

STATE OF NEW YORK

3164

2015-2016 Regular Sessions

IN ASSEMBLY

January 22, 2015

Introduced by M. of A. TITONE -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the state technology law, in relation to privacy rights for minors in the digital world

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

Section 1. The state technology law is amended by adding a new article to read as follows:

ARTICLE IV

PRIVACY RIGHTS FOR MINORS

Section 401. Definitions.

402. Restrictions.

403. Removal of content.

404. Penalties.

§ 401. Definitions. As used in this article:

1. "Minor" shall mean an individual under eighteen years of age.

2. "Internet website, online services, online application or mobile application directed at minors" shall mean an internet website, online services, online application, mobile application, or any portion thereof that is created for the purposes of communicating with an audience that is predominantly comprised of minors, and is not intended for a more general audience comprised of adults. Provided that such term include an internet website, online service, online application, mobile application, or any portion thereof which merely refers or links to another internet website, online service, online application or mobile application directed at minors by using information location tools, including a directory, index, reference, pointer or hypertext link.

3. "Marketing or advertising" shall mean, in exchange for monetary compensation, the making of a communication to one or more individuals, or the arranging for dissemination to the public of a communication about a product or service the primary purpose of which is to encourage

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

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1 recipients of such communication to purchase or use the product or
2 service.

3 4. "Operator" shall mean any person that owns an internet website,
4 online service, online application or mobile application. Such term
5 shall not include a third party that operates, hosts or manages, but
6 does not own, an internet website, online service, online application or
7 mobile application on the owner's behalf or processes information on the
8 owner's behalf.

9 5. "Posted" shall mean content or information that can be accessed by
10 a user in addition to the minor who posted the content or information,
11 whether the user is a registered user or not of the internet website,
12 online service, online application or mobile application where the
13 content or information is posted.

14 6. "Prohibited product or service" shall mean:

15 (a) an alcoholic beverage as defined in subdivision one of section
16 three of the alcoholic beverage control law;

17 (b) any machine gun, firearm silencer, firearm, switchblade knife,
18 gravity knife, pilum ballistic knife, metal knuckle knife, automatic
19 knife, rifle, shotgun, cane sword, antique firearm, chuka stick, elec-
20 tronic dart gun, Kung Fu stars, electronic stun gun, armor piercing
21 ammunition, disguised gun or large capacity ammunition feeding device as
22 such terms are defined in section 265.00 of the penal law;

23 (c) any ammunition;

24 (d) any aerosol container of paint;

25 (e) any tobacco product, herbal cigarette, shisha, electronic ciga-
26 rette, bidis or gutka;

27 (f) any drug or controlled substance as such terms are defined in
28 section sixty-eight hundred two of the education law;

29 (g) any air-gun, spring-gun, or other instrument or weapon in which
30 the propelling force is a spring or air;

31 (h) any billy, blackjack, bludgeon, plastic knuckles, metal knuckles,
32 sand bag, sand club, wrist-brace type slingshot or slugshot, shuriken,
33 dagger, dangerous knife, dirk, razor, stiletto or other dangerous or
34 deadly instrument;

35 (i) any fireworks or dangerous fireworks as defined in subdivision one
36 of section 270.00 of the penal law;

37 (j) any tanning service in an ultraviolet radiation device as defined
38 in subdivision two of section thirty-five hundred fifty of the public
39 health law;

40 (k) any dietary supplement as defined in paragraph (a) of subdivision
41 two of section three hundred ninety-one-o of the general business law;

42 (l) any ticket or share in a lottery game or pari-mutuel wager;

43 (m) any tattoo, body piercing or tongue splitting service;

44 (n) any drug-related paraphernalia as defined in subdivision two of
45 section eight hundred fifty of the general business law; or

46 (o) any indecent material as referred to in section 235.22 of the
47 penal law.

48 § 402. Restrictions. 1. No operator of an internet website, online
49 service, online application or mobile application directed at minors
50 shall market or advertise a prohibited product or service on such
51 website, service or application.

