



## 2023 SENATE BILL 385

August 9, 2023 - Introduced by Senators COWLES and CABRAL-GUEVARA, cosponsored by Representatives STEFFEN, ARMSTRONG, GUNDRUM, MAXEY, MURPHY, ROZAR, SCHMIDT, STUBBS, TITTL, TUSLER and WICHGERS. Referred to Committee on Mental Health, Substance Abuse Prevention, Children and Families.

1     **AN ACT** *to create* 100.75 of the statutes; **relating to:** use of social media  
2             platforms by minors, granting rule-making authority, and providing a penalty.

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### *Analysis by the Legislative Reference Bureau*

This bill creates requirements related to social media companies' and social media platforms' treatment of account holders on the basis of age.

Under the bill, social media companies must ensure that all accounts created on or after January 1, 2019, are designated as a youth accounts that comply with the youth account requirements of the bill. A social media company may remove the youth account designation from an account if 1) the social media company estimates that the account holder is not a minor through employment of a process or program that provides a 95 percent accuracy rate of estimating age within 24 months of actual age; 2) the social media company verifies that the account holder is not a minor; or 3) a parent or guardian of a minor account holder requests for the youth account designation to be removed from the minor's account.

Under the bill, a social media company shall do all of the following in regards to a youth account: 1) prevent direct messaging between the account holder and other account holders or users with whom the youth account holder is not connected; 2) refrain from showing information about the youth account to any person not connected to the youth account holder; 3) prevent advertising from being shown to the youth account holder; 4) refrain from collecting or using personal information from the youth account; 5) refrain from the use of targeted or suggested groups or content on the youth account; and 6) ensure that the youth account cannot be used between the hours of 10 p.m. and 7 a.m.

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The bill also provides to parents of minor account holders certain access, including full access to the account and all its posts and messages, the ability to change the time limits on the account, and to opt out the minor's account from the youth account designation.

A violation of the requirements of the bill may result in the social media platform being required to forfeit \$100 per violation per day, an award of damages to an injured account holder, and an injunction preventing further violations.

For further information see the state fiscal estimate, which will be printed as an appendix to this bill.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 100.75 of the statutes is created to read:

2           **100.75 Social media company requirements. (1) DEFINITIONS.** In this  
3 section:

4           (a) "Account" means a social media platform account or profile.

5           (b) "Account holder" means a person who has, or opens, an account.

6           (c) "Educational entity" means any of the following:

7           1. A public school, as defined in s. 115.01 (1).

8           2. A charter school, as defined in s. 115.001 (1).

9           3. A tribal school, as defined in s. 115.001 (15m).

10          4. A private school participating in a program in s. 118.60 or 119.23.

11          5. The Wisconsin Center for the Blind and Visually Impaired.

12          6. The Wisconsin Educational Services Program for the Deaf and Hard of  
13 Hearing.

14          7. A school of a parochial or denominational character that offers a course with  
15 a sectarian objective.

16          8. A technical college under the authority of a district board, as defined in s.  
17 38.01 (6).

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1           9. A college campus, as defined in s. 36.05 (6m).

2           10. An institution, as defined in s. 36.05 (9).

3           11. A tribally controlled college located in this state.

4           12. A private, nonprofit postsecondary institution that is a member of the  
5 Wisconsin Association of Independent Colleges and Universities.

6           (d) “Interactive computer service” means an information service, an  
7 information system, or information access software that provides access to the  
8 Internet or provides or enables computer access by multiple users to a computer  
9 server. “Interactive computer service” includes a web service, a web system, a  
10 website, a web application, and a web portal. “Interactive computer service” does not  
11 include an Internet service provider.

12           (e) “Minor” means a resident under the age of 18. “Minor” does not include an  
13 emancipated minor, as defined in s. 48.375 (2) (e).

14           (f) “Post” means content that an account holder or user makes available on a  
15 social media platform for other account holders or users to view.

16           (g) “Resident” means an individual who resides in this state.

17           (h) “Social media company” means an interactive computer service that makes  
18 available a social media platform that has 5,000,000 or more account holders.

19           (i) 1. “Social media platform” means an online forum that a social media  
20 company makes publicly available and for which the primary purpose of is enabling  
21 an account holder to open a profile, upload a post, view a post of another account  
22 holder, or interact with other account holders or users.

23           2. Notwithstanding subd. 1., “social media platform” does not include an online  
24 service, website, or application for which the predominant or exclusive function is  
25 any of the following:

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1 a. Electronic mail.

2 b. The direct messaging of text, photo, or video messages that are sent between  
3 devices by electronic means, in which the messages shared between the sender and  
4 the recipient are visible only to the sender and the recipient and are not posted  
5 publicly.

6 c. A streaming service that provides only licensed media in a continuous flow  
7 from itself to the end user and that does not obtain a license to the media from an  
8 account holder or user by agreement to its terms of service.

9 d. News, sports, entertainment, or other content that is preselected by a social  
10 media platform that is not user-generated, on which any provided chat, comment,  
11 or other interactive functionality is incidental to, directly related to, or dependent  
12 upon the provision of the content.

