Amended

January 31, 2024

H. 4700

Introduced by Reps. W. Newton, Pope, Guffey, Chapman, Leber, Beach, Kilmartin, Cromer, Oremus, Vaughan, Nutt, Haddon, Burns, Chumley, West, Felder, Guest, McCravy, Bailey, Brittain, Robbins, Sessions, Bradley, Mitchell, Yow, Hiott, Erickson, Hager, Wheeler, Weeks, Ballentine, Wooten, Calhoon, M. M. Smith, Davis, McGinnis, Gagnon, B. Newton, Schuessler, Elliott, Forrest, Willis, Ligon, Hixon and Taylor

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Read the first time January 09, 2024

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A bill

TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY ADDING article 9 to chapter 5, title 39 SO AS TO PROVIDE DEFINITIONS; TO PROVIDE THAT A SOCIAL MEDIA COMPANY MAY NOT PERMIT CERTAIN MINORS TO BE ACCOUNT HOLDERS; TO PROVIDE REQUIREMENTS FOR SOCIAL MEDIA COMPANIES; TO PROVIDE THAT A SOCIAL MEDIA COMPANY SHALL PROVIDE CERTAIN PARENTS OR GUARDIANS WITH CERTAIN INFORMATION; TO PROVIDE THAT A SOCIAL MEDIA COMPANY SHALL RESTRICT SOCIAL MEDIA ACCESS TO MINORS DURING CERTAIN HOURS; TO PROVIDE FOR CONSUMER COMPLAINTS; TO PROVIDE THAT THE CONSUMER SERVICES DIVISION HAS AUTHORITY TO ADMINISTER AND ENFORCE CERTAIN REQUIREMENTS; TO PROVIDE FOR AN ANNUAL REPORT; TO PROVIDE FOR A CAUSE OF ACTION; and TO PROVIDE THAT CERTAIN WAIVERS AND LIMITATIONS ARE VOID.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 5, Title 39 of the S.C. Code is amended by adding:

Article 9

South Carolina Social Media Regulation

Section 39-5-810. As used in this article:

(1) “Account holder” means a person who has, or opens, an account or profile to use a social media company’s platform.

(2) “Interactive computer service” means an information service, information system, or information access software provider that provides or enables computer access by multiple users to a computer server and provides access to the Internet. An interactive computer service includes a web service, a web system, a website, a web application, or a web portal.

(3) “Minor” means an individual under circumstances where a social media company reasonably believes or has actual knowledge that the individual is under the age of eighteen. A social media company shall treat an individual as a minor if the social media company verifies that the individual is under the age of eighteen as provided in this chapter.

(4) “Office” means the South Carlina Office of Attorney General.

(5) “Post” means content that an account holder makes available on a social media platform for other account holders or users to view.

(6) “Social media company” means a person or entity that provides a social media platform that has at least five million account holders worldwide and is an interactive computer service.

(7)(a) “Social media platform” means a public or semipublic Internet-based service or application that has users in South Carolina and that meets all of the following:

(i) The service or application connects users in order to allow users to interact socially with each other within the service or application. A service or application that provides email or direct messaging services, enterprise cloud storage services, enterprise cybersecurity services, educational devices, or enterprise collaboration tools for K-12 schools are not considered to meet this criterion on the basis of that function alone.

(ii) The service or application allows users to do all of the following:

(A) construct a public or semipublic profile for the purposes of signing into and using the service or application;

(B) populate a list of other users with whom an individual shares a social or virtual connection within the system, including subscribing to content related to another user; and

(C) create or post content viewable by other users including, but not limited to, on message boards, in chat rooms, on video channels, or through a landing page or main feed that presents the user with content generated by other users.

(b) “Social media platform” may not include an online service, website, or application where the predominant or exclusive function is any of the following:

(i) electronic mail;

(ii) a service that, pursuant to its terms of use, does not permit minors to use the platform and utilizes commercially reasonable age assurance mechanisms to attempt to prohibit minors from becoming an account holder or user;

(iii) a streaming service that provides only licensed media in a continuous flow from the service, website, or application to the end user and does not obtain a license to the media from a user or account holder by agreement to its terms of service;

(iv) news, sports, entertainment, or other content that is preselected by the provider and not user generated, and any chat, comment, or interactive functionality that is provided incidental to, directly related to, or dependent upon provisions of the content;

