

ASSEMBLY, No. 4919

STATE OF NEW JERSEY 220th LEGISLATURE

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Sponsored by:

Assemblyman HERB CONAWAY, JR.

District 7 (Burlington)

Assemblyman DANIEL R. BENSON

District 14 (Mercer and Middlesex)

SYNOPSIS

Concerns social media privacy and data management for children and establishes New Jersey Children's Data Protection Commission.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 1/19/2023)

1 AN ACT concerning social media privacy and data management
2 standards for children, establishing the New Jersey Children’s
3 Data Protection Commission, and supplementing Title 56 of the
4 Revised Statutes.

5
6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:

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9 1. As used in P.L. , c. (C.) (pending before the
10 Legislature as this bill):

11 “Child” or “children” means a consumer or consumers who are
12 under 18 years of age.

13 “Data Protection Impact Assessment” means a systematic survey
14 to assess and mitigate any risks that arise from the data management
15 practices of a social media platform related to an online service,
16 product, or feature that is likely to be accessed by children.

17 “Likely to be accessed by children” means it is reasonable to
18 expect, based on any of the following indicators, that the online
19 service, product, or feature would be accessed by children:

- 20 a. the online service, product, or feature is directed to children;
- 21 b. the online service, product, or feature is determined, based on
22 competent and reliable evidence regarding audience composition, to
23 be routinely accessed by a significant number of children;
- 24 c. the online service, product, or feature includes advertisements
25 marketed to children;
- 26 d. the online service, product, or feature has design elements that
27 are known to be of interest to children, including, but not limited to,
28 games, cartoons, music, and celebrities who appeal to children; or
- 29 e. a significant amount of the audience of the online service,
30 product, or feature is determined, based on internal company
31 research, to be children.

32 “Online service, product, or feature” does not mean any of the
33 following:

- 34 a. a broadband telecommunications service, as defined in section
35 1 of P.L.2007, c.191 (C.40:9D-1);
- 36 b. a telecommunications service, as defined in 47 U.S.C. s.153;
- 37 or
- 38 c. the delivery or use of a physical product.

39 “Personal information” means individually identifiable
40 information about an individual that is collected online, including,
41 but not limited to:

- 42 a. first and last name;
- 43 b. home or other physical address, including street name and
44 name of a city or town;
- 45 c. online contact information;
- 46 d. any screen or user name that functions in the same manner as
47 online contact information;
- 48 e. telephone number;

- 1 f. Social Security number;
- 2 g. persistent identifier that can be used to recognize a user over
3 time and across different Internet websites or online services. Such
4 persistent identifier includes, but is not limited to, a customer
5 number held in a cookie, an Internet Protocol (IP) address, a
6 processor or device serial number, or unique device identifier;
- 7 h. any photograph, video, or audio file that contains a child's
8 image or voice;
- 9 i. geolocation information sufficient to identify street name and
10 name of a city or town; or
- 11 j. information concerning the child or the parents of the child that
12 the operator collects online from the child and combines with an
13 identifier.

14 “Profile” or “profiling” means any form of automated processing
15 of personal information that uses personal information to evaluate
16 certain aspects relating to a natural person, including analyzing or
17 predicting aspects concerning a natural person’s performance at
18 work, economic situation, health, personal preferences, interests,
19 reliability, behavior, location, or movements.

20 “Social media platform” or “platform” means a public or semi-
21 public internet-based service or application that has users in this
22 State, which service or application:

- 23 a. allows users to construct a public or semipublic profile for
24 the purposes of using the platform, populate a list of other users
25 with whom the user shares a social connection through the platform,
26 and post content viewable by other users of the platform; and
- 27 b. is designed to connect users within the platform to facilitate
28 social interactions, except that a service or application that provides
29 email or direct messaging services shall not be considered to meet
30 this criterion solely based on the existence of that functionality.

31 “User” means a person who has an account on a social media
32 platform, regardless of whether the person posts or has posted
33 content or material to the social media platform.

34
35 2. Before a new online service, product, or feature is offered to
36 users residing in the State, which online service, product, or feature
37 is likely to be accessed by children, the social media platform that
38 offers the online service, product, or feature shall take all of the
39 following actions:

- 40 a. complete a Data Protection Impact Assessment for the online
41 service, product, or feature and maintain documentation of this
42 assessment as long as the online service, product, or feature is likely
43 to be accessed by children;
- 44 b. document any risk of material detriment to children that arises
45 from the data management practices of the social media platform
46 identified in the Data Protection Impact Assessment and create a
47 timed plan to mitigate or eliminate those risks before the online
48 service, product, or feature is accessed by children;

