



## MEMORANDUM

**TO:** The Pennsylvania Senate Communications & Technology Committee

**FROM:** Elizabeth Randol, Legislative Director, ACLU of Pennsylvania

**DATE:** September 18, 2023

**RE: OPPOSITION TO SB 22 P.N. 869 Amendment A01975 (HUGHES)**

**Bill summary:** [SB 22](#) (PN 869) A01975 would amend [Title 50](#) (Mental Health) to restrict access to social media by minors (under 16 years old) in the following ways:

1. Provides a cause of action to sue social media companies that “intentionally, knowingly, recklessly or negligently cause or encourage a minor to access content which the social media companies know or should have known subjects one or more minors to harm that is detrimental to the physical health, mental health or the wellbeing of a minor or that creates a reasonable likelihood of bodily injury or death to the minor.” This includes actual damages and punitive damages. A social media company can defend itself by showing it made a good faith effort to protect the minor from harm.
2. Requires the express consent of parents for minors to create social media accounts. The Office of the Attorney General will post consent forms online for parents to submit. The OAG will then send the completed forms to each social media platform. Parents can later revoke this consent, which requires that the account be suspended, disabled, or deleted.
3. Gives parents access to their children’s social media accounts.
4. If social media companies fail to follow the consent requirements, the bill allows companies to be sued by the Attorney General with statutory damages and a potential injunction for repeated violations.
5. Prohibits social media companies from using the minor’s data for any for-profit purpose, including selling it or mining it, without consent from the parent. This also includes an action permitting statutory damages and an injunction.
6. Requires social media platforms to create procedures to remove a minor’s data and delete it at the request of the minor or parent. This includes an action permitting statutory damages that accrue each day the social media platform does not comply.

**On behalf of over 100,000 members and supporters of the ACLU of Pennsylvania, I respectfully urge you to oppose Senate Bill 22.**

### **SB 22 would threaten the First Amendment rights of young people.**

Some parental consent requirements already exist in current law. COPPA ([Children's Online Privacy Protection Rule](#)) protects the privacy of people under 13 by [requiring parental consent](#) before certain private information is collected about them. COPPA’s concern, however, is with privacy and the exploitation of children’s data. Under recently proposed parental verification legislation like SB 22, the government’s interest is in protecting children from viewing harmful content—but 99.9% of that content is likely legal speech, and therefore these laws affect First Amendment rights.

The Supreme Court has repeatedly recognized that states and Congress cannot use concerns about children to ban them from expressing themselves or accessing information. Most recently in [Brown v. EMA](#), the Court ruled that while the State might have “the power to enforce parental prohibitions—to require, for example, that the promoters of a rock concert exclude those minors whose parents have advised the promoters that their children are forbidden to attend, . . . it does not follow that the state has the power to prevent children from

hearing or saying anything without their parents' prior consent" (564 U.S. 786, 795 n.3). In other words, although states and Congress can give parents tools to help, **the state cannot substitute itself for parents and prohibit all minors from engaging in First Amendment activity.**

### **SB 22 will likely have dire consequences for young people, especially vulnerable youth.**

While SB 22's intent to prevent harassment, exploitation, and mental health trauma for minors is laudable, this bill will likely result in dire, even if unintended, consequences for young people.

SB 22 would prohibit social media companies/platforms from causing harm to minors, which effectively would require them to employ broad filters to limit minors' access to certain online content. Content filtering is notoriously imprecise; [filtering used by schools](#) and [libraries](#) in response to the [Children's Internet Protection Act](#) has curtailed access to critical information such as sex education or [resources for LGBTQ+ youth](#). Online services would face substantial pressure to over-moderate, including from Attorneys General—on both sides of the aisle—seeking to score political points. At a time when books with LGBTQ+ themes are being [banned from school libraries](#) and people providing healthcare to trans children are being falsely accused of "[grooming](#)," SB 22 would cut off vital access to information for vulnerable youth.

### **SB 22 would invite parental surveillance, potentially denying kids access to online support or help.**

After providing consent to open an account, SB 22 would permit a parent or legal guardian to supervise their minor's account. Not every parent-child dynamic is healthy or constructive. As such, SB 22 risks subjecting teens who are experiencing domestic violence and/or parental abuse to additional forms of digital surveillance and control that could prevent these vulnerable youth from reaching out for help or support. And by creating strong incentives to filter and enable parental control over the content minors can access, SB 22 could also jeopardize young people's access to end-to-end encrypted technologies, which they depend on to access resources related to [mental health](#) and [to keep their data safe from bad actors](#).

