

Model Legislation for Age Verification of Social Media

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Part 1. General Requirements

Section 101. Definitions.

As used in this chapter:

- (1) “Account holder” means a person who has, or opens, an account or profile to use a social media company’s platform.
- (2) (a) “Interactive computer service” means an information service, information system, or information access software provider that:
 - (i) provides or enables computer access by multiple users to a computer server; and
 - (ii) provides access to the Internet.
- (b) “Interactive computer service” includes:
 - (i) a web service;
 - (ii) a web system;
 - (iii) a website;
 - (iv) a web application; or,
 - (v) a web portal.
- (3) “Minor” means an individual who is under the age of 18.
- (4) “Device setting” means an adjustment in a program or hardware device that changes it to the user’s preference.
- (5) “Post” means content that an account holder makes available on a social media platform for other account holders or users to view.
- (6) “Social media company” means a person or entity that:

- (a) provides a social media platform and
 - (b) is an interactive computer service.
- (7) "Social media platform" means an Internet website or application that is open to the public, allows a user to create an account, and enables users to communicate with other users for the primary purpose of posting information, comments, messages, images, collaborative online gaming, or videos. The term does not include:
- (A) a broadband internet access service as defined by the Federal Communications Commission;
 - (B) electronic mail service; or
 - (C) an online service, application, or website:
 - (i) that consists primarily of news, sports, entertainment, or other information or content that is not user generated but is preselected by the provider; and
 - (ii) for which any chat, comments, or interactive functionality is incidental to, directly related to, or dependent on the provision of the content described by subparagraph (i).
- (8)"User" means a person who has access to view all, or some of, the posts on a social media platform, but is not an account holder.
- (9) (a) "[State] account holder" means a person who is a [State] resident and an account holder.
- (b) "[State] account holder" includes a [State] minor account holder.
- (10) "[State] minor account holder" means a [State] account holder who is a minor.
- (11) "[State] resident" means an individual who currently resides in [State].

Section 102. Age requirements for use of social media platform— Parental consent

- (1) Beginning [insert date], a social media company may not permit a [State] resident who is a minor to be an account holder on the social media company's social media platform unless the [State] resident has the express consent of the minor's parent or guardian.
- (2) Notwithstanding any provision of this chapter, a social media company may not permit a [State] resident who is a minor to hold or open an account on a social media platform if the minor is ineligible to hold or open an account under any other provision of state or federal law.
- (3) (a) Beginning [insert date], a social media company shall verify the age of an existing or new [State] account holder and, if the existing or new account holder is a minor, confirm that a minor has consent as required under Subsection (5):
- (i) for a new account, at the time the [State] resident opens the account; or
 - (ii) for a [State] account holder who has not provided age verification as required under this section, within 14 calendar days of the [State] account holder's attempt to access the account.
- (b) If a [State] account holder fails to meet the verification requirements of this section within the required time period, the social media company shall deny access to the account:
- (i) upon the expiration of the time period; and
 - (ii) until all verification requirements are met.
- (4) (a) A social media company must perform reasonable age verification and obtain consent if necessary according to Section 5 before allowing access to the social media company's social media platform.
- (b) Reasonable age verification under Subsection 4(a) of this section cannot only involve a user's affirmation. A social media platform shall offer as many of the following types of authentications as feasible and efficient either itself or through a third-party as described in subsection 4(c):

- (i) a digitized identification card, including a digital copy of a driver's license;
 - (ii) government-issued identification;
 - (iii) financial documents or other documents that are reliable proxies for age; or
 - (iv) any other reliable age-authentication method.
- (c) Reasonable age verification may be conducted by a trusted third party other than the social media platform to verify age and consent and may employ cryptographic techniques such as zero knowledge proofs to preserve anonymity and protect privacy.
- (d) Reasonable age verification can be included or incorporated in device settings, provided the requirements of this section are met.
- (5) (a) If a user is a minor, then a social media company shall obtain valid consent from a parent or guardian of the minor to open or use an account as required under this section;
- (b) Valid consent must include:
- (i) The parent's or guardian's age verification under subsection 4 and
 - (ii) An oath or affirmation made under penalty of perjury [as set forth in INSERT RELEVANT STATE OATHS AND AFFIRMATION SECTION] that the consenting adult is the minor user's parent or guardian; or
 - (iii) The social media platform or third party shall collect information from the parent or guardian that proves the parent/guardian-child relationship. Such information may include:
 - (A) the child's birth certificate;
 - (B) adoption paperwork;
 - (C) medical or school records;
 - (D) court documents;
 - (E) a notarized statement attesting the relationship; or
 - (F) a form, provided by the social media company, for the minor's parent or guardian to sign and return to the digital service provider by common carrier, facsimile, or electronic scan.
- (6) A third-party vendor or a social media company that performs a reasonable age verification and/or parental consent confirmation shall not retain any identifying information of the individual(s) after access to the social media company has been granted.
- (7) A parent or guardian may revoke consent at any time upon written notification to the platform. Such notification shall include the requirements of valid consent set forth in section 5(b).

