

AMENDED IN SENATE MARCH 10, 2022

SENATE BILL

No. 1018

Introduced by Senator Pan

February 14, 2022

An act to amend Section 22575 of the Business and Professions Code, add Chapter 5.9 (commencing with Section 11549.65) to Part 1 of Division 3 of Title 2 of the Government Code, relating to business.

LEGISLATIVE COUNSEL'S DIGEST

SB 1018, as amended, Pan. ~~Operators of commercial internet websites or online services: privacy policies. Platform Accountability and Transparency Act.~~

Existing law requires an operator of a commercial internet website or online service that collects personally identifiable information through the internet about individual consumers residing in California who use or visit its commercial internet website or online service to conspicuously post its privacy policy on its internet website, as prescribed. *Existing law establishes the Department of Technology within the Government Operations Agency and requires the Governor to appoint the Director of Technology to supervise the Department of Technology and report directly to the Governor on issues relating to information technology.*

~~This bill would make nonsubstantive changes to that provision.~~

This bill would establish within the department the Office of Platform Accountability and Transparency, which would be headed by a chairperson appointed by the director for a term of 4 years unless removed by the director. The bill would also establish within the department the Academic Board, which would be composed of an unspecified number of academics.

This bill would require the board, on or before July 1, 2023, to establish a process to solicit research applications from researchers in order to identify qualified research projects, as defined, and to prescribe guidelines and criteria used to determine how the board will review research applications seeking approval to be a qualified research project. The bill would require the board to, among other things, identify the qualified data and information, as defined, that a platform operator shall make available to a qualified researcher, as defined, pursuant to a qualified research project and the means by which the qualified data and information shall be made available. The bill would define the term “platform” to mean an internet service that is an internet website, virtual reality, desktop application, or mobile application that does certain things, including enables one or more users to generate content that can be viewed by other users of the platform, and that had at least 1,000,000 unique users in the state in at least 7 of the preceding 12 months.

This bill would require the office to, among other things, on or before 10 days after a qualified research project is referred to the office by the board, notify a platform operator that operates a platform that is the subject of the qualified research project that the platform operator shall provide qualified data and information pursuant to the qualified research project. The bill would prohibit a qualified researcher from using qualified data and information for a purpose other than the purpose of conducting research authorized under the qualified research project’s terms and under the privacy and cybersecurity provisions prescribed by the office.

This bill would also require a platform operator to disclose to the office, on or before July 1, 2023, and annually thereafter, among other things, certain information with respect to its use of algorithms and metrics, including a description of all product features that made use of algorithms during the previous calendar year.

The bill would require the chairperson of the office to, on or before July 1, 2024, and annually thereafter, submit to the director and to the Legislature a report of the operations of the office, as provided.

This bill would subject a violator of its provisions to a civil penalty of up to \$100,000 for each violation that may be recovered only in a civil action brought by the Attorney General.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

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

1 *SECTION 1. Chapter 5.9 (commencing with Section 11549.65)*
2 *is added to Part 1 of Division 3 of Title 2 of the Government Code,*
3 *to read:*

4
5 *CHAPTER 5.9. PLATFORM ACCOUNTABILITY AND TRANSPARENCY*
6 *ACT*

7
8 *11549.65. This chapter shall be known as the “Platform*
9 *Accountability and Transparency Act.”*

10 *11549.66. As used in this chapter:*

11 *(a) “Board” means the Academic Board.*

12 *(b) “Chairperson” means the chairperson of the Office of*
13 *Platform Accountability and Transparency.*

14 *(c) “Department” means the Department of Technology.*

15 *(d) “Director” means the Director of Technology.*

16 *(e) “Office” means the Office of Platform Accountability and*
17 *Transparency.*

18 *(f) “Personal information” has the same meaning as defined*
19 *in Section 1798.140 of the Civil Code.*

20 *(g) “Platform” means an internet service that meets both of the*
21 *following criteria:*

22 *(1) The service is an internet website, virtual reality, desktop*
23 *application, or mobile application that does all of the following:*

24 *(A) Permits a person to become a registered user, establish an*
25 *account, or create a profile for the purpose of allowing the user*
26 *to create, share, and view user-generated content through that*
27 *account or profile.*

28 *(B) Enables one or more users to generate content that can be*
29 *viewed by other users of the platform.*

30 *(C) Primarily serves as a medium for users to interact with*
31 *content generated by other users of the platform and for the*
32 *platform to deliver advertisements to users.*

33 *(2) The service had at least 1,000,000 unique users in the state*
34 *in at least 7 of the preceding 12 months.*

35 *(h) “Qualified data and information” means data and*
36 *information from a platform that is necessary to allow a qualified*
37 *researcher to carry out research contemplated by a qualified*
38 *research project.*

1 (i) “Qualified researcher” means a university-affiliated
2 researcher specifically identified in a qualified research project.

