



March 20, 2023

House Select Committee on Youth Health and Safety
Attn: Milda Mora, Chief of Staff
Capitol Extension
Room E2.132
1100 Congress Avenue
Austin, TX 78701

**RE: HB 18 - “Relating to the protection of minors from harmful, deceptive, or unfair trade practices in connection with the use of certain digital services.”
(Oppose)**

Dear Chair Thompson, Vice-Chair Hull and Members of the House Select Committee on Youth Health and Safety:

On behalf of the Computer & Communications Industry Association (CCIA), I write to respectfully oppose HB 18.

CCIA is an international, not-for-profit trade association representing a broad cross-section of communications and technology firms.¹ Proposed regulations on the interstate provision of digital services therefore can have a significant impact on CCIA members. Recent sessions have seen an increasing volume of state legislation related to the regulation of digital services. While recognizing that policymakers are appropriately interested in the digital services that make a growing contribution to the U.S. economy, these bills require study, as they may raise constitutional concerns, conflict with federal law, and risk impeding digital services companies in their efforts to restrict inappropriate or dangerous content on their platforms.

CCIA strongly believes children 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.² 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.

1. Several definitions in the bill are too broad.

As currently written, the bill defines a “minor” as anyone under 18. Due to the nuanced ways in which children under the age of 18 use the internet, it is imperative to appropriately tailor such treatments to respective age groups. For example, if a 16-year-old is conducting research for a school project, it is expected that they would come across, learn from, and discern from a wider array of materials than a 7-year-old on the internet playing video games. We suggest changing the definition of “minor” to a

¹ For more than 50 years, CCIA has promoted open markets, open systems, and open networks. CCIA members employ more than 1.6 million workers, invest more than \$100 billion in research and development, and contribute trillions of dollars in productivity to the global economy. A list of CCIA members is available at <https://www.ccianet.org/members>.

² Jordan Rodell, *Why Implementing Education is a Logical Starting Point for Children’s Safety Online*, Disruptive Competition Project (Feb. 7, 2023), <https://www.project-disco.org/privacy/020723-why-implementing-education-is-a-logical-starting-point-for-childrens-safety-online/>.

user under the age of 13 to align with the federal Children’s Online Privacy Protection Act (COPPA) standard. This would also allow for those over 13, who use the internet much differently than their younger peers, to continue to benefit from its resources.

The bill’s definition of “personal identifying information” (PII) also warrants additional clarification. As drafted, the definition is so broad that it would be difficult for businesses to understand what is not included as PII, and if everything becomes PII, this far-reaching definition renders the goal of this legislation meaningless and takes away from holding bad actors accountable. For example, “any inferences drawn from personal identifying information that might identify a minor’s traits, characteristics, or trends” encompasses just about anything reasonable.

The definition of “digital service provider” also spans a wide scope. For example, a cloud service provider or a cybersecurity company vetting or authenticating any user, on behalf of a social media company, could be looped in and treated the same as a social media company. Without definitions narrowly tailored to the objective of the bill, the law is difficult to comply with.³

2. The bill’s “duty of care” provisions are extremely broad and may apply to a wide array of services and activities while imposing burdensome requirements.

As written, the bill’s “duty of care” provision would require a digital service provider to “ensure that a minor is not exposed to a type of harm described by Subsection (a)”. Subsection (a) includes an extensive list of what may constitute risking “physical, emotional, and development harm to a minor”. However, there are many services that may be unintentionally subject to these provisions. For example, based on videos a teenager viewed regarding current international events and global affairs, a service may recommend other videos about the war in Ukraine to a 17-year-old, but those videos could include depictions of bombings and death that could negatively affect or “harm” that user.

The bill would also encompass a wide array of products and services, creating negative unintended consequences. The bill attempts to define what constitutes a digital service that “targets or appeals to minors” may extend far beyond digital service providers. Services that “target minors” could include organizations that offer sports camps, after school programs, drivers-ed, and other services that those under the age of 18 benefit from. However, all of these activities do carry inherent risks and it is unclear how the bill’s provisions may apply in those instances. For example, under the duty to prevent harm, it is unclear whether bullying experienced at camp or competitive “trash talk” during a teen sporting event constitutes a violation.

Similarly, it would be helpful to further define what constitutes “empirical evidence” of “many” users of the digital service who are minors. Without a bright line threshold, this introduces subjectivity in determining how the bill’s provisions might apply. This also raises questions about whether digital services would then need to employ additional age estimation mechanisms.

³ Josh Withrow, *The scope of Texas' child protection bill is too broad*, R Street Institute (Mar. 6, 2023), <https://www.rstreet.org/commentary/the-scope-of-texas-child-protection-bill-is-too-broad/>.

3. The bill may restrict younger users' access to supportive communities that may not be available in their physical location.

While CCIA understands the intent behind providing parents with more access and oversight about the activities their children are participating in online, this may also unintentionally restrict children's ability to access and connect with like-minded individuals and communities. For example, under HB 18's provisions, a parent would be able to change certain settings without the consent of the minor. While many parents and guardians have good intentions, these interests may not always align, particularly in instances where children may be in unsafe or abusive households. In these scenarios, such controls could create an impediment for children seeking communities of support, or reaching out to those who can provide them with a safer environment. This is further compounded by the provisions regarding PII. Covered entities would be required to offer a "simple and easily accessible" method to request PII from a parent or minor but also ensure that such PII is not disclosed in a way to harm a child. In such scenarios of abuse, disclosing PII inherently *would* potentially cause harm to a child, but a digital service would not have a way of knowing that a younger user is living in such an environment.

Speaking more broadly, an online central meeting place where younger users can share their experiences and find support can have positive impacts. Teens themselves paint a nuanced picture of the effects of social media – a majority of teens credit these platforms⁴ with deepening connections and providing a support network when they need it. In a recent survey, 80% of teens say that what they see on social media makes them feel more connected to what's going on in their friends' lives, while 71% say it makes them feel like they have a place where they can show their creative side. Additionally, 67% also say these platforms make them feel as if they have people who can support them through tough times.

4. Investing enforcement authority with the state attorney general and providing a cure period would be beneficial to consumers and businesses alike.

HB 18 permits consumers to bring legal action against businesses that have been accused of violating new regulations. By creating a new private right of action, the measure would open the doors of Texas' courthouses to plaintiffs advancing frivolous claims with little evidence of actual injury. Lawsuits also prove extremely costly and time-intensive – it is foreseeable that these costs would be passed on to individual consumers in Texas, disproportionately impacting smaller businesses and startups across the state. Further, investing enforcement authority with the state attorney general allows for the leveraging of technical expertise concerning enforcement authority, placing public interest at the forefront.

CCIA recommends that the legislation include a cure period of at least 30 days. This would allow for actors operating in good faith to correct an unknowing or technical violation, reserving formal lawsuits and violation penalties for the bad actors that the bill intends to address. This would also focus the government's limited resources on enforcing the law's provisions for those that persist in violations despite being made aware of such alleged violations. Such notice allows consumers to receive injunctive relief, but without the time and expense of bringing a formal suit.

⁴ Monica Anderson *et al.*, *Connection, creativity and drama: Teen life on social media in 2022*, Pew Research Center: Internet, Science & Tech (Nov. 17, 2022), <https://www.pewresearch.org/internet/2022/11/16/connection-creativity-and-drama-teen-life-on-social-media-in-2022/>.



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While we share the legislators' concern regarding the safety of young people online, we encourage lawmakers to resist advancing legislation that is not adequately tailored to this objective. We appreciate the Committee's 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