

Kentucky HB 227

OPPOSITION TESTIMONY

February 18, 2026

Kentucky Legislature House Standing Committee on Small Business and Information Technology

Dear Chair Gordon, Vice-Chair Lawrence and Members of the Committee;

NetChoice respectfully asks that you **oppose HB 227**. This bill raises serious constitutional concerns and would create significant practical implementation challenges that could ultimately harm the very minors it seeks to protect.

NetChoice is a trade association of leading internet businesses that promotes the value, convenience, and choice that internet business models provide to American consumers. Our mission is to make the internet safe for free enterprise and free expression. NetChoice members have taken issues of teen safety seriously and in recent years have rolled out numerous new features, settings, parental tools, and protections to better empower parents and assist in monitoring their children's use of social media.

HB 227 will not protect a single citizen from harm. That is because an unconstitutional law will protect zero children. Nearly identical laws have already been struck down. Rather than head down this path, NetChoice asks that we work together to create real solutions that will not be thrown out in court.

HB 227 is a privacy nightmare

HB 227 was ostensibly introduced to protect children but instead it puts children's sensitive data at greater privacy and security risks. Under the bill's age estimation requirements, platforms must use "reasonable means and efforts" to estimate whether account holders are minors, with confidence thresholds of 80% at 25 hours of use and 90% at 50 hours. To estimate age with this range of confidence and track the precise moment users cross the 25-hour, 50-hour, and 100-hour thresholds, platforms would need to implement invasive surveillance systems monitoring session duration, behavioral patterns, device characteristics, and biometric indicators—creating exactly the kind of detailed user profiles that privacy advocates oppose.

Requiring identity authentication of all Kentucky users adds several unconstitutional barriers to sharing and accessing First Amendment-protected online speech.

HB 227 Violates the 1st Amendment of the US Constitution- At Least Twice Over

This bill presents at least two independent First Amendment violations. First, it infringes on the rights of users to receive protected expression without first having their age "estimated" by the platform and, if determined to be a minor, securing parental consent. Second, it infringes on the rights of platforms to disseminate their own "distinctive expressive offering" to users without engaging in invasive age estimation and verification processes.

Age Estimation, Verification, and Parental Consent Requirements Are Unconstitutional

Restrictions on the access to and enjoyment of speech are rarely permitted. Indeed, restrictions are permitted only for certain categories of speech, and the Court has been careful to articulate such categories as obscenity, incitement, true threats, and fighting words. But the government cannot create new categories of unprotected speech to solve some perceived social harm. *Brown*, 564 U.S. at 792. And, as *Packingham* recognized, social media is home to troves of protected, valuable speech. 582 U.S. at 105.

When the government has attempted to restrict access to speech through requirements for speakers to "determine" or "verify" the age of audience members, the Supreme Court routinely struck them down. Such restrictions impermissibly chill speech by dissuading otherwise willing speakers and listeners from participating. The government may not impose barriers as a precondition to speak or receive the speech of others. See *Reno v. ACLU*, 521 U.S. 844, 855-857 (1997); *Ashcroft v. ACLU*, 542 U.S. 656 (2004). Similarly, the Supreme Court also invalidated parental consent requirements to access lawful speech. *Brown*, 564 U.S. 786 (2011).

While HB 227 does not purport to prevent access to social media websites outright, it *does* restrict access to the website's "distinctive expressive offering." *Moody v. NetChoice*, 603 U.S. at 738. That offering is protected expression, and the government may not prevent access to that offering any more than it could dictate how the *New York Times* or *Wall Street Journal* arrange articles in their newspapers.

Restrictions on Dissemination of Lawful Speech are Unconstitutional

Distinct from the First Amendment injury HB 227 inflicts on the viewers, readers, and users of social media websites, the law inflicts a separate injury on *websites* because it prevents them from freely offering their own "distinctive expressive offering."

The bill would make it unlawful for social media websites to offer content that is "recommended, selected, or prioritized" to users without either determining the user is an adult or obtaining parental consent for minors. This restriction prevents the exercise of editorial discretion. The judgment about what content to display "rest[s] on a set of beliefs about which messages are appropriate" to prioritize and display to users is expressive. And the government does not have the authority to alter those decisions merely because it believes it would make better choices. *Id.* at 738.

The Supreme Court's decision last term in *NetChoice* emphatically held that the personalized feeds available on social media websites like Facebook and YouTube are protected expression under the First

Amendment. Because HB 227 would prevent the exercise of editorial discretion by prohibiting the use of these personalized feeds, it is unconstitutional.

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Again, we respectfully ask you to **oppose HB 227**. The bill would not survive constitutional scrutiny and would likely face immediate legal challenge, as similar laws have in Arkansas, Ohio, California, and Texas. We urge the Committee to reject HB 227 and instead pursue evidence-based approaches that empower families without violating constitutional rights or creating an unworkable regulatory scheme. As always, we offer ourselves as a resource to discuss any of these issues with you in further detail, and we appreciate the opportunity to provide the committee with our thoughts on this important matter.

Sincerely,

Amy Bos
Vice President of Government Affairs, NetChoice

NetChoice is a trade association that works to protect free expression and promote free enterprise online.