



## Texas Spearheads the App Store Accountability Act Preventing Unauthorized In-App Purchases by Minors: What this Means for Doing Business with Texans.

As we first reported in the [September issue of the Texas Bar Journal](#), [SB 2420, Tex. Bus. & Comm. Code § 121](#) – or “the Act” – is intended to curb in-app spending by children and limit exposure to inappropriate content. A recent [survey](#) indicated that nearly one-in-three parents’ children has made an online purchase without their permission. On average, kids spend \$170 for these unauthorized purchases, with one six-year-old [spending \\$16,000](#). Texas is not unique in this endeavor; other states will also be following suit next year, but Texas’ new law goes live first. It is already being challenged in federal court in multiple lawsuits under First Amendment issues, but that does not mean that it can be ignored in the meantime.

### Who does the Act apply to?

There is some debate regarding if ultimate responsibility for compliance lies with the apps stores or the developers, but as of now, all apps with Texan users are affected.

How the Act tries to accomplish this includes a process for verifying user ages of all app stores and mobile applications, obtaining minors’ parental consent, and maintaining records of these steps. Applicable apps must “use a commercially reasonable method” to verify a user’s age. All users need to be categorized into four categories:

1. Children under 13;
2. Younger teenagers 13 to 15;
3. Older teenagers 16 to 17; and
4. Adults 18 or older.

The app thereby will require an affiliated parent's account to download the app, purchase the app, or make a purchase in or using the app. Failure to abide by this can be classified as a deceptive trade practice. Another fairly unique aspect of this law: it carries a private right of action; that is, it gives the ability for individuals to file civil lawsuits for allegations of noncompliance.

We note that this is *not* the same law in Texas that targets commercial pornographic websites. That law was HB 1181, codified as Tex. Civ. & Rem. Code 129B. It required that pornographic websites use reasonable age-verification to ensure that users are 18 and older. It also narrowly applies to content already unprotected by the First Amendment.

### **This sounds like a good thing, right? What's the problem?**

Everyone agrees that protecting children is a moral duty. While the Act has yet to go live, we can think of a few challenges with compliance.

1. **The Act does not explain what apps are affected.** It is not clear what categories of apps are being targeted, whether it is a small, independently developed game, an Amazon account, or an app that does not target children at all. As written, every Texan must verify their identity to access apps, regardless of their purpose for using the app's content.
2. **It is not certain if the app store or the app developer is responsible for age verification.** As you can likely guess, each side believes the other is responsible. In the meantime, the time is ticking for this relative rush to comply.
3. **Compliance can be difficult and expensive.** These updates may entail costs related to rewriting code, having the ability to share age verification with the app store, and the dilemma of what to do with users who suddenly fall into one of the categorical "buckets." This may also require multiple versions of the app. Noncompliance can be expensive, too: the new Texas law can impose as much as \$10,000 per penalty, which is independent of any private lawsuits.

Legal considerations and takeaways:

- For companies with app users in Texas: review your apps. Consider whether technological updates are needed. Seek legal advice and technical guidance as needed, or if your company is served with a lawsuit or fine.

- For all parents: regardless of the outcomes of the federal legislation regarding this app, we encourage digital literacy and voluntary parental controls to safeguard their children's online experiences.

*This blog post was drafted by [Christine Chasse](#) and [Shawn Tuma](#), attorneys in the Plano, Texas, office of Spencer Fane. For more information, visit [www.spencerfane.com](http://www.spencerfane.com).*

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