13 e. A community forum, the primary purpose of which is for customer  
14 self-service support related to products, sellers, services, events, or places, or any  
15 combination thereof.

16 f. Online shopping or e-commerce if an account holder's or user's interaction  
17 with other account holders or users is generally limited to the ability to upload a post  
18 or comment on reviews, the ability to display lists or collections of goods for sale, and  
19 other functions that are focused on online shopping or e-commerce rather than on  
20 interaction between account holders or users.

21 g. Interactive gaming, virtual gaming, or an online service that allows the  
22 creating and uploading of content for the purpose of interactive gaming, educational  
23 entertainment, or entertainment associated with interactive gaming or educational  
24 entertainment, and the communication related to that content.

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1 h. A professional creative network for showcasing and discovering artistic  
2 content if the content is required to be non-pornographic.

3 i. Single-purpose community groups for public safety if interaction between  
4 account holders or users is generally limited to the single purpose and the  
5 community has guidelines or policies against illegal content.

6 j. Providing career development opportunities, including professional  
7 networking, job skills, learning certificates, and job posting and application services.

8 k. Business-to-business software.

9 L. A teleconferencing or videoconferencing service that allows reception and  
10 transmission of audio and video signals for real-time communication.

11 m. Cloud storage.

12 n. Shared document collaboration.

13 o. Cloud computing services.

14 p. Providing access to or interfacing with data visualization platforms,  
15 libraries, or hubs.

16 q. Permitting comments on a digital news website if the news content is posted  
17 only by the provider of the digital news website.

18 r. Providing or obtaining technical support for a platform, product, or service.

19 s. Academic or scholarly research.

20 t. Genealogical research.

21 u. Providing content to account holders or users if any ability of account holders  
22 or users to chat, comment, or interact with other account holders or users is directly  
23 related to the provider's content.

24 v. A classified ad service that permits only the sale of goods and prohibits the  
25 solicitation of personal services.

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1 w. Use by and under the direction of an educational entity, including a learning  
2 management system, a student engagement program, and a subject or skill-specific  
3 program.

4 (j) "User" means a person who is not an account holder and who has access to  
5 view or create a post on a social media platform.

6 (k) "Youth account" means an account on a social media platform for use by a  
7 minor.

8 **(2) AGE-BASED ACCOUNT REQUIREMENTS.** (a) Except as provided in par. (b),  
9 beginning on August 1, 2024, a social media company shall ensure that all accounts  
10 created on or after January 1, 2019, are designated as youth accounts that comply  
11 with the requirements under sub. (3).

12 (b) A social media company may remove a youth account designation from a  
13 user's account and in turn be exempted from the corresponding requirements under  
14 sub. (3) for the account if any of the following applies:

15 1. The social media company estimates that the account holder is not a minor  
16 through employment of a process or program that provides a 95 percent accuracy rate  
17 of estimating age within 24 months of actual age.

18 2. The social media company verifies that the account holder is not a minor.

19 3. A parent or guardian of a minor account holder requests that the social media  
20 company remove the youth account designation from the minor's account as provided  
21 under sub. (4) (f).

22 **(3) YOUTH ACCOUNTS.** A social media company shall do all of the following  
23 regarding a youth account:

24 (a) Prevent direct messaging between the account holder and any other account  
25 holder or user that is not linked to the account through friending or another process

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1 through which 2 persons add each other to a list of contacts associated with the  
2 account holder.

3 (b) Refrain from showing the account or information about the account in  
4 search results provided to any other account holder or user that is not linked to the  
5 account through friending or another process through which 2 persons add each  
6 other to a list of contacts associated with the account holder.

7 (c) Prevent advertising from being shown to the account holder.

8 (d) Refrain from collecting or using personal information from the account or  
9 the account holder's posts, messages, text, usage activities, or entered information,  
10 other than information that is necessary to comply with state or federal law.

11 (e) Refrain from the use of targeted or suggested groups, accounts, users,  
12 services, posts, and products on the account.

13 (f) Subject to sub. (4) (c), ensure that the account cannot be used or accessed  
14 between the hours of 10 p.m. and 7 a.m. The time of day under this paragraph shall  
15 be calculated on the basis of the Internet protocol address being used by the account  
16 at the time of attempted access. The social media company shall ensure that an  
17 account holder does not change or bypass the time restrictions under this paragraph.

18 **(4) PARENTAL ACCESS.** A social media company shall provide to a parent or  
19 guardian of a minor account holder a password or other means for the parent or  
20 guardian to access the minor's account until the account holder is no longer a minor.  
21 The parent or guardian access required under this subsection shall include all of the  
22 following:

23 (a) Access to posts that the minor has made on the social media platform.

24 (b) Access to all messages and responses sent by or to the minor on the social  
25 media platform.

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1 (c) The ability to change or eliminate the time restrictions required under sub.

2 (3) (c).

3 (d) The ability to set a limit of total time per day that the minor may use or  
4 access the minor's youth account.

