



February 3, 2023

House Judiciary Committee
Attn: Jonathan Adams
120 E Capitol Street
Salt Lake City, UT 84103

Re: HB 311 - Social Media Usage Amendments (Oppose)

Chair Hawkins and Members of the House Judiciary Committee:

On behalf of the Computer & Communications Industry Association (CCIA), I write to respectfully oppose HB 311.

CCIA is an international, not-for-profit trade association representing a broad cross section of communications and technology firms. For over 50 years, CCIA has promoted open markets, open systems, and open networks. The Association supports the enactment of comprehensive federal privacy legislation in order to promote a trustworthy information ecosystem characterized by clear and consistent consumer privacy rights and responsibilities for organizations that collect data. A uniform federal approach to the protection of consumer privacy is necessary to ensure that businesses have regulatory certainty in meeting their compliance obligations and that consumers are able to understand and exercise their rights.

We appreciate, however, that in the absence of federal privacy protections, state lawmakers have a continued interest in enacting local legislation to guide businesses and protect consumers. As you know, Utah is out in front of this effort as one of the five states to have already enacted a groundbreaking comprehensive consumer data privacy law. CCIA commends lawmakers in their thoughtful approach in enacting legislation that supports meaningful privacy protections while avoiding interference with the ability of businesses to meet their compliance obligations and the opportunity for consumers to benefit from the innovation that supports the modern economy.

CCIA strongly believes younger users deserve an enhanced level of security and privacy online. Currently, there are a number of efforts among our members to incorporate protective design features into their websites and platforms. CCIA's members have been leading the effort in raising the standard for teen safety and privacy across our industry by creating new features, settings, parental tools, and protections that are age-appropriate and tailored to the differing developmental needs of young people. While CCIA understands that certain users may warrant specific treatments, we caution against several provisions included in HB 311.



1. As drafted, HB 311 may actually put Utahns at greater risk of harm, including children that the bill seeks to protect.

HB 311 provides several examples of how to obtain verifiable consent, however, this raises questions about whether such verification mechanisms would conflict with data minimization principles and other consumer data privacy protection measures. CCIA is concerned that businesses may be forced to collect age verification data, which would paradoxically force companies to collect a higher volume of data on users.¹ Businesses may be forced to accumulate personal information they don't want to collect and consumers don't want to give, and that data collection creates extra privacy and security risks for everyone. Further, the bill does not include exemptions for data processing for security purposes, such as for spam, abuse, and fraud or to maintain basic service functionality.

When the federal Communications Decency Act was passed, there was an effort to sort the online population into children and adults for different regulatory treatment. That requirement was struck down by the U.S. Supreme Court as unconstitutional because of the infeasibility.² After 25 years, age authentication still remains a vexing technical and social challenge.³ Though the intention to keep younger users safe online is commendable, this bill is counterproductive to that initiative by requiring more data collection about young people and their parents. California recently enacted legislation that would implement similar age verification measures which is currently being challenged for similar reasons.⁴ CCIA recommends that lawmakers permit this issue to be more fully examined by the judiciary before burdening businesses with legislation that risks being invalidated.

2. The private right of action would result in the proliferation of frivolous lawsuits.

In addition to providing enforcement power to the Division of Consumer Protection and state attorney general, HB 311 would also create a private right of action. CCIA recommends striking this provision. By creating a new private right of action, the measure would open the doors of Utah's courthouses to plaintiffs advancing frivolous claims with little evidence of actual injury. As lawsuits prove extremely costly and time-intensive, it is foreseeable that these costs would be passed on to individual users and advertisers in Utah, disproportionately impacting smaller businesses and startups across the state.⁵

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¹ Caitlin Dewey, *California's New Child Privacy Law Could Become National Standard*, The Pew Charitable Trusts (Nov. 7, 2022), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2022/11/07/californias-new-child-privacy-law-could-become-national-standard>.

² *Reno v. ACLU*, 521 U.S. 844 (1997).

³ Jackie Snow, *Why age verification is so difficult for websites*, The Wall Street Journal (Feb. 27, 2022), <https://www.wsj.com/articles/why-age-verification-is-difficult-for-websites-11645829728>.

⁴ *NetChoice v. Bonta* (N.D. Cal. 22-cv-08861).

⁵ Trevor Wagener, *State Regulation of Content Moderation Would Create Enormous Legal Costs for Platforms*, Broadband Breakfast (Mar. 23, 2021), <https://broadbandbreakfast.com/2021/03/trevor-wagener-state-regulation-of-content-moderation-would-create-enormous-legal-costs-for-platforms/>.



We appreciate your consideration of these comments and stand ready to provide additional information as the legislature considers proposals related to technology policy.

Sincerely,

Khara Boender
State Policy Director
Computer & Communications Industry Association