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As Engrossed: S3/27/23 H4/4/23
A Bill

SENATE BILL 396

By: Senators Dees, J. Petty
By: Representative Eubanks

For An Act To Be Entitled

AN ACT TO CREATE THE SOCIAL MEDIA SAFETY ACT; TO REQUIRE AGE VERIFICATION FOR USE OF SOCIAL MEDIA; TO CLARIFY LIABILITY FOR FAILURE TO PERFORM AGE VERIFICATION FOR USE OF SOCIAL MEDIA AND ILLEGAL RETENTION OF DATA; AND FOR OTHER PURPOSES.

Subtitle

TO CREATE THE SOCIAL MEDIA SAFETY ACT; TO REQUIRE AGE VERIFICATION FOR USE OF SOCIAL MEDIA; AND TO CLARIFY LIABILITY FOR FAILURE TO PERFORM AGE VERIFICATION FOR USE OF SOCIAL MEDIA AND ILLEGAL RETENTION OF DATA.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 4, Chapter 88, is amended to add an additional subchapter to read as follows:

Subchapter 11 – Regulation of Social Media

4-88-1101. Definitions.

As used in this subchapter:

(1) "Account holder" means an individual who creates an account or a profile to use a social media platform;

(2) "Arkansas user" means an individual who is a resident of the State of Arkansas and who accesses or attempts to access a social media



platform while present in this state by accessing the social media platform using an Arkansas internet protocol address or otherwise known or believed to be in this state while using the social media platform;

(3)(A) "Commercial entity" means a corporation, limited liability company, partnership, limited partnership, sole proprietorship, or other legally recognized entity.

(B) "Commercial entity" includes a third party vendor;

(4) "Digitized identification card" means a data file available on a mobile device that has connectivity to the internet through a state-approved application that allows the mobile device to download the data file from the Office of Driver Services that contains all of the data elements visible on the face and back of a driver's license or identification card and displays the current status of the driver's license or identification card, including valid, expired, cancelled, suspended, revoked, active, or inactive;

(5) "Minor" means an individual under eighteen (18) years of age;

(6) "Reasonable age verification" means to confirm that a person seeking to access a social media platform is at least eighteen (18) years old;

(7)(A) "Social media company" means an online forum that a company makes available for an account holder to:

(i) Create a public profile, establish an account, or register as a user for the primary purpose of interacting socially with other profiles and accounts;

(ii) Upload or create posts or content;

(iii) View posts or content of other account

holders; and

(iv) Interact with other account holders or users, including without limitation establishing mutual connections through request and acceptance.

(B) "Social media company" does not include a:

(i) Media company that exclusively offers subscription content in which users follow or subscribe unilaterally and whose platforms' primary purpose is not social interaction;

(ii) Social media company that allows a user to generate short video clips of dancing, voice overs, or other acts of

entertainment in which the primary purpose is not educational or informative, does not meet the exclusion under subdivision (7)(B)(i) of this section;

(iii) Media company that exclusively offers interacting gaming, virtual gaming, or an online service, that allows the creation and uploading of content for the purpose of interacting gaming, entertainment, or associated entertainment, and the communication related to that content;

(iv) Company that:

(a) Offers cloud storage services, enterprise cybersecurity services, educational devices, or enterprise collaboration tools for kindergarten through grade twelve (K-12) schools; and

(b) Derives less than twenty-five percent (25%) of the company's revenue from operating a social media platform, including games and advertising; or

(v) Company that provides career development opportunities, including professional networking, job skills, learning certifications, and job posting and application services;

(8)(A) "Social media platform" means a public or semipublic internet-based service or application:

(i) That has users in Arkansas; and

(ii)(a) On which a substantial function of the service or application is to connect users in order to allow users to interact socially with each other within the service or application.

(b) A service or application that provides email or direct messaging shall not be considered to meet the criteria under subdivision (8)(A)(ii)(a) of this section on the basis of that function alone.

