

STATE OF NEW YORK

8558

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 preventing interactive computer service providers from knowingly or negligently promoting developed content that is dangerous or otherwise injurious to minors

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 providers; developing injuri-
4 ous content; minors. 1. As used in this section, the following terms
5 shall have the following meanings:

6 (a) "interactive computer service providers" shall mean a service
7 provider who operates in the state of New York, which, for profit-making
8 purposes, operates an internet platform that is designed to disseminate
9 public content generated by third parties;

10 (b) "content" shall mean the textual, visual or aural information that
11 is generated by a third party or an interactive computer service provid-
12 er;

13 (c) "promote" shall mean to present, or otherwise convey, third
14 party-generated or interactive computer service provider-generated
15 content to a targeted minor;

16 (d) "minor" shall mean any person under the age of eighteen who is
17 located in the state of New York;

18 (e) "platform" means an application or website that serves as a base
19 from which the interactive computer service is provided;

20 (f) "targeted minor" means a minor who uses the interactive computer
21 service, and who the interactive computer service provider targets for
22 the purpose of sending a developed message;

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

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

(i) location data, whether general or precise, including:

(A) the time of day in the minor's current or predicted future location;

(B) the weather in the minor's current or predicted future location;

(C) the local businesses in the minor's current or future predicted location;

(D) the natural, artificial, or planned events in the users current or future predicated location;

(E) political preferences in the minor's current or future predicted location; and/or

(F) landmarks in the minor's current or future predicted location.

(ii) income related activities, including the minor'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) is 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 an 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 minor's:

(A) mental state;

(B) physical state;

(C) emotional state; and/or

1 (D) frequency of their receipt of medical care.
2 (viii) sex;
3 (ix) gender;
4 (x) national origin;
5 (xi) age;
6 (xii) race;
7 (xiii) religion; and
8 (xiv) familial demographics, including:
9 (A) whether the user is pregnant or expecting a child;
10 (B) the demographic makeup of the minor's family;
11 (C) the number of people in the minor's family;
12 (D) the emotional relationship between family members; and/or
13 (E) an immediate or distant relative's personal data as described in
14 subparagraphs (i)-(xiii) of this paragraph or their familial demograph-
15 ics status as described in clauses(A)-(D) of this subparagraph; and
16 (h) "developed or developing" shall mean:
17 (i) the interactive computer service provider generating or altering
18 visible portions of content or a group of content; or
19 (ii) the interactive computer service provider sufficiently altering
20 the meaning of content or a group of content generated by third parties
21 through the calculated targeting of the specific minor such that a new
22 message is deemed to be created by the interactive computer service
23 provider.
24 2. An interactive computer service provider that conducts business in
25 the state shall not knowingly or negligently injure a targeted minor
26 with promoted content that the interactive computer service provider
27 developed.
28 The interactive computer service provider shall be liable to the
29 targeted minor in a civil action for any actual, physical, and emotional
30 harm incurred from a violation of this section, as well as punitive
31 damages. Such interactive computer services provider shall incur a civil
32 penalty of up to one hundred thousand dollars per offense.
33 3. It is not a defense to this section that the interactive computer
34 service provider incorrectly determined the targeted minor's data.
35 4. Nothing in this section shall be construed as:
36 (a) an obligation imposed on an interactive computer service provider
37 that adversely affects the rights or freedoms of any persons, such as
38 exercising the right of free speech pursuant to the first amendment to
39 the United States Constitution;
40 (b) an additional or increased liability of an interactive computer
41 service provider for anything other than knowingly or negligently
42 promoting content that is detrimental to minors who use such interactive
43 computer service provider promoting content to non-targeted minors based
44 solely on their location and/or time data;
45 (c) creating any liability for an interactive computer service provid-
46 er for promoting content that is not sufficiently developed to be deemed
47 a violation of the provisions of subdivision two of this section; or
48 (d) creating any liability for an interactive computer service provid-
49 er for promoting dangerous or otherwise injurious developed content in
50 another state.
51 5. In determination of any such violation, the attorney general shall
52 be authorized to take proof and make a determination of the relevant
53 facts and to issue subpoenas in accordance with the civil practice law
54 and rules.
55 § 2. This act shall take effect on the one hundred twentieth day after
56 it shall have become a law.