



April 11, 2023

The Office of Governor Sarah Huckabee Sanders  
500 Woodlane St.  
Little Rock, AR 72201

## RE: SB 396 - "AN ACT TO CREATE THE SOCIAL MEDIA SAFETY ACT" Veto Request

Dear Governor Huckabee Sanders:

CCIA is an international, not-for-profit trade association representing a broad cross-section of communications and technology firms.<sup>1</sup> 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,<sup>2</sup> 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.<sup>3</sup> 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 policies this bill would implement.

### **1. SB 396's provisions regarding liability for data collection and age verification will not achieve the bill's stated objectives. In fact, the bill may actually put Arkansans at greater risk of harm, including children that the legislation seeks to protect.**

This legislation will inevitably result in companies being required to collect additional information about all users, including adults. These bills provide 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 geolocation and age verification data, which would paradoxically force companies to collect a higher volume of data on users.<sup>4</sup> Businesses may be forced to accumulate personal information they do not

<sup>1</sup> 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>.

<sup>2</sup> 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](https://repository.uchastings.edu/cgi/viewcontent.cgi?article=3985&context=hastings_law_journal).

<sup>3</sup> 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/>.

<sup>4</sup> 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>.

want to collect and consumers do not want to give, and that data collection creates extra privacy and security risks for everyone. This mandated data collection would include collecting highly sensitive personal information about children, including collecting and storing their geolocation to ensure they do not reside outside of the state when confirming that they are of age to be using these services. 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.<sup>5</sup>

Further, 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.

It is also important to note that although the bill provides what forms of identification are acceptable, it does not provide what other identification could be used should someone not have a government-issued identification card. As written, the bill defines "reasonable age verification methods" to include "any commercially reasonable age verification method." Without clear definitions and guidelines, the law will be extremely difficult for businesses to comply with.

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.<sup>6</sup> After 25 years, age authentication still remains a vexing technical and social challenge.<sup>7</sup> California recently enacted legislation that would implement similar age verification measures which is currently being challenged for similar reasons.<sup>8</sup> 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. Restricting access to the internet for children may further isolate those who are in unsafe households.

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 supportive resources, particularly for those who may be in unsafe or abusive households. For example, many social networking sites provide a means to communicate with those who may have experienced and worked through similar challenges or those who may be able to offer them safer environments.

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<sup>5</sup> 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>.

<sup>6</sup> *Reno v. ACLU*, 521 U.S. 844 (1997).

<sup>7</sup> 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>.

<sup>8</sup> *NetChoice v. Bonta* (N.D. Cal. 22-cv-08861).



An online central meeting place where kids can share their experiences and find support can have positive impacts. Teens themselves also paint a nuanced picture of the effects of social media. It is one in which majorities credit these platforms<sup>9</sup> 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. Investing sole enforcement authority with the state attorney general and providing a cure period would be beneficial to consumers and businesses alike.

In addition to providing for attorney general enforcement, SB 396 permits prosecutors to bring legal action against companies that have been accused of violating certain new regulations. By creating a new private right of action, the measure would open the doors of Arkansas’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 Arkansas, disproportionately impacting smaller businesses and startups across the state.<sup>10</sup>

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.

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While we share the concerns of the sponsor and the Legislature regarding the safety of young people online, we encourage your office to resist signing legislation that is not adequately tailored to this objective. We appreciate your consideration of these comments and stand ready to provide additional information as Arkansas considers proposals related to technology policy.

Sincerely,

Jordan Rodell  
State Policy Manager  
Computer & Communications Industry Association

<sup>9</sup> 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/>.

<sup>10</sup> 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>