

STATE OF NEW YORK

895--A

Cal. No. 1070

2023-2024 Regular Sessions

IN SENATE

January 9, 2023

Introduced by Sens. HOYLMAN-SIGAL, FERNANDEZ, MYRIE, SALAZAR, SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Internet and Technology -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged and said bill committed to the Committee on Rules -- ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

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:

Section 1. The general business law is amended by adding a new article 42 to read as follows:

ARTICLE 42

SOCIAL MEDIA TERMS OF SERVICE

Section 1100. Definitions.

1101. Required disclosure of terms of service.

1102. Terms of service report.

1103. Violations and remedies.

1104. Application.

§ 1100. Definitions. For purposes of this article, the following definitions apply:

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

2. "Content" means statements or comments made by users and media that are created, posted, livestreamed, shared, or otherwise interacted with by users on an internet-based service or application. "Content" does not

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

LBD03659-02-3

1 include media put on a service or application exclusively for the
2 purpose of cloud storage, transmitting files, or file collaboration.

3 3. "Public or semipublic internet-based service or application"
4 excludes a service or application used to facilitate communication with-
5 in a business or enterprise among employees or affiliates of the busi-
6 ness or enterprise, provided that access to the service or application
7 is restricted to employees or affiliates of the business or enterprise
8 using the service or application.

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

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

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

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

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

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

25 (iii) create or post content viewable or audible by other users,
26 including, but not limited to, livestreams, on message boards, in chat
27 rooms, or through a landing page or main feed that presents the user
28 with content generated by other users.

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

34 § 1101. Required disclosure of terms of service. 1. A social media
35 company shall post terms of service for each social media platform owned
36 or operated by the company in a manner reasonably designed to inform all
37 users of the social media platform of the existence and contents of the
38 terms of service.

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

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

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

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

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

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

6 (a) The current version of the terms of service of the social media
7 platform.

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

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

14 (i) hate speech or racism;

15 (ii) extremism or radicalization;

16 (iii) disinformation or misinformation;

17 (iv) harassment; and/or

18 (v) foreign political interference.

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

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

24 (ii) how automated content moderation systems enforce terms of service
25 of the social media platform and when these systems involve human
26 review;

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

29 (iv) how the social media company would remove individual pieces of
30 content, users, or groups that violate the terms of service, or take
31 broad action against individual users or against groups of users that
32 violate the terms of service; and

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

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

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

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

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

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

46 (E) the number of times actioned items of content were viewed or heard
47 by users;

48 (F) the number of times actioned items of content were shared, and the
49 number of users that viewed or heard the content before it was actioned;
50 and

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

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

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

3 (B) the type of content, including, but not limited to, posts, lives-
4 streams, comments, messages, profiles of users, or groups of users;

5 (C) the type of media of the content, including, but not limited to,
6 text, images, livestreams, and videos;

7 (D) how the content was flagged, including, but not limited to,
8 flagged by company employees or contractors, flagged by artificial
9 intelligence software, flagged by community moderators, flagged by civil
10 society partners, and flagged by users; and

11 (E) how the content was actioned, including, but not limited to,
12 actioned by company employees or contractors, actioned by artificial
13 intelligence software, actioned by community moderators, actioned by
14 civil society partners, and actioned by users.

15 2. (a) A social media company shall electronically submit a semiannual
16 terms of service report pursuant to subdivision one of this section,
17 covering activity within the third and fourth quarters of the preceding
18 calendar year, to the attorney general no later than April first of each
19 year, and shall electronically submit a semiannual terms of service
20 report pursuant to subdivision one of this section, covering activity
21 within the first and second quarters of the current calendar year, to
22 the attorney general no later than October first of each year.

23 (b) Notwithstanding paragraph (a) of this subdivision, a social media
24 company shall electronically submit its first terms of service report
25 pursuant to subdivision one of this section, covering activity within
26 the third quarter of two thousand twenty-four, to the attorney general
27 no later than January first, two thousand twenty-five, and shall elec-
28 tronically submit its second terms of service report pursuant to subdivi-
29 vision one of this section, covering activity within the fourth quarter
30 of two thousand twenty-four, to the attorney general no later than April
31 first, two thousand twenty-five. A social media platform shall submit
32 its third report no later than October first, two thousand twenty-five,
33 in accordance with paragraph (a) of this subdivision.

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

37 § 1103. Violations and remedies. 1. (a) A social media company that
38 violates the provisions of this article shall be liable for a civil
39 penalty not to exceed fifteen thousand dollars per violation per day,
40 and may be enjoined in any court of competent jurisdiction.

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

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

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

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

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

54 2. Actions for relief pursuant to this article shall be prosecuted
55 exclusively in a court of competent jurisdiction by the attorney general
56 in the name of the people of the state of New York.

1 § 1104. Application. This article shall not apply to a social media
2 company that generated less than one hundred million dollars in gross
3 revenue during the preceding calendar year or to an internet-based
4 service or application for which interactions between users are limited
5 to direct messages, commercial transactions, consumer reviews of
6 products, sellers, services, events, or places, or any combination ther-
7 eof.

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