

SENATE, No. 3493

STATE OF NEW JERSEY
220th LEGISLATURE

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Sponsored by:
Senator JOSEPH F. VITALE
District 19 (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.



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:

8
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
27 that are known to be of interest to children, including, but not
28 limited to, games, cartoons, music, and celebrities who appeal to
29 children; or
- 30 e. a significant amount of the audience of the online service,
31 product, or feature is determined, based on internal company
32 research, to be children.

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

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

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

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

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

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

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

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

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

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

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

- 1 timed plan to mitigate or eliminate those risks before the online
2 service, product, or feature is accessed by children;
- 3 c. estimate the age for which the use of the service, product, or
4 feature is appropriate for child users based on the risks that arise
5 from the data management practices of the social media platform or
6 apply the privacy and data protections afforded to children to all
7 consumers;
- 8 d. configure all default privacy settings provided to children by
9 the online service, product, or feature to settings that offer a high
10 level of privacy, unless the social media platform can demonstrate a
11 compelling reason that a different setting is in the best interests of
12 children;
- 13 e. provide any privacy information, terms of service, policies,
14 and community standards concisely, prominently, and using clear
15 language suited to the age of children likely to access that online
16 service, product, or feature;
- 17 f. if the online service, product, or feature allows the child’s
18 parent, guardian, or any other consumer to monitor the child’s
19 online activity or track the child’s location, provide an obvious
20 signal to the child when the child is being monitored or tracked;
- 21 g. enforce published terms, policies, and community standards
22 established by the social media platform, including, but not limited
23 to, privacy policies and those concerning children; and
- 24 h. provide prominent, accessible, and responsive tools to help
25 children or, if applicable, their parents or guardians exercise their
26 privacy rights and report concerns.
- 27
- 28 3. a. The Data Protection Impact Assessment required under
29 subsection a. of section 2 of P.L. 2021-10, c. 1 (C. 17:27) (pending before
30 the Legislature as this bill) shall identify the purpose of the online
31 service, product, or feature, how it uses children’s personal
32 information, and the risks of material detriment to children that
33 arise from the data management practices of the social media
34 platform. The Data Protection Impact Assessment shall address, to
35 the extent applicable, all of the following:
- 36 (1) whether the design of the online product, service, or feature
37 could harm children, including, but not limited to, exposing
38 children to harmful, or potentially harmful, content on the social
39 media platform;
- 40 (2) whether the design of the online service, product, or feature
41 could lead to children experiencing or being targeted by harmful, or
42 potentially harmful, contacts on the social media platform;
- 43 (3) whether the design of the online service, product, or feature
44 could permit children to witness, participate in, or be subject to
45 harmful, or potentially harmful, conduct on the social media
46 platform;

1 (4) whether the design of the online service, product, or feature
2 could allow children to be party to or exploited by a harmful, or
3 potentially harmful, contact on the social media platform;

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

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

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

13 (8) whether, how, and for what purpose the online service,
14 product, or feature collects or processes the personal information of
15 children.

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

18

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

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

37

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

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

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

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

1 (2) either of the following is true:

2 (a) profiling is necessary to provide the online service, product,
3 or feature requested and only with respect to the aspects of the
4 online service, product, or feature with which the child is actively
5 engaged; or

6 (b) the social media platform can demonstrate a compelling
7 reason that profiling is in the best interests of children;

8 (3) collect, sell, share, or retain any personal information that is
9 not necessary to provide an online service, product, or feature with
10 which a child is actively and knowingly engaged, unless the social
11 media platform can demonstrate a compelling reason that the
12 collecting, selling, sharing, or retaining of the personal information
13 is in the best interests of children likely to access the online service,
14 product, or feature;

15 (4) collect, sell, or share any geolocation information of children
16 by default unless the collection of that geolocation information is
17 strictly necessary for the social media platform to provide the online
18 service, product, or feature, in which case the information may only
19 be collected, sold, or shared during the time in which the
20 geolocation information is necessary to provide the online service,
21 product, or feature;

22 (5) collect any geolocation information of a child without
23 providing an obvious sign to the child during all times in which the
24 geolocation information is collected;

25 (6) use deceptive design practices to lead or encourage children
26 to provide more personal information than is reasonably necessary
27 to provide the online service, product, or feature, or to take any
28 action that the social media platform knows, or has reason to know,
29 is materially detrimental to the child's physical health, mental
30 health, or well-being; and

31 (7) use any personal information collected to estimate the age for
32 any other purpose or retain that personal information longer than
33 necessary to estimate age.

