

# STATE OF NEW YORK

7694--A

2023-2024 Regular Sessions

## IN SENATE

October 13, 2023

Introduced by Sens. GOUNARDES, BAILEY, CHU, CLEARE, COMRIE, FERNANDEZ, HARCKHAM, HINCHEY, HOYLMAN-SIGAL, JACKSON, KAVANAGH, KRUEGER, LIU, MANNION, MARTINEZ, MAY, MAYER, MURRAY, MYRIE, PALUMBO, PARKER, RAMOS, RHOADS, RIVERA, RYAN, SALAZAR, SEPULVEDA, SERRANO, SKOUFIS, STAVISKY, TEDISCO, WEBB, WEBER -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- recommitted to the Committee on Internet and Technology in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law, in relation to enacting the Stop Addictive Feeds Exploitation (SAFE) for Kids act prohibiting the provision of an addictive feed to a minor

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

1 Section 1. This act shall be known and may be cited as the "Stop  
2 Addictive Feeds Exploitation (SAFE) for Kids act".  
3 § 2. Legislative intent. Social media platforms automatically process  
4 enormous amounts of data about the behavior of users, using tens or  
5 hundreds of thousands of data points for each user, filtered through  
6 sophisticated machine learning algorithms, to create media feeds person-  
7 alized to each user. These feeds are based on data that generally  
8 includes not only the deliberate choices of the users, such as content  
9 they "like" or other users they "follow," but also conduct the user may  
10 not even be aware of, such as how long they spent looking at a partic-  
11 ular piece of media. These feeds make predictions about interests, mood,  
12 and other factors related to what is most likely to keep users engaged  
13 for as long as possible, creating a feed tailor-made to keep each user  
14 on the platform for longer periods. Today these addictive feeds have  
15 become the primary way that people experience social media.  
16 Since their adoption, addictive feeds have had a dramatic negative  
17 effect on children and teenagers, causing young users to spend more time

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

LBD11334-14-4

1 on social media than they otherwise would, which has been tied to  
2 significantly higher rates of youth depression, anxiety, suicidal idea-  
3 tion, and self-harm. Children are particularly susceptible to addictive  
4 feeds because they provide a non-stop drip of dopamine with each new  
5 piece of media and because children are less capable of exercising the  
6 impulse control necessary to mitigate these negative effects. Research  
7 shows that spending time on social media is ten times more dangerous  
8 than other kinds of screentime. Among girls, the association between  
9 poor mental health and social media use is stronger than the associ-  
10 ations between poor mental health and binge drinking, obesity, or hard  
11 drug use. Research also shows that social media usage at night is  
12 particularly harmful to children's health. Self-regulation by social  
13 media companies has not and will not work because the addictive feeds  
14 are profitable, designed to make users stay on services so that children  
15 can see more ads and the companies can collect more data.

16 This act, therefore, prohibits social media companies from providing  
17 children under 18 with addictive feeds absent parental consent. This act  
18 will still permit minors to view non-addictive feeds and any content  
19 available on a social media platform, such as feeds listed in chronolog-  
20 ical order, to ensure that children can still obtain all the core bene-  
21 fits of social media, and does not limit social media companies' ability  
22 to moderate in good faith to protect children from harmful or otherwise  
23 objectionable content. Moreover, this act only imposes obligations on  
24 social media companies where the addictive feed is a significant part of  
25 their platform, and not on online services that provide such feeds as  
26 ancillary features or add-ons, or where users are on the feed for a  
27 relatively small portion of their time using the service.

