STATE OF NEW YORK

8316

IN SENATE

February 11, 2022

Introduced by Sen. BAILEY -- read twice and ordered printed, and when printed to be committed to the Committee on Internet and Technology

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:

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

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

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

(b) "content" shall mean the textual, visual or aural information that is generated by a third party or an interactive computer service provider;

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

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

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

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

(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:

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

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(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
(D) frequency of their receipt of medical care.
(viii) sex;
(ix) gender;
(x) national origin;

(xi) age;
(xii) race;
(xiii) religion; and
(xiv) familial demographics, including:
(A) whether the user is pregnant or expecting a child;
(B) the demographic makeup of the minor's family;
(C) the number of people in the minor's family;
(D) the emotional relationship between family members; and/or
(E) an immediate or distant relative's personal data as described in subparagraphs (i)-(xiii) of this paragraph or their familial demographics status as described in clauses(A)-(D) of this subparagraph; and
(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 minor 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 the state shall not knowingly or negligently injure a targeted minor with promoted content that the interactive computer service provider developed.
The interactive computer service provider shall be liable to the targeted minor in a civil action for any actual, physical, and emotional harm incurred from a violation of this section, as well as punitive damages. Such interactive computer services provider shall incur a civil penalty of up to one hundred thousand dollars per offense.
3. It is not a defense to this section that the interactive computer service provider incorrectly determined the targeted minor's data.
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, such as exercising the right of free speech pursuant to the first amendment to the United States Constitution;
(b) an additional or increased liability of an interactive computer service provider for anything other than knowingly or negligently promoting content that is detrimental to minors who use such interactive computer service provider promoting content to non-targeted minors 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 dangerous or otherwise injurious developed content in another state.
5. In determination of any such violation, the attorney general shall be authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

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