- 1 c. estimate the age for which the use of the service, product, or
2 feature is appropriate for child users based on the risks that arise
3 from the data management practices of the social media platform or
4 apply the privacy and data protections afforded to children to all
5 consumers;
- 6 d. configure all default privacy settings provided to children by
7 the online service, product, or feature to settings that offer a high
8 level of privacy, unless the social media platform can demonstrate a
9 compelling reason that a different setting is in the best interests of
10 children;
- 11 e. provide any privacy information, terms of service, policies,
12 and community standards concisely, prominently, and using clear
13 language suited to the age of children likely to access that online
14 service, product, or feature;
- 15 f. if the online service, product, or feature allows the child's
16 parent, guardian, or any other consumer to monitor the child's
17 online activity or track the child's location, provide an obvious
18 signal to the child when the child is being monitored or tracked;
- 19 g. enforce published terms, policies, and community standards
20 established by the social media platform, including, but not limited
21 to, privacy policies and those concerning children; and
- 22 h. provide prominent, accessible, and responsive tools to help
23 children or, if applicable, their parents or guardians exercise their
24 privacy rights and report concerns.
25
- 26 3. a. The Data Protection Impact Assessment required under
27 subsection a. of section 2 of P.L. , c. (C.) (pending before
28 the Legislature as this bill) shall identify the purpose of the online
29 service, product, or feature, how it uses children's personal
30 information, and the risks of material detriment to children that
31 arise from the data management practices of the social media
32 platform. The Data Protection Impact Assessment shall address, to
33 the extent applicable, all of the following:
- 34 (1) whether the design of the online product, service, or feature
35 could harm children, including, but not limited to, exposing
36 children to harmful, or potentially harmful, content on the social
37 media platform;
- 38 (2) whether the design of the online service, product, or feature
39 could lead to children experiencing or being targeted by harmful, or
40 potentially harmful, contacts on the social media platform;
- 41 (3) whether the design of the online service, product, or feature
42 could permit children to witness, participate in, or be subject to
43 harmful, or potentially harmful, conduct on the social media
44 platform;
- 45 (4) whether the design of the online service, product, or feature
46 could allow children to be party to or exploited by a harmful, or
47 potentially harmful, contact on the social media platform;

1 (5) whether algorithms used by the online service, product, or
2 feature could harm children;

3 (6) whether targeted advertising systems used by the online
4 service, product, or feature could harm children;

5 (7) whether and how the online service, product, or feature uses
6 system design features to increase, sustain, or extend use of the
7 social media platform by children, which features may include the
8 automatic playing of media, rewards for time spent, and
9 notifications; and

10 (8) whether, how, and for what purpose the online service,
11 product, or feature collects or processes the personal information of
12 children.

13 b. A social media platform shall review all Data Protection
14 Impact Assessments at least every two years.

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16 4. a. Within three business days of receiving a written request
17 from the Attorney General, a social media platform shall provide to
18 the Attorney General a list of all Data Protection Impact
19 Assessments the social media platform has completed. For any
20 Data Protection Impact Assessment completed pursuant to
21 subsection a. of section 2 of P.L. , c. (C.) (pending before
22 the Legislature as this bill), the social media platform shall provide
23 a written or electronic copy of the assessment to the Attorney
24 General within five business days of receiving the written request.

25 b. Notwithstanding any provision of law to the contrary, a Data
26 Protection Impact Assessment shall be deemed confidential and
27 shall not be considered a government record pursuant to P.L.1963,
28 c.73 (C.47:1A-1 et seq.), P.L.2001, c.404 (C.47:1A-5 et al.), or the
29 common law concerning access to government records. To the
30 extent any information contained in a Data Protection Impact
31 Assessment includes information subject to attorney-client privilege
32 or work product protection, disclosure pursuant to this section shall
33 not constitute a waiver of that privilege or protection.

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35 5. A social media platform that provides an online service,
36 product, or feature likely to be accessed by children shall not take
37 any of the following actions:

38 a. use the personal information of any child in a way that the
39 social media platform knows, or has reason to know, is materially
40 detrimental to the physical health, mental health, or well-being of a
41 child;

42 b. profile a child by default unless both of the following criteria
43 are met:

44 (1) the social media platform can demonstrate it has appropriate
45 safeguards in place to protect children; and

46 (2) either of the following is true:

47 (a) profiling is necessary to provide the online service, product,
48 or feature requested and only with respect to the aspects of the

