

STATE OF NEW YORK

9594

IN SENATE

November 16, 2022

Introduced by Sen. HOYLMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the general business law, in relation to requiring disclosure of certain social media terms of service

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 article
2 42 to read as follows:

ARTICLE 42

SOCIAL MEDIA TERMS OF SERVICE

Section 1100. Definitions.

6 1101. Required disclosure of terms of service.

7 1102. Terms of service report.

8 1103. Violations and remedies.

9 1104. Application.

10 § 1100. Definitions. For purposes of this article, the following defi-
11 nitions apply:

12 1. "Actioned" means a social media company, that due to a suspected or
13 confirmed violation of the terms of service, has taken some form of
14 action, including, but not limited to, removal, demonetization, deprior-
15 itization, or banning, against the relevant user or relevant item of
16 content.

17 2. "Content" means statements or comments made by users and media that
18 are created, posted, shared, or otherwise interacted with by users on an
19 internet-based service or application. "Content" does not include media
20 put on a service or application exclusively for the purpose of cloud
21 storage, transmitting files, or file collaboration.

22 3. "Public or semipublic internet-based service or application"
23 excludes a service or application used to facilitate communication with-
24 in a business or enterprise among employees or affiliates of the busi-
25 ness or enterprise, provided that access to the service or application
26 is restricted to employees or affiliates of the business or enterprise
27 using the service or application.

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

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1 4. "Social media company" means a person or entity that owns or oper-
2 ates one or more social media platforms.

3 5. "Social media platform" means a public or semipublic internet-based
4 service or application that has users in New York and that meets both of
5 the following criteria:

6 (a) A substantial function of the service or application is to connect
7 users in order to allow users to interact socially with each other with-
8 in the service or application. A service or application that provides
9 email or direct messaging services shall not be considered to meet this
10 criterion on the basis of that function alone.

11 (b) The service or application allows users to do all of the follow-
12 ing:

13 (i) construct a public or semipublic profile for purposes of signing
14 into and using the service or application;

15 (ii) populate a list of other users with whom an individual shares a
16 social connection within the system; and

17 (iii) create or post content viewable by other users, including, but
18 not limited to, on message boards, in chat rooms, or through a landing
19 page or main feed that presents the user with content generated by other
20 users.

21 6. "Terms of service" means a policy or set of policies adopted by a
22 social media company that specifies, at least, the user behavior and
23 activities that are permitted on the internet-based service owned or
24 operated by the social media company, and the user behavior and activ-
25 ities that may subject the user or an item of content to being actioned.

26 § 1101. Required disclosure of terms of service. 1. A social media
27 company shall post terms of service for each social media platform owned
28 or operated by the company in a manner reasonably designed to inform all
29 users of the social media platform of the existence and contents of the
30 terms of service.

31 2. The terms of service posted pursuant to subdivision one of this
32 section shall include all of the following:

33 (a) contact information for the purpose of allowing users to ask the
34 social media company questions about the terms of service;

35 (b) a description of the process that users must follow to flag
36 content, groups, or other users that they believe violate the terms of
37 service, and the social media company's commitments on response and
38 resolution time; and

39 (c) a list of potential actions the social media company may take
40 against an item of content or a user, including, but not limited to,
41 removal, demonetization, deprioritization, or banning.

42 3. The terms of service posted pursuant to subdivision one of this
43 section shall be available in the twelve most common non-English
44 languages spoken by limited-English proficient individuals in the state,
45 as outlined in section two hundred two-a of the executive law, in which
46 the social media platform offers product features, including, but not
47 limited to, menus and prompts.

48 § 1102. Terms of service report. 1. On a semiannual basis in accord-
49 ance with subdivision two of this section, a social media company shall
50 submit to the attorney general a terms of service report. The terms of
51 service report shall include, for each social media platform owned or
52 operated by the company, all of the following:

53 (a) The current version of the terms of service of the social media
54 platform.

1 (b) If a social media company has filed its first report, a complete
2 and detailed description of any changes to the terms of service since
3 the previous report.

4 (c) A statement of whether the current version of the terms of service
5 defines each of the following categories of content, and, if so, the
6 definitions of those categories, including any subcategories:

7 (i) hate speech or racism;

8 (ii) extremism or radicalization;

9 (iii) disinformation or misinformation;

10 (iv) harassment; and/or

11 (v) foreign political interference.

12 (d) A detailed description of content moderation practices used by the
13 social media company for that platform, including, but not limited to,
14 all of the following:

15 (i) any existing policies intended to address the categories of
16 content described in paragraph (c) of this subdivision;

17 (ii) how automated content moderation systems enforce terms of service
18 of the social media platform and when these systems involve human
19 review;

20 (iii) how the social media company responds to user reports of
21 violations of the terms of service;

22 (iv) how the social media company would remove individual pieces of
23 content, users, or groups that violate the terms of service, or take
24 broader action against individual users or against groups of users that
25 violate the terms of service; and

26 (v) the languages in which the social media platform does not make
27 terms of service available, but does offer product features, including,
28 but not limited to, menus and prompts.

