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## Protecting Kids Online – Part II



By Julia Jacobson, Alan Friel & Sasha Kiosse on February 27, 2024

In 2023, we analyzed the laws in **Arkansas**, **Texas** and **Utah** that require age verification and parental consent before allowing minors to create accounts on social media and other interactive platforms. A similar law – **Secure Online Child Interaction And Age Limitation (SOCIAL) Act** – was passed in Louisiana, which has an in-force date of July 1, 2024. Ohio legislators also enacted

the **Parental Notification by Social Media Operators Act** (Ohio Act). All of these laws have requirements that are similar to the proposed federal law titled “Kids Online Safety Act” (**KOSA**), which we explain in a **companion post**).

We also **reported** on the constitutional challenges to the Arkansas Social Media Safety Act (SMSA). NetChoice, an industry group, sued Arkansas, calling SMSA “the latest attempt in a long line of government efforts to restrict new forms of expression based on concerns that they harm minors.” NetChoice’s complaint **alleges** that SMSA violates Arkansans’ First Amendment rights and also contravenes the **Commerce Clause** of the U.S. Constitution by regulating “commercial and speech-related activities that occur wholly outside Arkansas” (Count Four), among other arguments. SMSA was preliminarily **enjoined** on August 31, 2023.

NetChoice also **sued** the State of Ohio to enjoin enforcement of the Ohio Act. On January 9, 2024, U.S. District Court Judge Algenon Marbley issued an **Opinion and Order** preventing Ohio’s Attorney General from enforcing the Ohio Act. On December 18, 2023, NetChoice filed a similar **lawsuit** in Utah’s U.S. District Court against Utah’s Attorney General seeking to enjoin enforcement of Utah’s SMRA.

Despite these federal injunctions, Florida’s legislature **just** (February 23, 2024) passed a **law** requiring certain social media platforms to prohibit certain Florida minors from creating new accounts and to verify the age of account holders. The Florida law consists of three operative sections that take effect on July 1, 2024. Section 1 relates to age verification for minor social accounts and certain parental controls, Section 2 relates to age verification for online access to “material harmful to minors and Section 3 sets out the requirements for an “anonymous age verification method.” The Florida Attorney General’s Office may issue regulations for Part 1 and Part 2.

### **Section 1**

- Section 1 applies to a “social media platform”, which is defined as online forum that uses “algorithms” or has “addictive features” (Fla.Stat.§ 501.1736(1)(g)). If 10% of the “daily active users” (i.e., unique users who use the social media platform at least “80% of the days during the previous 12 months” (Fla.Stat.§ 501.1736(1)(d)) who are under age 16 use the social media platform an average of at least 2 hours per day, then the social media platform must:
  - i. Not enter into a “contract” with the user to become an account holder, which is defined as a Florida resident identifiable by a unique identifier (Fla.Stat.§ 501.1736(2)(a)1); allowing a user to use the social media platform is deemed entering into a contract with the minor (Fla.Stat. § 501.1736(7))

- ii. Verify the age of each account holder and deny an account to anyone who is not verified as age 16 or older (Fla.Stat.§ 501.1736(2)(a)2)
  - iii. Terminate the account of an account holder that the social media platform knows or “has reason to believe” is under age 16 but subject to the account holder’s right to dispute termination by verifying age (Fla.Stat.§ 501.1736(3)(b)1)
  - iv. Allow the minor or the minor’s parent to terminate the account (Fla.Stat. § 501.1736(3)(b)2-3)
  - v. Permanently delete and personal information associated with the terminated account unless required by law to retain (Fla.Stat.§ 501.1736(3)(b)4).
- Age verification must use a “standard” method” and/or an “anonymous age verification method” (described below).
  - A knowing or reckless violation of the above requirements is subject to enforcement by the Florida Attorney General’s Office with civil penalties up to \$50,000 per violation plus attorney fees and court cost plus punitive damages for a consistent pattern of violation.
  - A private right of action in the name of the minor is available if the social media platform fails to terminate the account within the required time, i.e., within five (5) business days (for a minor’s request) and 10 business days (for a parent’s request) (Fla.Stat.§ 501.1736(4)(a)). The court may award up to \$10,000 per claimant if the civil action is brought within one year after the violation.

## Section 2

- Any business that operates an online service through which the business knowingly and intentionally publishes or distributes material harmful to minors online must use an anonymous age verification method (described below) to prevent access to minors (under age 18). The online service also must include 33.3% or more of material harmful to minors.
- In Section 2, material harmless to minors is broadly and indefinitely defined as material that:
  - “The average person applying contemporary community standards would find, taken as a whole, appeals to the prurient interest;
  - Depicts or describes, in a patently offensive way, sexual conduct as specifically defined in **s. 847.001(19)**; and
  - When taken as a whole, lacks serious literary, artistic, political, or scientific value for minors.

