

1 State of Arkansas
2 94th General Assembly
3 Regular Session, 2023
4

As Engrossed: S3/27/23

A Bill

SENATE BILL 396

5 By: Senators Dees, J. Petty
6 By: Representative Eubanks
7

For An Act To Be Entitled

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

17 TO CREATE THE SOCIAL MEDIA SAFETY ACT; TO
18 REQUIRE AGE VERIFICATION FOR USE OF
19 SOCIAL MEDIA; AND TO CLARIFY LIABILITY
20 FOR FAILURE TO PERFORM AGE VERIFICATION
21 FOR USE OF SOCIAL MEDIA AND ILLEGAL
22 RETENTION OF DATA.
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25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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27 SECTION 1. Arkansas Code Title 4, Chapter 88, is amended to add an
28 additional subchapter to read as follows:

29 Subchapter 11 – Regulation of Social Media
30

31 4-88-1101. Definitions.

32 As used in this subchapter:

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

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



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

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

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

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

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

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

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

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

25 (ii) Upload or create posts or content;

26 (iii) View posts or content of other account
27 holders; and

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

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

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

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

1 entertainment in which the primary purpose is not educational or informative,
2 does not meet the exclusion under subdivision (7)(B)(i) of this section; or
3 (iii) Media company that exclusively offers
4 interacting gaming, virtual gaming, or an online service, that allows the
5 creation and uploading of content for the purpose of interacting gaming,
6 entertainment, or associated entertainment, and the communication related to
7 that content;

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

10 (i) That has users in Arkansas; and

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

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

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

21 (i) Email;

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

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

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

29 (c) Are not posted publicly;

30 (iii) A streaming service that:

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

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

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

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

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

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

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

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

17 (vii) Cloud storage;

18 (viii) Shared document collaboration;

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

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

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

26 (xii) Academic or scholarly research;

27 (xiii) Other research:

28 (a) If:

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

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

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

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

3 (1) Learning management system;
4 (2) Student engagement program; and
5 (3) Subject-specific or skill-specific
6 program.

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

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

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14 4-88-1102. Social media platforms – Reasonable age verification
15 methods – Parental consent required.

16 (a) A social media company shall not permit an Arkansas user who is a
17 minor to be an account holder on the social media company's social media
18 platform unless the minor has the express consent of a parent or legal
19 guardian.

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

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

26 (c)(1) A social media company shall use a third party vendor to
27 perform reasonable age verification before allowing access to the social
28 media company's social media platform.

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

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

33 (B) Government-issued identification; or

34 (C) Any commercially reasonable age verification method.

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36 4-88-1103. Liability for social media companies.

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

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

8 (b)(1) As authorized under § 4-88-103, a prosecutor may initiate an
9 enforcement action against a social media company that allegedly violates §
10 4-88-1102.

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

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

16 (A) A penalty of two thousand five hundred dollars
17 (\$2,500) per violation, court costs, and reasonable attorney's fees as
18 ordered by the court; or

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

22 (d) This section does not:

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

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

26 (3) Apply to cloud service providers.

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

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1 4-88-1104. Liability for commercial entity or third party vendor.

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

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

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