Section 103. Parental access

- (1) Beginning [insert date], a social media company shall provide a parent or guardian who has given parental consent for a [State] minor account holder with a password or other means for the parent or guardian to access the account, which shall allow the parent or guardian to:
- (a) view all posts the [State] minor account holder makes under the social media platform account; and
 - (b) view all responses and messages sent to or by the [State] minor account holder in the social media platform account;
 - (c) control the minor's privacy and account settings; and
 - (d) monitor and limit the amount of time the minor spends using the service.

OR ANOTHER MORE LIMITED OPTION THAN PARENTAL ACCESS

Section 103. Parental tools

(1) A social media company shall provide a parent or guardian who has given parental consent for a [state] minor account holder as provided in Section 102 with a means for the minor account holder or the parent or guardian to initiate account supervision. Such supervision shall include the ability for the parent to control privacy and account settings of the minor's account and monitor and limit the amount of time the minor spends on the service.

Part 2. Enforcement

There are two routes a state can take for enforcement. Both options are included below. The first is for a relevant state agency/division to exclusively enforce the law or to empower state prosecutors and the state attorney general to enforce.

Section 201.

OPTION #1: Enforce by State Division

Investigative powers of the division.

- (1) The division shall receive consumer complaints alleging a violation of Part 1, General Requirements.
- (2) A person may file a consumer complaint that alleges a violation under Part 1, General Requirements, with the division.
- (3) The division shall investigate a consumer complaint to determine whether a violation of Part 1, General Requirements, occurred.

Enforcement powers of the division.

- (1) Except for a private right of action under [insert section], the division has the exclusive authority to administer and enforce the requirements of Part 1, General Requirements.
- (2) The attorney general, upon request, shall give legal advice to, and act as counsel for, the division in the exercise of the division's responsibilities under this part.
- (3) (a) Subject to the ability to cure an alleged violation under Subsection (4):
 - (i) the division director may impose an administrative fine of up to \$2,500 for each violation of Part 1, General Requirements; and
 - (ii) the division may bring an action in a court of competent jurisdiction to enforce a provision of Part 1, General Requirements.
- (b) In a court action by the division to enforce a provision of Part 1, General Requirements, the court may:

- (i) declare that the act or practice violates a provision of Part 1, General Requirements;
 - (ii) issue an injunction for a violation of Part 1, General Requirements;
 - (iii) order disgorgement of any money received in violation of Part 1, General Requirements;
 - (iv) order payment of disgorged money to an injured purchaser or consumer;
 - (v) impose a civil penalty of up to \$2,500 for each violation of Part 1, General Requirements;
 - (vi) award actual damages to an injured purchaser or consumer; and
 - (vii) award any other relief that the court deems reasonable and necessary.
- (4) (a) At least 30 days before the day on which the division initiates an enforcement action against a person that is subject to the requirements of Part 1, General Requirements, the division shall provide the person with:
- (i) written notice that identifies each alleged violation; and
 - (ii) an explanation of the basis for each allegation.
- (b) Except as provided under Subsection (4)(c), the division may not initiate an action if the person:
- (i) cures the noticed violation within 30 days after the day on which the person receives the notice described in Subsection (4)(a); and
 - (ii) provides the division with a written statement that:
 - (A) the person has cured the violation; and
 - (B) no further violation will occur.
- (c) The division may initiate a civil action against a person that:
- (i) fails to cure a violation after receiving the notice described in Subsection (4)(a); or
 - (ii) after curing a noticed violation and providing a written statement in accordance with Subsection (4)(b), commits another violation of the same provision.
- (5) If a court of competent jurisdiction grants judgment or injunctive relief to the division, the court shall award the division:
- (a) reasonable attorney fees;
 - (b) court costs; and
 - (c) investigative fees.
- (6) (a) A person who violates an administrative or court order issued for a violation of Part 1, General Requirements, is subject to a civil penalty of no more than \$5,000 for each violation.
- (b) A civil penalty authorized under this section may be imposed in any civil action brought by the division, or by the attorney general on behalf of the division.
- (7) All money received for the payment of a fine or civil penalty imposed under this section shall be deposited into the [select State Fund] established in [Insert state law].

[OR]

OPTION #2: Enforce by State Prosecutors and Attorney General

- (1) As authorized under [insert state code], a prosecutor may initiate an enforcement action against a social media company that allegedly violates Part 1, General Requirements.
- (2) As authorized under [insert state code], the Attorney General may initiate an enforcement action against a social media company that allegedly commits a violation of Part 1, General Requirements.

Part 3. Private Right of Action for Violation of General Requirements¹

Section 301. Private right of action.

