

Assembly Bill No. 1027

CHAPTER 824

An act to amend Sections 22677 and 22945 of, and to add and repeal Sections 22945.7 and 22945.9 of, the Business and Professions Code, relating to social media platforms.

[Approved by Governor October 13, 2023. Filed with Secretary
of State October 13, 2023.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1027, Petrie-Norris. Social media platforms: drug safety policies.

Existing law, the California Consumer Privacy Act of 2018 (CCPA), as amended by the California Privacy Rights Act of 2020, an initiative measure, grants to a consumer various rights with respect to personal information, as defined, that is collected by a business, as defined. The CCPA requires a business that controls the collection of a consumer's personal information to inform consumers of the categories of personal information collected, the purposes for which the categories of personal information are collected or used, and the length of time the business intends to retain each category of personal information, as specified.

Existing law, the Electronic Communications Privacy Act, generally prohibits a government entity from compelling the production of or access to electronic communication information or electronic device information, as defined, without a search warrant, wiretap order, order for electronic reader records, subpoena, or order for a pen register or trap and trace device, except for emergency situations, as specified. The CCPA grants to a consumer various rights with respect to personal information, as defined, that is collected by a business, as defined, including the right to request that a business delete personal information about the consumer that the business has collected from the consumer. The California Privacy Rights Act of 2020, approved by the voters as Proposition 24 at the November 3, 2020, statewide general election, amended, added to, and reenacted the CCPA.

Existing law requires a social media company, as defined, to submit reports, as specified, starting no later than January 1, 2024, to the Attorney General, including, but not limited to, the current version of the terms of service for each social media platform owned or operated by the company, specified categories of content and what policies the social media company has for that platform to address that content, and data related to violations of the terms of service for each platform. Existing law requires the Attorney General to make all terms of service reports submitted pursuant to those provisions available to the public in a searchable repository on its official internet website.

This bill would add to those categories of content the distribution of controlled substances.

Existing law, until January 1, 2028, requires a social media platform to create and post a policy statement regarding the use of the social media platform to illegally distribute controlled substances, including a general description of its policies and procedures for responding to law enforcement inquiries. Existing law exempts from these requirements a business that generated less than \$100,000,000 in gross revenue during the preceding calendar year.

This bill would delete the above-described exemption and would require the policy statement to include a general description of the social media platform's policy on the retention of electronic communication information and policies and procedures governing when a platform proactively shares relevant information pertaining to distribution of a controlled substance, as specified. The bill would require a social media platform to retain content it has taken down or removed for a violation of its policy related to controlled substances, as specified, for a period of 90 days, except when the platform has a good faith belief that the content is related to the offering, seeking, or receiving of gender-affirming health care, gender-affirming mental health care, or reproductive health care that is lawful under California law.

The bill would specify that it does not alter the rights or obligations established in any other law, including the Electronic Communications Privacy Act and the California Consumer Privacy Act.

The people of the State of California do enact as follows:

SECTION 1. It is the intent of the Legislature that this act is not intended to interfere with the offering, seeking, or receiving of gender-affirming health care, gender-affirming mental health care, or reproductive health care that is lawful under California law.

SEC. 2. Section 22677 of the Business and Professions Code is amended to read:

22677. (a) On a semiannual basis in accordance with subdivision (b), a social media company shall submit to the Attorney General a terms of service report. The terms of service report shall include, for each social media platform owned or operated by the company, all of the following:

(1) The current version of the terms of service of the social media platform.

(2) If a social media company has filed its first report, a complete and detailed description of any changes to the terms of service since the previous report.

(3) A statement of whether the current version of the terms of service defines each of the following categories of content, and, if so, the definitions of those categories, including any subcategories:

(A) Hate speech or racism.

(B) Extremism or radicalization.

- (C) Disinformation or misinformation.
- (D) Harassment.
- (E) Foreign political interference.
- (F) Controlled substance distribution.

(4) A detailed description of content moderation practices used by the social media company for that platform, including, but not limited to, all of the following:

(A) Any existing policies intended to address the categories of content described in paragraph (3).

(B) How automated content moderation systems enforce terms of service of the social media platform and when these systems involve human review.

(C) How the social media company responds to user reports of violations of the terms of service.

(D) How the social media company would remove individual pieces of content, users, or groups that violate the terms of service, or take broader action against individual users or against groups of users that violate the terms of service.

(E) The languages in which the social media platform does not make terms of service available, but does offer product features, including, but not limited to, menus and prompts.

(5) (A) Information on content that was flagged by the social media company as content belonging to any of the categories described in paragraph (3), including all of the following:

(i) The total number of flagged items of content.

(ii) The total number of actioned items of content.

(iii) The total number of actioned items of content that resulted in action taken by the social media company against the user or group of users responsible for the content.

(iv) The total number of actioned items of content that were removed, demonetized, or deprioritized by the social media company.

(v) The number of times actioned items of content were viewed by users.

(vi) The number of times actioned items of content were shared, and the number of users that viewed the content before it was actioned.

(vii) The number of times users appealed social media company actions taken on that platform and the number of reversals of social media company actions on appeal disaggregated by each type of action.

(B) All information required by subparagraph (A) shall be disaggregated into the following categories:

(i) The category of content, including any relevant categories described in paragraph (3).

(ii) The type of content, including, but not limited to, posts, comments, messages, profiles of users, or groups of users.