- Bona fide news and public interest broadcasts and sources and ISPs and their employees are excluded.
- A knowing or reckless violation of Section 2 requirements is subject to enforcement by the Florida Attorney General's Office with civil penalties up to \$50,000 per violation plus attorney fees and court cost plus punitive damages for a consistent pattern of violation. A private right of action in the name of the minor Floridan is available if the operator fails to prohibit or block the material harmful to minors. The court may award up to \$10,000 per claimant if the civil action is brought within one year after the violation.

### Section 3

- In Fla.Stat. § 501.1738, an "anonymous age verification method" must be conducted by a U.S. non-governmental independent third party. The third party is not permitted to retain, use or share personal information for any purpose other than age verification and must deploy reasonable security procedures to protect the personal information from unlawful processing. The Florida law does not provide any specifications for a "standard age verification method" other than the method must be "commercially reasonable" and "approved by the social media platform" (Fla.Stat. § 501.1736(1)(h)).
- A social media platform that knowingly or recklessly violates the requirements for an anonymous age verification method is subject to enforcement by the Florida Attorney General's Office with civil penalties up to \$50,000 per violation plus attorney fees and court costs (Fla.Stat. § 501.1736(1)3b).

So far, Louisiana's SOCIAL Act and the Texas SCOPE Act have both escaped a similar challenge in federal court. NetChoice has actively opposed Louisiana's SOCIAL Act (see **testimony** and **debate**). Texas is, however, currently party to two lawsuits involving constitutional claims. One relates to a law that restricts minors' online access to "sexual material harmful to minors", which was preliminarily **enjoined** on August 31, 2023 and is under appeal. Texas and Florida also are **defending** their social media content moderation laws before the U.S. Supreme Court. The issue before the Court is whether the **First Amendment** to the U.S. Constitution prohibits social media platforms from making editorial choices about whether and how to publish and disseminate content. (The Florida law was **enjoined** by the 11<sup>th</sup> Circuit but the **Texas law** was upheld by the 5<sup>th</sup> Circuit.) Oral arguments were heard on February 26, 2024.

Please see our table below comparing the Arkansas, Texas and Utah laws updated to include the similar laws in Louisiana, Ohio and Florida.

Please contact the authors for more information.

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The following is a chart comparing key provisions of the minor social media accounts laws in Utah, Arkansas, Texas, Louisiana, Ohio, and Florida (as of February 23, 2024)

Topic	UT SMRA	AR SMSA	TX SCOPE Act	LA SOCIAL Act	Ohio	Florida
Applies to*	“Social media platforms” and “social media companies,” which are defined broadly. The law contains 24 exceptions that generally track the typical definition of a social media platform. The law applies to social media companies with at least 5 million users worldwide.	“Social media platforms” and “social media companies,” which are defined broadly. The law contains 15 exceptions that generally track the typical definition of a social media platform. The law applies to social media platforms that have generated at least \$100 million in annual gross revenue.	“Digital service providers” which means controllers that own/operate a digital service that behaves as a social media platform broadly. The law includes 11 exceptions that generally track the typical definition of a social media platform.	“Social media platforms” and “social media companies,” which are defined broadly. The law contains 24 exemptions that generally track the typical definition of social media platform. The law applies to social media companies with at least 5 million account holders worldwide.	“Operators” that operate an online service that behaves as a social media platform. The law contains 2 exemptions that generally track the typical definition of social media platform.	“Social media platform”, which is defined broadly and requires that the platform uses algorithms or has addictive features. Email and direct messaging services are exempt.
In force	March 1, 2024 (challenged by <b>lawsuit filed December 18, 2023</b> )	September 1, 2023 (enforcement <b>enjoined</b> as of	September 1, 2024	July 1, 2024	January 15, 2024 (enforcement <b>enjoined</b> as of 01/09/24)	July 1, 2024

Topic	UT SMRA	AR SMSA	TX SCOPE Act	LA SOCIAL Act	Ohio	Florida
		August 31, 2023)				
Regulations forthcoming	Yes	n/a	Yes – By the Texas Education Agency* and only for school districts and open enrollment charter schools. Requires a joint legislative committee to conduct a study about the “effects of media on minors”.	Yes – “May adopt rules ... that provide examples” of acceptable processes for a social media company to conduct age verification; for an individual to verify age and for a parent/ guardian to confirm consent (§1752.D).	n/a	Yes

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### **Key Requirements**

Topic	UT SMRA	AR SMSA	TX SCOPE Act	LA SOCIAL Act	Ohio	Florida
Verify the age of all account holders.	Yes	Yes – Verification by a third-party vendor required	Yes – Heightened verification requirements for digital services that knowingly distribute	Yes – Using commercially reasonable efforts ... appropriate to the risks” §1752.A.	n/a – Parental consent required if service is “reasonably anticipated to be accessed by children”.	Yes – Using a standards method (i.e., “commercially reasonable” and “approved by the social media platform”) or

