



TECHNET
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INNOVATION ECONOMY

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Dear Wisconsin State Senate Members:

On behalf of TechNet and our over 100 innovative member companies, **we respectfully request that you not sign on as a co-sponsor to Rep. Steffen's proposed LRB 1186/1, "Kids Online Safety Act,"** which creates an extensive new age verification system in tension with consumer privacy, impedes parental consent, and creates an expansive new private right of action.

TechNet is the national, bipartisan network of innovation economy CEOs and senior executives. Our diverse membership includes dynamic American businesses ranging from revolutionary start-ups to some of the most recognizable companies in the world. TechNet represents over five million employees and countless customers in the fields of information technology, e-commerce, sharing and gig economies, advanced energy, cybersecurity, venture capital, and finance.

Age Verification

This proposal if enacted would create the standard that a user is a child unless they can verify that they are not. With this bill's requirements, every Wisconsin resident must submit more personal information to social media platforms before they can create a new account or use their existing account. Age-verification is a complex challenge for our industry to address and requires consideration of how to properly balance the interests of privacy and security. Stringent age-verification as in this proposal requires the collection of more personal information such as birthdates, addresses, and government IDs. In order for a minor to gain access a parent or guardian must provide their own identification and personal information *and* personal information about the minor. The standards and requirements in this bill conflict with industry best practices regarding data minimization.

Efforts are ongoing to develop more privacy protective ways to verify age online. But until there are industry-wide tools available, age-verification will continue to have tradeoffs and be difficult to implement in practice.

Parental Consent and Controls

TechNet's members have empowered consumers and parents with a number of tools to customize their online experience. Parents have options when it comes to filtering the content their children experience online.

Additionally, there are many commercial, as well as free, content filtering and blocking solutions available that enable consumers to protect their families and themselves from illegal or inappropriate content as well as set time limits. These solutions are widely available as both integrated and independent solutions for a wide range of technologies.

However, this proposal goes beyond these already available tools and requires parental consent before a minor can even create or access their social media account. This bill steps in between parents and their children and makes the determination that parents have to take an extra step and provide their own personal information as well as that of their child's before they can allow their child access to social media.

Furthermore, this bill's requirements to allow parents access to any and all content that a minor has accessed is problematic. First, some social media platforms have time-limited content that disappears after a certain period. Mandating that this content be preserved for inspection by parents would be incredibly burdensome to re-engineer an entire platform and to retain massive amounts of data and information.

Second, allowing parents to access direct messages shared between users, even for minors, is a violation of their privacy. Privacy is a value held not just by the recipient of a message but also by the sender. Allowing access to a message therefore violates not only the recipient's privacy but also the sender's and vice versa. This proposal would set a concerning new standard regarding minor's privacy rights.

Enforcement

This proposal imposes a punitive amount of new liability on social media platforms that could have many unintended consequences. This bill creates a private right of action for any parent or guardian to sue social media companies for their child's access of social media and allows plaintiff attorneys to challenge the sufficiency of the company's age verification and to pounce on any mistake. This increase in liability could lead to companies deciding to not allow any Wisconsin minors on their platform in order to limit their risk.

Constitutionality

There are numerous constitutional problems with the proposal. It is in many ways similar to regulations state and local governments have attempted to enact to protect minors from effects of playing violent video games. Such laws have repeatedly been found unconstitutional. *American Amusement Machine Ass'n v. Kendrick*, 244 F.3d 572 (7th Cir. 2001); see also *Entertainment Merchants*

Association v. Henry, No. CIV-06-675-C, *3 (W.D. Okla. Sep. 17, 2007) (collecting cases).

The bill directly interferes with expressive rights of both the minors who will effectively be banned from social media services and the service providers themselves. The imposition of a private right of action and requirements to age verify all users of social media services interferes with constitutionally protected rights of adults and minors alike.

Children have First Amendment rights both to receive information and to express themselves. While protecting children from harm is an important interest, this proposal does not attempt to reasonably scope the restrictions on social media platforms to that goal, let alone to "narrowly tailor" the law as the Constitution requires. *Entertainment Software Ass'n v. Blagojevich*, 469 F.3d 641, 646-47 (7th Cir. 2006).

Additionally, the prohibitions against providing content suggestions in this proposal likely violate the First Amendment. Online service providers have a First Amendment right to make decisions about how to present the content on their sites, including through ranking and recommendation algorithms. The prohibitions against providing content suggestions in the proposal likely run afoul of this principle. For these reasons we believe a court is likely to find this proposal to be unconstitutional.

For the reasons stated within this letter, we encourage you not to sign onto this bill as a co-sponsor and to reject this legislation. Thank you for your consideration. If you have any questions regarding TechNet's concerns, please contact Tyler Diers, Executive Director of TechNet Midwest at tdiers@technet.org or 630-400-3439.

Sincerely,



Tyler Diers
Executive Director, Midwest
TechNet