- (1) Beginning [insert date], a person may bring an action against an entity that does not comply with a requirement of Part 1, General Requirements.
- (2) A suit filed under the authority of this section shall be filed in the district court for the district in which a person bringing the action resides.
- (3) If a court finds that an entity has violated a provision of Part 1, General Requirements, the person who brings an action under this section is entitled to:
 - (a) an award of reasonable attorney fees and court costs; and
 - (b) an amount equal to the greater of:
 - (i) \$10,000 per each incident of violation; or
 - (ii) actual damages for financial, physical, and emotional harm incurred by the person bringing the action, if the court determines that the harm is a direct consequence of the violation or violations.
 - (c) punitive damages
- (4) For purposes of this section, a violation shall include
 - (i) the creation and/or retention of a minor user's account without following the procedures set forth in this Chapter; or
 - (ii) the retention of any identifying information of the individual(s), age-verification information, or consent or consent revocation information that a user or parent or guardian of a user provided to either a social media platform or a third party pursuant to the requirements of this Chapter, after access to the social media platform has been granted; or
 - (iii) the disclosure of any identifying information of the individual(s), age-verification information, or consent or consent revocation information that a user or parent or guardian of a user provided to either a social media platform or a third party pursuant to the requirements of this Chapter, unless required by law.

¹ If the bill were to omit public enforcement (Part 2) entirely and solely rely on a private right of action it would be much more difficult to challenge the law and make it more likely to withstand appeal. This was the successful strategy employed by the Texas anti-abortion bill.

Part 4. Waiver Prohibited

Section 401. Waiver prohibited.

A waiver or limitation, or a purported waiver or limitation, of any of the following is void as unlawful, is against public policy, and a court or arbitrator may not enforce or give effect to the waiver, notwithstanding any contract or choice-of-law provision in a contract:

- (1) a protection or requirement provided under this chapter;
- (2) the right to cooperate with the division or to file a complaint with the division; or
- (3) the right to a private right of action as provided under this chapter.

Part 5. Severability

Section 501. Severability.

- (1) Mindful of *Leavitt v. Jane L.*, 518 U.S. 137 (1996), in which in the context of determining the severability of a state statute the United States Supreme Court held that an explicit statement of legislative intent is controlling, it is the intent of the legislature that every provision, section, subsection, sentence, clause, phrase, or word in this Act, and every application of the provisions in this Act, are severable from each other.
- (2) If any application of any provision in this Act to any person, group of persons, or circumstances is found by a court to be invalid or unconstitutional, the remaining applications of that provision to all other persons and circumstances shall be severed and may not be affected. All constitutionally valid applications of this Act shall be severed from any applications that a court finds to be invalid, leaving the valid applications in force, because it is the legislature's intent and priority that the valid applications be allowed to stand alone.
- (3) If any court declares or finds a provision of this Act facially unconstitutional, when discrete applications of that provision can be enforced against a person, group of persons, or circumstances without violating the United States Constitution and Texas Constitution, those applications shall be severed from all remaining applications of the provision, and the provision shall be interpreted as if the legislature had enacted a provision limited to the persons, group of persons, or circumstances for which the provision's application will not violate the United States Constitution and Texas Constitution.
- (4) The legislature further declares that it would have enacted this Act, and each provision, section, subsection, sentence, clause, phrase, or word, and all constitutional applications of this Act, irrespective of the fact that any provision, section, subsection, sentence, clause, phrase, or word, or applications of this Act, were to be declared unconstitutional.

(5) If any provision of this Act is found by any court to be unconstitutionally vague, the applications of that provision that do not present constitutional vagueness problems shall be severed and remain in force.

(6) No court may decline to enforce the severability requirements of Subsections (1), (2), (3), (4), and (5) of this section on the ground that severance would rewrite the statute or involve the court in legislative or lawmaking activity. A court that declines to enforce or enjoins a state official from enforcing a statutory provision does not rewrite a statute, as the statute continues to contain the same words as before the court's decision. A judicial injunction or declaration of unconstitutionality:

- (a) is nothing more than an edict prohibiting enforcement that may subsequently be vacated by a later court if that court has a different understanding of the requirements of the Texas Constitution or United States Constitution;
- (b) is not a formal amendment of the language in a statute; and
- (c) no more rewrites a statute than a decision by the executive not to enforce a duly enacted statute in a limited and defined set of circumstances.

Effective date.

(1) This bill takes effect on [insert date].

About the Authors

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Michael Toscano is executive director of the Institute for Family Studies. Mr. Toscano is a leader in efforts nationwide to adopt laws to make technology safer for kids. He has written on family policy, tech policy, the uses of technology to reshape work, and the effect of technological change on America's republican form of government. His writing has appeared in the *Wall Street Journal*, *Newsweek*, the *New York Post*, *First Things*, *Compact*, *The American Conservative*, *National Review*, and elsewhere. Under his leadership, IFS has more than doubled its annual budget and quadrupled its research output. He is co-author with Peter Wood of "What Does Bowdoin Teach? How a Liberal Arts College Shapes Students" (2013).