S T A T E O F N E W Y O R K

3164

2015-2016 Regular Sessions

I N A S S E M B L Y

January 22, 2015

Introduced by M. of A. TITONE -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the state technology law, in relation to privacy rights for minors in the digital world

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The state technology law is amended by adding a new article 4 to read as follows:

ARTICLE IV

PRIVACY RIGHTS FOR MINORS

SECTION 401. DEFINITIONS.
402. RESTRICTIONS.
403. REMOVAL OF CONTENT.
404. PENALTIES.

S 401. DEFINITIONS. AS USED IN THIS ARTICLE:

1. "MINOR" SHALL MEAN AN INDIVIDUAL UNDER EIGHTEEN YEARS OF AGE.

2. "INTERNET WEBSITE, ONLINE SERVICES, ONLINE APPLICATION OR MOBILE APPLICATION DIRECTED AT MINORS" SHALL MEAN AN INTERNET WEBSITE, ONLINE SERVICES, ONLINE APPLICATION, MOBILE APPLICATION, OR ANY PORTION THEREOF THAT IS CREATED FOR THE PURPOSES OF COMMUNICATING WITH AN AUDIENCE THAT IS PREDOMINANTLY COMPRISED OF MINORS, AND IS NOT INTENDED FOR A MORE GENERAL AUDIENCE COMPRISED OF ADULTS. PROVIDED THAT SUCH TERM INCLUDE AN INTERNET WEBSITE, ONLINE SERVICE, ONLINE APPLICATION, MOBILE APPLICATION, OR ANY PORTION THEREOF WHICH MERELY REFERS OR LINKS TO ANOTHER INTERNET WEBSITE, ONLINE SERVICE, ONLINE APPLICATION OR MOBILE APPLICATION DIRECTED AT MINORS BY USING INFORMATION LOCATION TOOLS, INCLUDING A DIRECTORY, INDEX, REFERENCE, POINTER OR HYPERTEXT LINK.

3. "MARKETING OR ADVERTISING" SHALL MEAN, IN EXCHANGE FOR MONETARY COMPENSATION, THE MAKING OF A COMMUNICATION TO ONE OR MORE INDIVIDUALS, OR THE ARRANGING FOR DISSEMINATION TO THE PUBLIC OF A COMMUNICATION ABOUT A PRODUCT OR SERVICE THE PRIMARY PURPOSE OF WHICH IS TO ENCOURAGE

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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RECIPIENTS OF SUCH COMMUNICATION TO PURCHASE OR USE THE PRODUCT OR SERVICE.

4. "OPERATOR" SHALL MEAN ANY PERSON THAT OWNS AN INTERNET WEBSITE, ONLINE SERVICE, ONLINE APPLICATION OR MOBILE APPLICATION. SUCH TERM SHALL NOT INCLUDE A THIRD PARTY THAT OPERATES, HOSTS OR MANAGES, BUT DOES NOT OWN, AN INTERNET WEBSITE, ONLINE SERVICE, ONLINE APPLICATION OR MOBILE APPLICATION ON THE OWNER'S BEHALF OR PROCESSES INFORMATION ON THE OWNER'S BEHALF.

5. "POSTED" SHALL MEAN CONTENT OR INFORMATION THAT CAN BE ACCESSED BY A USER IN ADDITION TO THE MINOR WHO POSTED THE CONTENT OR INFORMATION, WHETHER THE USER IS A REGISTERED USER OR NOT OF THE INTERNET WEBSITE, ONLINE SERVICE, ONLINE APPLICATION OR MOBILE APPLICATION WHERE THE CONTENT OR INFORMATION IS POSTED.

6. "PROHIBITED PRODUCT OR SERVICE" SHALL MEAN:

(A) AN ALCOHOLIC BEVERAGE AS DEFINED IN SUBDIVISION ONE OF SECTION THREE OF THE ALCOHOLIC BEVERAGE CONTROL LAW;

(B) ANY MACHINE GUN, FIREARM SILENCER, FIREARM, SWITCHBLADE KNIFE, GRAVITY KNIFE, PILUM BALLISTIC KNIFE, METAL KNUCKLE KNIFE, AUTOMATIC KNIFE, RIFLE, SHOTGUN, CANE SWORD, ANTIQUE FIREARM, CHUKA STICK, ELECTRONIC DART GUN, KUNG FU STARS, ELECTRONIC STUN GUN, ARMOR PIERCING AMMUNITION, DISGUISED GUN OR LARGE CAPACITY AMMUNITION FEEDING DEVICE AS SUCH TERMS ARE DEFINED IN SECTION 265.00 OF THE PENAL LAW;

(C) ANY AMMUNITION;

(D) ANY AEROSOL CONTAINER OF PAINT;

(E) ANY TOBACCO PRODUCT, HERBAL CIGARETTE, SHISHA, ELECTRONIC CIGARETTE, BIDIS OR GUTKA;

(F) ANY DRUG OR CONTROLLED SUBSTANCE AS SUCH TERMS ARE DEFINED IN SECTION SIXTY-EIGHT HUNDRED TWO OF THE EDUCATION LAW;

