

## Publications

### Breaking Down Novel Va. Social Media Law For Minors

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On May 2, Virginia enacted S.B. 854, a bill<sup>1</sup> that amends the state's comprehensive privacy law, the Virginia Consumer Data Protection Act,<sup>2</sup> to impose stringent limitations on minors' use of social media. The amendments come into effect on Jan. 1, 2026.

#### Virginia Bill Requirements

The bill will require social media platform operators to determine whether users are minors under the age of 16 by using commercially reasonable methods, such as a neutral age screen.

Notably, the bill requires controllers and processors to treat a user as a minor under 16 if the user's device communicates or signals that the user is a minor, including through "a browser plug-in or privacy setting, device setting, or other mechanism." The bill prohibits social media platform operators from using the information collected to determine a user's age for any other purpose.

For users determined to be minors, social media platform operators must limit such users' social media use to no more than one hour per day, unless a parent consents to increase the daily limit. The bill prohibits social media platform operators from altering the quality or price of any online service, product, or feature due to the social media time use restrictions set forth in the bill.

The bill defines "social media platform" as a "public or semipublic Internet-based service or application" with users in Virginia that allows users to:

- Interact socially with each other;

- Construct a public or semipublic profile;
- Populate a public list of other users with whom such user shares a social connection; and
- Create or post content viewable by other users, including content on message boards, in chat rooms, or through a landing page or main feed that presents the user with content generated by other users.

Exempted from the definition of "social media platform" is an online service or application that: (1) "exclusively provides email or direct messaging services"; or (2) "consists primarily of news, sports, entertainment, e-commerce, or content preselected by the provider and not generated by users, and for which any chat, comments, or interactive functionality is incidental to, directly related to, or dependent on the provision of such content, or that is for interactive gaming."

In passing the final version of the bill, the Virginia Legislature declined<sup>3</sup> to adopt recommendations by Gov. Glenn Youngkin that would have strengthened its children's privacy protections, including by raising the covered user age from 16 to 18 and disabling infinite scroll and auto play features.

The bill comes on the heels of recent children's privacy amendments to the Virginia Consumer Data Protection Act that took effect on Jan. 1.<sup>4</sup>

## Other State Social Media Laws Concerning Minors

While the Virginia bill is novel in setting a one-hour daily limit on minors' use of social media, it joins over a dozen other states that have passed legislation regulating minors' use of social media, including Arkansas, California, Connecticut, Florida, Georgia, Louisiana, Mississippi, Nebraska, New York, Ohio, Tennessee, Texas and Utah.

Many of these state laws require users' age verification. While most of the laws place the onus of age assurance on the social media platform operator, two states — Utah and Texas — require app store providers to verify the age of users and share that information with third-party app developers.

This requirement creates compliance burdens for social media operators and app store providers alike, and increases privacy and security risks associated with the collection of sensitive information to prove identity (e.g., date of birth, government ID numbers, biometric data).

The proliferation of state laws requiring age verification likely will lead to an industry-standard method that is widely used, but such a universal method does not yet exist. The lack of a universal standard could lead to a disjointed approach and user friction.

In addition to age verification, many of the laws require parents to provide consent for the creation of accounts for minors. The term "minor" ranges in age from under 18 to under 16 years of age, depending on the law, and requires the provision of parental controls.

While companies that target their online services to children under 13 likely already have processes in place to obtain verifiable parental consent under the federal Children's Online Privacy Protection Act, these new laws will impose parental consent requirements for social media services used by teenagers, a population that historically has not required parental consent.

Additionally, similar to Virginia, a number of these state laws, including in California, Connecticut, New York and Utah, regulate social media features deemed to be addictive or otherwise harmful, such as infinite scroll, addictive feeds, unsolicited adult messaging, late-night notifications, and usage during school hours or late evening hours.

Many of these laws, including in Connecticut, Louisiana, Maryland and Utah, also limit or restrict the processing of sensitive data (e.g., precise geolocation data) and the serving of targeted ads to users who are minors.

## Legal Challenges

Many of these laws have been challenged on First Amendment grounds, particularly from industry groups like NetChoice.

To date, social media laws concerning minors in a number of states, including Arkansas,<sup>5</sup> California,<sup>6</sup> Florida,<sup>7</sup> Georgia,<sup>8</sup> Louisiana,<sup>9</sup> Mississippi,<sup>10</sup> Ohio,<sup>11</sup> Tennessee,<sup>12</sup> Texas<sup>13</sup> and Utah,<sup>14</sup> have been enjoined following legal challenges.

It remains to be seen whether the Virginia bill's social media amendments to the Virginia Consumer Data Protection Act will face similar legal challenges.

Following the U.S. Supreme Court's June 27 ruling in *Free Speech Coalition v. Paxton*, however, challenges to social media laws concerning minors, at least with respect to age verification, may be less successful. The ruling upheld a Texas law requiring age verification for access to adult websites, potentially setting a precedent for other states that have passed similar legislation, including Virginia.

The court held that the Texas law, which requires websites to verify users are 18 or older to access sexually explicit material harmful to minors, is subject to intermediate scrutiny under the First Amendment and survives that standard. This means the law is constitutional because it serves an important government interest (protecting minors from harmful content) and does not unduly restrict the free speech rights of adults.

The court explained that "adults have no First Amendment right to avoid age verification." While the holding was limited to a state law regulating minors' access to sexually explicit content, states may rely on this precedent to argue that social media contains content that is harmful to minors, and therefore laws regulating minors' access to and use of social media platforms similarly should be subject to intermediate scrutiny review.

This certainly is a space to watch following this significant Supreme Court decision.

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1. <https://lis.virginia.gov/bill-details/20251/SB854/text/CHAP0703>
2. <https://www.hunton.com/privacy-and-information-security-law/virginia-becomes-the-second-u-s-state-to-enact-major-privacy-legislation>
3. <https://www.hunton.com/privacy-and-information-security-law/virginia-governor-recommends-amendments-to-strengthen-childrens-social-media-bill>
4. <https://www.hunton.com/privacy-and-information-security-law/virginias-new-protections-for-children-go-into-effect>
5. NetChoice LLC v. Griffin <https://netchoice.org/netchoice-v-griffin/>
6. NetChoice LLC v. Bonta <https://netchoice.org/netchoice-v-bonta-california-2024/>
7. CCIA & NetChoice v. Uthmeier <https://netchoice.org/ccia-netchoice-v-moody-2024/>
8. NetChoice LLC v. Carr <https://netchoice.org/netchoice-v-carr-georgia-sb-351/>
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11. NetChoice v. Yost <https://netchoice.org/netchoice-v-yost/>
12. NetChoice v. Skrmetti <https://netchoice.org/netchoice-v-skrmetti-tennessee/>
13. CCIA & NetChoice v. Paxton <https://netchoice.org/netchoice-and-ccia-v-paxton/>
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