

# STATE OF NEW YORK

6418

2023-2024 Regular Sessions

## IN SENATE

April 19, 2023

Introduced by Sen. MARTINS -- 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 and the executive law, in relation to the regulation of social media companies and social media platforms

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 9-D to read as follows:

### ARTICLE 9-D

#### NEW YORK SOCIAL MEDIA REGULATION ACT

##### Section 149-c. Definitions.

6 149-d. Age requirements for use of social media platform;  
7 parental consent.

8 149-e. Prohibitions on data collection for certain accounts.

9 149-f. Parental access to social media account.

10 149-g. Limited hours of access for minors; parental access and  
11 options.

12 149-h. Enforcement.

13 149-i. Private right of action.

14 § 149-c. Definitions. As used in this article, the following terms  
15 shall have the following meanings:

16 1. "Account holder" means a person who has, or opens, an account or  
17 profile to use a social media company's platform.

18 2. "Division" means the consumer protection division established  
19 pursuant to section ninety-four-a of the executive law.

20 3. "Educational entity" means a public school, a local education agen-  
21 cy, a charter school, a private school, a denominational school, a paro-  
22 chial school, a community college, a state university, a city universi-  
23 ty, or a nonprofit private postsecondary educational institution.

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

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1 4. (a) "Interactive computer service" means an information service,  
2 information system, or information access software provider that:

3 (i) provides or enables computer access by multiple users to a comput-  
4 er server; and

5 (ii) provides access to the internet.

6 (b) "Interactive computer service" shall include:

7 (i) a web service;

8 (ii) a web system;

9 (iii) a website;

10 (iv) a web application; or

11 (v) a web portal.

12 5. "Minor" means an individual who is under the age of eighteen years  
13 old and:

14 (a) has not been emancipated; or

15 (b) has not been married.

16 6. "Post" means content that an account holder makes available on a  
17 social media platform for other account holders or users to view.

18 7. "Social media company" means a person or entity that:

19 (a) provides a social media platform that has at least five million  
20 account holders worldwide; and

21 (b) is an interactive computer service.

22 8. (a) "Social media platform" means an online forum that a social  
23 media company makes available for an account holder to:

24 (i) create a profile;

25 (ii) upload posts;

26 (iii) view the posts of other account holders; and

27 (iv) interact with other account holders or users.

28 (b) "Social media platform" shall not include an online service,  
29 website, or application:

30 (i) where the predominant or exclusive function is:

31 (A) electronic mail;

32 (B) direct messaging consisting of text, photos, or videos that are  
33 sent between devices by electronic means, where messages are shared  
34 between the recipient, only visible to the sender and the recipient and  
35 are not posted publicly;

36 (C) a streaming service that provides only licensed media in a contin-  
37 uous flow from the service, website, or application to the end user and  
38 does not obtain a license to the media from a user or account holder by  
39 agreement to its terms of service;

40 (D) news, sports, entertainment, or other content that is preselected  
41 by the provider and not user generated, and any chat, comment, or inter-  
42 active functionality that is provided incidental to, directly related  
43 to, or dependent upon provision of the content;

44 (E) online shopping or e-commerce, if the interaction with other users  
45 or account holders is generally limited to the ability to upload a post  
46 and comment on reviews, the ability to display lists or collections of  
47 goods for sale or wish lists or other functions that are focused on  
48 online shopping or electronic commerce rather than interaction between  
49 users or account holders;

50 (F) interactive gaming, virtual gaming, or an online service, that  
51 allows the creation and uploading of content for the purpose of interac-  
52 tive gaming, edutainment, or associated entertainment, and the communi-  
53 cation related to that content;

54 (G) photo editing that has an associated photo hosting service, if the  
55 interaction with other users or account holders is generally limited to  
56 liking or commenting;

1 (H) a professional creative network for showcasing and discovering  
2 artistic content, if the content is required to be non-pornographic;

3 (I) single-purpose community groups for public safety if the inter-  
4 action with other users or account holders is generally limited to that  
5 single purpose and the community group has guidelines or policies  
6 against illegal content;

7 (J) providing career development opportunities, including professional  
8 networking, job skills, learning certifications, and job posting and  
9 application services;

10 (K) business to business software;

11 (L) a teleconferencing or videoconferencing service that allows recep-  
12 tion and transmission of audio and video signals for real time communi-  
13 cation;

14 (M) cloud storage;