34

35 6. a. Except as provided in subsection d. of this section, any
36 social media platform that violates P.L. , c. (C.) (pending
37 before the Legislature as this bill) shall be subject to an injunction
38 and liable for a civil penalty of not more than \$2,500 per affected
39 child for each negligent violation or not more than \$7,500 per
40 affected child for each intentional violation, which shall be assessed
41 and recovered only in a civil action brought by the Attorney
42 General.

43 b. Any penalties, fees, and expenses recovered in an action
44 brought under P.L. , c. (C.) (pending before the Legislature
45 as this bill) shall be used to offset the costs incurred by the Attorney
46 General in connection with P.L. , c. (C.) (pending before
47 the Legislature as this bill).

1 c. If a social media platform is not in substantial compliance
2 with the requirements of P.L. , c. (C.) (pending before the
3 Legislature as this bill), the Attorney General shall provide written
4 notice to the social media platform, before initiating an action under
5 P.L. , c. (C.) (pending before the Legislature as this bill),
6 identifying the specific provisions of P.L. , c. (C.) (pending
7 before the Legislature as this bill) that the Attorney General alleges
8 have been or are being violated.

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

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

20

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

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

28 (a) three appointees by the Governor;

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

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

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

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

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

47 (2) evaluating and prioritizing the best interests of children with
48 respect to their privacy, physical health, and mental health and well-

- 1 being and evaluating how those interests may be furthered by the
2 design, development, and implementation of an online service,
3 product, or feature;
- 4 (3) ensuring that methods used by social media platforms that
5 provide online services, products, or features likely to be accessed
6 by children are proportionate to the risks that arise from the data
7 management practices of the social media platforms, are privacy
8 protective, and minimally invasive;
- 9 (4) assessing and mitigating risks to children that arise from the
10 use of an online service, product, or feature;
- 11 (5) publishing privacy information, policies, and standards in
12 concise, clear language suited for the age of children likely to
13 access an online service, product, or feature;
- 14 (6) assessing how the commission and the Division of Consumer
15 Affairs may leverage the expertise of the division in the long-term
16 development of data privacy policies that affect the privacy, rights,
17 and safety of children online; and
- 18 (7) any other considerations or practices that the commission
19 deems appropriate.
- 20 d. Members of the commission shall be appointed within 30
21 days after the effective date of P.L. , c. (C.) (pending
22 before the Legislature as this bill), and shall hold their initial
23 organizational meeting as soon as practicable, but no later than 30
24 days following appointment of a majority of its authorized
25 membership. At the initial organizational meeting, the members
26 shall elect a chairperson and vice-chairperson from among the
27 members of the commission by a majority vote of the members
28 present.
- 29 e. Members of the commission shall serve without
30 compensation, but may be reimbursed for travel and other necessary
31 expenses incurred in the performance of their duties, within the
32 limits of funds appropriated or otherwise made available to the
33 commission for its purposes. The Division of Consumer Affairs
34 shall provide professional, stenographic, and clerical staff to the
35 commission, as may be necessary for the commission to carry out
36 its duties. The commission shall be entitled to call upon the
37 services of any State, county, or municipal department, board,
38 commission, or agency, as may be available to it for its purposes.
- 39 f. A majority of the authorized members of the commission shall
40 constitute a quorum, and no action of the commission shall be taken
41 without the affirmative vote of a majority of the authorized
42 members of the commission, except for the election of the
43 chairperson and vice-chairperson at the initial organizational
44 meeting pursuant to subsection d. of this section.
- 45 g. The commission shall prepare a report on its findings and
46 recommendations and shall submit the report to the Governor and to
47 the Legislature, pursuant to section 2 of P.L.1991, c.164 (C.52:14-

1 19.1), no later than six months following its organizational meeting
2 and annually thereafter.

3

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

6

7

8

STATEMENT

9

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

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

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

41 The bill prohibits social media platforms that provide online
42 service, product, or feature likely to be accessed by children from,
43 among other things: (1) using the personal information of any child
44 in a way that the social media platform knows, or has reason to
45 know, is materially detrimental to the physical health, mental
46 health, or well-being of a child; (2) profiling a child by default,
47 unless certain criteria apply; or (3) collecting, selling, sharing, or
48 retaining any personal information that is not necessary to provide

1 an online service, product, or feature with which a child is actively
2 and knowingly engaged, unless the social media platform can
3 demonstrate a compelling reason that the collecting, selling,
4 sharing, or retaining of the personal information is in the best
5 interests of children likely to access the online service, product, or
6 feature.

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

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