5 (e) The ability to access the minor's youth account without time restrictions.

6 (f) The ability to opt the minor's account out of the youth account designation  
7 and the corresponding youth account requirements provided under sub. (3).

8 **(5) PRIVACY.** (a) A social media company and its agents may use and retain  
9 information and data obtained under this section only for the purpose of complying  
10 with this section and may not use that information or data for any other purpose.

11 (b) A social media company may not use or employ a person to process  
12 estimation or verification requirements for the social media company unless the  
13 person's principal place of business is located in the United States of America.

14 **(6) WAIVER PROHIBITED.** A social media company may not include a provision  
15 in an agreement or contract, and a finder of fact or court may not enforce or give effect  
16 to a provision in an agreement or contract, that waives, limits, or purports to waive  
17 or limit any of the following:

18 (a) A protection or requirement of this section.

19 (b) The right of a person to cooperate with the department or to file a complaint  
20 with the department.

21 **(7) NOTICE AND ENFORCEMENT.** (a) The department shall receive consumer  
22 complaints alleging violations of this section, and shall investigate alleged violations  
23 of this section. Subject to par. (b), the department, the department of justice in  
24 consultation with the department, or a district attorney in consultation with the  
25 department may bring an action for temporary or permanent injunctive or other



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1 relief for any violation of this section or an action for the penalties authorized in sub.  
2 (8).

3 (b) 1. At least 30 days before the day on which an action against a social media  
4 company is initiated under par. (a), the department, the department of justice in  
5 consultation with the department, or a district attorney in consultation with the  
6 department seeking to bring an action under par. (a) shall provide the social media  
7 company with written notice that identifies each alleged violation of this section, and  
8 an explanation of the basis for each allegation.

9 2. An action may not be initiated under par. (a) if, within 30 days after the day  
10 on which the social media company was provided notice under subd. 1., the social  
11 media company cures the violation of this section and the social media company  
12 provides to the department a written statement that the violation has been cured and  
13 that no further violation will occur.

14 3. Notwithstanding subd. 2., the department, the department of justice, or a  
15 district attorney may initiate an action under par. (a) if the social media company  
16 does not cure a violation of this section or provide a written statement as provided  
17 in subd. 2., or, if after curing a noticed violation of this section and providing a written  
18 statement in accordance with subd. 2., the social media company commits another  
19 violation of the same provision of this section.

20 **(8) PENALTIES.** A social media company that violates this section is subject to  
21 all of the following:

22 (a) A forfeiture of \$100 for each violation. Each account affected by a violation  
23 constitutes a separate offense. Each day of continued violation constitutes a  
24 separate offense.

25 (b) An order to pay an award of damages to an injured account holder.

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1 (c) Disgorgement of the money the social media company received in the course  
2 of violating this section's requirements and payout of the disgorged money to all  
3 injured account holders.

4 (d) Notwithstanding s. 814.04 (1), a court-ordered award to the department  
5 and the department of justice, as appropriate, for the reasonable and necessary costs  
6 of investigation and expenses of prosecution, including court costs and attorney fees.

7 (e) Any other relief or course of action the court deems reasonable and  
8 necessary.

9 **(9) RULE MAKING.** The department shall promulgate rules establishing all of the  
10 following:

11 (a) Processes by which a social media company may meet the requirements of  
12 this section.

13 (b) Acceptable forms or methods of age verification that are not limited to a  
14 valid identification card issued by a government entity.

15 (c) Requirements for providing confirmation of the receipt of any information  
16 provided by a person seeking to verify age under this section.

17 (d) Processes to confirm the identity of a person claiming to be a minor account  
18 holder's parent or guardian.

19 (e) Requirements for social media companies regarding the retaining,  
20 protecting, and securely disposing of any information obtained by a social media  
21 company or one of its agents as a result of compliance with the requirements of this  
22 section.

23 (f) Processes by which the department ensures that it appropriately retains,  
24 protects, and securely disposes of any forms of identification or documents it obtains  
25 in the course of enforcing this section.

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1 (g) Such rules as are necessary to effectively enforce this section.

2 (10) DEPARTMENT REPORT. (a) The department shall, on July 1, 2025, and  
3 annually thereafter, submit a report to the governor and the appropriate standing  
4 committees of the legislature under s. 13.172 (3) that includes all of the following  
5 information:

6 1. An evaluation of the liability and enforcement provisions of this section,  
7 including the effectiveness of the department's efforts to enforce this section and any  
8 recommendations for changes to this section.

9 2. A summary of the consumer interactions that are protected and not protected  
10 by this section, including a list of alleged violations of this section that the  
11 department has received.

12 3. An accounting for the year of all penalties assessed and all forfeitures  
13 collected.

14 (b) The department may update or correct the report submitted under par. (a)  
15 as new information becomes available.

16 **SECTION 2. Effective dates.** This act takes effect on August 1, 2024, except as  
17 follows:

18 (1) The treatment of s. 100.75 (9) takes effect on the day after publication.

19 (END)