28 To limit access to addictive feeds, this act will require social media  
29 companies to use commercially reasonable methods to determine user age.  
30 Regulations by the attorney general will provide guidance, but this  
31 flexible standard will be based on the totality of the circumstances,  
32 including the size, financial resources, and technical capabilities of a  
33 given social media company, and the costs and effectiveness of available  
34 age determination techniques for users of a given social media platform.  
35 For example, if a social media company is technically and financially  
36 capable of effectively determining the age of a user based on its exist-  
37 ing data concerning that user, it may be commercially reasonable to  
38 present that as an age determination option to users. Although the  
39 legislature considered a statutory mandate for companies to respect  
40 automated browser or device signals whereby users can inform a covered  
41 operator that they are a covered minor, we determined that the attorney  
42 general would already have discretion to promulgate such a mandate  
43 through its rulemaking authority related to commercially reasonable and  
44 technologically feasible age determination methods. The legislature  
45 believes that such a mandate can be more effectively considered and  
46 tailored through that rulemaking process. Existing New York antidiscrim-  
47 ination laws and the attorney general's regulations will require,  
48 regardless, that social media companies provide a range of age verifica-  
49 tion methods all New Yorkers can use, and will not use age assurance  
50 methods that rely solely on biometrics or require government identifica-  
51 tion that many New Yorkers do not possess.

52 § 3. The general business law is amended by adding a new article 45 to  
53 read as follows:

54 ARTICLE 45  
55 SAFE FOR KIDS ACT

56 Section 1500. Definitions.

1 1501. Prohibition of addictive feeds.

2 1502. Overnight notifications.

3 1503. Parental control.

4 1504. Nondiscrimination.

5 1505. Rulemaking authority.

6 1506. Language access.

7 1507. Scope.

8 1508. Remedies.

9 § 1500. Definitions. For the purposes of this article, the following  
10 terms shall have the following meanings:

11 1. "Addictive feed" shall mean a website, online service, online  
12 application, or mobile application, or a portion thereof, in which  
13 multiple pieces of media generated or shared by users of a website,  
14 online service, online application, or mobile application, either  
15 concurrently or sequentially, are recommended, selected, or prioritized  
16 for display to a user based, in whole or in part, on information associ-  
17 ated with the user or the user's device, unless any of the following  
18 conditions are met, alone or in combination with one another:

19 (a) the recommendation, prioritization, or selection is based on  
20 information that is not persistently associated with the user or user's  
21 device, and does not concern the user's previous interactions with media  
22 generated or shared by other users;

23 (b) the recommendation, prioritization, or selection is based on user-  
24 selected privacy or accessibility settings, or technical information  
25 concerning the user's device;

26 (c) the user expressly and unambiguously requested the specific media,  
27 media by the author, creator, or poster of media the user has subscribed  
28 to, or media shared by users to a page or group the user has subscribed  
29 to, provided that the media is not recommended, selected, or prioritized  
30 for display based, in whole or in part, on other information associated  
31 with the user or the user's device that is not otherwise permissible  
32 under this subdivision;

33 (d) the user expressly and unambiguously requested that specific  
34 media, media by a specified author, creator, or poster of media the user  
35 has subscribed to, or media shared by users to a page or group the user  
36 has subscribed to pursuant to paragraph (c) of this subdivision, be  
37 blocked, prioritized or deprioritized for display, provided that the  
38 media is not recommended, selected, or prioritized for display based, in  
39 whole or in part, on other information associated with the user or the  
40 user's device that is not otherwise permissible under this subdivision;

41 (e) the media are direct and private communications;

42 (f) the media are recommended, selected, or prioritized only in  
43 response to a specific search inquiry by the user;

44 (g) the media recommended, selected, or prioritized for display is  
45 exclusively next in a pre-existing sequence from the same author, crea-  
46 tor, poster, or source; or

47 (h) the recommendation, prioritization, or selection is necessary to  
48 comply with the provisions of this article and any regulations promul-  
49 gated pursuant to this article.

50 2. "Addictive social media platform" shall mean a website, online  
51 service, online application, or mobile application, that offers or  
52 provides users an addictive feed as a significant part of the services  
53 provided by such website, online service, online application, or mobile  
54 application.

1 3. "Covered minor" shall mean a user of a website, online service,  
2 online application, or mobile application in New York when the operator  
3 has actual knowledge the user is a minor.

4 4. "Covered user" shall mean a user of a website, online service,  
5 online application, or mobile application in New York, not acting as an  
6 operator, or agent or affiliate of the operator, of such website, online  
7 service, online application, or mobile application, or any portion ther-  
8 eof.

9 5. "Media" shall mean text, an image, or a video.

10 6. "Minor" shall mean an individual under the age of eighteen.