- 1 online service, product, or feature with which the child is actively
2 engaged; or
- 3 (b) the social media platform can demonstrate a compelling
4 reason that profiling is in the best interests of children;
- 5 (3) collect, sell, share, or retain any personal information that is
6 not necessary to provide an online service, product, or feature with
7 which a child is actively and knowingly engaged, unless the social
8 media platform can demonstrate a compelling reason that the
9 collecting, selling, sharing, or retaining of the personal information
10 is in the best interests of children likely to access the online service,
11 product, or feature;
- 12 (4) collect, sell, or share any geolocation information of children
13 by default unless the collection of that geolocation information is
14 strictly necessary for the social media platform to provide the online
15 service, product, or feature, in which case the information may only
16 be collected, sold, or shared during the time in which the
17 geolocation information is necessary to provide the online service,
18 product, or feature;
- 19 (5) collect any geolocation information of a child without
20 providing an obvious sign to the child during all times in which the
21 geolocation information is collected;
- 22 (6) use deceptive design practices to lead or encourage children
23 to provide more personal information than is reasonably necessary
24 to provide the online service, product, or feature, or to take any
25 action that the social media platform knows, or has reason to know,
26 is materially detrimental to the child's physical health, mental
27 health, or well-being; and
- 28 (7) use any personal information collected to estimate the age for
29 any other purpose or retain that personal information longer than
30 necessary to estimate age.
- 31
- 32 6. a. Except as provided in subsection d. of this section, any
33 social media platform that violates P.L. , c. (C.) (pending
34 before the Legislature as this bill) shall be subject to an injunction
35 and liable for a civil penalty of not more than \$2,500 per affected
36 child for each negligent violation or not more than \$7,500 per
37 affected child for each intentional violation, which shall be assessed
38 and recovered only in a civil action brought by the Attorney
39 General.
- 40 b. Any penalties, fees, and expenses recovered in an action
41 brought under P.L. , c. (C.) (pending before the Legislature
42 as this bill) shall be used to offset the costs incurred by the Attorney
43 General in connection with P.L. , c. (C.) (pending before
44 the Legislature as this bill).
- 45 c. If a social media platform is not in substantial compliance with
46 the requirements of P.L. , c. (C.) (pending before the
47 Legislature as this bill), the Attorney General shall provide written
48 notice to the social media platform, before initiating an action under

1 P.L. , c. (C.) (pending before the Legislature as this bill),
2 identifying the specific provisions of P.L. , c. (C.) (pending
3 before the Legislature as this bill) that the Attorney General alleges
4 have been or are being violated.

5 d. If, within 90 days of the notice provided by subsection c. of
6 this section, the social media platform cures any violation alleged
7 by the Attorney General and provides the Attorney General with a
8 written statement that the alleged violations have been cured, and
9 sufficient measures have been taken to prevent future violations, the
10 social media platform shall not be liable for a civil penalty for any
11 violation cured pursuant to this subsection.

12 e. Nothing in P.L. , c. (C.) (pending before the
13 Legislature as this bill) shall be interpreted to serve as the basis for
14 a private right of action under P.L. , c. (C.) (pending before
15 the Legislature as this bill) or any other law.

16

17 7. a. There is created, within the Division of Consumer Affairs in
18 the Department of Law and Public Safety, the New Jersey
19 Children's Data Protection Commission.

20 b. (1) The commission shall consist of nine members, with
21 expertise in children's data privacy, children's physical health,
22 children's mental health and well-being, computer science, or
23 children's rights, which members shall be appointed as follows:

24 (a) three appointees by the Governor;

25 (b) three appointees by the President of the Senate; and

26 (c) three appointees by the Speaker of the Assembly.

27 (2) Each member shall serve for a term of three years, except
28 that, of the members first appointed, three members shall be
29 appointed for a one-year term, three members shall be appointed for
30 a two-year term, and three members shall be appointed for a three-
31 year term. Each member shall serve for the term of appointment
32 until the member's successor is appointed. A member who has
33 completed a term of membership may be reappointed to the
34 commission. Vacancies in the commission shall be filled in the
35 same manner as the original appointments were made.

36 c. The commission shall take input from a broad range of
37 stakeholders, including from academia, consumer advocacy groups,
38 and small, medium, and large businesses affected by data privacy
39 policies, and shall make recommendations to the Legislature
40 concerning best practices for:

41 (1) identifying online services, products, or features likely to be
42 accessed by children;

43 (2) evaluating and prioritizing the best interests of children with
44 respect to their privacy, physical health, and mental health and well-
45 being and evaluating how those interests may be furthered by the
46 design, development, and implementation of an online service,
47 product, or feature;

1 (3) ensuring that methods used by social media platforms that
2 provide online services, products, or features likely to be accessed
3 by children are proportionate to the risks that arise from the data
4 management practices of the social media platforms, are privacy
5 protective, and minimally invasive;

6 (4) assessing and mitigating risks to children that arise from the
7 use of an online service, product, or feature;

8 (5) publishing privacy information, policies, and standards in
9 concise, clear language suited for the age of children likely to
10 access an online service, product, or feature;

11 (6) assessing how the commission and the Division of Consumer
12 Affairs may leverage the expertise of the division in the long-term
13 development of data privacy policies that affect the privacy, rights,
14 and safety of children online; and

15 (7) any other considerations or practices that the commission
16 deems appropriate.