(G) ANY AIR-GUN, SPRING-GUN, OR OTHER INSTRUMENT OR WEAPON IN WHICH THE PROPELLING FORCE IS A SPRING OR AIR;

(H) ANY BILLY, BLACKJACK, BLUDGEON, PLASTIC KNUCKLES, METAL KNUCKLES, SAND BAG, SAND CLUB, WRIST-BRACE TYPE SLINGSHOT OR SLUGSHOT, SHURIKEN, DAGGER, DANGEROUS KNIFE, DIRK, RAZOR, STILETTO OR OTHER DANGEROUS OR DEADLY INSTRUMENT;

(I) ANY FIREWORKS OR DANGEROUS FIREWORKS AS DEFINED IN SUBDIVISION ONE OF SECTION 270.00 OF THE PENAL LAW;

(J) ANY TANNING SERVICE IN AN ULTRAVIOLET RADIATION DEVICE AS DEFINED IN SUBDIVISION TWO OF SECTION THIRTY-FIVE HUNDRED FIFTY OF THE PUBLIC HEALTH LAW;

(K) ANY DIETARY SUPPLEMENT AS DEFINED IN PARAGRAPH (A) OF SUBDIVISION TWO OF SECTION THREE HUNDRED NINETY-ONE-O OF THE GENERAL BUSINESS LAW;

(L) ANY TICKET OR SHARE IN A LOTTERY GAME OR PARI-MUTUEL WAGER;

(M) ANY TATTOO, BODY PIERCING OR TONGUE SPLITTING SERVICE;

(N) ANY DRUG-RELATED PARAPHERNALIA AS DEFINED IN SUBDIVISION TWO OF SECTION EIGHT HUNDRED FIFTY OF THE GENERAL BUSINESS LAW; OR

(O) ANY INDECENT MATERIAL AS REFERRED TO IN SECTION 235.22 OF THE PENAL LAW.

S 402. RESTRICTIONS. 1. NO OPERATOR OF AN INTERNET WEBSITE, ONLINE SERVICE, ONLINE APPLICATION OR MOBILE APPLICATION DIRECTED AT MINORS SHALL MARKET OR ADVERTISE A PROHIBITED PRODUCT OR SERVICE ON SUCH WEBSITE, SERVICE OR APPLICATION.

2. NO OPERATOR SHALL MARKET OR ADVERTISE A PROHIBITED PRODUCT TO A MINOR, WHO SUCH OPERATOR HAS ACTUAL KNOWLEDGE IS USING THE OPERATOR'S INTERNET WEBSITE, ONLINE SERVICE, ONLINE APPLICATION OR MOBILE APPLICATION, WHEN THE MARKETING OR ADVERTISING IS SPECIFICALLY DIRECTED AT THE MINORS BASED UPON INFORMATION SPECIFIC TO SUCH MINOR INCLUDING, BUT NOT

LIMITED TO, THE MINOR'S PROFILE, ACTIVITY, ADDRESS OR LOCATION, AND EXCLUDING INTERNET PROTOCOL ADDRESS AND PRODUCT IDENTIFICATION NUMBERS. PROVIDED, HOWEVER, THAT ANY OPERATOR WHO TAKES REASONABLE ACTIONS, IN GOOD FAITH, DESIGNED TO AVOID MARKETING OR ADVERTISING PROHIBITED PRODUCTS OR SERVICES TO MINORS SHALL NOT BE DEEMED TO HAVE VIOLATED THE PROVISIONS OF THIS SUBDIVISION.

3. NO OPERATOR OF AN INTERNET WEBSITE, ONLINE SERVICE, ONLINE APPLICATION OR MOBILE APPLICATION DIRECTED AT MINORS, OR WHO HAS ACTUAL KNOWLEDGE THAT A MINOR IS USING ITS INTERNET WEBSITE, ONLINE SERVICE, ONLINE APPLICATION OR MOBILE APPLICATION SHALL KNOWINGLY USE, DISCLOSE, COMPILE, OR ALLOW A THIRD PARTY TO USE, DISCLOSE OR COMPILE THE PERSONAL INFORMATION OF A MINOR WITH ACTUAL KNOWLEDGE THAT THE USE, DISCLOSURE OR COMPILATION OF SUCH INFORMATION IS FOR THE PURPOSE OF MARKETING OR ADVERTISING OF PROHIBITED PRODUCTS OR SERVICES TO THE MINOR.

4. NO PROVISION OF THIS SECTION SHALL BE DEEMED TO REQUIRE ANY OPERATOR TO COLLECT OR RETAIN AGE INFORMATION ABOUT ITS USERS.

5. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO THE INCIDENTAL PLACEMENT OF PRODUCTS EMBEDDED IN CONTENT WHEN SUCH CONTENT IS NOT DISTRIBUTED BY OR AT THE DIRECTION OF THE OPERATOR PRIMARILY FOR THE PURPOSE OF MARKETING OR ADVERTISING PROHIBITED PRODUCTS OR SERVICES.