11 7. "Covered operator" shall mean any person, business, or other legal  
12 entity, who operates or provides an addictive social media platform.

13 8. "Parent" shall mean parent or legal guardian.

14 § 1501. Prohibition of addictive feeds. 1. It shall be unlawful for a  
15 covered operator to provide an addictive feed to a covered user unless:

16 (a) the covered operator has used commercially reasonable and techni-  
17 cally feasible methods to determine that the covered user is not a  
18 covered minor; or

19 (b) the covered operator has obtained verifiable parental consent to  
20 provide an addictive feed to a covered minor.

21 2. (a) The attorney general shall promulgate regulations identifying  
22 commercially reasonable and technically feasible methods for covered  
23 operators to determine if a covered user is a covered minor required  
24 pursuant to subdivision one of this section, and any exceptions thereto.

25 (b) In promulgating such regulations, the attorney general shall  
26 consider the size, financial resources, and technical capabilities of  
27 the addictive social media platform, the costs and effectiveness of  
28 available age determination techniques for users of the addictive social  
29 media platform, the audience of the addictive social media platform,  
30 prevalent practices of the industry of the covered operator, and the  
31 impact of the age determination techniques on the covered users' safety,  
32 utility, and experience.

33 (c) Such regulations shall also identify the appropriate levels of  
34 accuracy that would be commercially reasonable and technically feasible  
35 for covered operators to achieve in determining whether a covered user  
36 is a covered minor. Such regulations shall set forth multiple commer-  
37 cially reasonable and technically feasible methods for a covered opera-  
38 tor to determine if a covered user is a covered minor, including at  
39 least one method that either does not rely solely on government issued  
40 identification or that allows a covered user to maintain anonymity as to  
41 the covered operator of the addictive social media platform.

42 (d) Where a covered operator has used commercially reasonable and  
43 technically feasible age determination methods in compliance with such  
44 regulations and has not determined that a covered user is a covered  
45 minor, the covered operator shall operate under the presumption that the  
46 covered user is not a covered minor for the purposes of this article,  
47 unless it obtains actual knowledge that the covered user is a covered  
48 minor.

49 3. Information collected for the purpose of determining a covered  
50 user's age under paragraph (a) of subdivision one of this section shall  
51 not be used for any purpose other than age determination and shall be  
52 deleted immediately after an attempt to determine a covered user's age,  
53 except where necessary for compliance with any applicable provisions of  
54 New York state or federal law or regulation.

55 4. The attorney general shall promulgate regulations identifying meth-  
56 ods of obtaining verifiable parental consent pursuant to paragraph (b)

1 of subdivision one of this section and section fifteen hundred two of  
2 this article.

3 5. Information collected for the purpose of obtaining such verifiable  
4 parental consent shall not be used for any purpose other than obtaining  
5 verifiable parental consent and shall be deleted immediately after an  
6 attempt to obtain verifiable parental consent, except where necessary  
7 for compliance with any applicable provisions of New York state or  
8 federal law or regulation.

9 6. Nothing in this section shall be construed as requiring any opera-  
10 tor to give a parent who grants verifiable parental consent any addi-  
11 tional or special access to or control over the data or accounts of  
12 their child.

13 7. Nothing in this section shall be construed as preventing any action  
14 taken in good faith to restrict access to or availability of media that  
15 the covered operator considers to be obscene, lewd, lascivious, filthy,  
16 excessively violent, harassing, or otherwise objectionable, whether or  
17 not such material is constitutionally protected.

18 § 1502. Overnight notifications. It shall be unlawful for the covered  
19 operator of an addictive social media platform to, between the hours of  
20 12 AM Eastern and 6 AM Eastern, send notifications concerning an addic-  
21 tive feed to a covered minor unless the operator has obtained verifiable  
22 parental consent to send such nighttime notifications.

23 § 1503. Parental control. Nothing in this article shall be construed  
24 as requiring the operator of an addictive social media platform to give  
25 a parent any additional or special access to or control over the data or  
26 accounts of their child.

