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BUSINESS AND PROFESSIONS CODE - BPC

DIVISION 8. SPECIAL BUSINESS REGULATIONS [18400 - 22949.92.2] (*Division 8 added by Stats. 1941, Ch. 44.*)

CHAPTER 31.5. Drug Safety Policies on Social Media Platforms [22945 - 22945.9] (*Chapter 31.5 added by Stats. 2022, Ch. 432, Sec. 1.*)

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.

(Amended by Stats. 2023, Ch. 824, Sec. 3. (AB 1027) Effective January 1, 2024. Repealed as of January 1, 2028, pursuant to Section 22945.9.)

22945.5. (a) (1) A person may seek an order requiring a social media platform to remove content that includes an offer to transport, import into this state, sell, furnish, administer, or give away a controlled substance in violation of Section 11352 of the Health and Safety Code.

(2) (A) If the social media platform has a reporting mechanism described in paragraph (4) of subdivision (b) of Section 22945, a person shall not bring an action pursuant to paragraph (1) until the person has notified the social media platform of the content and requested that it be removed through the reporting mechanism.

(B) A person may bring an action pursuant to paragraph (1) before 48 hours have passed since providing notice to a social media platform through the reporting mechanism, but the court shall not rule on the request for an order until 48 hours have passed from the provision of notice.

(C) The court may dismiss an action if the social media platform deletes the content relevant to the order sought pursuant to paragraph (1) before 48 hours have passed from the provision of notice under subparagraph (A).

(3) If the social media platform does not have a reporting mechanism described in paragraph (4) of subdivision (b) of Section 22945, a person may bring an action under paragraph (1), and a court may rule on the request for an order, at any time.

(b) (1) A court shall award court costs and reasonable attorney's fees to a prevailing plaintiff in an action brought pursuant to this section.

(2) Reasonable attorney's fees may be awarded to a prevailing defendant upon a finding by the court that the plaintiff's prosecution of the action was not in good faith.

(Added by Stats. 2023, Ch. 698, Sec. 1. (SB 60) Effective January 1, 2024. Repealed as of January 1, 2028, pursuant to Section 22945.9.)

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).

(Added by Stats. 2023, Ch. 824, Sec. 4. (AB 1027) Effective January 1, 2024. Repealed as of January 1, 2028, pursuant to Section 22945.9.)

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

(Added by Stats. 2023, Ch. 824, Sec. 5. (AB 1027) Effective January 1, 2024. Repealed as of January 1, 2028, pursuant to Section 22945.9. Note: Repeal affects Chapter 31.5, commencing with Section 22945.)