

Arkansas Passes the Social Media Safety Act



Lizzi Esparza
eesparza@mwlaw.com
(479) 464.5660

04/11/2023

On April 10, 2023, the Arkansas legislature passed the Social Media Safety Act (the “Act”). Pending the governor’s signature, the Act will take effect on September 1, 2023. See S.B. 396, 94th Gen. Assemb., Reg. Sess. (Ark. 2023). The Act will require a “social media company” to (1) use a third-party vendor to verify the age of account holders of its “social media platform,” and (2) obtain express consent of a parent or legal guardian prior to allowing an Arkansan under the age of 18 to become an account holder. *Id.* at § 4-88-1102. Knowing violations of these requirements are subject to a fine of \$2,500 per violation, enforceable by a prosecutor or the Attorney General.

A “reasonable age verification” may be completed using a digital copy of driver’s license or other government-issued identification, or any commercially reasonable age verification method. § 4-88-1102 (c)(2). The social media company and its third-party vendor are prohibited from retaining the information used to perform the age verification. § 4-88-1103.

The Act defines “social media platform” as a “public or semi-public internet-based service[s] or application[s]” that have users who reside in Arkansas and on which a “substantial function” is to connect users to allow them to “interact socially with each other within the service or application.” § 4-88-1101(8). Notably, there is no floor to the number of Arkansas users which triggers age verification, so a social media company with any Arkansas users is subject to the age-verification requirements.

The Act applies only to “social media companies,” defined as businesses that provide online forums where a user creates a public profile or account for the primary purpose of interacting socially with other profiles and accounts, uploading or creating posts or content, viewing posts or content of other account holders, and interacting with other account holders or users. § 4-88-1101(7). However, social media companies with less than \$100 million in annual gross revenue and “internet service provider[s]” are exempt from regulation. Also exempt are websites whose “predominant or exclusive function” is email, private direct messaging between sender and recipient, or online shopping, among numerous other carve-outs. The Act applies to Arkansas-based social media companies, as well as companies based elsewhere in the United States and even foreign-based companies.

Social media companies with Arkansas users will have a little less than five months to determine whether they fall within the scope of the Act and, for those that do, to select a third-party vendor and develop a plan to comply with Act’s requirements.