



March 16, 2023

Senate Committee on Insurance and Commerce
Attn: Michelle Nelson, Legislative Analyst
State Capitol
500 Woodlane Street, Room 171
Little Rock, AR 72201

RE: SB 396 - “TO CREATE THE SOCIAL MEDIA SAFETY ACT; TO REQUIRE AGE VERIFICATION FOR USE OF SOCIAL MEDIA; AND TO CLARIFY LIABILITY FOR FAILURE TO PERFORM AGE VERIFICATION FOR USE OF SOCIAL MEDIA AND ILLEGAL RETENTION OF DATA.” (Oppose)

Dear Chair Hill, Vice-Chair Murdock and Members of the Senate Committee on Insurance and Commerce:

On behalf of the Computer & Communications Industry Association (CCIA), I write to respectfully oppose SB 396.

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 regulating what digital services host and how they host it. 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,² conflict with federal law, and risk impeding digital services companies in their efforts to restrict inappropriate or harmful 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.³ CCIA’s members have been leading the effort to raise 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 strongly supports the overall goal of keeping children safe online, there are many concerns we would like to raise about the specific policies this bill would implement.

¹ For over 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 Eric Goldman, *The Constitutionality of Mandating Editorial Transparency*, 73 *Hastings L.J.* 1203 (2022), https://repository.uchastings.edu/cgi/viewcontent.cgi?article=3985&context=hastings_law_journal.

³ 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/>.



1. SB 396's provisions regarding liability for data collection and age verification will not achieve the bill's stated objectives.

SB 396 would hold covered social media companies liable for failing to perform reasonable age verification but also prohibits a social media company from retaining any identifying information about the user after access is granted. However, by requiring covered businesses to delete relevant information, the law would leave businesses without a means to document their compliance. This becomes especially problematic in instances where a user decides to use deceptive verification information such as using an identification card that is not their own. Additionally, it is unclear what impact users' employment of VPNs and other mechanisms to evade age verification could have on organizations' liability under this bill. It does not advance the bill's goal to place covered companies in a Catch-22 where they cannot be fully compliant without incurring new liability.

More broadly, the bill's obligation to collect additional information associated with age verification is itself likely to conflict with data minimization principles inherent in typical federal and international privacy and data protection compliance practices. If the state were to force companies to collect a higher volume of data on users even as others are requiring the collection of less data, it may place businesses in an untenable position of picking which state's law to comply with, and which to violate.⁴

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.⁵ After 25 years, age authentication still remains a vexing technical and social challenge.⁶ California recently enacted legislation that would implement similar age verification measures which is currently being challenged for similar reasons.⁷ 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. This bill may result in shutting down services for all users under 18, including access to supportive communities that may not be available in their physical location.

The Children's Online Privacy Protection Act (COPPA) and associated rules at the federal level currently regulate how to address users under 13, a bright line that was a result of a lengthy negotiation process that accounted for the rights of users and children while also considering the compliance burden on businesses. To avoid collecting data from users under 13, some businesses chose to shut down various services when COPPA went into effect due to regulatory complexity – it became easier to simply not serve this population. Users between 14 and 17 could face a similar fate as SB 396 would implement more complex vetting requirements tied to parental consent for users under 18.

⁴ 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>.

⁵ *Reno v. ACLU*, 521 U.S. 844 (1997).

⁶ 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>.

⁷ *NetChoice v. Bonta* (N.D. Cal. 22-cv-08861).



When businesses are required to deny access to social networking sites or other online resources, this may also unintentionally restrict children’s ability to access and connect with like-minded individuals and communities. For example, in instances where children may be in unsafe households, this could create an impediment for children seeking communities of support.

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. It is one in which majorities credit these platforms⁸ 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.

3. Businesses operating online depend on clear regulatory certainty across jurisdictions nationwide.

Existing U.S. law provides websites and online businesses with legal and regulatory certainty that they will not be held liable for third-party content and conduct. By limiting the liability of digital services for misconduct by third-party users, U.S. law has created a robust internet ecosystem where commerce, innovation, and free expression thrive — all while enabling providers to take creative and aggressive steps to fight online abuse. Ambiguous and inconsistent regulation at the state level would undermine this business certainty and deter new entrants, harming competition and consumers.

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While we share the Committee’s concern regarding the safety of young people online, we encourage Committee members 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

⁸ 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/>.