STATE OF NEW YORK

7694--A

2023-2024 Regular Sessions

IN SENATE

October 13, 2023

Introduced by Sens. GOUNARDES, BAILEY, CHU, CLEARE, COMRIE, FERNANDEZ, HARCKHAM, HINCHEY, HOYLMAN-SIGAL, JACKSON, KAVANAGH, KRUEGER, LIU, MANNION, MARTINEZ, MAY, MAYER, MURRAY, MYRIE, PALUMBO, PARKER, RAMOS, RHOADS, RIVERA, RYAN, SALAZAR, SEPULVEDA, SERRANO, SKOUFIS, STAVISKY, TEDISCO, WEBB, WEBER -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- recommitted to the Committee on Internet and Technology in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law, in relation to enacting the Stop Addictive Feeds Exploitation (SAFE) for Kids act prohibiting the provision of an addictive feed to a minor

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

Section 1. This act shall be known and may be cited as the "Stop Addictive Feeds Exploitation (SAFE) for Kids act".

§ 2. Legislative intent. Social media platforms automatically process enormous amounts of data about the behavior of users, using tens or hundreds of thousands of data points for each user, filtered through sophisticated machine learning algorithms, to create media feeds personalized to each user. These feeds are based on data that generally includes not only the deliberate choices of the users, such as content they "like" or other users they "follow," but also conduct the user may not even be aware of, such as how long they spent looking at a particular piece of media. These feeds make predictions about interests, mood, and other factors related to what is most likely to keep users engaged for as long as possible, creating a feed tailor-made to keep each user on the platform for longer periods. Today these addictive feeds have become the primary way that people experience social media.

Since their adoption, addictive feeds have had a dramatic negative effect on children and teenagers, causing young users to spend more time

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

LBD11334-14-4

on social media than they otherwise would, which has been tied to significantly higher rates of youth depression, anxiety, suicidal ideation, and self-harm. Children are particularly susceptible to addictive feeds because they provide a non-stop drip of dopamine with each new piece of media and because children are less capable of exercising the impulse control necessary to mitigate these negative effects. Research shows that spending time on social media is ten times more dangerous than other kinds of screentime. Among girls, the association between poor mental health and social media use is stronger than the associations between poor mental health and binge drinking, obesity, or hard drug use. Research also shows that social media usage at night is particularly harmful to children's health. Self-regulation by social media companies has not and will not work because the addictive feeds are profitable, designed to make users stay on services so that children can see more ads and the companies can collect more data.

This act, therefore, prohibits social media companies from providing children under 18 with addictive feeds absent parental consent. This act will still permit minors to view non-addictive feeds and any content available on a social media platform, such as feeds listed in chronological order, to ensure that children can still obtain all the core benefits of social media, and does not limit social media companies' ability to moderate in good faith to protect children from harmful or otherwise objectionable content. Moreover, this act only imposes obligations on social media companies where the addictive feed is a significant part of their platform, and not on online services that provide such feeds as ancillary features or add-ons, or where users are on the feed for a relatively small portion of their time using the service.

To limit access to addictive feeds, this act will require social media companies to use commercially reasonable methods to determine user age. Regulations by the attorney general will provide guidance, but this flexible standard will be based on the totality of the circumstances, including the size, financial resources, and technical capabilities of a given social media company, and the costs and effectiveness of available age determination techniques for users of a given social media platform. For example, if a social media company is technically and financially capable of effectively determining the age of a user based on its existing data concerning that user, it may be commercially reasonable to present that as an age determination option to users. Although the legislature considered a statutory mandate for companies to respect automated browser or device signals whereby users can inform a covered operator that they are a covered minor, we determined that the attorney general would already have discretion to promulgate such a mandate through its rulemaking authority related to commercially reasonable and technologically feasible age determination methods. The legislature believes that such a mandate can be more effectively considered and tailored through that rulemaking process. Existing New York antidiscrimination laws and the attorney general's regulations will require, regardless, that social media companies provide a range of age verification methods all New Yorkers can use, and will not use age assurance methods that rely solely on biometrics or require government identification that many New Yorkers do not possess.

§ 3. The general business law is amended by adding a new article 45 to read as follows:

ARTICLE 45

SAFE FOR KIDS ACT

Section 1500. Definitions.