(v) online shopping, electronic commerce, or self-service support if the interaction with other users or account holders is generally limited to the ability to upload a post and comment on reviews, the ability to seek support related to products or services, the ability to display lists or collections of goods for sale or wish lists, or any other function that is focused on online shopping, electronic commerce, or self-service support rather than interaction between users or account holders;

(vi) interactive gaming, virtual gaming, or an online service that allows the creation and uploading of content and the communication related to that content for the purpose of interactive gaming, educational entertainment, or associated entertainment;

(vii) photograph editing that has an associated photograph hosting service if the interaction with other users or account holders is generally limited to liking or commenting;

(viii) single-purpose community groups for public safety if the interaction with other users or account holders is limited to that single purpose and the community group has guidelines or policies against illegal content;

(ix) career development opportunities, including professional networking, job skills, learning certifications, and job posting and application services;

(x) business-to-business software;

(xi) a teleconferencing or videoconferencing service that allows reception and transmission of audio and video signals for real-time communication;

(xii) cloud storage;

(xiii) shared document collaboration;

(xiv) cloud computing services, which may include cloud storage and shared document collaboration;

(xv) providing access to or interacting with data visualization platforms, libraries, or hubs;

(xvi) permitting comments on digital news website if the news content is posted by only the provider of the digital news website;

(xvii) providing or obtaining technical support for a platform product or service;

(xviii) academic, scholarly, or genealogical research;

(xix) Internet access and broadband service;

(xx) a classified advertising service in which the provider of the online service, website, or application is limited to all of the following:

(A) permitting only the sale of goods;

(B) prohibiting the solicitation of personal service;

(C) posting or creating a substantial amount of the content; and

(D) providing the ability to chat, comment, or interact with other users only if it is directly related to the provider’s content;

(xxi) an online service, website, or application that is used by or under the direction of an educational entity, including a learning management system, a student engagement program, or a subject or skill-specific program, where the majority of the content is created or posted by the provider of the online service, website, or application and the ability to chat, comment, or interact with other users is directly related to the provider’s content.

(8) “South Carolina account holder” means a person who is a resident of South Carolina and an account holder, including a South Carolina minor account holder.

(9) “South Carolina minor account holder” means a South Carolina account holder who is a minor.

(10) “South Carolina resident” means an individual who currently resides in South Carolina.

(11) “User” means a person who has access to view all, or some of, the posts on a social media platform, but is not an account holder.

Section 39-5-820. (A) Beginning March 1, 2025, a social media company shall make commercially reasonable efforts to verify the age of South Carolina account holders with a level of certainty appropriate to the risks that arise from the information management practices of the social media company or apply the accommodations afforded to minors pursuant to this chapter to all account holders.

(B) A social media company may not permit a South Carolina resident who is a minor to be an account holder on the social media company’s social media platform unless the minor has the express consent of a parent or guardian. Acceptable methods of obtaining express consent from a parent or guardian include any of the following:

(1) providing a form for the minor’s parent or guardian to sign and return to the digital service provider by common carrier, facsimile, or electronic;

(2) providing a toll-free telephone number for the minor’s parent or guardian to call to consent;

(3) coordinating a call with a minor’s parent or guardian over video conferencing technology;

(4) collecting information related to the government-issued identification of the minor’s parent or guardian and deleting that information after confirming the identity of the minor’s parent or guardian;

(5) allowing the minor’s parent or guardian to provide consent by responding to an email and taking additional steps to verify the identity of the minor’s parent or guardian; or

(6) any other commercially reasonable method of obtaining consent in light of available technology.

(C) Notwithstanding any other provision of this chapter, a social media company may not permit a South Carolina resident who is a minor to hold or open an account on a social media platform if the minor is ineligible to hold or open an account pursuant to any other provision of state or federal law.

(D) Any information collected by the social media company or its agent as a result of complying with the requirements of this article only may be retained for the purpose of compliance with this article and may not be used for any other purpose. Once the social media company or its agent has complied with the requirements of this article, the social media company shall securely dispose of any information obtained as a result of compliance with the requirements of this article.