27 § 1504. Nondiscrimination. A covered operator shall not withhold,  
28 degrade, lower the quality, or increase the price of any product,  
29 service, or feature, other than as necessary for compliance with the  
30 provisions of this article or any rules or regulations promulgated  
31 pursuant to this article, to a covered user due to the covered operator  
32 not being permitted to provide an addictive feed to such covered user  
33 under subdivision one of section fifteen hundred one of this article.

34 § 1505. Rulemaking authority. The attorney general shall promulgate  
35 such rules and regulations as are necessary to effectuate and enforce  
36 the provisions of this article.

37 § 1506. Language access. 1. Instructions to parents on how to provide  
38 verifiable parental consent under paragraph (b) of subdivision one of  
39 section fifteen hundred one of this article shall be made available in  
40 no fewer than the twelve most commonly spoken languages in New York  
41 state consistent with section two hundred two-a of the executive law and  
42 as further defined by regulations promulgated by the attorney general.

43 2. The attorney general shall ensure that any public information or  
44 guidance that it may provide concerning this chapter is available in the  
45 twelve most commonly spoken languages in New York state consistent with  
46 section two hundred two-a of the executive law and as further defined by  
47 regulations promulgated by the attorney general.

48 § 1507. Scope. 1. This article shall apply to conduct that occurs in  
49 whole or in part in New York. For purposes of this article, conduct  
50 takes place wholly outside of New York if the addictive social media  
51 platform is accessed by a user who is physically located outside of New  
52 York.

53 2. Nothing in this article shall be construed to impose liability for  
54 commercial activities or actions by operators subject to 15 U.S.C. §  
55 6501 that is inconsistent with the treatment of such activities or  
56 actions under 15 U.S.C. § 6502.

1 § 1508. Remedies. 1. No earlier than one hundred eighty days after  
2 the effective date of this article, whenever it appears to the attorney  
3 general, either upon complaint or otherwise, that any person, within or  
4 outside the state, has engaged in or is about to engage in any of the  
5 acts or practices stated to be unlawful in this article, the attorney  
6 general may bring an action or special proceeding in the name and on  
7 behalf of the people of the state of New York to enjoin any violation of  
8 this article, to obtain restitution of any moneys or property obtained  
9 directly or indirectly by any such violation, to obtain disgorgement of  
10 any profits or gains obtained directly or indirectly by any such  
11 violation, including but not limited to the destruction of unlawfully  
12 obtained data, to obtain damages caused directly or indirectly by any  
13 such violation, to obtain civil penalties of up to five thousand dollars  
14 per violation, and to obtain any such other and further relief as the  
15 court may deem proper, including preliminary relief.

16 2. The attorney general shall maintain a website to receive  
17 complaints, information or referrals from members of the public concern-  
18 ing a covered operator's or social media platform's alleged compliance  
19 or non-compliance with the provisions of this article.

20 § 4. Severability. If any clause, sentence, paragraph, subdivision,  
21 section or part of this act shall be adjudged by any court of competent  
22 jurisdiction to be invalid, such judgment shall not affect, impair, or  
23 invalidate the remainder thereof, but shall be confined in its operation  
24 to the clause, sentence, paragraph, subdivision, section or part thereof  
25 directly involved in the controversy in which such judgment shall have  
26 been rendered. It is hereby declared to be the intent of the legislature  
27 that this act would have been enacted even if such invalid provisions  
28 had not been included herein.

29 § 5. This act shall take effect on the one hundred eightieth day after  
30 the office of the attorney general shall promulgate rules and regu-  
31 lations necessary to effectuate the provisions of this act; provided  
32 that the office of the attorney general shall notify the legislative  
33 bill drafting commission upon the occurrence of the enactment of the  
34 rules and regulations necessary to effectuate and enforce the  
35 provisions of section three of this act in order that the commission may  
36 maintain an accurate and timely effective data base of the official text  
37 of the laws of the state of New York in furtherance of effectuating the  
38 provisions of section 44 of the legislative law and section 70-b of the  
39 public officers law. Effective immediately, the addition, amendment  
40 and/or repeal of any rule or regulation necessary for the implementation  
41 of this act on its effective date are authorized to be made and  
42 completed on or before such effective date.