ASSEMBLY, No. 5069

STATE OF NEW JERSEY
220th LEGISLATURE

INTRODUCED JANUARY 19, 2023

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SYNOPSIS
Prohibits social media platforms from using certain practices or features that cause child users to become addicted to platform.

CURRENT VERSION OF TEXT
As introduced.

(Sponsorship Updated As Of: 3/23/2023)
AN ACT prohibiting the use of certain addictive practices or features by social media platforms and supplementing Title 56 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. As used in P.L. , c. (C. ) (pending before the Legislature as this bill):
   “Addict” means to knowingly, recklessly, or negligently cause addiction through any act or omission or any combination of acts or omissions.
   “Addiction” means the use of one or more social media platforms, the use of which:
   a. indicates preoccupation or obsession with, or withdrawal or difficulty to cease or reduce the use of, a social media platform despite the child user’s desire to cease or reduce such use; and
   b. causes physical, mental, emotional, developmental, or material harm to the child user.
   “Child user” means a person who is younger than 18 years of age and uses one or more social media platforms.
   “Content” means any statements, materials, documents, photographs, graphics, or other information that is created, posted, shared, or otherwise transmitted on a social media platform, except that “content” does not include any information that is posted online exclusively for the purpose of cloud storage, transmitting documents, or file collaboration.
   “Public or semi-public internet-based service or application” excludes any internet-based service or application that is used to facilitate communication within a business or enterprise among employees or affiliates of the business or enterprise, provided that access to the service or application is restricted to employees or affiliates of the business or enterprise using the service or application.
   “Social media platform” or “platform” means a public or semi-public internet-based service or application that has users in this State, which service or application:
   a. allows users to construct a public or semipublic profile for the purposes of using the platform, populate a list of other users with whom the user shares a social connection through the platform, and post content viewable by other users of the platform; and
   b. is designed to connect users within the platform to facilitate social interactions, except that a service or application that provides email or direct messaging services shall not be considered to meet this criterion solely based on the existence of that functionality.

2. a. Except as otherwise provided in this section, a social media platform shall not use any practice, design, feature, or
affordance that the platform knew, or which by the exercise of reasonable care should have known, would cause child users to become addicted to the platform.

b. A social media platform shall not be deemed to violate the provisions of subsection a. of this section if:

(1) the social media platform demonstrates that the platform:
   (a) instituted and maintained an audit program in which the platform: (i) conducts quarterly audits of its practices, designs, features, and affordances to determine whether these practices, designs, features, or affordances cause, have the potential to cause, or contribute to the addiction of child users to the platform; and (ii) hires an independent third party to conduct an annual audit of its practices, designs, features, or affordances to determine whether these practices, designs, features, or affordances cause, have the potential to cause, or contribute to the addition of child users to the platform; and
   (b) if an audit determines that any practice, design, feature, or affordance used by the platform causes, has the potential to cause, or contributes to the addiction of child users, the platform has corrected the practice, design, feature, or affordance within 30 calendar days of the completion of the audit;

(2) the social media platform is controlled by a business entity that generated less than $100 million in gross revenue during the preceding calendar year; or

(3) the primary function of the social media platform is to enable users to play video games.

c. Nothing in this section shall be construed to impose liability on a social media platform for:

(1) any content that is generated, uploaded, or shared on the social media platform by a user of the platform;

(2) any content that is created solely by a third party and passively displayed by the social media platform;

(3) any information or content for which the social media platform was not, in whole or in part, responsible for creating or developing; and

(4) any conduct involving child users that would otherwise be protected by 47 U.S.C. §230, the First Amendment of the United States Constitution, or Article I, paragraph 6 of the State Constitution.

d. A social media platform that violates the provisions of subsection a. of this section shall be liable for a civil penalty, not to exceed $250,000 per violation, to be collected in a civil action by a summary proceeding under the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). The Superior Court and the municipal court shall have jurisdiction to enforce the provisions of the "Penalty Enforcement Law of 1999" pursuant to this subsection.
3. This act shall take effect on the first day of the third month following the date of enactment.

STATEMENT

This bill prohibits a social media platform from using any practice, design, feature, or affordance that would cause child users to become addicted to the platform. Under the bill, a social media platform would be liable for a civil penalty not to exceed $250,000 for each violation.

However, if a social media platform implements an audit program and corrects certain addictive practices, the platform would not be deemed to violate the provisions of the bill. Specifically, the social media platform would be required to conduct quarterly audits, and hire an independent third party to conduct an annual audit, to determine whether any of its practices, designs, features, or affordances would cause, have the potential to cause, or contribute to the addiction of child users to the platform. If so, the social media platform would also be required to correct the practice, design, feature, or affordance within 30 calendar days of the completion of the audit.

Additionally, certain social media platforms would not be subject to the requirements of the bill. These social media platforms would include any platform that is controlled by a business entity that generated less than $100 million in gross revenue during the preceding calendar year, or any platform whose primary function is to enable users to play video games.

The bill also clarifies that social media platforms would not be subject to liability under this bill for: (1) any content generated, uploaded, or shared by users of the platform; (2) any content that is created by third-party entities and passively displayed by the platform; (3) any information or content for which the platform was not responsible for creating and developing; and (4) any conduct involving child users that would otherwise be protected under certain federal law, the First Amendment of the United States Constitution, or Article I, paragraph 6 of the State Constitution.