(iii) The type of media of the content, including, but not limited to, text, images, and videos.

(iv) How the content was flagged, including, but not limited to, flagged by company employees or contractors, flagged by artificial intelligence

software, flagged by community moderators, flagged by civil society partners, and flagged by users.

(v) How the content was actioned, including, but not limited to, actioned by company employees or contractors, actioned by artificial intelligence software, actioned by community moderators, actioned by civil society partners, and actioned by users.

(b) (1) A social media company shall electronically submit a semiannual terms of service report pursuant to subdivision (a), covering activity within the third and fourth quarters of the preceding calendar year, to the Attorney General no later than April 1 of each year, and shall electronically submit a semiannual terms of service report pursuant to subdivision (a), covering activity within the first and second quarters of the current calendar year, to the Attorney General no later than October 1 of each year.

(2) Notwithstanding paragraph (1), a social media company shall electronically submit its first terms of service report pursuant to subdivision (a), covering activity within the third quarter of 2023, to the Attorney General no later than January 1, 2024, and shall electronically submit its second terms of service report pursuant to subdivision (a), covering activity within the fourth quarter of 2023, to the Attorney General no later than April 1, 2024. A social media platform shall submit its third report no later than October 1, 2024, in accordance with paragraph (1).

(c) The Attorney General shall make all terms of service reports submitted pursuant to this section available to the public in a searchable repository on its official internet website.

SEC. 3. Section 22945 of the Business and Professions Code is amended to read:

22945. (a) For purposes of this chapter, the following definitions apply:

(1) (A) “Content” means statements or comments made by users and media that are created, posted, shared, or otherwise interacted with by users on an internet-based service or application.

(B) “Content” does not include media put on a service or application exclusively for the purpose of cloud storage, transmitting files, or file collaboration.

(2) “Controlled substance” has the same meaning as that term is defined in Section 11007 of the Health and Safety Code.

(3) “Social media platform” means a public or semipublic internet-based service or application that has users in California and that meets both of the following criteria:

(A) (i) A substantial function of the service or application is to connect users in order to allow users to interact socially with each other within the service or application.

(ii) A service or application that provides email or direct messaging services shall not be considered to meet this criterion on the basis of that function alone.

(B) The service or application allows users to do all of the following:

(i) Construct a public or semipublic profile for purposes of signing into and using the service.

(ii) Populate a list of other users with whom an individual shares a social connection within the system.

(iii) Create or post content viewable by other users, including, but not limited to, on message boards, in chat rooms, or through a landing page or main feed that presents the user with content generated by other users.

(4) “Public or semipublic internet-based service or application” excludes a service or application 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.

(b) A social media platform that operates in the state shall create, and publicly post on the social media platform’s internet website, a policy statement that includes all of the following:

(1) The social media platform’s policy on the use of the social media platform to illegally distribute a controlled substance.

(2) A general description of the social media platform’s moderation practices that are employed to prevent users from posting or sharing electronic content pertaining to the illegal distribution of a controlled substance. The description shall not include any information that the social media platform believes might compromise operational efforts to identify prohibited content or user activity, or otherwise endanger user safety.

(3) A link to mental health and drug education resources provided by governmental public health authorities.

(4) A link to the social media platform’s reporting mechanism for illegal or harmful content or behavior on the social media platform, if one exists.

(5) A general description of the social media platform’s policies and procedures for responding to law enforcement inquiries, including warrants, subpoenas, and other court orders compelling the production of or access to electronic communication information, as defined in Section 1546 of the Penal Code.

(6) A general description of the social media platform’s policy on the retention of electronic communication information, as defined in Section 1546 of the Penal Code, including how long the platform retains that information.

(7) A general description of the social media platform’s policies and procedures governing when a platform proactively shares relevant information pertaining to the illegal distribution of a controlled substance.

(c) The disclosures required by this section may be posted separately or incorporated within another document or post, including, but not limited to, the terms of service or the community guidelines.

(d) A person or entity operating a social media platform in the state shall do all of the following:

(1) Update the policy statement created pursuant to subdivision (b) as necessary.

(2) Consider consulting with nonprofits, safety advocates, and survivors to assist in developing and supporting the policy statement created pursuant to subdivision (b).

(3) (A) A social media platform shall retain data on content it has taken action to take down or remove for a violation of a policy prohibiting the unlawful sale, distribution, amplification, or otherwise proliferation of controlled substances and related paraphernalia. A social media platform shall retain the content that violated a policy and the username of the violating account at issue for a period of 90 days.

(B) Notwithstanding subparagraph (A), a social media platform is not required to retain content removed in violation of the policy if there is a good faith belief that the content is related to the offering, seeking, or receiving of gender-affirming health care, gender-affirming mental health care, or reproductive health care that is lawful under California law.

SEC. 4. Section 22945.7 is added to the Business and Professions Code, to read:

22945.7. Nothing in this chapter alters the rights or obligations established in any other law, including, but not limited to, the Electronic Communications Privacy Act (Chapter 3.6 (commencing with Section 1546) of Title 12 of Part 2 of the Penal Code) and the California Consumer Privacy Act of 2018 (Title 1.81.5 (commencing with Section 1798.100) of Part 4 of Division 3 of the Civil Code).

SEC. 5. Section 22945.9 is added to the Business and Professions Code, to read:

22945.9. This chapter shall remain in effect only until January 1, 2028, and as of that date is repealed.