OR TO AFFIRMATIVELY SEARCH FOR ILLEGAL CONTENT;

HOWEVER, A PLATFORM SHALL ACT ON REPORTS AND INFORMATION IT RECEIVES AS REQUIRED BY THIS PART 19.

6-1-1903. Exemptions.

(1) This part 19 does not apply to:

(a) A PLATFORM THAT IS PRIMARILY USED FOR EDUCATIONAL PURPOSES AND WHOSE PRIMARY FUNCTION IS TO FACILITATE LEARNING OR INSTRUCTION; OR

(b) A PLATFORM THAT DOES NOT PERMIT USER-TO-USER MESSAGING OR USER-GENERATED CONTENT.

(2) A PLATFORM IS CONSIDERED PRIMARILY USED FOR EDUCATIONAL PURPOSES IF ITS PRINCIPAL PURPOSE AND PRIMARY FEATURES ARE DEDICATED TO INSTRUCTION, COURSEWORK, EDUCATIONAL ADMINISTRATION, OR LEARNING MANAGEMENT, AS DETERMINED BY THE PLATFORM IN GOOD FAITH OR BY A COURT IF DISPUTED.

6-1-1904. Civil liability — deceptive trade practice.

(1) A VIOLATION OF THIS PART 19 CONSTITUTES A DECEPTIVE TRADE PRACTICE PURSUANT TO SECTION 6-1-105 (1)(qqqq) AND IS SUBJECT TO THE REMEDIES, ENFORCEMENT, AND PENALTIES PROVIDED IN THIS ARTICLE 1.

(2) EACH INSTANCE OF NONCOMPLIANCE THAT RESULTS IN A MINOR BEING EXPOSED TO EXPLOITATIVE CONTENT, OR THAT MATERIALLY INCREASES THE RISK OF SUCH EXPOSURE, MAY CONSTITUTE A SEPARATE VIOLATION FOR PURPOSES OF ENFORCEMENT.

SECTION 5. In Colorado Revised Statutes, add part 16 to article 21 of title 13 as follows:

PART 16

CIVIL REMEDIES FOR CHILD DIGITAL SAFETY VIOLATIONS

13-21-1601. Private right of action — civil damages — attorney fees.

(1) A victim of:

(a) A VIOLATION OF SECTION 18-6-403 (3)(e) OR (3)(f); OR

(b) A VIOLATION OF PART 19 OF ARTICLE 1 OF TITLE 6;

may bring a civil action against the perpetrator of the criminal violation or against the digital platform responsible for the violation of part 19, as applicable.

(2) AS USED IN THIS PART 16, UNLESS THE CONTEXT OTHERWISE REQUIRES, "VICTIM" MEANS ANY MINOR WHO IS THE TARGET OF ONLINE GROOMING OR SEXTORTION, ANY MINOR DEPICTED IN EXPLOITATIVE CONTENT, OR ANY MINOR PROXIMATELY AND DIRECTLY HARMED BY A VIOLATION OF PART 19 OF ARTICLE 1 OF TITLE 6.

(3) In an action under this part 16, the court may award:

(a) Compensatory damages;

(b) Reasonable attorney fees and costs; and

(c) Disgorgement of ill-gotten profits attributable to the violation.

(4) No criminal conviction is required to bring an action under this part 16.

(5) The remedies provided in this part 16 are in addition to any other remedies available under common law or statute.

SECTION 6. In Colorado Revised Statutes, add 18-21-104 as follows:

18-21-104. Digital child safety fund — creation — uses.

(1) The digital child safety fund is created in the state treasury.

(2) The state treasurer shall credit to the fund:

(a) Civil penalties collected under article 1 of title 6 for violations of part 19 of that article; and

(b) Any fine collected pursuant to convictions under section 18-6-403 (3)(e) or (3)(f).

(3) The money in the fund is continuously appropriated to the department of public safety for:

(a) Education and awareness programs targeted at parents, minors, educators, and the public regarding online grooming, sextortion, and related digital threats to child safety;

(b) Prevention and intervention programs, including counseling and support services for victims of online child exploitation; and

(c) Technical support for local law enforcement and schools, including training, equipment, and resources to investigate and prevent the digital exploitation of children.

(4) The department of public safety may expend money from the fund for grants and contracts consistent with subsection (3) of this section.

SECTION 7. In Colorado Revised Statutes, 6-1-105, amend (1)(pppp) and add (1)(qqqq) as follows:

6-1-105. Deceptive trade practices.

(1) A person engages in a deceptive trade practice when, in the course of the person's business, vocation, or occupation, the person:

(pppp) Violates part 18 of this article 1; or

(qqqq) VIOLATES PART 19 OF THIS ARTICLE 1.

SECTION 8. SEVERABILITY.

If any provision of this act or the application of this act to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 9. EFFECTIVE DATE.

This act takes effect upon the date of the official declaration of the vote and the proclamation of the governor, in accordance with article V, section 1 (4)(a) of the Colorado constitution.