15 (N) shared document collaboration;

16 (O) cloud computing services, which may include cloud storage and  
17 shared document collaboration;

18 (P) providing access to or interacting with data visualization plat-  
19 forms, libraries, or hubs;

20 (Q) to permit comments on a digital news website, if the news content  
21 is posted only by the provider of the digital news website;

22 (R) providing or obtaining technical support for a platform, product,  
23 or service;

24 (S) academic or scholarly research; or

25 (T) genealogical research;

26 (ii) where the majority of the content that is posted or created is  
27 posted or created by the provider of the online service, website, or  
28 application and the ability to chat, comment, or interact with other  
29 users is directly related to the provider's content;

30 (iii) that is a classified ad service that only permits the sale of  
31 goods and prohibits the solicitation of personal services; or

32 (iv) that is used by and under the direction of an educational entity,  
33 including but not limited to:

34 (A) a learning management system;

35 (B) a student engagement program; and

36 (C) a subject or skill-specific program.

37 9. "User" means a person who has access to view all, or some of, the  
38 posts on a social media platform, but is not an account holder.

39 10. "New York state account holder" means a person who is a resident  
40 of the state of New York and an account holder, and shall include a New  
41 York state minor account holder.

42 11. "New York state minor account holder" means a New York account  
43 holder who is a minor.

44 § 149-d. Age requirements for use of social media platform; parental  
45 consent. 1. A social media company may not permit a New York state resi-  
46 dent who is a minor to be an account holder on such social media compa-  
47 ny's social media platform unless such New York state resident has the  
48 express consent of a parent or guardian.

49 2. Notwithstanding any provision of law to the contrary, a social  
50 media company may not permit a New York state resident who is a minor to  
51 hold or open an account on a social media platform if such minor is  
52 ineligible to hold or open an account under any other provision of state  
53 or federal law.

54 3. (a) Beginning March first, two thousand twenty-four, a social media  
55 company shall verify the age of an existing or new New York state  
56 account holder and, if the existing or new account holder is a minor,

1 confirm that such minor has consent as required pursuant to subdivision  
2 one of this section for:

3 (i) a new account, at the time such New York state resident opens the  
4 account; or

5 (ii) a New York state account holder who has not provided age verifi-  
6 cation as required under this section, within fourteen calendar days of  
7 the New York state account holder's attempt to access the account.

8 (b) If a New York state account holder fails to meet the verification  
9 requirements of this section within the required time period, the social  
10 media company shall deny access to the account:

11 (i) upon the expiration of the required time period; and

12 (ii) until all verification requirements are met.

13 4. In accordance with section ninety-four-a of the executive law, the  
14 division shall make rules to:

15 (a) establish processes or means by which a social media company may  
16 meet the age verification requirements of this article;

17 (b) establish acceptable forms or methods of identification, which may  
18 include but not be limited to a valid identification card issued by a  
19 government entity;

20 (c) establish requirements for providing confirmation of the receipt  
21 of any information provided by a person seeking to verify age under this  
22 article;

23 (d) establish processes or means to confirm that a parent or guardian  
24 has provided consent for the minor to open or use an account as required  
25 under this section;

26 (e) establish requirements for retaining, protecting, and securely  
27 disposing of any information obtained by a social media company or its  
28 agent as a result of compliance with the requirements of this article;

29 (f) require that information obtained by a social media company or its  
30 agent in order to comply with the requirements of this article are only  
31 retained for the purpose of compliance and may not be used for any other  
32 purpose;

33 (g) if the division permits an agent to process verification require-  
34 ments required by this section, require that such agent have its princi-  
35 pal place of business in the United States of America;

36 (h) require other applicable state agencies to comply with any rules  
37 promulgated under the authority of this section; and

38 (i) ensure that the rules are consistent with state and federal law.

39 § 149-e. Prohibitions on data collection for certain accounts. Begin-  
40 ning March first, two thousand twenty-four, a social media company, for  
41 a social media platform account held by a New York state minor account  
42 holder:

43 1. shall prohibit direct messaging between the account and any other  
44 user that is not linked to the account through friending;

45 2. may not show the account in search results for any user that is not  
46 linked to the account through friending;

47 3. shall prohibit the display of any advertising in the account;

48 4. shall not collect or use any personal information from the posts,  
49 content, messages, text, or usage activities of the account other than  
50 information that is necessary to comply with, and to verify compliance  
51 with, state or federal law, which information shall include a parent or  
52 guardian's name, a birth date, and any other information required to be  
53 submitted under this section; and

54 5. shall prohibit the use of targeted or suggested groups, services,  
55 products, posts, accounts, or users in the account.