Topic	UT SMRA	AR SMSA	TX SCOPE Act	LA SOCIAL Act	Ohio	Florida
			harmful material.			anonymous age verification method as per Fla.Stat. § 501.1738.
Minor	Age 18 or younger	Age 18 or younger	Age 18 or younger	Minor is “under the age of sixteen and is not emancipated or married”	Minor is “any consumer of an online web site, service, or product who is under the age of sixteen and who is not emancipated.”	An “account holder” who is under age 16.
Parental controls for minors’ account including privacy, access times and security settings.	Yes – Parental controls that allow for viewing all of the minor’s posts and responses and messages sent to/by the minor account holder; change or eliminate the minor’s permitted access time	n/a	Yes – Parental controls for “privacy and account settings”, allowing certain otherwise restricted activities and limiting the minor’s access times	Yes – “Account supervision” includes “the ability for the parent to view privacy settings of the minor’s account, set daily time limits for the service, schedule breaks, and offer the minor the option to set up parental notifications when the minor reports	Operator must “present to the child’s parent or legal guardian a list of the features offered by an operator’s online web site, service, or product related to censoring or moderating content, including any features that can be disabled for a particular	Yes – “Confirmed” parent can request deletion of account for account holder under age 16.

Topic	UT SMRA	AR SMSA	TX SCOPE Act	LA SOCIAL Act	Ohio	Florida
				a person or issue”	profile” and provide “a web site link at which the parent or legal guardian may access and review the list of features” (§ 349.09 B)	
Heightened default privacy settings for minors’ accounts.	Yes	n/a	Yes	n/a	Same as above	n/a
Handling personal information	No collection or use of any personal information from the minor’s posts, content, messages, text, or usage activities other than as necessary to comply with law	No retention of any identifying information of the minor after access to the platform is granted	Collection and use of the minor’s personal information restricted to what is reasonably necessary to provide the digital service.	Prohibits collection or use of personal information other than information beyond what is adequate, relevant, and reasonably necessary in relation to the purposes for which such information is collected, as disclosed.  §1753	Same as above	Social media platform must delete all personal information associated with a terminated account



Topic	UT SMRA	AR SMSA	TX SCOPE Act	LA SOCIAL Act	Ohio	Florida
Prevent minor's from engaging in financial transactions through the digital service unless parent changes such setting.	n/a	n/a	Yes	n/a	Same as above	n/a
Content filtering for minors	Yes – No “suggestions” of groups, services, posts, etc.	n/a	Yes – Prevent minor's exposure to “harmful material” or certain other content	n/a	<i>Same as above</i>	Yes –Any business that operates an online service ( <i>vs. social media platform only</i> ) through which the business knowingly and intentionally publishes or distributes material harmful to minors online must age verify
No advertising to minors' accounts	Yes	n/a	Yes – Digital service provider cannot display targeted ads to known	Yes – Prohibits “display of any advertising in the account based on the Louisiana	Same as above	n/a

Topic	UT SMRA	AR SMSA	TX SCOPE Act	LA SOCIAL Act	Ohio	Florida
			minors and must use “commercially reasonable” efforts to prevent advertisers from targeted known minors with advertising for illegal products/ services/ activities	minor account holder’s personal information, except age and location”		

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### ***Enforcement***

Topic	UT SMRA	AR SMSA	TX SCOPE Act	LA SOCIAL Act	Ohio	Florida
Civil Penalties	Yes	Yes**	Yes	Yes	Yes (§1349.09 H)	Yes
Cure Period	Yes	n/a	n/a	Yes – 45 days	Yes – 90 days “if an operator is in substantial compliance with this section, the attorney general shall provide written notice to the operator	No

Topic	UT SMRA	AR SMSA	TX SCOPE Act	LA SOCIAL Act	Ohio	Florida
					before commencing a civil action” (§1349.09 M)	
Private Right of Action	Yes – On and after March 1, 2024, \$2,500 per violation or 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”	Yes – \$2,500 per violation or court ordered damages as well as court costs and reasonable attorney’s fees.	Yes – The parent or guardian of a minor may seek a declaratory judgement or injunction	n/a	n/a (§1349.09 G)	Yes – if the social media platform fails to terminate the account within the required time (within five (5) business days when minor requests termination and 10 business days when parent requests termination

**Disclaimer:** While every effort has been made to ensure that the information contained in this article is accurate, neither its authors nor Squire Patton Boggs accepts responsibility for any errors or omissions. The content of this article is for general information only and is not intended to constitute or be relied upon as legal advice.

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