Section 39-5-830. Beginning March 1, 2025, for a South Carolina minor account holder, a social media company shall:

(1) prohibit adults from direct messaging a South Carolina minor account holder unless the minor is already connected to the adult on the service;

(2) prohibit the display of any advertising in the account based on the South Carolina minor account holder’s personal information, except age and location;

(3) prohibit the collection or use of personal information from the posts, content, messages, text, or usage activities of the account other than information beyond what is adequate, relevant, and reasonably necessary in relation to the purposes for which such information is collected, as disclosed;

(4) make commercially reasonable efforts to develop a policy or mechanism to filter and prevent access by minor account holders to content that does any of the following:

(a) advocates for the use of force, is directed to inciting or producing imminent lawless action, and is likely to incite or produce such action;

(b) advocates for self-harm, is directed to inciting or producing imminent self-harm, or is likely to incite or produce such action;

(c) advocates for the destruction of personal or public property within a school setting in South Carolina; or

(d) displays visual depictions of sexual conduct as that term is defined in S.C. Code Ann. Section 16-15-305(C)(1); and

(5) report to the State Law Enforcement Division, local law enforcement agencies, and local

school districts, as appropriate, any content posted by minors in South Carolina that is in violation of this section.

Section 39-5-840. Beginning March 1, 2025, a social media company shall provide a parent or guardian who has given parental consent for a South Carolina minor account holder as provided in this chapter with a means for the minor account holder or the parent or guardian to initiate account supervision. Such supervision must include the ability for the parent to view privacy settings of the minor’s account, view the list of other users with whom the minor shares a social or virtual connection within the system, set daily time limits for the service, schedule breaks, and offer the minor the option to set up parental notifications when the minor reports a person or issue.

Section 39-5-850. (A) The Office of Attorney General may receive complaints alleging a violation of this chapter.

(B) The Office of Attorney General may investigate any complaint to determine whether a violation has occurred.

Section 39-5-860. Except for a private right of action pursuant to Section 39‑5‑890, the Office of Attorney General has the exclusive authority to administer and enforce the requirements of this chapter.

Section 39-5-870. (A) The Office of Attorney General shall compile an annual report that contains an accounting of all of the following information:

(1) all administrative fines and civil penalties assessed during the year;

(2) all administrative fines and civil penalties collected during the year; and

(3) the use of funds from all administrative fines and civil penalties collected during the year.

(B) The Office of Attorney General may update or correct the report as new information becomes available.

(C) The Office of Attorney General shall maintain the report, which must be published on its website.

Section 39-5-880. (A) Beginning March 1, 2025, a person may bring an action against a person that does not comply with a requirement of this chapter.

(B) A suit filed pursuant to the authority of this section must be filed in the circuit court for the circuit in which a person bringing the action resides.

(C) If a court finds that a person has violated a provision of this chapter, the person who brings an action pursuant to this section is entitled to:

(1) an award of reasonable attorneys’ fees and court costs; and

(2) an amount equal to the greater of:

(a) two thousand five hundred dollars for each incident of violation; or

(b) actual damages for financial, physical, and emotional harm incurred by the person bringing the action, if the court determines that the harm is a direct consequence of the violation.

Section 39-5-890. (A)(1) By March 1, 2025, the Department of Education shall develop model programs for educating students regarding online safety while using the Internet, taking into consideration educational materials on this topic developed by other states as well as any other materials suggested by educational experts, child psychologists, and technology companies that promote child online safety issues.

(2) The model programs provided for in this subsection must include one or more model programs for students in grades six through twelve which include instruction regarding the negative effects of social media on the mental health of users including addiction; the ability of social media to manipulate and influence thoughts and behaviors; the permanency and risks of sharing materials online; ways to maintain personal security and identify cyberbullying, predatory behavior, and human trafficking on the Internet and social media; and ways to report suspicious behavior encountered on the Internet and social media to appropriate persons and authorities.

(3) The Department of Education shall periodically update the model programs provided for in this subsection to reflect changes in Internet and social media use, emergent technologies, social and psychological research, and information concerning new threats to teenagers and young adults using social media platforms and other online communication technologies.

(4) The Department of Education shall publish on its website information relating to the model programs provided for in this section, including recommended curricula and instructional materials.

(B) Each local board of education may incorporate into its instructional program a component on online Internet safety, including social media safety, to be taught on a schedule as determined by the local board of education.

Section 39-5-900. A waiver or limitation, or a purported waiver or limitation, of any of the following is void as unlawful, is against public policy, and a court or arbitrator may not enforce or give effect to the waiver, notwithstanding any contract or choice‑of‑law provision in a contract:

(1) a protection or requirement provided pursuant to this chapter;

(2) the right to cooperate with the division or to file a complaint with the division; or

(3) the right to a private right of action as provided pursuant to this chapter.

SECTION 2. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 3. This act takes effect upon approval by the Governor.

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