STATE OF NEW YORK

9953

IN SENATE

November 20, 2024

Introduced by Sen. GOUNARDES -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the general business law, in relation to establishing the New York children's online safety act

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

Section 1. Short title. This act shall be known and may be cited as the "New York children's online safety act".

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

ARTICLE 45-A

NEW YORK CHILDREN'S ONLINE SAFETY ACT

Section 1509. Definitions.
1510. Privacy by default.
1511. Parental approvals.
1512. Prohibition on dark patterns.
1513. Nondiscrimination.
1514. Scope.
1515. Rulemaking authority.
1516. Remedies.

§ 1509. Definitions. For the purposes of this article, the following terms shall have the following meanings:

1. "Connected" and variations thereof shall mean that a covered minor and/or such covered minor's parent has previously approved a connection with another user such that such other user may privately contact the covered minor.

2. "Covered minor" shall mean any user who is determined by an operator, via one or more commercially reasonable age verification methods, to be under the age of eighteen.

3. "Financial transaction" shall mean a transaction between users involving any type of currency, including virtual currency used within a covered platform whether or not it can be converted to fiat money.

4. "Operator" shall mean any person, business, or other legal entity who operates or provides a covered platform.

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

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5. "Parent" shall mean a parent or legal guardian.

6. "Covered platform" shall mean a public or semi-public website, online service, online application, or mobile application that (a) is used by a covered minor in this state, (b) allows users to construct a public or semi-public profile for the purposes of using such website, service, or application, (c) allows users to create or post content that is viewable by other users, including but not limited to, on message boards, in chat rooms, or through a landing page or main feed that presents the user with content generated by other users, and (d) allows users to socially interact with each other and such website, service, or application as a significant part of the provision of such website, service, or application.

7. "Tag" shall mean when a user identifies a second user in posted content in a manner that links to the second user's profile.

8. "User" shall mean a user of a covered platform in New York not acting as an operator, or agent or affiliate of such operator, of such platform or any portion thereof.

§ 1510. Privacy by default. 1. No operator shall offer a covered platform in this state without conducting commercially reasonable age verification to determine whether a user is a covered minor. The attorney general shall promulgate regulations identifying methods for commercially reasonable and technically feasible age verification, which shall consider the size, financial resources, and technical capabilities of covered platforms, the costs and effectiveness of available age determination techniques for users of such platforms, the audience of such platforms, and prevalent practices of the industry of the operator. Such regulations shall also identify the appropriate levels of accuracy that would be considered commercially reasonable and technically feasible for operators to achieve in determining whether a user is a covered minor.

2. For all users determined under a commercially reasonable age verification method by an operator to be a covered minor, such operator shall utilize the following settings by default for covered minors, which shall ensure that no user who is not already connected to a covered minor may:

(a) communicate directly with such minor;

(b) view the profile of such minor;

(c) tag such minor in posted content; and/or

(d) engage in a financial transaction with such minor.

3. A parent of a covered minor may override the default privacy settings provided in subdivision two of this section at such parent's discretion.

4. An operator shall notify a parent of a covered minor whenever such covered minor attempts to change the default settings provided in subdivision two of this section. The parent may then either approve or deny the request to change the settings for such minor.

§ 1511. Parental approvals. 1. For all users determined under a commercially reasonable age verification method by an operator to be a covered minor under the age of thirteen, such operator shall require the parent of such covered minor to approve all new connections with such covered minor before such covered minor's and such other user's accounts may be connected. For covered minors under the age of thirteen, an operator shall also establish a mechanism by which a parent of such minor may easily view the list of all users currently connected with the account of the minor.

2. For all users determined under a commercially reasonable age verification method by an operator to be a covered minor, such operator

shall require a parent to approve all financial transactions relating to such covered minor's account. Such operator shall further establish a mechanism by which a parent of a covered minor may easily view a history of all financial transactions relating to such covered minor's account at any time.

§ 1512. Prohibition on dark patterns. It shall be unlawful for a covered platform to deploy any mechanism or design which intentionally inhibits the purpose of this article, subverts user and/or parent choice or autonomy, or renders it more difficult for a user and/or parent to exercise any of the prescribed rights and/or privileges provided in this article.

§ 1513. Nondiscrimination. An operator shall not withhold, degrade, lower the quality of, or increase the price of any product, service, or feature of a covered platform, other than as necessary for compliance with the provisions of this article or any rules or regulations promulgated pursuant to this article, to a user due to such operator being required to establish the settings and approvals provided in sections fifteen hundred ten and fifteen hundred eleven of this article.

§ 1514. 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 covered 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.

§ 1515. Rulemaking authority. The attorney general shall promulgate such rules and regulations as are necessary to effectuate and enforce the provisions of this article.

§ 1516. Remedies. 1. On or after the effective date of this article, whenever it appears to the attorney general, upon complaint or otherwise, that any person, within or outside the state, has violated the provisions of 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 such violation, 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, 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, and/or referrals from members of the public concerning an operator's or covered platform's alleged compliance or noncompliance with the provisions of this article.

§ 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.