ASSEMBLY, No. 3286

STATE OF NEW JERSEY
216th LEGISLATURE

INTRODUCED JUNE 5, 2014

Sponsored by:
Assemblyman REED GUSCIORA
District 15 (Hunterdon and Mercer)

SYNOPSIS
Prohibits advertising of certain products to minors on websites; requires website operators to allow minors to delete posts.

CURRENT VERSION OF TEXT
As introduced.
AN ACT concerning Internet websites and minors and
supplementing Title 56 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State
of New Jersey:

1. As used in P.L. , c. (C. ) (pending before the Legislature
as this bill):
   "Body piercing" means the creation of an opening in a human
   body for the purpose of inserting jewelry or other decoration, which
   includes, but is not limited to, the piercing of an ear, including the
   tragus, lip, tongue, nose, or eyebrow.
   "Branding" means the process in which a mark or marks are
   burned into human skin tissue with a hot iron or other instrument,
   with the intention of leaving a permanent scar.
   “Ephedrine group alkaloids” means ephedrine, pseudoephedrine,
   norephedrine, norpseudoephedrine, methylephedrine, and
   methylpseudoephedrine.
   “Internet website, online service, online application, or mobile
   application directed to minors” means an Internet website, online
   service, online application, or mobile application, or a portion
   thereof, that is created for the purpose of reaching an audience that
   is predominately comprised of minors, and is not intended for a
   more general audience comprised of adults.
   “Marketing or advertising” means, in exchange for monetary
   compensation, to make a communication to one or more
   individuals, or to arrange for the dissemination to the public of
   communication, about a product or service the primary purpose of
   which is to encourage recipients of the communication to purchase
   or use the product or service.
   “Minor” means a person under 18 years of age.
   “Operator” means any person or entity that owns an Internet
   website, online service, online application, or mobile application
   that is available to individuals in this State. It does not include any
   third party that operates, hosts, or manages, but does not own, an
   Internet website, online service, online application, or mobile
   application on the owner’s behalf or processes information on the
   owner’s behalf.
   “Posted” means content or information that can be accessed by a
   user in addition to the minor who posted the content or information,
   whether the user is a registered user or not, of the Internet website,
   online service, online application, or mobile application where the
   content or information is posted.
   “Tattooing” means the insertion of pigment in human skin tissue
   by piercing with a needle.

2. a. An operator of an Internet website, online service, online
application, or mobile application directed to minors or an operator
of an Internet website, online service, online application, or mobile application that has actual knowledge that a minor is using its Internet website, online service, online application, or mobile application shall not market or advertise, or allow to be marketed or advertised, to a minor a product or service concerning:

(1) Alcoholic beverages, as defined in section 3 of P.L.1987, c.152 (C.2A:22A-3);
(2) Branding;
(3) Cigarettes, as defined in section 102 of P.L.1948, c.65 (C.54:40A-2);
(4) Dangerous fireworks, as defined in R.S.21:2-3;
(5) Drug paraphernalia, as defined in N.J.S.2C:36-1;
(6) Electronic smoking devices, as defined in section 3 of P.L.2005, c.383 (C.26:3D-57);
(7) Ephedrine group alkaloids;
(8) Firearms, as defined in N.J.S.2C:39-1;
(9) Less-lethal ammunition, as defined in N.J.S.2C:3-11;
(10) Obscene material, as defined in N.J.S.2C:34-3;
(11) Spray paint, as defined in section 7 of P.L.1995, c.251 (C.2C:33-24);
(12) Tanning facilities, as defined in section 2 of P.L.1989, 234 (C.26:2D-82);
(13) Tattooing and body piercing; and
(14) Tobacco products, as defined in section 2 of P.L.1990, c.39 (C.54:40B-2).

b. An operator shall be deemed to be in compliance with subsection a. of this section if the operator takes reasonable actions in good faith designed to avoid marketing or advertising, or allowing the marketing or advertising of, the products or services provided in subsection a. of this section to a minor.

3. a. An operator of an Internet website, online service, online application, or mobile application directed to minors or an operator of an Internet website, online service, online application, or mobile application that has actual knowledge that a minor is using its Internet website, online service, online application, or mobile application shall:

(1) Allow a minor who is a registered user of the operator’s Internet website, online service, online application, or mobile application to remove, or to request and obtain removal of within seven days of the request, content or information posted on the operator’s Internet website, online service, online application, or mobile application by the user;
(2) Provide notice to a minor who is a registered user of the operator’s Internet website, online service, online application, or mobile application that the minor may remove, or request and obtain removal, of content or information posted on the operator’s Internet website, online service, online application, or mobile
application by the registered user. The notice shall explain that the removal described in paragraph (1) of this subsection does not ensure complete or comprehensive removal of the content or information posted on the operator’s Internet website, online service, online application, or mobile application; and

(3) Provide clear instructions to a minor who is a registered user of the operator’s Internet website, online service, online application, or mobile application on how the user may remove, or request and obtain the removal of, content or information posted on the operator’s Internet website, online service, online application, or mobile application.

b. An operator of an Internet website, online service, online application, or mobile application shall be deemed in compliance with subsection a. of this section if the operator renders the content or information posted by the minor user no longer visible to other users of the service and the public even if the content or information remains on the operator’s servers or the content or information remains visible because a third party has copied the posting or reposted the content or information posted by the minor.

c. An operator of an Internet website, online service, online application, or mobile application, or a third party using an Internet website, online service, online application, or mobile application, is not required to erase or otherwise eliminate, or to enable erasure or elimination of, content or information if any other provision of federal or State law requires the operator or third party to maintain the content or information.

4. a. The provisions of P.L. (pending before the Legislature as this bill) shall not limit the authority of a law enforcement agency to obtain any content or information from an operator as authorized by law or pursuant to a court order.

b. The provisions of P.L. (pending before the Legislature as this bill) shall not be construed to require an operator of an Internet website, online service, online application, or mobile application to collect or retain age information about its users.

5. This act shall take effect on January 1, 2015.

STATEMENT

This bill prohibits an operator of an Internet website, online service, online application, or mobile application from marketing or advertising specified types of products or services to a minor. An operator is deemed to be in compliance with this bill if the operator takes reasonable actions in good faith designed to avoid marketing or advertising the prohibited products or services to a minor. The prohibited products and services include:
• Alcoholic beverages;
• Branding;
• Cigarettes;
• Dangerous fireworks;
• Drug paraphernalia;
• Electronic smoking devices;
• Ephedrine group alkaloids;
• Firearms;
• Less-lethal ammunition;
• Obscene material;
• Spray paint;
• Tanning facilities;
• Tattooing and body piercing; and
• Tobacco products.

This bill also requires the operator of an Internet website, online service, online application, or mobile application to permit a minor who is a registered user of the operator’s Internet website, online service, online application, or mobile application to remove, or to request and obtain removal of within seven days of the request, content or information posted by the minor. An operator is required to provide notice to a minor that the minor may remove the content or information. The operator is not required to remove content or information if any provision of State or federal law requires the operator or third party to maintain the content or information.

This bill does not limit the authority of a law enforcement agency to obtain any content or information from an operator as authorized by law or pursuant to a court order.

This bill addresses public safety concerns as they relate to minors in this State. Minors have increasing access to various forms of interactive media through computers, smartphones, and other technological devices. It is in the interest of the State to protect minors from advertisements for harmful products on websites that minors may use. Further, it is in the interest of the State to require websites to allow minors to delete posts that the minor may have posted in haste or in error.