### **Counterintuitively, SB 22 may require *more* data collection from *all* users.**

In order to comply with SB 22's requirement to approve the creation of a minor's account, social media companies will need to require verification of **everyone's** age or identity in order to distinguish adult users from minor users and to confirm the relationship between minor users and their parents/guardians. Verification may require users to provide platforms with personally identifiable information, such as date of birth and government-issued identification documents, which can threaten users' privacy, including through the risk of data breaches and chill their willingness to access sensitive information online because they [cannot do so anonymously](#).

### **SB 22 would define causing "harm" to minors in broad, subjective, and unenforceable ways.**

In the first half of the bill under Section 1110 (Cause of Action), SB 22 includes extremely problematic and vague criteria to hold social media companies and/or platforms liable for damages. Specifically, SB 22 would prohibit a social media company or a social media platform from "intentionally, knowingly, recklessly or negligently cause or encourage a minor to access content which the social media companies know or should have known subjects one or more minors to harm that is detrimental to the physical health, mental health or the wellbeing of a minor or that creates a reasonable likelihood of bodily injury or death to the minor."

- Who decides what constitutes risk of harm? Some might say anything involving LGBT people causes harm to their children; history lessons about slavery could harm a child's wellbeing; or content involving hunting with a firearm might adversely affect a child's mental health. **The standard is so vague and subjective that it is incapable of objective enforcement, leading to overbroad censorship that would likely violate the First Amendment to the U.S. Constitution.**

- Moreover, how can this kind of harm be anticipated or predicted? Harm will certainly differ from person to person and could include an endless range of content. This provision is also incapable of reasoned and objective enforcement.

### **SB 22 would deprive parents of their right to raise their children without government interference.**

Though not perfect, many social media platforms already have safety features that allow parents to supervise, monitor, and limit their children's online activity. Instagram allows parents to [supervise](#) the accounts of young people. TikTok allows parents to [pair](#) their accounts with their child's account to set safety features. And YouTube allows parents to create [supervised accounts](#) linked to their Google account. Such features may not stop young people from accessing social media platforms, but they do offer an option for parents who wish to supervise their children online. SB 22, though well-intentioned, replaces parents' ability to decide for themselves what they will allow their children to access online (the vast majority of which is legal speech) with tech company-curated content that complies with state-regulated requirements or restrictions.

### **SB 22 begs important monitoring and enforcement questions.**

Under Section 1132 (Prohibitions) in SB 22, it is unclear how the mining or sale of data will be monitored or how these provisions will be enforced. Data restrictions in SB 22 would also prohibit the use of minors' personal data in a social media company's "algorithmic recommendations." First, this would be nearly, if not entirely, impossible to monitor, much less enforce, since algorithms that fuel social media platforms are proprietary. Second, there are numerous types of algorithms that "recommend" content to users—algorithms based on location and language; recommended content based on what friends are sharing; content based on timeliness or recency; content based on the quality or veracity of linked content, and so on. Are social media platforms prohibited from making any of these types of algorithmic recommendations?

Finally, it is not clear whether, how, or to what extent social media companies can be regulated at the state level. SB 22 joins [similar efforts](#) in states like [Arkansas](#), [Ohio](#), [Connecticut](#), [Texas](#), [New Jersey](#), [Louisiana](#), and most recently, [Utah](#), that have introduced bills requiring social media companies to adhere to a wide variety of restrictions, content moderation, and other limitations, all with their own penalties. In fact, SB 22 would require each social media company to "post in a conspicuous place on each of their social media platforms notice that express consent by the minor's parent or legal guardian shall be required prior to opening an account. Any electronic consent included in a social media platform must include the same information as required by the form developed by the Attorney General's office under subsection (b)." Expecting all social media companies to include Pennsylvania-required information on their consent forms is unrealistic. And creating a 50-state patchwork of regulations is an unworkable, if legally sustainable, solution.

Rather than age-gating privacy settings and safety tools to apply only to minors, legislators should instead focus on ensuring that all users, regardless of age, benefit from strong privacy protections by [passing comprehensive privacy legislation](#).

**For these reasons, we urge you to oppose Senate Bill 22.**