

ACLU of Wisconsin Comments re: Assembly Bill 963

The ACLU of Wisconsin understands and shares the ultimate goal of protecting young people from harm and appreciates the opportunity to provide written comments highlighting the constitutional and practical concerns regarding this bill.

AB-963 raises concerns about free expression, privacy, and the constitutional rights of both minors and adults. While the stated intent is to protect young people online, the bill attempts to achieve that goal by imposing sweeping surveillance, mandatory age estimation, and administratively infeasible parental control systems.

The bill applies to social media platforms with at least one billion dollars in annual revenue and requires them to estimate the age of every user to determine whether that person is under eighteen. All new users must provide a date of birth as a condition of access. **If a platform is not sufficiently confident that a user is an adult, the user's account cannot exist without verifiable parental consent and may be terminated entirely.**

This structure burdens far more speech than the bill acknowledges. Age estimation applies to everyone. **Adults are subjected to ongoing scrutiny of their data and behavior so platforms can assess whether they are "likely" adults.** If a platform lacks 90% percent confidence, adult users risk losing access to speech, features, or even their accounts altogether. This directly burdens adult expression and the right to receive information, which the First Amendment squarely protects.

Although the bill claims that platforms need not collect new information, that assurance is misleading. Platforms are required to analyze and infer age from existing data collected "in the ordinary course of operation." Age estimation is not neutral or precise. It requires behavioral analysis, content inference, and probabilistic judgments that will inevitably be wrong for many users. At the same time, the bill mandates that all new users provide a date of birth. A date of birth is not a trivial data point. It is a highly sensitive identifier that is routinely used in identity verification, account recovery, and fraud. Making date of birth mandatory for adults eliminates anonymous and pseudonymous participation, which has long been recognized as essential to free expression, particularly for people discussing politics, religion, health, or personal identity.

If a user is determined to be a minor (including a 17 ½-year-old), the bill imposes a sweeping set of restrictions. Older teens are trusted to drive cars, work full-time jobs, and make decisions with real consequences for their safety and future. They could weeks or months away from voting, from moving across the country, and from being treated as full legal adults. Yet under this bill, not only will the account be unable to exist without verifiable parental consent, but privacy settings must be locked to the most restrictive defaults, and parents must be given access to a separate password to monitor and control the account. **This raises concerns regarding compelled parental surveillance and the false assumption that parental monitoring is *always* safe, appropriate, and beneficial.**

Today, political activism is often coordinated online on social media platforms. Limiting youth access to these types of forums by requiring parental consent will stifle political interest and engagement and infringe upon First Amendment rights.

The bill also requires platforms to terminate a minor's account upon request by the minor or the parent, on short timelines, and renders contracts void if parental consent was not obtained. Practically speaking, not only would a parent or guardian have to prove they approve of the minor's use of the platform, but also prove they are in fact the parent or guardian of the child. Some concerning tactics that have already been employed for this verification include: requiring a consent form to be signed by parents and returned via mail or fax; requiring a parent to use a credit card; and holding a video conference with the parent.¹ All of these methods prove to be onerous for the parent and do not take into account a large number of non-traditional families. It is not clear how these examples would function for children who have different last names than their parents, who are placed in out-of-home care, or those living with a legal guardian.

We can and should support young people online. But we cannot do so by mandating surveillance, eliminating anonymity, burdening adult speech, and assuming that every parent is a safe monitor of their child's inner life. This bill sacrifices fundamental rights in the name of protection, and in doing so, it undermines the very values it claims to advance.

¹ All of which require the parent or guardian to share more private information with these companies and rely on technology or access that the families may not have. <https://www.eff.org/deeplinks/2023/05/law-should-not-require-parental-consent-all-minors-access-social-media>