1501. Prohibition of addictive feeds.
1502. Overnight notifications.
1503. Parental control.
1504. Nondiscrimination.
1505. Rulemaking authority.
1506. Language access.
1507. Scope.
1508. Remedies.

§ 1500. Definitions. For the purposes of this article, the following terms shall have the following meanings:

1. "Addictive feed" shall mean a website, online service, online application, or mobile application, or a portion thereof, in which multiple pieces of media generated or shared by users of a website, online service, online application, or mobile application, either concurrently or sequentially, are recommended, selected, or prioritized for display to a user based, in whole or in part, on information associated with the user or the user's device, unless any of the following conditions are met, alone or in combination with one another:

(a) the recommendation, prioritization, or selection is based on information that is not persistently associated with the user or user's device, and does not concern the user's previous interactions with media generated or shared by other users;

(b) the recommendation, prioritization, or selection is based on user-selected privacy or accessibility settings, or technical information concerning the user's device;

(c) the user expressly and unambiguously requested the specific media, media by the author, creator, or poster of media the user has subscribed to, or media shared by users to a page or group the user has subscribed to, provided that the media is not recommended, selected, or prioritized for display based, in whole or in part, on other information associated with the user or the user's device that is not otherwise permissible under this subdivision;

(d) the user expressly and unambiguously requested that specific media, media by a specified author, creator, or poster of media the user has subscribed to, or media shared by users to a page or group the user has subscribed to pursuant to paragraph (c) of this subdivision, be blocked, prioritized or deprioritized for display, provided that the media is not recommended, selected, or prioritized for display based, in whole or in part, on other information associated with the user or the user's device that is not otherwise permissible under this subdivision;

(e) the media are direct and private communications;

(f) the media are recommended, selected, or prioritized only in response to a specific search inquiry by the user;

(g) the media recommended, selected, or prioritized for display is exclusively next in a pre-existing sequence from the same author, creator, poster, or source; or

(h) the recommendation, prioritization, or selection is necessary to comply with the provisions of this article and any regulations promulgated pursuant to this article.

2. "Addictive social media platform" shall mean a website, online service, online application, or mobile application, that offers or provides users an addictive feed as a significant part of the services provided by such website, online service, online application, or mobile application.

3. "Covered minor" shall mean a user of a website, online service, online application, or mobile application in New York when the operator has actual knowledge the user is a minor.

4. "Covered user" shall mean a user of a website, online service, online application, or mobile application in New York, not acting as an operator, or agent or affiliate of the operator, of such website, online service, online application, or mobile application, or any portion thereof.

5. "Media" shall mean text, an image, or a video.

6. "Minor" shall mean an individual under the age of eighteen.

7. "Covered operator" shall mean any person, business, or other legal entity, who operates or provides an addictive social media platform.

8. "Parent" shall mean parent or legal guardian.

§ 1501. Prohibition of addictive feeds. 1. It shall be unlawful for a covered operator to provide an addictive feed to a covered user unless:

(a) the covered operator has used commercially reasonable and technically feasible methods to determine that the covered user is not a covered minor; or

(b) the covered operator has obtained verifiable parental consent to provide an addictive feed to a covered minor.

2. (a) The attorney general shall promulgate regulations identifying commercially reasonable and technically feasible methods for covered operators to determine if a covered user is a covered minor required pursuant to subdivision one of this section, and any exceptions thereto.

(b) In promulgating such regulations, the attorney general shall consider the size, financial resources, and technical capabilities of the addictive social media platform, the costs and effectiveness of available age determination techniques for users of the addictive social media platform, the audience of the addictive social media platform, prevalent practices of the industry of the covered operator, and the impact of the age determination techniques on the covered users' safety, utility, and experience.

(c) Such regulations shall also identify the appropriate levels of accuracy that would be commercially reasonable and technically feasible for covered operators to achieve in determining whether a covered user is a covered minor. Such regulations shall set forth multiple commercially reasonable and technically feasible methods for a covered operator to determine if a covered user is a covered minor, including at least one method that either does not rely solely on government issued identification or that allows a covered user to maintain anonymity as to the covered operator of the addictive social media platform.

(d) Where a covered operator has used commercially reasonable and technically feasible age determination methods in compliance with such regulations and has not determined that a covered user is a covered minor, the covered operator shall operate under the presumption that the covered user is not a covered minor for the purposes of this article, unless it obtains actual knowledge that the covered user is a covered minor.