52 2. No operator shall market or advertise a prohibited product to a
53 minor, who such operator has actual knowledge is using the operator's
54 internet website, online service, online application or mobile applica-
55 tion, when the marketing or advertising is specifically directed at the
56 minors based upon information specific to such minor including, but not

1 limited to, the minor's profile, activity, address or location, and
2 excluding internet protocol address and product identification numbers.
3 Provided, however, that any operator who takes reasonable actions, in
4 good faith, designed to avoid marketing or advertising prohibited
5 products or services to minors shall not be deemed to have violated the
6 provisions of this subdivision.

7 3. No operator of an internet website, online service, online applica-
8 tion or mobile application directed at minors, or who has actual know-
9 ledge that a minor is using its internet website, online service, online
10 application or mobile application shall knowingly use, disclose,
11 compile, or allow a third party to use, disclose or compile the personal
12 information of a minor with actual knowledge that the use, disclosure or
13 compilation of such information is for the purpose of marketing or
14 advertising of prohibited products or services to the minor.

15 4. No provision of this section shall be deemed to require any opera-
16 tor to collect or retain age information about its users.

17 5. The provisions of this section shall not apply to the incidental
18 placement of products embedded in content when such content is not
19 distributed by or at the direction of the operator primarily for the
20 purpose of marketing or advertising prohibited products or services.

21 § 403. Removal of content. 1. Every operator that has actual knowledge
22 that a minor is using its internet website, online service, online
23 application or mobile application shall:

24 (a) permit a minor who is a registered user of the internet website,
25 online service, online application or mobile application to remove or,
26 if the operator prefers, to request and obtain removal of content or
27 information posted by the user;

28 (b) provide notice to a minor who is a registered user of the internet
29 website, online service, online application or mobile application that
30 the user may remove or, if the operator prefers, request and obtain
31 removal of content or information posted by the user;

32 (c) provide clear instructions to a minor who is a registered user of
33 the internet website, online service, online application or mobile
34 application on how a user may remove or, if the operator prefers,
35 request and obtain removal of content or information posted by such
36 user; and

37 (d) provide notice to a minor who is a registered user of the internet
38 website, online service, online application or mobile application that
39 removal of content or information does not ensure complete or comprehen-
40 sive removal.

41 2. Operators and third parties shall not be required to erase or
42 otherwise eliminate, or enable erasure or elimination of content or
43 information when:

44 (a) any other provision of federal or state law requires the operator
45 or third party to maintain the content or information;

46 (b) the content or information was stored or posted on the operator's
47 internet, online service, online application or mobile application by a
48 third party other than the minor, who is a registered user, including
49 any content or information posted by a registered user that was stored,
50 republished or reposted by the third party;

51 (c) the operator anonymizes the content or information posted by the
52 minor who is a registered user, so that the minor cannot be individually
53 identified;

54 (d) the minor does not follow the instructions established pursuant to
55 paragraph (c) of subdivision one of this section; or

1 (e) the minor has received compensation or other consideration for
2 providing the content.

3 3. No provision of this section shall be deemed to limit the authority
4 of any law enforcement agency or court to obtain any content or informa-
5 tion from an operator as authorized by law or lawful order.

6 4. No operator shall be deemed to have violated the provisions of this
7 section when:

8 (a) it renders content or information posted by a minor to be no long-
9 er visible to other users and the public, even when such content or
10 information remains on the operator's servers in some form; or

11 (b) despite making an original posting by a minor user invisible, such
12 posting remains visible because a third party has copied the posting or
13 reposted such content or information.

14 5. No provision of this section shall be deemed to require any opera-
15 tor to collect or retain age information about its users.

16 § 404. Penalties. Any person found to have violated the provisions of
17 this article shall be guilty of a misdemeanor.

18 § 2. Severability. If any clause, sentence, paragraph, section or part
19 of this act shall be adjudged by any court of competent jurisdiction to
20 be invalid and after exhaustion of all further judicial review, the
21 judgment shall not affect, impair or invalidate the remainder thereof,
22 but shall be confined in its operation to the clause, sentence, para-
23 graph, section or part of this act directly involved in the controversy
24 in which the judgment shall have been rendered.

25 § 3. This act shall take effect on the first of January next succeed-
26 ing the date on which it shall have become a law.