1 § 149-f. Parental access to social media account. Beginning March  
2 first, two thousand twenty-four, a social media company shall provide a  
3 parent or guardian who has given parental consent for a New York state  
4 minor account holder pursuant to section one hundred forty-nine-d of  
5 this article with a password or other means for such parent or guardian  
6 to access such account, which shall allow such parent or guardian to  
7 view:

8 1. all posts the New York state minor account holder makes under the  
9 social media platform account; and

10 2. all responses and messages sent to or by the New York state minor  
11 account holder in the social media platform account.

12 § 149-g. Limited hours of access for minors; parental access and  
13 options. 1. Beginning March first, two thousand twenty-four, a social  
14 media company shall prohibit a New York state minor account holder from  
15 having access to the New York state minor account holder's account  
16 during the hours of 10:30 p.m. to 6:30 a.m., unless the access is modi-  
17 fied according to another requirement of this section.

18 2. Time of day under this section shall be calculated based on the  
19 internet protocol address being used by the New York state minor account  
20 holder at the time of attempting access.

21 3. A social media company shall provide options for a parent or guard-  
22 ian with access to an account under section one hundred forty-nine-f of  
23 this article to:

24 (a) change or eliminate the time-of-day restriction described in  
25 subdivision one of this section; and

26 (b) set a limit on the number of hours per day that a New York state  
27 minor account holder may use the account.

28 4. A social media company shall not permit a New York state minor  
29 account holder to change or bypass restrictions on access as required by  
30 this section.

31 5. Notwithstanding any provision of this section, a social media  
32 company shall permit a parent or guardian with access to an account  
33 pursuant to section one hundred forty-nine-f of this article to access  
34 the account without time restrictions.

35 § 149-h. Enforcement. 1. The attorney general, upon request, shall  
36 provide legal advice to, and act as counsel for, the division in the  
37 exercise of the division's duties pursuant to this article.

38 2. (a) Subject to the ability to cure an alleged violation as set  
39 forth in subdivision three of this section, the division:

40 (i) may impose an administrative fine of up to twenty-five hundred  
41 dollars for each violation of this article; and

42 (ii) the division may bring an action in a court of competent juris-  
43 isdiction to enforce any provision of this article.

44 (b) In a court action brought by the division pursuant to subparagraph  
45 (ii) of paragraph (a) of this subdivision, a court may:

46 (i) declare that the act in question violates a provision of this  
47 article;

48 (ii) issue an injunction for any violation of this article;

49 (iii) impose a civil penalty of up to twenty-five hundred dollars for  
50 each violation of this article;

51 (iv) award actual damages to an injured party; and

52 (v) award any other relief that the court deems reasonable and neces-  
53 sary.

54 3. (a) At least thirty days before the day on which the division  
55 initiates an enforcement action against a person that is subject to the

1 requirements of this article, the division shall provide such person  
2 with:

3 (i) written notice that identifies each alleged violation; and

4 (ii) an explanation of the basis for each allegation;

5 (b) Except as provided in paragraph (c) of this subdivision, the divi-  
6 sion may not initiate an action if the person:

7 (i) cures the noticed violation or violations within thirty days after  
8 the day which such person receives notice pursuant to paragraph (a) of  
9 this subdivision; and

10 (ii) provides the division with a written statement that states that  
11 such person has cured the violation or violations and no further  
12 violation will occur.

13 (c) The division may initiate a civil action against a person that:

14 (i) fails to cure a violation after receiving the notice pursuant to  
15 paragraph (a) of this subdivision; or

16 (ii) after curing a noticed violation and providing a written state-  
17 ment in accordance with paragraph (b) of this subdivision, commits  
18 another violation of the same provision.

19 4. If a court of competent jurisdiction grants judgment or injunctive  
20 relief to the division, the court shall award the division:

21 (a) reasonable attorneys' fees;

22 (b) court costs; and

23 (c) investigative fees.

24 5. (a) A person who violates an administrative or court order issued  
25 for a violation of this article shall be subject to a civil penalty of  
26 no more than five thousand dollars for each violation.