S 403. REMOVAL OF CONTENT. 1. EVERY OPERATOR THAT HAS ACTUAL KNOWLEDGE THAT A MINOR IS USING ITS INTERNET WEBSITE, ONLINE SERVICE, ONLINE APPLICATION OR MOBILE APPLICATION SHALL:

(A) PERMIT A MINOR WHO IS A REGISTERED USER OF THE INTERNET WEBSITE, ONLINE SERVICE, ONLINE APPLICATION OR MOBILE APPLICATION TO REMOVE OR, IF THE OPERATOR PREFERS, TO REQUEST AND OBTAIN REMOVAL OF CONTENT OR INFORMATION POSTED BY THE USER;

(B) PROVIDE NOTICE TO A MINOR WHO IS A REGISTERED USER OF THE INTERNET WEBSITE, ONLINE SERVICE, ONLINE APPLICATION OR MOBILE APPLICATION THAT THE USER MAY REMOVE OR, IF THE OPERATOR PREFERS, REQUEST AND OBTAIN REMOVAL OF CONTENT OR INFORMATION POSTED BY THE USER;

(C) PROVIDE CLEAR INSTRUCTIONS TO A MINOR WHO IS A REGISTERED USER OF THE INTERNET WEBSITE, ONLINE SERVICE, ONLINE APPLICATION OR MOBILE APPLICATION ON HOW A USER MAY REMOVE OR, IF THE OPERATOR PREFERS, REQUEST AND OBTAIN REMOVAL OF CONTENT OR INFORMATION POSTED BY SUCH USER; AND

(D) PROVIDE NOTICE TO A MINOR WHO IS A REGISTERED USER OF THE INTERNET WEBSITE, ONLINE SERVICE, ONLINE APPLICATION OR MOBILE APPLICATION THAT REMOVAL OF CONTENT OR INFORMATION DOES NOT ENSURE COMPLETE OR COMPREHENSIVE REMOVAL.

2. OPERATORS AND THIRD PARTIES SHALL NOT BE REQUIRED TO ERASE OR OTHERWISE ELIMINATE, OR ENABLE ERASURE OR ELIMINATION OF CONTENT OR INFORMATION WHEN:

(A) ANY OTHER PROVISION OF FEDERAL OR STATE LAW REQUIRES THE OPERATOR OR THIRD PARTY TO MAINTAIN THE CONTENT OR INFORMATION;

(B) THE CONTENT OR INFORMATION WAS STORED OR POSTED ON THE OPERATOR'S INTERNET, ONLINE SERVICE, ONLINE APPLICATION OR MOBILE APPLICATION BY A THIRD PARTY OTHER THAN THE MINOR, WHO IS A REGISTERED USER, INCLUDING ANY CONTENT OR INFORMATION POSTED BY A REGISTERED USER THAT WAS STORED, REPUBLISHED OR REPOSTED BY THE THIRD PARTY;

(C) THE OPERATOR ANONYMIZES THE CONTENT OR INFORMATION POSTED BY THE MINOR WHO IS A REGISTERED USER, SO THAT THE MINOR CANNOT BE INDIVIDUALLY IDENTIFIED;

(D) THE MINOR DOES NOT FOLLOW THE INSTRUCTIONS ESTABLISHED PURSUANT TO PARAGRAPH (C) OF SUBDIVISION ONE OF THIS SECTION; OR

(E) THE MINOR HAS RECEIVED COMPENSATION OR OTHER CONSIDERATION FOR PROVIDING THE CONTENT.

3. NO PROVISION OF THIS SECTION SHALL BE DEEMED TO LIMIT THE AUTHORITY OF ANY LAW ENFORCEMENT AGENCY OR COURT TO OBTAIN ANY CONTENT OR INFORMATION FROM AN OPERATOR AS AUTHORIZED BY LAW OR LAWFUL ORDER.

4. NO OPERATOR SHALL BE DEEMED TO HAVE VIOLATED THE PROVISIONS OF THIS SECTION WHEN:

(A) IT RENDERS CONTENT OR INFORMATION POSTED BY A MINOR TO BE NO LONGER VISIBLE TO OTHER USERS AND THE PUBLIC, EVEN WHEN SUCH CONTENT OR INFORMATION REMAINS ON THE OPERATOR'S SERVERS IN SOME FORM; OR

(B) DESPITE MAKING AN ORIGINAL POSTING BY A MINOR USER INVISIBLE, SUCH POSTING REMAINS VISIBLE BECAUSE A THIRD PARTY HAS COPIED THE POSTING OR REPOSTED SUCH CONTENT OR INFORMATION.

5. NO PROVISION OF THIS SECTION SHALL BE DEEMED TO REQUIRE ANY OPERATOR TO COLLECT OR RETAIN AGE INFORMATION ABOUT ITS USERS.

S 404. PENALTIES. ANY PERSON FOUND TO HAVE VIOLATED THE PROVISIONS OF THIS ARTICLE SHALL BE GUILTY OF A MISDEMEANOR.

S 2. Severability. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid and after exhaustion of all further judicial review, the judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part of this act directly involved in the controversy in which the judgment shall have been rendered.

S 3. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.