3 (j) “Qualified research project” means a research plan
4 approved by the board.

5 (k) “User” means a person that uses a platform, including an
6 advertiser or a seller, regardless of whether that person has an
7 account or is otherwise registered with the platform.

8 11549.67. (a) (1) There is established within the department
9 the Office of Platform Accountability and Transparency.

10 (2) The office shall be headed by a chairperson who shall be
11 appointed by the director and serve for a term of four years unless
12 removed by the director.

13 (b) The office may adopt regulations necessary to implement
14 this chapter.

15 (c) The office shall do both of the following:

16 (1) On or before 10 days after a qualified research project is
17 referred to the office by the board, the office shall notify a platform
18 operator that operates a platform that is the subject of the qualified
19 research project that the platform operator shall provide qualified
20 data and information pursuant to the qualified research project.

21 (2) (A) On or before 30 days after a qualified research project
22 is referred to the office by the board, the office shall establish
23 reasonable privacy and cybersecurity safeguards for the qualified
24 data and information that the platform operator is required to
25 disclose pursuant to this chapter.

26 (B) The reasonable privacy and cybersecurity safeguards
27 established pursuant to this paragraph may include any of the
28 following:

29 (i) Encryption of the data in transit and when not in use.

30 (ii) Delivery of the data in a format that is not reasonably
31 capable of being associated or linked with a particular individual.

32 (iii) Use and monitoring of a secure environment to facilitate
33 delivery of the qualified data and information to qualified
34 researchers while protecting against unauthorized use of the
35 qualified data and information.

36 (d) On or before July 1, 2024, and annually thereafter, the
37 chairperson shall submit to the director and to the Legislature,
38 pursuant to Section 9795, a report of the operations of the office
39 pursuant to this chapter, which shall include all of the following
40 information with respect to a qualified research project:

- 1 (1) *The identity of a qualified researcher and the institution*
2 *with which the qualified researcher is affiliated.*
- 3 (2) *The name of a platform operator required to provide*
4 *qualified data and information to a qualified researcher.*
- 5 (3) *The categories of qualified data and information a platform*
6 *operator was required to provide.*
- 7 (4) *The terms of the privacy and cybersecurity safeguards*
8 *required by the office.*
- 9 (5) *Recommendations for improvements to the operation of this*
10 *chapter in order to facilitate its aim of providing enhanced*
11 *researcher access to platforms.*
- 12 11549.68. (a) *There is hereby established within the*
13 *department the Academic Board that shall be composed of an*
14 *unspecified number of academics.*
- 15 (b) *On or before July 1, 2023, the board shall do both of the*
16 *following:*
- 17 (1) *Establish a process to solicit research applications from*
18 *researchers in order to identify qualified research projects.*
- 19 (2) *Prescribe guidelines and criteria used to determine how the*
20 *board will review research applications seeking approval to be a*
21 *qualified research project.*
- 22 (c) *Subject to subdivision (d), the board shall approve proposed*
23 *research that meets the criteria prescribed pursuant to subdivision*
24 *(b).*
- 25 (d) *The board shall not approve proposed research as a*
26 *qualified research project unless either of the following is true:*
- 27 (1) *Either of the following applies:*
- 28 (A) *The proposed research project has been approved by an*
29 *institutional review board at the researcher’s affiliated institution.*
- 30 (B) *The proposed research project has been deemed exempt*
31 *from institutional review board review.*
- 32 (2) *The proposed research concerns activity on a platform.*
- 33 (e) *The board shall consult with the office to assess whether*
34 *any privacy or cybersecurity risks associated with proposed*
35 *research can be adequately addressed through safeguards.*
- 36 (f) *The board shall identify the qualified data and information*
37 *that a platform operator shall make available to a qualified*
38 *researcher pursuant to a qualified research project and the means*
39 *by which the qualified data and information shall be made*
40 *available.*

1 (g) The board shall refer a qualified research project to the
2 office.

