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ACLU of Wisconsin Comments on Senate Bill 758

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.

Senate Bill 758 raises concerns about free expression, privacy, and the constitutional rights of both minors and adults. Specifically, p.5 lines 5-7 of the bill creates an "age verification" requirement for social media platforms, whereby platforms "shall employ a reliable, industry-accepted method approved by the department of justice" to determine whether a user of the platform is a minor.[1] While the government has a legitimate interest in protecting minors from harm, that "does not include a free-floating power to restrict the ideas to which children may be exposed."[2] In part for this reason, courts have struck down social media restrictions similar to SB-758 around the country.[3] And in a recent U.S. Supreme Court emergency docket concurrence involving a state social media age-verification law, Justice Kavanaugh wrote that under the Court's precedent, the law "is likely unconstitutional."[4]

The scope of platforms covered by the bill is extensive—the definition of "social media platform" includes any "public or semipublic online website, service or application" that 1) is used by a minor in Wisconsin, 2) "allows users to construct a public or semipublic profile for the purpose of using the website, service, or application," 3) "allows users to create or post content that is viewable by other users, including on message boards, in chat rooms, or through a landing page or main feed that presents the user with content generated by other users," and 4) "allows users to privately message each other as a significant part of the provision of the website, service, or application."

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[1] In 2024, New York enacted Senate Bill S7694, the Stop Addictive Feeds Exploitation ("SAFE") for Kids Act, which contains many similar provisions to SB-758. However, the Act will not take effect until 180 days after the New York Office of the Attorney General ("OAG") promulgates rules regarding the Act's implementation, and enforcement actions will not begin until at least 180 days after the Act's effective date. The OAG issued draft administrative rules in September 2025 open to public comment until December 1, 2025 and has one year following the close of public comment to finalize the rules. Several organizations that issued public comments raised concerns that the proposed regulations pose unintended risks to online expression and personal privacy; *see, e.g.,* https://www.nyclu.org/resources/policy/testimonies/comments-on-proposed-rules-re-safe-act.

[2] *Brown v. Entertainment Merchants Ass'n*, 564 U.S. 786, 794 (2011).

[3] *See NetChoice, LLC v. Griffin,* No. 23-5105, 2025 WL 978607 (W.D. Ark. Mar. 31, 2025), *appeal docketed*, No. 25-1889 (8th Cir. May 2, 2025); NetChoice, LLC v. Carr, 789 F.Supp.3d 1200 (N.D. Ga. 2025); *NetChoice, LLC v. Yost*, 778 F. Supp. 3d 923 (S.D. Ohio 2025), *appeal docketed*, No. 25-3371 (6th Cir. May 13, 2025); *NetChoice, LLC v. Bonta*, 770 F. Supp. 3d 1164 (N.D. Cal. 2025), *appeal docketed*, No. 25-2366 (9th Cir. Apr. 11, 2025); *NetChoice, LLC v. Reyes*, 748 F. Supp. 3d 1105 (D. Utah 2024), *appeal docketed sub nom*., *NetChoice, LLC v. Brown*, No. 24-4100 (10th Cir. Oct. 11, 2024).

[4] While the Court denied an application for interim relief against the Mississippi law without explanation, Justice Kavanaugh wrote in his concurrence, "it is no surprise that the District Court in this case enjoined enforcement of the Mississippi law and that seven other Federal District Courts have likewise enjoined enforcement of similar state laws." *NetChoice, LLC v. Fitch*, 145 S. Ct. 2658 (Kavanaugh, J. concurring), https://www.supremecourt.gov/opinions/24pdf/25a97_5h25.pdf.

While SB-758 does not expressly grant rulemaking authority to the Wisconsin Department of Justice, the agency would be charged with determining permissible "reliable, industry-acceptable methods" of verifying a user's age. Age "verification" schemes typically require all users—including adults— to submit a scan of a drivers' license or passport or upload a credit card number. Age "assurance" mechanisms may require users to provide personally identifying information, often biometric data (such as facial recognition or voice analysis).

With the risk of sensitive identity documents falling into the hands of bad actors due to data breaches,[5] and the very real threats of government surveillance and criminalization of dissent,[6] requiring adults to submit to mandatory age and identity gates in order to express themselves on platforms like X, Bluesky, and Reddit will inevitably chill constitutionally protected speech.

One alternative framework that avoids the significant privacy risks with age "verification" but still provides accountability for platforms is a standard of "actual knowledge" on behalf of a covered entity that a consumer is a minor. This standard is used in the "Community Health and Information Safety and Privacy Act"[7] recently introduced by the New Mexico legislature to protect *all* consumer data from exploitation by social media platforms, applications, and big corporations (and by extension, government actors), and includes provisions regarding default settings required on platforms for minors.

[5] "Hack of age verification firm may have exposed 70,000 Discord users' ID photos," The Guardian (Oct. 9, 2025), https://www.theguardian.com/media/2025/oct/09/hack-age-verification-firm-discord-users-id-photos; "Hackers Expose Age-Verification Software Powering Surveillance Web," The Rage (Feb. 19, 2026), https://www.therage.co/persona-age-verification/; "Online age-verification tools spread across U.S. for child safety, but adults are being surveilled," CNBC (March 8, 2026), https://www.cnbc.com/2026/03/08/social-media-child-safety-internet-ai-surveillance.html; "Online age checking is creating a treasure trove of data for hackers," The Conversation (Nov. 11, 2025), https://theconversation.com/online-age-checking-is-creating-a-treasure-trove-of-data-for-hackers-268586; "IDMerit data breach: 1 billion records of personal data exposed in KYC data leak," Cyber News (Feb. 18, 2026), https://cybernews.com/security/global-data-leak-exposes-billion-records/.

[6] "Trump's Orders Targeting Anti-Facism Aim to Criminalize Opposition," Brennan Center (Oct. 9, 2025), https://www.brennancenter.org/our-work/research-reports/trumps-orders-targeting-antifascism-aim-criminalize-opposition; "Homeland Security Wants Social Media Sites to Expose Anti-ICE Accounts," New York Times (Feb. 13, 2026), https://www.nytimes.com/2026/02/13/technology/dhs-anti-ice-social-media.html; "DHS AI Surveillance Arsenal Grows as Agency Defies Courts," Tech Policy Press (Feb. 1, 2026), https://www.techpolicy.press/dhs-ai-surveillance-arsenal-grows-as-agency-defies-courts/; "ICE Is Going on a Surveillance Shopping Spree," Electronic Frontier Foundation (Jan. 7, 2026), https://www.eff.org/deeplinks/2026/01/ice-going-surveillance-shopping-spree;

[7] https://www.nmlegis.gov/Sessions/26%20Regular/bills/senate/SB0053.HTML.