29 (e) (i) Information on content that was flagged by the social media
30 company as content belonging to any of the categories described in para-
31 graph (c) of this subdivision, including all of the following:

32 (A) the total number of flagged items of content;

33 (B) the total number of actioned items of content;

34 (C) the total number of actioned items of content that resulted in
35 action taken by the social media company against the user or group of
36 users responsible for the content;

37 (D) the total number of actioned items of content that were removed,
38 demonetized, or deprioritized by the social media company;

39 (E) the number of times actioned items of content were viewed by
40 users;

41 (F) the number of times actioned items of content were shared, and the
42 number of users that viewed the content before it was actioned; and

43 (G) the number of times users appealed social media company actions
44 taken on that platform and the number of reversals of social media
45 company actions on appeal disaggregated by each type of action.

46 (ii) All information required by subparagraph (i) of this paragraph
47 shall be disaggregated into the following categories:

48 (A) the category of content, including any relevant categories
49 described in paragraph (c) of this subdivision;

50 (B) the type of content, including, but not limited to, posts,
51 comments, messages, profiles of users, or groups of users;

52 (C) the type of media of the content, including, but not limited to,
53 text, images, and videos;

54 (D) how the content was flagged, including, but not limited to,
55 flagged by company employees or contractors, flagged by artificial

1 intelligence software, flagged by community moderators, flagged by civil
2 society partners, and flagged by users; and

3 (E) how the content was actioned, including, but not limited to,
4 actioned by company employees or contractors, actioned by artificial
5 intelligence software, actioned by community moderators, actioned by
6 civil society partners, and actioned by users.

7 2. (a) A social media company shall electronically submit a semiannual
8 terms of service report pursuant to subdivision one of this section,
9 covering activity within the third and fourth quarters of the preceding
10 calendar year, to the attorney general no later than April first of each
11 year, and shall electronically submit a semiannual terms of service
12 report pursuant to subdivision one of this section, covering activity
13 within the first and second quarters of the current calendar year, to
14 the attorney general no later than October first of each year.

15 (b) Notwithstanding paragraph (a) of this subdivision, a social media
16 company shall electronically submit its first terms of service report
17 pursuant to subdivision one of this section, covering activity within
18 the third quarter of two thousand twenty-three, to the attorney general
19 no later than January first, two thousand twenty-four, and shall elec-
20 tronically submit its second terms of service report pursuant to subdi-
21 vision one of this section, covering activity within the fourth quarter
22 of two thousand twenty-three, to the attorney general no later than
23 April first, two thousand twenty-four. A social media platform shall
24 submit its third report no later than October first, two thousand twen-
25 ty-four, in accordance with paragraph (a) of this subdivision.

26 3. The attorney general shall make all terms of service reports
27 submitted pursuant to this section available to the public in a searcha-
28 ble repository on its official internet website.

29 § 1103. Violations and remedies. 1. (a) A social media company that
30 violates the provisions of this article shall be liable for a civil
31 penalty not to exceed fifteen thousand dollars per violation per day,
32 and may be enjoined in any court of competent jurisdiction.

33 (b) A social media company shall be considered in violation of the
34 provisions of this article for each day the social media company does
35 any of the following:

36 (i) fails to post terms of service in accordance with section eleven
37 hundred two of this article;

38 (ii) fails to timely submit to the attorney general a report required
39 pursuant to section eleven hundred two of this article; or

40 (iii) materially omits or misrepresents required information in a
41 report submitted pursuant to section eleven hundred two of this article.

42 (c) In assessing the amount of a civil penalty pursuant to paragraph
43 (a) of this subdivision, the court shall consider whether the social
44 media company has made a reasonable, good faith attempt to comply with
45 the provisions of this article.

46 2. Actions for relief pursuant to this article shall be prosecuted
47 exclusively in a court of competent jurisdiction by the attorney general
48 in the name of the people of the state of New York, or a city corpo-
49 ration counsel on behalf of a locality upon their own complaint or upon
50 the complaint of a board, officer, person, corporation, or association.

51 3. If an action pursuant to this section is brought by the attorney
52 general, one-half of the penalty collected shall be paid to the treasur-
53 er of the county in which the judgment was entered, and one-half of the
54 penalty collected shall be paid to the general fund established by
55 section seventy-two of the state finance law. If the action is brought

1 by a city corporation counsel, the penalty collected shall be paid to
2 the city in which the judgment was entered.

3 § 1104. Application. This article shall not apply to a social media
4 company that generated less than one hundred million dollars in gross
5 revenue during the preceding calendar year or to an internet-based
6 service or application for which interactions between users are limited
7 to direct messages, commercial transactions, consumer reviews of
8 products, sellers, services, events, or places, or any combination ther-
9 eof.

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