

# 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:

1 Section 1. The general business law is amended by adding a new section  
2 394-ccc to read as follows:

3 § 394-ccc. Interactive computer service; developing injurious  
4 content. 1. As used in this section, the following terms shall have the  
5 following meanings:

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

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

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

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

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

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

22 (g) "Target, targets, targeted, or targeting" means conveying content  
23 to a target user solely on the basis of their personal data which  
24 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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1 (i) location data, whether general or precise, including: (A) the  
2 time of day in the user's current or predicted future location; (B) the  
3 weather in the user's current or predicted future location; (C) the  
4 local businesses in the user's current or future predicted location; (D)  
5 the natural, artificial, or planned events in the user's current or  
6 future predicted location; (E) political preferences in the user's  
7 current or future predicted location; and/or (F) landmarks in the user's  
8 current or future predicted location;

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

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

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

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

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

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

36 (viii) sex;

37 (ix) gender;

38 (x) national origin;

39 (xi) age;

40 (xii) race;

41 (xiii) religion; and/or

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

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

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

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

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

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

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

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

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

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

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