(B) "Social media platform" does not include an online service, a website, or an application if the predominant or exclusive function is:

(i) Email;

(ii) Direct messaging consisting of messages, photos, or videos that are sent between devices by electronic means if messages are:

(a) Shared between the sender and the recipient or recipients;

(b) Only visible to the sender and the recipient or recipients; and

(c) Are not posted publicly;

(iii) A streaming service that:

(a) Provides only licensed media in a continuous flow from the service, website, or application to the end user; and

(b) Does not obtain a license to the media from a user or account holder by agreement of the streaming service's terms of service;

(iv) News, sports, entertainment, or other content that is preselected by the provider and not user generated, including without limitation if any chat, comment, or interactive functionality that is provided is incidental to, directly related to, or dependent upon provision of the content;

(v) Online shopping or e-commerce, if the interaction with other users or account holders is generally limited to:

(a) The ability to post and comment on reviews;

(b) The ability to display lists or collections of goods for sale or wish lists; and

(c) Other functions that are focused on online shopping or e-commerce rather than interaction between users or account holders;

(vi) Business-to-business software that is not accessible to the general public;

(vii) Cloud storage;

(viii) Shared document collaboration;

(ix) Providing access to or interacting with data visualization platforms, libraries, or hubs;

(x) To permit comments on a digital news website, if the news content is posted only by the provider of the digital news website;

(xi) For the purpose of providing or obtaining technical support for the social media company's social media platform, products, or services;

(xii) Academic or scholarly research;

(xiii) Other research:

(a) If:

(1) The majority of the content is posted or created by the provider of the online service, website, or application; and

(2) The ability to chat, comment, or interact with other users is directly related to the provider's content;

(b) That is a classified advertising service that only permits the sale of goods and prohibits the solicitation of personal services; or

(c) That is used by and under the direction of an educational entity, including without limitation a:

(1) Learning management system;

(2) Student engagement program; and

(3) Subject-specific or skill-specific program.

(C) "Social media platform" does not include a social media platform that is controlled by a business entity that has generated less than one hundred million dollars (\$100,000,000) in annual gross revenue; and

(9) "User" means a person who has access to view all or some of the posts and content on a social media platform but is not an account holder.

4-88-1102. Social media platforms – Reasonable age verification methods – Parental consent required.

(a) A social media company shall not permit an Arkansas user 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 legal guardian.

(b)(1) A social media company shall verify the age of an account holder.

(2) If an account holder is a minor, the social media company shall confirm that a minor has consent under subsection (a) of this section to become a new account holder, at the time an Arkansas user opens the account.

(c)(1) A social media company shall use a third party vendor to

perform reasonable age verification before allowing access to the social media company's social media platform.

(2) Reasonable age verification methods under subdivision (c)(1) of this section include providing:

(A) A digitized identification card, including a digital copy of a driver's license under § 27-16-601 et seq.;

(B) Government-issued identification; or

(C) Any commercially reasonable age verification method.

4-88-1103. Liability for social media companies.

(a)(1) A social media company that knowingly violates this subchapter is liable if the social media company fails to perform a reasonable age verification.

(2) If a social media company performs a reasonable age verification, the social media company shall not retain any identifying information of the individual after access to the social media platform has been granted.

(b)(1) As authorized under § 4-88-103, a prosecutor may initiate an enforcement action against a social media company that allegedly violates § 4-88-1102.

(2) As authorized under § 4-88-104, the Attorney General may initiate an enforcement action against a social media company that allegedly commits a violation of § 4-88-1102.

(c)(1) A social media company that violates this subchapter is liable to an individual for:

(A) A penalty of two thousand five hundred dollars (\$2,500) per violation, court costs, and reasonable attorney's fees as ordered by the court; or

(B) Damages resulting from a minor accessing a social media platform without his or her parent's or custodian's consent, including court costs and reasonable attorney's fees as ordered by the court.

(d) This section does not:

(1) Apply to a news or public interest broadcast, website video, report, or event;

(2) Affect the rights of a news-gathering organization; or

(3) Apply to cloud service providers.

(e) An internet service provider, or any of its affiliates or subsidiaries, or search engines, shall not violate this subchapter solely by providing access, connection to or from a website, or other information or content on the internet, or a facility, system, or network that is not under that internet service provider's control, including transmission, downloading, intermediate storage, access software, or other service that provides access or connectivity, to the extent the internet service provider is not responsible for the creation of the content or the communication on a social media platform.

4-88-1104. Liability for commercial entity or third party vendor.

(a) A commercial entity or third party vendor shall not retain any identifying information of an individual after access to the social media platform has been granted.

(b) A commercial entity that is found to have knowingly retained identifying information of an individual after access to the material is granted is liable to the individual for damages resulting from the retention of the identifying information, including court costs and reasonable attorney's fees as ordered by the court.

SECTION 2. DO NOT CODIFY. EFFECTIVE DATE. This act is effective on and after September 1, 2023.

/s/Dees

APPROVED: 4/11/23