3. Information collected for the purpose of determining a covered user's age under paragraph (a) of subdivision one of this section shall not be used for any purpose other than age determination and shall be deleted immediately after an attempt to determine a covered user's age, except where necessary for compliance with any applicable provisions of New York state or federal law or regulation.

4. The attorney general shall promulgate regulations identifying methods of obtaining verifiable parental consent pursuant to paragraph (b)

of subdivision one of this section and section fifteen hundred two of this article.

5. Information collected for the purpose of obtaining such verifiable parental consent shall not be used for any purpose other than obtaining verifiable parental consent and shall be deleted immediately after an attempt to obtain verifiable parental consent, except where necessary for compliance with any applicable provisions of New York state or federal law or regulation.

6. Nothing in this section shall be construed as requiring any operator to give a parent who grants verifiable parental consent any additional or special access to or control over the data or accounts of their child.

7. Nothing in this section shall be construed as preventing any action taken in good faith to restrict access to or availability of media that the covered operator considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected.

§ 1502. Overnight notifications. It shall be unlawful for the covered operator of an addictive social media platform to, between the hours of 12 AM Eastern and 6 AM Eastern, send notifications concerning an addictive feed to a covered minor unless the operator has obtained verifiable parental consent to send such nighttime notifications.

§ 1503. Parental control. Nothing in this article shall be construed as requiring the operator of an addictive social media platform to give a parent any additional or special access to or control over the data or accounts of their child.

§ 1504. Nondiscrimination. A covered operator shall not withhold, degrade, lower the quality, or increase the price of any product, service, or feature, other than as necessary for compliance with the provisions of this article or any rules or regulations promulgated pursuant to this article, to a covered user due to the covered operator not being permitted to provide an addictive feed to such covered user under subdivision one of section fifteen hundred one of this article.

§ 1505. Rulemaking authority. The attorney general shall promulgate such rules and regulations as are necessary to effectuate and enforce the provisions of this article.

§ 1506. Language access. 1. Instructions to parents on how to provide verifiable parental consent under paragraph (b) of subdivision one of section fifteen hundred one of this article shall be made available in no fewer than the twelve most commonly spoken languages in New York state consistent with section two hundred two-a of the executive law and as further defined by regulations promulgated by the attorney general.

2. The attorney general shall ensure that any public information or guidance that it may provide concerning this chapter is available in the twelve most commonly spoken languages in New York state consistent with section two hundred two-a of the executive law and as further defined by regulations promulgated by the attorney general.

§ 1507. Scope. 1. This article shall apply to conduct that occurs in whole or in part in New York. For purposes of this article, conduct takes place wholly outside of New York if the addictive social media platform is accessed by a user who is physically located outside of New York.

2. Nothing in this article shall be construed to impose liability for commercial activities or actions by operators subject to 15 U.S.C. § 6501 that is inconsistent with the treatment of such activities or actions under 15 U.S.C. § 6502.

§ 1508. Remedies. 1. No earlier than one hundred eighty days after the effective date of this article, whenever it appears to the attorney general, either upon complaint or otherwise, that any person, within or outside the state, has engaged in or is about to engage in any of the acts or practices stated to be unlawful in this article, the attorney general may bring an action or special proceeding in the name and on behalf of the people of the state of New York to enjoin any violation of this article, to obtain restitution of any moneys or property obtained directly or indirectly by any such violation, to obtain disgorgement of any profits or gains obtained directly or indirectly by any such violation, including but not limited to the destruction of unlawfully obtained data, to obtain damages caused directly or indirectly by any such violation, to obtain civil penalties of up to five thousand dollars per violation, and to obtain any such other and further relief as the court may deem proper, including preliminary relief.

2. The attorney general shall maintain a website to receive complaints, information or referrals from members of the public concerning a covered operator's or social media platform's alleged compliance or non-compliance with the provisions of this article.

§ 4. Severability. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 5. This act shall take effect on the one hundred eightieth day after the office of the attorney general shall promulgate rules and regulations necessary to effectuate the provisions of this act; provided that the office of the attorney general shall notify the legislative bill drafting commission upon the occurrence of the enactment of the rules and regulations necessary to effectuate and enforce the provisions of section three of this act in order that the commission may maintain an accurate and timely effective data base of the official text of the laws of the state of New York in furtherance of effectuating the provisions of section 44 of the legislative law and section 70-b of the public officers law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.