

STATE OF NEW YORK

7695--A

2023-2024 Regular Sessions

IN SENATE

October 13, 2023

Introduced by Sens. GOUNARDES, BORRELLO, CHU, COMRIE, FERNANDEZ, GONZALEZ, HARCKHAM, JACKSON, KAVANAGH, KENNEDY, MANNION, MAYER, PALUMBO, PARKER, RAMOS, RHOADS, RIVERA, SALAZAR, SEPULVEDA, STAVISKY, 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 establishing the New York child data protection act

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 39-FF to read as follows:

3 ARTICLE 39-FF

4 NEW YORK CHILD DATA PROTECTION ACT

5 Section 899-ee. Definitions.

6 899-ff. Privacy protection by default.

7 899-gg. Third parties.

8 899-hh. Ongoing use.

9 899-ii. Respecting user-provided age flags.

10 899-jj. Protections for third-party operators.

11 899-kk. Rulemaking authority.

12 899-ll. Scope.

13 899-mm. Remedies.

14 § 899-ee. Definitions. For purposes of this article, the following
15 terms shall have the following meanings:

16 1. "Covered user" shall mean a user of a website, online service,
17 online application, mobile application, or connected device, or portion
18 thereof, in the state of New York who is:

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

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1 (a) actually known by the operator of such website, online service,
2 online application, mobile application, or connected device to be a
3 minor; or

4 (b) a user of a website, online service, online application, mobile
5 application, or connected device primarily directed to minors.

6 2. "Minor" shall mean a natural person under the age of eighteen.

7 3. "Operator" shall mean any person:

8 (a) who operates or provides a website on the internet, online
9 service, online application, mobile application, or connected device;
10 and

11 (b) who:

12 (i) collects or maintains, either directly or through another person,
13 personal data from or about the users of such website, service, applica-
14 tion, or connected device;

15 (ii) integrates with another website, service, application, or
16 connected device and directly collects personal data from the users of
17 such website, service, application, or connected device;

18 (iii) allows another person to collect personal data directly from
19 users of such website, service, application, or connected device; or

20 (iv) allows users of such website, service, application, or connected
21 device to publicly disclose personal data.

22 4. "Personal data" shall mean any data that identifies or could
23 reasonably be linked, directly or indirectly, with a specific natural
24 person or device.

25 5. "Process" or "processing" shall mean an operation or set of oper-
26 ations performed on personal data, including but not limited to the
27 collection, use, access, sharing, sale, monetization, analysis,
28 retention, creation, generation, derivation, recording, organization,
29 structuring, storage, disclosure, transmission, disposal, licensing,
30 destruction, deletion, modification, or deidentification of personal
31 data.

32 6. "Primarily directed to minors" shall mean a website, online
33 service, online application, mobile application, or connected device, or
34 a portion thereof, that is targeted to minors. A website, online
35 service, online application, mobile application, or connected device, or
36 portion thereof, shall not be deemed directed primarily to minors solely
37 because such website, online service, online application, mobile appli-
38 cation, or connected device, or portion thereof refers or links to any
39 other website, online service, online application, mobile application,
40 or connected device directed to minors by using information location
41 tools, including a directory, index, reference, pointer, or hypertext
42 link. A website, online service, online application, mobile application,
43 or connected device, or portion thereof, shall be deemed directed to
44 minors when it has actual knowledge that it is collecting personal data
45 of users directly from users of another website, online service, online
46 application, mobile application, or connected device primarily directed
47 to minors.

48 7. "Sell" shall mean to share personal data for monetary or other
49 valuable consideration. "Selling" shall not include the sharing of
50 personal data for monetary or other valuable consideration to another
51 person as an asset that is part of a merger, acquisition, bankruptcy, or
52 other transaction in which that person assumes control of all or part of
53 the operator's assets.

54 8. "Third party" shall mean any person who is not any of the follow-
55 ing:

1 (a) the operator with whom the user intentionally interacts and who
2 collects personal data from the user as part of the user's current
3 interaction with the operator;

4 (b) the user whose personal data the operator processes; or

5 (c) the parent or legal guardian of a user under thirteen years old
6 whose personal data the operator processes.

7 § 899-ff. Privacy protection by default. 1. Except as provided for in
8 subdivision six of this section and section eight hundred ninety-nine-ii
9 of this article, an operator shall not process, or allow a third party
10 to process, the personal data of a covered user collected through the
11 use of a website, online service, online application, mobile applica-
12 tion, or connected device unless and to the extent:

13 (a) the covered user is twelve years of age or younger and processing
14 is permitted under 15 U.S.C. § 6502 and its implementing regulations; or

15 (b) the covered user is thirteen years of age or older and processing
16 is strictly necessary for an activity set forth in subdivision two of
17 this section, or informed consent has been obtained as set forth in
18 subdivision three of this section.

