

September 26, 2023

RE: Opposition – House Bill 8 age-verification requirements

Dear Governor Cooper,

I'm writing on behalf of The Free Speech Coalition, the national trade association for the rights of adult businesses and workers, as well as millions of legal adult consumers in your state, to express our opposition to the age-verification mandate in House Bill 8 and offer our collaboration on a more effective solution.

We whole-heartedly support the goal of protecting young people from material that is age-inappropriate or harmful. Unfortunately, House Bill 8 has significant practical, technical and legal problems that will undermine its effectiveness in protecting children, create serious privacy risks and infringe on North Carolinians Constitutional rights.

In the past few months, we have currently filed suit in federal court over similar legislation in Texas, Louisiana and Utah, and have seen significant success on the merits. We believe that North Carolina would similarly be violating Constitutional protections with House Bill 8.

House Bill 8 Will Not Prevent Minors from Accessing Adult Content

House Bill 8 only addresses sites with more than 1/3 material harmful to minors, thus theoretically exempting the social media networks, forums, search engines and other spaces where the minors are most likely to stumble upon adult content.² Rather than preventing access by minors, House Bill 8 will increase the presence of adult content on social media and other non-adult platforms.

States that have passed similar legislation have subsequently seen massive growth of the use of Virtual Private Networks (VPNs). The only way that a website can determine whether a user is located in North Carolina is to use the geolocation data provided by the user's device. It is extremely simple to use a VPN to make it appear as though a user is located elsewhere, thereby evading age checks. In fact, a recent study found that 41% of middle schoolers already use a VPN to browse the internet.¹

House Bill 8 Will Endanger North Carolinians' Private Information

Compliance with House Bill 8 requires a user to transmit extremely sensitive data – such as digitized copies of their government-issued identification, biometric scans, or other forms of data used by commercial age verification software providers – over the internet.

While the bill laudably bars companies from retaining this information, that does not mitigate the dangers of transmitting it in the first place. The mere collection of this information opens North Carolinians up to the risk of data breaches. Even good actors and governments struggle to secure this type of data, as we've seen countless times in recent years. Just months after Louisiana's bill went into effect, the Office of Motor Vehicles suffered a cyberattack and data breach.

In addition to the risks inherent in transmitting this data to reputable age verification providers, the introduction of this kind of scheme creates a massive opportunity for criminals. Personal information regarding sex and sexuality is highly sensitive, and criminals are adept at exploiting this. In fact, one common extortion tactic reported by the FTC employs a threat to disclose a person's adult website browsing behavior.³

Even more troublingly, we are already receiving reports in Louisiana of potential identity theft, as criminals set up phishing scams where they pose as an adult site and solicit the upload of identification documents. We expect North Carolinians to be victimized with increasing frequency by criminals should the law pass.

House Bill 8 Will Result in Exposure to Illegal Content

Websites that are not bound by U.S. law will be the primary beneficiaries of this bill.

Legal adults, when confronted with a governmental request to verify identity during a visit to an adult site will either need to subject themselves to the privacy risks outlined above or go elsewhere. Minors who do not use a VPN to evade the law will do the same.

Platforms that have instituted age-verification in states like Louisiana have seen their in-state traffic drop 80 to 98%, as consumers employ VPNs or go to non-compliant or non-affected platforms.⁴

This will simultaneously punish responsible US-based sites that comply with the law and boost the growth of illicit websites and pirate platforms where they are at an enormous risk of encountering dangerous illegal content such as child sexual abuse material (CSAM) and non-consensual intimate imagery ("revenge porn"). Children will run the risk of becoming victimized themselves.

House Bill 8 is Unconstitutional

Adult content is First Amendment-protected speech and the Supreme Court has ruled repeatedly that restrictions on its production and consumption face the highest legal bar: strict scrutiny.

In *Reno v. ACLU* (1997), the Court struck down the statutory provisions of the Communications Decency Act (CDA) requiring use of age verification software as an unconstitutional content-based blanket restriction on speech:

“In order to deny minors access to potentially harmful speech, the CDA effectively suppresses a large amount of speech that adults have a constitutional right to receive and address to one another.”⁵

The Court found that the burdens posed by online age verification unnecessarily suppress access to protected speech, and that “less restrictive alternatives” — such as device-level filters on phones or laptops— ”would be at least as effective” at barring minors from seeing adult material. The Court pointed to parental controls/filters as a preferred method because they respect parents’ authority to determine what content is appropriate for their children.

Groups behind the bill, such as the American Principles Project, call for total ban on “pornography,” a term they use broadly to encompass all discussion of LGBTQ+ issues. For them, bills like House Bill 8 are the gateway to a much larger censorship project, and should be regarded as such.

How to Keep Children Safe

To be clear: the adult industry does not want minors on its sites. This is why we voluntarily utilize the “Restricted to Adults” (RTA) label on our sites and platforms. It was created by the nonprofit Association of Sites Advocating Child Protection (ASACP) to standardize a single, consistent, universally recognizable tag for adult material that allows it to be automatically blocked by device-level parental control and filtering software.

Parental controls and device-level filters are effective tools if parents and schools are willing to use them. Many of us use them in our own households to protect the young people in our lives from accessing adult content, even when using a VPN. This technology not only puts power where it should be – in the hands of parents and caregivers – it is widely available, fully supported by industry, and endorsed by the Supreme Court.

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 North Carolinians and avoiding costly, time-consuming constitutional challenges.

In recent discussions with Free Speech Coalition members, many expressed eagerness 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 House Bill 8 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.

Bills that so severely impact our First Amendment rights deserve serious consideration and debate. We ask that you veto House Bill 8, and direct the legislature to work with technology companies, privacy experts and our members to find an effective solution. We look forward to discussing the issue further.

Sincerely,



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Citations

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5. *Reno v. ACLU*, 521 U.S. 844 (1997)