3 11549.69. (a) Upon the office's determination of final
4 safeguards for qualified data and information, a platform operator
5 shall provide the qualified data and information to qualified
6 researchers under the terms dictated by the office for the purpose
7 of conducting the qualified research project.

8 (b) A platform shall notify users of the information that the
9 platform operator is required to share with qualified researchers
10 pursuant to this chapter.

11 11549.70. (a) A qualified researcher shall use qualified data
12 and information only for the purpose of conducting research
13 authorized under the qualified research project's terms and under
14 the privacy and cybersecurity provisions prescribed by the office.

15 (b) A qualified researcher shall not attempt to reidentify, access,
16 or publish personal information derived from qualified data and
17 information.

18 (c) A cause of action arising solely from a qualified researcher's
19 access and use of qualified data and information in furtherance
20 of a qualified research project shall not be brought against a
21 qualified researcher who conducts a qualified research project in
22 compliance with this chapter and abides by the information sharing
23 and privacy standards established by this office pursuant to Section
24 11549.67.

25 (d) A qualified researcher, or a person working with a qualified
26 researcher pursuant to a qualified research project, may engage
27 in scraping with respect to a platform that has been given the
28 notice required by paragraph (1) of subdivision (c) of Section
29 11549.67.

30 11549.71. (a) At least 30 days before the proposed public
31 release of an analysis by a qualified researcher derived from a
32 qualified research project, the qualified researcher shall submit
33 a prepublication version of the analysis to any relevant platform
34 operator and the office for evaluation to confirm that the analysis
35 does not expose personal information, trade secrets, or confidential
36 commercial information, or otherwise violates applicable law.

37 (b) (1) The office or a platform operator that provided qualified
38 data and information with respect to a qualified research project
39 may object to the publication or release of an analysis derived

1 from the qualified research project that will expose personal
2 information or otherwise violate the law.

3 (2) An objection pursuant to this subdivision shall be made in
4 writing to the office within 15 days of the date that the qualified
5 researcher submits the prepublication version of the analysis
6 pursuant to subdivision (a).

7 (c) A qualified researcher may, within 120 days of an objection
8 pursuant to subdivision (b), do either of the following:

9 (1) Modify the analysis and resubmit the analysis to the office
10 and any platform operator involved for evaluation pursuant to this
11 section.

12 (2) (A) If the objection was made by a platform operator,
13 contest the objection.

14 (B) The office shall decide if publication of the analysis can
15 proceed within 50 days of notice of an objection pursuant to this
16 paragraph.

17 11549.72. (a) A platform operator shall disclose, on or before
18 July 1, 2023, and annually thereafter, to the office a statistically
19 representative sampling of public content that is weighted by the
20 number of impressions the content receives that includes all of the
21 following:

22 (1) The underlying content itself, including any public uniform
23 resource locator link to the content.

24 (2) The extent of dissemination of or engagement with the
25 content.

26 (3) The audience reached with the content.

27 (4) Whether the content has been determined to violate the
28 platform's policies.

29 (5) The extent to which the content was recommended by the
30 platform or otherwise amplified by platform algorithms.

31 (6) Whether an account responsible for the content posted
32 content deemed to violate the platform's policies in the past.

33 (7) Other similar information deemed necessary by the office
34 to accomplish the purposes of this subdivision.

35 (b) A platform operator shall disclose, on or before July 1, 2023,
36 and annually thereafter, to the office all of the following
37 information with respect to its use of algorithms and metrics:

38 (1) A description of all product features that made use of
39 algorithms during the previous calendar year.

- 1 (2) A summary of signals and features used as inputs to the
2 algorithms referred to in paragraph (1), including an explanation
3 of all user data incorporated into these inputs ranked or based on
4 the significance of their impact on the algorithms' outputs.
- 5 (3) A summary of data-driven models, including those based
6 on machine learning or other artificial intelligence techniques,
7 utilized in the described algorithms, including the optimization
8 objective of those models ranked based on the significance of their
9 impact on the algorithms' outputs.
- 10 (4) A summary of metrics used by the platform to score or rank
11 content ranked based on the significance of their impact on the
12 algorithms' outputs.
- 13 (5) A summary of metrics calculated by the platform operator
14 to assess product changes or new features with an assessment of
15 their relative importance in platform decisionmaking.
- 16 (6) Other similar information deemed necessary by the office
17 to accomplish the purposes of this subdivision.
- 18 (c) A platform operator shall disclose, on or before July 1, 2023,
19 and annually thereafter, to the office all of the following
20 information with respect to content moderation and content
21 violating platform policies:
- 22 (1) Statistics regarding the amount of content that the platform
23 determined violated its policies organized by all of the following:
- 24 (A) The violated policy.
- 25 (B) The action taken in response to the violation.
- 26 (C) The methods the platform used to identify the violating
27 content.
- 28 (D) The extent to which the content was recommended or
29 otherwise amplified by platform algorithms.
- 30 (E) The extent to which the user chose to follow the account
31 that originated or spread the violating content, and, if so, whether
32 that account had been recommended to the user by the platform.
- 33 (2) Statistics regarding the number of times violating content
34 was viewed by users and the number of users who viewed it.
- 35 (3) Estimates by the platform about the prevalence of violating
36 content.
- 37 (4) Other similar information deemed necessary by the office
38 to accomplish the purposes of this subdivision.

