

March 25, 2024

Finance, Ways, and Means Subcommittee
Tennessee General Assembly
600 Dr. M.L.K. Jr Blvd,
Nashville, TN 37243

Dear Chairperson Hicks and Members of the House Criminal Justice Subcommittee,

The Free Speech Coalition, an advocate for the rights of the adult industry and others engaged in constitutionally-protected sexual expression, writes to express our deep concern regarding HB 1614, currently scheduled for consideration in the House Criminal Justice Subcommittee on Wednesday, March 27th.

The adult industry whole-heartedly supports efforts to keep minors from material that is age-inappropriate or harmful. Aside from the moral and ethical issues involved with minors accessing our content, this access is a financial drain on our industry. Were there a way to easily remove minors from accessing our sites, while not significantly impacting the ability of legal adults to access our content, we would eagerly embrace it.

Unfortunately, HB 1614 has significant practical, technical and legal problems that render its ability to protect children limited, while creating dangerous privacy risks for adults, and violating the First Amendment rights of both consumers and producers.

Age-Verification Laws Have Encouraged Non-Compliance

It has now been over a year since Act 440 went into effect in Louisiana, and in that time we've learned the real effect of that law — and others like it. Following the enactment, major adult websites attempted to comply with the regulations, only to find that the vast majority of adult consumers — as many as 97% — refuse to submit their ID or otherwise engage in other age-verification protocols.¹

Submitting an ID online for sensitive content is simply not the same as flashing an ID at a checkout counter.² The process is expensive and complicated, and most consumers fear the real risks of surveillance, identity theft and exposure. Proponents of these laws have promised that this information will never be shared, but anyone who knows the history of the internet and

hacking, knows how unrealistic that is. In Utah and Louisiana, we have had reports of phishing scams, identity theft and extortion as a result of the law.

Additionally, while these bills prohibit third-party age-verification companies from storing or keeping information, they have no prohibitions on state governments, credit bureaus, employers, banks or other databases which supply the information from keeping, using or selling it.

As a result we have watched as adult consumers have instead flocked to non-compliant sites overseas — often pirate sites, unlikely to ever respond to a state lawsuit — and social media sites like Twitter, Reddit and 4chan which may not meet the 33% standard, but host large volumes of adult content. Rather than protect minors, these bills encourage the growth of these illegal sites, and the presence of adult content on non-adult platforms where minors are most likely to stumble upon it.

Age-Verification Bills Have Been Rejected by the Supreme Court

The issue of how best to protect minors online is not new, and from the beginning of the internet the Supreme Court has understood that we needed to balance the protection of minors with adults' constitutional right to access controversial, but legal speech and ideas. The Court and others like it have repeatedly ruled and reaffirmed that, unlike showing your ID at a gas station, age-verification does not pass the strict scrutiny required by the First Amendment. The risk of surveillance or exposure dissuades adults from their willingness to access legal speech. Last August, in a decision granting a preliminary injunction against a similar law in Texas, United States District Judge David Ezra was clear about the risks to consumers:

“Privacy is an especially important concern... because the government is not required to delete data regarding access, and one of the two permissible mechanisms of age-verification is through government ID. People will be particularly concerned about accessing controversial speech when the state government can log and track that access. By verifying information through government identification, the law will allow the government to peer into the most intimate and personal aspects of people’s lives. It runs the risk that the state can monitor when an adult views sexually explicit materials and what kind of websites they visit. In effect, the law risks forcing individuals to divulge specific details of their sexuality to the state government to gain access to certain speech. Such restrictions have a substantial chilling effect.”³

This is consistent with decades of legal precedent. In *Reno v. ACLU*, the Supreme Court found that the burdens posed by online age verification unnecessarily suppress access to protected speech, and that “less restrictive alternatives” — such as parental filters — “would be at least as effective” at barring minors from seeing adult material.⁴ Such filters are regularly used by our schools and workplaces, and adult businesses already voluntarily register our sites with them to

make sure our sites are effectively blocked. In fact, we pioneered the protocols that allow filters to easily do so.

Such filters are already available on phones, tablets, laptops and home WiFi networks. They are easy to set up and, for the most part, free to use. They put power in the hands of parents, rather than the government.

More importantly, filters can not be evaded by use of VPN — the virtual private networks that allow users to evade the regulations by accessing the internet through another state or country. Filters can be tailored to remove sites like Twitter and Reddit which allow adult content, but may not reach the threshold required for liability under this bill. Filters can also trigger “safe search” settings on search engines, which prevent adult content or sites from appearing in search results.

A study by Common Sense Media found that 40% of minors already use VPNs.⁵ In the past year we’ve seen usage of VPNs skyrocket in states like Utah, Virginia and Louisiana that have passed legislation similar to the bill you’re considering.⁶ Unfortunately, in an effort to protect minors, HB 1614 will push more residents of Tennessee — young and old — to employ such tools, and encourage growth and traffic to less regulated, more dangerous areas of the web.

Finding a Solution

If your goal is to keep minors from accessing adult content, our industry is willing and enthusiastic to work with you to achieve it. We understand the technology, the consumer landscape, and the practical solutions that can keep minors from encountering adult material while preserving the safety and privacy of residents of Tennessee and avoiding costly, time-consuming constitutional challenges.

Many of our members are eager to find a self-regulating solution that would encourage wider adoption by consumers. The history of these efforts have taught us that an effective system must:

- *Use a Shared Standard*
The system must be consistent across platforms and across states
- *Safeguard Privacy*
The system must not be vulnerable to hacking or disclosure.
- *Not Overly Burden Consumers*
Technologies that are familiar and easy-to-use encourage compliance. Overly burdensome technologies encourage traffic to illegal and pirate sites.

Unfortunately, we do not believe HB 1614 meets these criteria and we fear that consumers will at best simply evade the measures, or at worst fall prey to criminals eager to rob and extort them.

The Free Speech Coalition counts many age verification software providers among our members and has engaged a working group of websites, platforms, payment processors, technologists, and business owners to devise workable solutions. Our goal is to provide the greatest degree of reliable age verification with the least amount of risk to the largest number of people. No system will be perfect, but we are confident that we can make significant progress toward keeping children safe online.

We understand the impetus and the urgency of preventing minors from accessing adult content, and are eager to work with legislators on a bill that would be more effective but not trigger the privacy concerns, compliance risks and constitutional triggers associated with this bill. We are eager to work with you to find a solution and look forward to discussing the issue further, but join our colleagues at other civil rights organizations in asking you to vote no on HB 1614.

Sincerely,
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Citations

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