17 d. Members of the commission shall be appointed within 30 days
18 after the effective date of P.L. , c. (C.) (pending before the
19 Legislature as this bill), and shall hold their initial organizational
20 meeting as soon as practicable, but no later than 30 days following
21 appointment of a majority of its authorized membership. At the
22 initial organizational meeting, the members shall elect a chairperson
23 and vice-chairperson from among the members of the commission
24 by a majority vote of the members present.

25 e. Members of the commission shall serve without compensation,
26 but may be reimbursed for travel and other necessary expenses
27 incurred in the performance of their duties, within the limits of
28 funds appropriated or otherwise made available to the commission
29 for its purposes. The Division of Consumer Affairs shall provide
30 professional, stenographic, and clerical staff to the commission, as
31 may be necessary for the commission to carry out its duties. The
32 commission shall be entitled to call upon the services of any State,
33 county, or municipal department, board, commission, or agency, as
34 may be available to it for its purposes.

35 f. A majority of the authorized members of the commission shall
36 constitute a quorum, and no action of the commission shall be taken
37 without the affirmative vote of a majority of the authorized
38 members of the commission, except for the election of the
39 chairperson and vice-chairperson at the initial organizational
40 meeting pursuant to subsection d. of this section.

41 g. The commission shall prepare a report on its findings and
42 recommendations and shall submit the report to the Governor and to
43 the Legislature, pursuant to section 2 of P.L.1991, c.164 (C.52:14-
44 19.1), no later than six months following its organizational meeting
45 and annually thereafter.

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47 8. This act shall take effect on the first day of the 24th month
48 after enactment.

STATEMENT

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This bill establishes social media privacy and data management requirements for children and also establishes the New Jersey Children’s Data Protection Commission.

The bill requires that before any new online service, product, or feature is offered to users residing in New Jersey, a social media platform that provides an online service, product, or feature likely to be accessed by children is required to, take certain actions as described in the bill, including completing a data protection impact assessment.

Under the bill, a data protection impact assessment is to address: (1) whether the design of the online product, service, or feature could harm children, including by exposing children to harmful, or potentially harmful, content on the social media platform; (2) whether the design of the online service, product, or feature could lead to children experiencing or being targeted by harmful, or potentially harmful, contacts on the social media platform; (3) whether the design of the online service, product, or feature could permit children to witness, participate in, or be subject to harmful, or potentially harmful, conduct on the social media platform; (4) whether the design of the online product, service, or feature could allow children to be party to or exploited by a harmful, or potentially harmful, contact on the social media platform; (5) whether algorithms used by the online service, product, or feature could harm children; (6) whether targeted advertising systems used by the online service, product, or feature could harm children; (7) whether and how the online service, product, or feature uses system design features to increase, sustain, or extend use of the social media platform by children, including the automatic playing of media, rewards for time spent, and notifications; and (8) whether, how, and for what purpose the online service, product, or feature collects or processes personal information of children.

The bill prohibits social media platforms that provide online service, product, or feature likely to be accessed by children from, among other things: (1) using the personal information of any child in a way that the social media platform knows, or has reason to know, is materially detrimental to the physical health, mental health, or well-being of a child; (2) profiling a child by default, unless certain criteria apply; or (3) collecting, selling, sharing, or retaining any personal information that is not necessary to provide an online service, product, or feature with which a child is actively and knowingly engaged, unless the social media platform can demonstrate a compelling reason that the collecting, selling, sharing, or retaining of the personal information is in the best interests of children likely to access the online service, product, or feature.

1 The bill provides penalties for social media platforms that fail to
2 comply with the provisions of the bill. Any social media platform
3 that violates the provisions of the bill is subject to an injunction and
4 liable for a civil penalty of not more than \$2,500 per affected child
5 for each negligent violation or not more than \$7,500 per affected
6 child for each intentional violation, which shall be assessed and
7 recovered only in a civil action brought by the Attorney General.

8 Finally, the bill establishes, within the Division of Consumer
9 Affairs, the New Jersey Children's Data Protection Commission
10 (commission). The commission shall consist of nine members, with
11 expertise in children's data privacy, children's physical health,
12 children's mental health and well-being, computer science, or
13 children's rights. Under the bill, three members would be
14 appointed by the Governor, President of the Senate, and the Speaker
15 of the Assembly, respectively. The commission is tasked with
16 taking input from a broad range of stakeholders and making
17 recommendations to the Legislature on best practices regarding
18 certain topics described in the bill. The commission is required to
19 submit a report of its findings and recommendations within six
20 months of its organizational meeting and annually thereafter.