27 (b) A civil penalty authorized under this section may be imposed in  
28 any civil action brought by the division, or by the attorney general on  
29 behalf of the division.

30 6. All money received for the payment of a fine or civil penalty  
31 imposed under this section shall be deposited into the consumer  
32 protection account established pursuant to section ninety-seven-www of  
33 the state finance law.

34 § 149-i. Private right of action. 1. A person may bring an action  
35 against a person that does not comply with the provisions of this arti-  
36 cle in a court of competent jurisdiction.

37 2. If a court finds that a person has violated a provision of this  
38 article, the person who brings an action under this section shall be  
39 entitled to:

40 (a) an award of reasonable attorneys' fees and court costs; and

41 (b) an amount equal to the greater of:

42 (i) twenty-five hundred dollars per each incident of violation; or

43 (ii) actual damages for financial, physical, and emotional harm  
44 incurred by the person bringing the action, if the court determines that  
45 the harm is a direct consequence of the violation or violations.

46 § 2. Subparagraphs 15 and 16 of paragraph (a) of subdivision 3 of  
47 section 94-a of the executive law, subparagraph 15 as amended and  
48 subparagraph 16 as added by chapter 374 of the laws of 2022, are amended  
49 and a new subparagraph 17 is added to read as follows:

50 (15) create an internet website or webpage pursuant to section three  
51 hundred ninety-c of the general business law, as added by chapter five  
52 hundred nine of the laws of two thousand seven; ~~and~~

53 (16) exercise such powers and duties granted to the secretary by arti-  
54 cle sixteen of the energy law as the secretary may direct, including,  
55 but not limited to: consult with such president of the New York state  
56 energy research and development authority in connection with investi-



1 gations conducted by such president pursuant to article sixteen of the  
2 energy law; make determinations relating to compliance by products with  
3 the standards adopted pursuant to article sixteen of the energy law;  
4 order the immediate cessation of any distribution, sale or offer for  
5 sale, import, or installation of any product that does not meet such  
6 standards; and impose civil penalties as contemplated by article sixteen  
7 of the energy law[-]; and

8 (17) exercise such powers and duties granted to the division by arti-  
9 cle nine-D of the general business law as the secretary may direct,  
10 including, but not limited to:

11 (i) receiving consumer complaints alleging a violation of article  
12 nine-D of the general business law; and

13 (ii) investigating consumer complaints to determine whether a  
14 violation of article nine-D of the general business law has occurred.

15 § 3. Subdivision 5 of section 94-a of the executive law is amended by  
16 adding a new paragraph (c) to read as follows:

17 (c) No later than one year from the effective date of this section,  
18 and annually thereafter, the secretary shall furnish to the governor,  
19 the speaker of the assembly and the temporary president of the senate a  
20 report:

21 (i) evaluating the liability and enforcement provisions of article  
22 nine-D of the general business law, including the effectiveness of the  
23 consumer protection division's efforts to enforce article nine-D of the  
24 general business law;

25 (ii) summarizing the consumer interactions that are protected and not  
26 protected by article nine-D of the general business law, including a  
27 list of alleged violations the consumer protection division has  
28 received; and

29 (iii) an accounting of:

30 (1) all administrative fines and civil penalties assessed under arti-  
31 cle nine-D of the general business law during the year;

32 (2) all administrative fines and civil penalties collected under arti-  
33 cle nine-D of the general business law during the year; and

34 (3) summarizing how funds received from fines and penalties under  
35 article nine-D of the general business law that were placed in the  
36 consumer protection account established pursuant to section ninety-sev-  
37 en-www of the state finance law were used.

38 § 4. Severability. If any item, clause, sentence, subparagraph, subdi-  
39 vision, section or other part of this act, or the application thereof to  
40 any person or circumstances shall be held to be invalid, such holding  
41 shall not affect, impair or invalidate the remainder of this act, or the  
42 application of such section or part of a section held invalid, to any  
43 other person or circumstances, but shall be confined in its operation  
44 to the item, clause, sentence, subparagraph, subdivision, section or  
45 other part of this act directly involved in such holding, or to the  
46 person and circumstances therein involved.

47 § 5. This act shall take effect December 31, 2023. Effective imme-  
48 diately, the addition, amendment, and/or repeal of any rule or regu-  
49 lation necessary for the implementation of this act on its effective  
50 date are authorized to be made and completed on or before such effective  
51 date.