

A Bill

State of Arkansas
94th General Assembly
Regular Session, 2023

SENATE BILL 396

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

Targeted Review -
Edits on page 2, 5, and 6
only.
RUSH
Need by 2:30 on 3/27

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.

REVIEWED
By rollcall at 10:15 pm, Mar 27, 2023

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 has or 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



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 profile;

23 (ii) Upload or create posts or content;

24 (iii) View posts or content of other account
25 holders; and

26 (iv) Interact with other account holders or users.

27 (B) "Social media company" does not include a company that
28 is controlled by a business entity that has generated less than one hundred
29 million dollars (\$100,000,000) in annual gross revenue;

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

32 (i) That has users in Arkansas; and

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

36 (b) A service or application that provides

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

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

7 (i) Email;

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

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

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

15 (c) Are not posted publicly;

16 (iii) A streaming service that:

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

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

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

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

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

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

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

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

3 (vii) Cloud storage;

4 (viii) Shared document collaboration;

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

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

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

12 (xii) Academic or scholarly research:

13 (a) If:

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

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

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

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

24 (1) Learning management system;

25 (2) Student engagement program; and

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

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

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

34
35 4-88-1102. Social media platforms – Reasonable age verification
36 methods – Parental consent required.

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

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

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

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

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

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

18 (B) Government-issued identification; or

19 (C) Any commercially reasonable age verification method.

20
21 4-88-1103. Liability for social media companies.

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

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

29 (b) A social media company that violates this subchapter is liable to
30 an individual for damages resulting from a minor accessing a social media
31 platform, including court costs and reasonable attorney's fees as ordered by
32 the court.

33 (c) A social media company that is found to have knowingly retained
34 identifying information of an individual after access to the social media
35 platform has been granted is liable to the individual for damages resulting
36 from retaining the identifying information, including court costs and

1 reasonable attorney's fees as ordered by the court.

2 (d) This section does not:

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

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

6 (3) Apply to cloud service providers.

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

16
17 4-88-1104. Liability for commercial entity or third party vendor.

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

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