19 2. For the purposes of paragraph (b) of subdivision one of this
20 section, the processing of personal data of a covered user is permissi-
21 ble where it is strictly necessary for the following activities:

22 (a) providing or maintaining a specific product or service requested
23 by the covered user;

24 (b) conducting the operator's internal business operations. For
25 purposes of this paragraph, such internal business operations shall not
26 include any activities related to marketing, advertising, or providing
27 products or services to third parties, or prompting covered users to use
28 the website, online service, online application, mobile application, or
29 connected device when it is not in use;

30 (c) identifying and repairing technical errors that impair existing or
31 intended functionality;

32 (d) protecting against malicious, fraudulent, or illegal activity;

33 (e) investigating, establishing, exercising, preparing for, or defend-
34 ing legal claims;

35 (f) complying with federal, state, or local laws, rules, or regu-
36 lations;

37 (g) complying with a civil, criminal, or regulatory inquiry, investi-
38 gation, subpoena, or summons by federal, state, local, or other govern-
39 mental authorities;

40 (h) detecting, responding to, or preventing security incidents or
41 threats; or

42 (i) protecting the vital interests of a natural person.

43 3. (a) For the purposes of paragraph (b) of subdivision one of this
44 section, to process personal data of a covered user where such process-
45 ing is not strictly necessary under subdivision two of this section,
46 informed consent must be obtained from the covered user either through a
47 device communication or signal pursuant to the provisions of subdivision
48 two of section eight hundred ninety-nine-ii of this article or through a
49 request. Requests for such informed consent shall:

50 (i) be made separately from any other transaction or part of a trans-
51 action;

52 (ii) be made in the absence of any mechanism that has the purpose or
53 substantial effect of obscuring, subverting, or impairing a covered
54 user's decision-making regarding authorization for the processing;

55 (iii) clearly and conspicuously state that the processing for which
56 the consent is requested is not strictly necessary, and that the covered

1 user may decline without preventing continued use of the website, online
2 service, online application, mobile application, or connected device;
3 and

4 (iv) clearly present an option to refuse to provide consent as the
5 most prominent option.

6 (b) Such informed consent, once given, shall be freely revocable at
7 any time, and shall be at least as easy to revoke as it was to provide.

8 (c) If a covered user declines to provide or revokes informed consent
9 for processing, another request may not be made for such processing for
10 the following calendar year, however an operator may make available a
11 mechanism that a covered user can use at their discretion to provide
12 informed consent.

13 (d) If a covered user's device communicates or signals that the
14 covered user declines to provide informed consent for processing pursu-
15 ant to the provisions of subdivision two of section eight hundred nine-
16 ty-nine-ii of this article, an operator shall not request informed
17 consent for such processing, however an operator may make available a
18 mechanism that a covered user can use at their discretion to provide
19 informed consent.

20 4. Except where processing is strictly necessary to provide a product,
21 service, or feature, an operator may not withhold, degrade, lower the
22 quality, or increase the price of any product, service, or feature to a
23 covered user due to the operator not obtaining verifiable parental
24 consent under 15 U.S.C. § 6502 and its implementing regulations or
25 informed consent under subdivision three of this section.

26 5. Except as provided for in section eight hundred ninety-nine-jj of
27 this article, an operator shall not purchase or sell, or allow a third
28 party to purchase or sell, the personal data of a covered user.

29 6. Within fourteen days of determining that a user is a covered user,
30 an operator shall:

31 (a) dispose of, destroy, or delete all personal data of such covered
32 user that it maintains, unless processing such personal data is permit-
33 ted under 15 U.S.C. § 6502 and its implementing regulations, is strictly
34 necessary for an activity listed in subdivision two of this section, or
35 informed consent is obtained as set forth in subdivision three of this
36 section; and

37 (b) notify any third parties to whom it disclosed the personal data,
38 and any third parties it allowed to process the personal data, that the
39 user is a covered user.

40 § 899-gg. Third parties. 1. Except as provided for in section eight
41 hundred ninety-nine-jj of this article, no operator shall disclose the
42 personal data of a covered user to a third party, or allow the process-
43 ing of the personal data of a covered user by a third party, without a
44 written, binding agreement governing such disclosure or processing. Such
45 agreement shall clearly set forth instructions for the nature and
46 purpose of the third-party's processing of the personal data,
47 instructions for using or further disclosing the personal data, and the
48 rights and obligations of both parties.

49 2. Except as provided for in section eight hundred ninety-nine-jj of
50 this article, prior to disclosing personal data to a third party, the
51 operator shall inform the third party if such data is the personal data
52 of a covered user.

