



February 15, 2024

My name is Lawrence G. Walters, and I am writing on behalf of the Woodhull Freedom Foundation as its General Counsel to express serious concerns regarding HB3. While we agree completely with the goal of keeping children from material that is age-inappropriate or harmful, similar bills introduced in Texas, Louisiana, Utah, and other states have raised significant privacy risks for consumers and are in violation of their First Amendment protections.

As you may be aware, a number of states have passed similar bills. Unfortunately, these bills are not only unconstitutional and a danger to consumer privacy, they are ineffective at preventing minors from accessing adult content. The restrictions are easily evaded through the use of VPNs (as more than 40% of minors already use the technology), have little impact on overseas and pirate sites, and fail to address adult content on search engines or social media where children are most likely to stumble upon it. In fact, these bills encourage the growth of explicit sexual content on non-adult sites.

Compliance with HB3 also 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. The mere collection of this information opens citizens 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.

Finally, sexually explicit 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 the use of age verification software as an unconstitutional content-based blanket restriction on speech, saying, “[i]n 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.” Numerous other courts have struck down similar age verification laws over the past 20 years.

The solution is simple. Parental controls and device-level filters are effective tools if parents and schools are willing to use them. 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.

Bills that so severely impact our First Amendment rights deserve serious consideration and debate. We ask that you veto HB3 and direct the legislature to work with technology companies, privacy experts, and affected communities to find an effective solution. Thanks for your consideration.

Sincerely,

Lawrence G. Walters
General Counsel
Woodhull Freedom Foundation