STATE OF NEW YORK

8557

2021-2022 Regular Sessions

IN ASSEMBLY

December 13, 2021

Introduced by M. of A. VANEL -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to prohibiting interactive computer service providers from knowingly developing or promoting content that is dangerous or injurious

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The general business law is amended by adding a new section 394-ccc to read as follows:

§ 394-ccc. Interactive computer service; developing injurious content. 1. As used in this section, the following terms shall have the following meanings:

(a) "Interactive computer service" means a service provider, which, for profit-making purposes operates an internet platform that is designed to disseminate public content generated by a third-party;

(b) "Content" means the textual, visual or aural information that is generated by a third-party or the interactive computer service provider;

(c) "Promote" means to present or otherwise convey third-party-generated or interactive computer service provider-generated content to a target user;

(d) "User" means any person who is located in the state who utilizes an interactive computer service provider's platform;

(e) "Platform" means an application or website developed by an interactive computer service provider that acts as an intermediary between users and a third-party to disseminate content;

(f) "Target user" means a person who uses an interactive computer service and whom the interactive computer service provider targets for the purpose of sending a developed message; and

(g) "Target, targets, targeted, or targeting" means conveying content to a target user solely on the basis of their personal data which includes, but is not limited, to a target user's:

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

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(i) location data, whether general or precise, including: (A) the time of day in the user's current or predicted future location; (B) the weather in the user's current or predicted future location; (C) the local businesses in the user's current or future predicted location; (D) the natural, artificial, or planned events in the user's current or future predicted location; (E) political preferences in the user's current or future predicted location; and/or (F) landmarks in the user's current or future predicted location;

(ii) income related activities, including the user's: (A) income level; (B) profession; (C) employment status; (D) source of income; and/or (E) investments;

(iii) relationship status, including whether the user is: (A) single; (B) married; (C) divorced; (D) engaging in an affair; (E) in a domestic partnership; (F) engaged; (G) in a romantic or intimate social relationship; and/or (H) contemplating or is in the process of terminating a relationship;

(iv) social status, including whether the user: (A) is a public official; (B) is a public figure; (C) is a limited purpose public figure; (D) is involuntarily thrust into the public domain; (E) receives a significant amount of engagements on the interactive computer service provider's platform; and/or (F) receives an insignificant amount of engagements or is within a specific threshold of engagements on the interactive computer service provider's platform;

(v) psychological profile, whether generated based on psychological conditions set by the interactive computer service provider, or unique or generally accepted psychological conditions;

(vi) veteran status, including whether the user: (A) has served in the armed forces of the United States or another country; (B) is currently serving in the armed forces of the United States or another country; (C) has been discharged, whether honorably, for medical reasons or otherwise; and/or (D) is not a veteran nor a member of the armed forces of the United States or another country;

(vii) medical condition or status, including the user's: (A) mental state; (B) physical state; (C) emotional state; and/or (D) frequency of their receipt of medical care;

(viii) sex;

(ix) gender;

(x) national origin;

(xi) age;

(xii) race;

(xiii) religion; and/or

(ix) familial demographics, including: (A) whether the user is pregnant or expecting a child; (B) the demographic makeup of the user's family; (C) the number of people in the user's family; (D) the emotional relationship between family members; and/or (E) an immediate or distant relative's social status, veteran status, medical status or psychological profile, relationship status, income related activities, income level, location data, age, sex, gender, race, national origin, religion, or familial status as described in this paragraph;

(h) "Developed" or "Developing" shall mean:

(i) the interactive computer service provider generating or altering visible portions of content or a group of content; or

(ii) the interactive computer service provider sufficiently altering the meaning of content or a group of content generated by third parties through the calculated targeting of the specific person such that a new

message is deemed to be created by the interactive computer service provider.

2. An interactive computer service provider that conducts business in this state shall not knowingly:

(a) promote any content to a targeted user; and

(b) with the intention of developing the content, cause: (i) extreme emotional harm; (ii) physical injury, including self-inflicted injury or injury resulting from addiction whereby the content being promoted created the addiction or encouraged such user to indulge in their addiction; (iii) financial injury, including self-inflicted financial injury and financial injury resulting from addiction whereby the content being promoted created the addiction or encouraged such user to indulge in their addiction; or (iv) any other severe, cognizable injury that the interactive computer service provider could reasonably foresee would occur as a result of them promoting the developed message.

3. Any interactive computer service provider who willfully violates any provision of this section shall be liable in a civil action to a target user for any actual, physical or emotional harm incurred from such violation and incur a civil penalty of up to ten thousand dollars for each offense. In making a determination of any violation pursuant to this section, the attorney general may take and make a determination on the relevant facts, and issue subpoenas in accordance with the civil practice law and rules.

4. Nothing in this section shall be construed as: (a) an obligation imposed on an interactive computer service provider that adversely affects the rights or freedoms of any persons including exercising the right of free speech granted by the New York state constitution or the United States Constitution; (b) creating any liability for an interactive computer service provider for promoting content to non-target users based solely on their location and/or time data; (c) creating any liability for an interactive computer service provider for promoting content that is not sufficiently developed to be deemed a violation of the provisions of subdivision two of this section; or (d) creating any liability for an interactive computer service provider for promoting injurious developed content in another state.

§ 2. This act shall take effect on the one hundred eightieth day after it shall have become a law.