53 3. An agreement pursuant to subdivision one of this section shall
54 require that the third party:

55 (a) process the personal data of covered users only when and to the
56 extent strictly necessary for an activity listed pursuant to subdivision

1 two of section eight hundred ninety-nine-ff of this article, or where
2 informed consent was obtained pursuant to subdivision three of section
3 eight hundred ninety-nine-ff of this article;

4 (b) delete or return to the operator all personal data of covered
5 users at the end of its provision of services, unless retention of the
6 personal data is required by law;

7 (c) upon reasonable request of the operator, make available to the
8 operator all data in its possession necessary to demonstrate the third-
9 party's compliance with the obligations in this section;

10 (d) allow, and cooperate with, reasonable assessments by the operator
11 or the operator's designated assessor for purposes of evaluating compli-
12 ance with the obligations of this article. Alternatively, the third
13 party may arrange for a qualified and independent assessor to conduct an
14 assessment of the third-party's policies and technical and organiza-
15 tional measures in support of the obligations under this article using
16 an appropriate and accepted control standard or framework and assessment
17 procedure for such assessments. The third party shall provide a report
18 of such assessment to the operator upon request; and

19 (e) notify the operator a reasonable time in advance before disclosing
20 or transferring the personal data of covered users to any further third
21 parties, which may be in the form of a regularly updated list of further
22 third parties that may access personal data of covered users.

23 § 899-hh. Ongoing use. Upon learning that a user is no longer a
24 covered user, an operator shall provide notice to such user that such
25 user is no longer covered by the protections and rights provided under
26 the New York child data protection act.

27 § 899-ii. Respecting user-provided age flags. 1. For the purposes of
28 this article, an operator shall treat a user as a covered user if the
29 user's device communicates or signals that the user is or shall be
30 treated as a minor, including through a browser plug-in or privacy
31 setting, device setting, or other mechanism.

32 2. For the purposes of subdivision three of section eight hundred
33 ninety-nine-ff of this article, an operator shall adhere to any clear
34 and unambiguous communications or signals from a covered user's device,
35 including through a browser plug-in or privacy setting, device setting,
36 or other mechanism, concerning processing that the covered user consents
37 to or declines to consent to. An operator shall not adhere to unclear or
38 ambiguous communications or signals from a covered user's device, and
39 shall instead request informed consent pursuant to the provisions of
40 paragraph a of subdivision three of section eight hundred ninety-nine-ff
41 of this article.

42 § 899-jj. Protections for third-party operators. Sections eight
43 hundred ninety-nine-ff and eight hundred ninety-nine-gg of this article
44 shall not apply to an operator processing the personal data of a covered
45 user of another website, online service, online application, mobile
46 application, or connected device, or portion thereof, where the operator
47 received reasonable written representations that the covered user
48 provided informed consent for such processing, or:

49 1. the operator does not have actual knowledge that the covered user
50 is a minor; and

51 2. the operator does not have actual knowledge that the other website,
52 online service, online application, mobile application, or connected
53 device, or portion thereof, is primarily directed to minors.

54 § 899-kk. Rulemaking authority. The attorney general may promulgate
55 such rules and regulations as are necessary to effectuate and enforce
56 the provisions of this article.

1 § 899-ll. Scope. 1. This article shall apply to conduct that occurs in
2 whole or in part in the state of New York. For purposes of this article,
3 commercial conduct takes place wholly outside of the state of New York
4 if the business collected such information while the covered user was
5 outside of the state of New York, no part of the use of the covered
6 user's personal data occurred in the state of New York, and no personal
7 data collected while the covered user was in the state of New York is
8 used.

9 2. Nothing in this article shall be construed to prohibit an operator
10 from storing a covered user's personal data that was collected pursuant
11 to section eight hundred ninety-nine-ff of this article when such
12 covered user is in the state.

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

17 § 899-mm. Remedies. Whenever it appears to the attorney general,
18 either upon complaint or otherwise, that any person, within or outside
19 the state, has engaged in or is about to engage in any of the acts or
20 practices stated to be unlawful in this article, the attorney general
21 may bring an action or special proceeding in the name and on behalf of
22 the people of the state of New York to enjoin any violation of this
23 article, to obtain restitution of any moneys or property obtained
24 directly or indirectly by any such violation, to obtain disgorgement of
25 any profits or gains obtained directly or indirectly by any such
26 violation, including but not limited to the destruction of unlawfully
27 obtained data and algorithms trained on such data, to obtain damages
28 caused directly or indirectly by any such violation, to obtain civil
29 penalties of up to five thousand dollars per violation, and to obtain
30 any such other and further relief as the court may deem proper, includ-
31 ing preliminary relief.

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

41 § 3. This act shall take effect one year after it shall have become a
42 law. Effective immediately, the addition, amendment and/or repeal of any
43 rule or regulation necessary for the implementation of this act on its
44 effective date are authorized to be made and completed on or before such
45 effective date.