1 (d) A platform operator shall disclose, on or before July 1, 2023,
2 and annually thereafter, to the office all of the following
3 information with respect to any advertisement on the platform:

4 (1) The legal name and unique identifier of the advertiser that
5 placed the advertisement.

6 (2) A digital copy of the content of the advertisement displayed
7 or delivered to the user.

8 (3) Metrics about the extent of dissemination of or engagement
9 with the advertisement placed on the platform, including active
10 dates and the cost of the advertisement.

11 (4) Any targeting criteria selected by the advertiser and any
12 criteria used to deliver the advertisement.

13 (5) Metrics about the audience reached with the advertisement,
14 including nonidentifying demographic or geographic data.

15 (6) Information about whether the advertisement was determined
16 to violate platform policies.

17 (7) Other similar information deemed necessary by the office
18 to accomplish the purposes of this subdivision.

19 (e) This section does not require the dissemination of
20 confidential business information or trade secrets.

21 11549.73. A violation of this chapter shall subject the violator
22 to a civil penalty of up to one hundred thousand dollars (\$100,000)
23 for each violation that may be recovered only in a civil action
24 brought by the Attorney General.

25 SECTION 1. ~~Section 22575 of the Business and Professions~~
26 ~~Code is amended to read:~~

27 22575. (a) ~~An operator of a commercial internet website or~~
28 ~~online service that collects personally identifiable information~~
29 ~~through the internet about individual consumers residing in~~
30 ~~California who use or visit its commercial internet website or~~
31 ~~online service shall conspicuously post its privacy policy on its~~
32 ~~internet website, or in the case of an operator of an online service,~~
33 ~~make that policy available in accordance with paragraph (5) of~~
34 ~~subdivision (b) of Section 22577. An operator shall be in violation~~
35 ~~of this subdivision only if the operator fails to post its policy within~~
36 ~~30 days after being notified of noncompliance.~~

37 (b) ~~The privacy policy required by subdivision (a) shall do all~~
38 ~~of the following:~~

39 (1) ~~Identify the categories of personally identifiable information~~
40 ~~that the operator collects through the internet website or online~~

- 1 service about individual consumers who use or visit its commercial
2 internet website or online service and the categories of third-party
3 persons or entities with whom the operator may share that
4 personally identifiable information.
- 5 (2) If the operator maintains a process for an individual
6 consumer who uses or visits its commercial internet website or
7 online service to review and request changes to any of the
8 consumer’s personally identifiable information that is collected
9 through the internet website or online service, provide a description
10 of that process.
- 11 (3) Describe the process by which the operator notifies
12 consumers who use or visit its commercial internet website or
13 online service of material changes to the operator’s privacy policy
14 for that internet website or online service.
- 15 (4) Identify its effective date.
- 16 (5) Disclose how the operator responds to internet browser “do
17 not track” signals or other mechanisms that provide consumers
18 the ability to exercise choice regarding the collection of personally
19 identifiable information about an individual consumer’s online
20 activities over time and across third-party internet websites or
21 online services, if the operator engages in that collection.
- 22 (6) Disclose whether other parties may collect personally
23 identifiable information about an individual consumer’s online
24 activities over time and across different internet websites when a
25 consumer uses the operator’s internet website or service.
- 26 (7) An operator may satisfy the requirement of paragraph (5)
27 by providing a clear and conspicuous hyperlink in the operator’s
28 privacy policy to an online location containing a description,
29 including the effects, of any program or protocol the operator
30 follows that offers the consumer that choice.