STATE OF NEW YORK

8148

2023-2024 Regular Sessions

IN ASSEMBLY

October 13, 2023

Introduced by M. of A. ROZIC -- read once and referred to the Committee on Science and Technology

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. 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. Time controls.

1503. Age flags.

1504. Nondiscrimination.

1505. Rulemaking authority.

1506. Scope.

1507. 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:

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

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(a) the information 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 others;

(b) the information is user-selected privacy or accessibility settings, technical information concerning the user's device, or device communications or signals concerning whether the user is a minor;

(c) the user expressly and unambiguously requested the specific media or media by the author, creator, or poster of the media, 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 media are direct, private communications; or

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

2. "Addictive social media platform" shall mean a website, online service, online application, or mobile application, that offers or provides users an addictive feed that is not incidental to the provision of 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.

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

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

7. "Operator" shall mean any person who operates or provides a website on the internet, an online service, an online application, or a mobile application.

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

9. "User" shall mean a person not acting as an agent of an operator.

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

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

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

2. 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.

3. Nothing in this section shall be construed as requiring the operator of an addictive social media platform 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.

4. 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 operator of an addictive social media platform considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected.

§ 1502. Time controls. 1. It shall be unlawful for the operator of an addictive social media platform to, between the hours of 12 AM Eastern and 6 AM Eastern, send notifications concerning an addictive social

media platform to a covered minor unless the operator has obtained verifiable parental consent to send such nighttime notifications.

2. The operator of an addictive social media platform shall provide a mechanism through which the verified parent of a covered minor may:

(a) prevent their child from accessing the addictive social media platform between the hours of 12 AM Eastern and 6 AM Eastern; and

(b) limit their child's access to the addictive social media platform to a length of time per day specified by the verified parent.

3. Nothing in this section 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.

§ 1503. Age flags. For the purposes of this article, the operator of an addictive social medial platform shall treat a user as a minor if the user's device communicates or signals that the user is or shall be treated as a minor, including through a browser plug-in or privacy setting, device setting, or other mechanism.

§ 1504. Nondiscrimination. An operator of an addictive social media platform shall not withhold, degrade, lower the quality, or increase the price of any product, service, or feature, other than as required by this article, to a covered user due to the operator not being permitted to provide an addictive feed to such covered user under subdivision one of section fifteen hundred one of this article or not being permitted to provide such covered user access to or send notifications concerning an addictive social media platform between the hours of 12 AM Eastern and 6 AM Eastern under section fifteen hundred two of this article.

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

§ 1506. 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.

§ 1507. Remedies. 1. 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 and algorithms trained on such 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. Any covered user, or the parent of a covered minor may bring an action for a violation of section fifteen hundred one or section fifteen hundred two of this article, to obtain:

(a) damages of up to five thousand dollars per covered user per incident or actual damages, whichever is greater;

(b) injunctive or declaratory relief; and/or

(c) any other relief the court deems proper.

3. Actions brought pursuant to this section may be brought on a class-wide basis.

4. The court shall award reasonable attorneys' fees to a prevailing plaintiff.

5. Prior to bringing any action for a violation of section fifteen hundred one or fifteen hundred two of this article, a covered user shall provide the business thirty days' written notice identifying the specific provisions of this article the covered user alleges have been or are being violated. In the event a cure is possible, if within the thirty days the business cures the noticed violation and provides the covered user an express written statement that the violations have been cured and that no further violations shall occur, no action for individual statutory damages or class-wide statutory damages may be initiated against the business. No notice shall be required prior to an individual consumer initiating an action solely for actual pecuniary damages suffered as a result of the alleged violations of this article. If a business continues to violate this article in breach of an express written statement provided to the covered user pursuant to this section, the covered user may initiate an action against the business to enforce the written statement and may pursue statutory damages for each breach of the express written statement, as well as any other violation of the article that postdates the written statement.

§ 3. 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.

§ 4. 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 two 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.