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Introduced by M. of A. BORES, SIMON, ROSENTHAL, HYNDMAN, TORRES, SIMONE, CONRAD, GLICK, LUNSFORD, K. BROWN, BEEPHAN, TAPIA -- read once and referred to the Committee on Consumer Affairs and Protection -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Consumer Affairs and Protection in accordance with Assembly Rule 3, sec. 2 -- 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 NY digital choice act

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 48 to read as follows:

ARTICLE 48

NY DIGITAL CHOICE ACT

Section 1800. Short title.
1801. Definitions.
1802. Portability.
1803. Interoperability.
1804. Data rights.
1805. Rulemaking authority.
1806. Enforcement by attorney general.
1807. Severability.
1808. Safe harbor.

§ 1800. Short title. This article shall be known and may be cited as the "NY digital choice act".

§ 1801. Definitions. As used in this article, the following terms shall have the following meanings:

1. "Open protocol" means a publicly available set of technical rules that:

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

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(a) enables interoperability and data exchange between social media platforms by providing a means whereby multiple social media platforms can access a covered user's social graph;

(b) is free from licensing fees and patent restrictions; and

(c) governs how social media platforms communicate and exchange data.

2. (a) "Social graph" means:

(i) a covered user's social connections with secondary users;

(ii) content created by a covered user;

(iii) the covered user's responses to secondary users' content, including comments, reactions, mentions, reports, shares, and other engagements;

(iv) secondary users' responses to the covered user's content;

(v) metadata for subparagraphs (i), (ii), (iii), and (iv) of this paragraph; and

(vi) relational references sufficient to maintain the associations among data elements described in subparagraphs (i), (ii), (iii), and (iv) of this paragraph.

(b) "Social graph" does not include a secondary user's content and responses that have been designated private by such secondary user, including private messages.

3. "Content" has the same meaning as in section eleven hundred of this chapter.

4. "Social media company" has the same meaning as in section eleven hundred of this chapter.

5. "Social media platform" has the same meaning as in section eleven hundred of this chapter.

6. "Covered user" has the same meaning as in section fifteen hundred of this chapter.

7. "Secondary user" means a user of a website, online service, online application, or mobile application that is developed, deployed, or operating in whole or in part in the state and that is not acting as an operator, or agent or affiliate of an operator, of such website, online service, online application, or mobile application, or any portion thereof, irrespective of such user's physical location.

8. "Data portability" means the ability of covered users of social media platforms to retain existing social graphs without impairment of quality, reliability, or convenience when such information is transferred from one social media platform or third party to another.

9. "Continuous, real-time data sharing" means data sharing between platforms conducted no less frequently than every thirty seconds.

§ 1802. Portability. 1. If a covered user requests a copy of such covered user's social graph under this article, a social media company shall, within five business days, provide the social graph or user-selected parts of the social graph, in a format that:

(a) allows for data portability, to the extent technically feasible;

(b) is readily usable by the covered user; and

(c) allows the covered user to transmit the data to another social media platform or third party without impediment if the social media platform or third party processes the data by automated means.

2. A social media company shall adopt an accessible, prominent, and persistent method for covered users to request their social graph data.

§ 1803. Interoperability. 1. A social media company shall implement a transparent, third-party-accessible interoperability interface or interfaces to allow covered users to choose to:

(a) export a covered user's social graph or user-selected parts of the social graph to the social media platforms designated by the covered user; and

(b) enable third parties to access social graph data created by the covered user and to be notified when new or updated social graph data is available, with the covered user's permission.

2. To achieve interoperability under subdivision one of this section, a social media company shall:

(a) utilize an open protocol;

(b) facilitate and maintain interoperability and continuous, real-time data sharing with other social media platforms through an interoperability interface, based on reasonable terms that do not discriminate between social media platforms;

(c) establish reasonable and proportionate thresholds related to the frequency, nature, and volume of requests, beyond which the social media company may assess a fair, reasonable, and non-discriminatory fee for such access; and

(d) disclose to other social media companies complete, accurate, and regularly updated documentation describing access to the interoperability interface required under this section; and

(e) publicly disclose the open protocol that the social media company intends to use for purposes of paragraph (a) of this subdivision.

3. A social media company or third party that accesses an interoperability interface shall take reasonable steps to meet platform integrity standards, including data security, data privacy, and abuse-mitigation practices necessary to preserve user protections and secure any data such company or third party acquires, processes, or transmits.

4. A social media company or third party may not export or receive a covered user's social graph through the interoperability interface, except with the covered user's consent.

5. A social media company shall adopt an accessible, prominent, and persistent method for covered users to give consent for data sharing with other social media platforms or third parties through the interoperability interface and shall implement such user's instructions within five business days of receipt of such request.

6. A social media company is not required to:

(a) provide access to:

(i) inferences, analyses, or derived data that the social media company has generated internally about a user; or

(ii) proprietary algorithms, ranking systems, or other internal operating mechanisms; or

(b) transmit data that meets all of the following criteria:

(i) such data is stored or structured in a proprietary format;

(ii) no open, industry-standard format is reasonably available; and

(iii) transmitting the data would disclose information described in paragraph (a) of this subdivision; or

(c) import any data or treat imported data any differently from any other data on their service.

7. A social media company shall give secondary users an opportunity to opt out of transferal of such secondary user's public data from one social media platform or third party to another.

§ 1804. Data rights. Upon specific request from a covered user, a social media company shall allow such covered user to delete the data in such covered user's social graph, as well as any data that has been designated private by such covered user.

§ 1805. Rulemaking authority. The attorney general may promulgate such rules and regulations as are necessary to identify open protocols that satisfy the requirements of this article.

§ 1806. Enforcement by attorney general. In addition to any other remedies provided by law, whenever there shall be a violation of this article, application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations. If it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this article, an injunction may be issued by such court or justice enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules. Whenever the court shall determine that a violation of this article has occurred, the court may impose a civil penalty of not more than twenty-five hundred dollars for each violation.

§ 1807. Severability. If any clause, sentence, paragraph, subdivision, section or part of this article 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 made.

§ 1808. Safe harbor. A social media company shall not be in violation of paragraph (b) of subdivision two of section eighteen hundred three of this article for a temporary loss of continuous, real-time data sharing if the social media company demonstrates that:

1. the social media company made good faith efforts to maintain continuous, real-time data sharing; and

2. the social media company took reasonable steps to restore data sharing as soon as practicable.

§ 2. This act shall take effect July 1, 2027. 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.