



May 1, 2023

Honorable Sen. Matt Klein

Honorable Sen. Judy Seeberger

Honorable Sen. Jordan Rasmuson

Honorable Rep. Zack Stephenson

Honorable Rep. Carlie Kotyza-Witthuhn

Honorable Rep. Tim O’Driscoll

Re: Business Community Concerns with SF 2744 - “Minnesota Age-Appropriate Design Code Act”

Dear Commerce Conference Committee Members:

Children deserve enhanced security and privacy online. We appreciate your work on protecting children and providing them with a safe online environment. The business community takes seriously the shared responsibility of incorporating protective design features that can provide safety and security for young people on the internet. While we support the underlying intent of keeping children and teens safer online, we have serious concerns about the overly broad nature of this legislation. As such, we respectfully urge you to allow this language to be considered over the interim. This would allow for the needed time to study this legislation, including any potential unintended consequences in the context of the evolving privacy policy landscape in Minnesota.

The above eight undersigned organizations have serious concerns that the “Minnesota Age-Appropriate Design Code Act,” Sec. 24. [325O.01] beginning on pg. 182 of SF 2744, is not adequately tailored to this objective. In fact, this legislation may actually put Minnesota children at greater risk of harm. In order to achieve meaningful children’s safety protections, it is imperative for businesses to have a roadmap of how to properly comply and avoid unintentional violations. This includes narrowly tailored definitions that provide for the nuanced ways in which children of all ages use the internet. It is also important to ensure that children are not denied access to social networking sites or other online support that could unintentionally restrict children’s ability to access and connect with resources or communities, particularly for those who may be in unsafe or abusive households. We repeatedly shared similar concerns about this legislation in past committee hearings this session¹, and our concerns have not been addressed. Therefore, we are asking for the “Minnesota Age-Appropriate Design Code Act” language to not be included in the final Commerce Omnibus bill, and we are committed to working with members in the legislature over the interim to address privacy and online child safety concerns.

¹ The business community expressed these and a variety of other concerns in letters in previous hearings this session. See Letters from ANA, CCIA, Chamber of Progress, Minnesota Technology Association, NetChoice, SIIA, SPSC, and TechNet Re: Concerns with Minnesota Age-Appropriate Design Code Act, available at [https://www.senate.mn/committees/2023-2024/3128_Committee_on_Judiciary_and_Public_Safety/Joint%20Ad%20Trade%20Letter%20in%20Opposition%20to%20Minnesota%20SF%202810%20\(Senate%20Committee%20on%20Judiciary%20and%20Public%20Safety%204.21.23\).pdf](https://www.senate.mn/committees/2023-2024/3128_Committee_on_Judiciary_and_Public_Safety/Joint%20Ad%20Trade%20Letter%20in%20Opposition%20to%20Minnesota%20SF%202810%20(Senate%20Committee%20on%20Judiciary%20and%20Public%20Safety%204.21.23).pdf); available at <https://ccianet.org/library/ccia-comments-on-minnesota-hf-2257/>; available at https://www.house.mn.gov/comm/docs/15v6bayEYumCb60_r8EA.docx; available at <https://www.house.mn.gov/comm/docs/sixNBZLci02cgOkYtZz1w.pdf>; available at <https://netchoice.org/netchoice-testimony-opposing-minnesota-hf-2680-denying-teens-access-to-internet/>; available at https://www.senate.mn/committees/2023-2024/3128_Committee_on_Judiciary_and_Public_Safety/SIIA%20Letter%20on%20MN%20AADC%20April%2014%202023.pdf; available at [https://www.senate.mn/committees/2023-2024/3128_Committee_on_Judiciary_and_Public_Safety/SPSC%20-%20MN%20SF%202810%20\(AADC\)%20-%20Testimony%2004.23.pdf](https://www.senate.mn/committees/2023-2024/3128_Committee_on_Judiciary_and_Public_Safety/SPSC%20-%20MN%20SF%202810%20(AADC)%20-%20Testimony%2004.23.pdf); available at https://www.house.mn.gov/comm/docs/VGIeH3_IRkesqPKdkf-8tO.pdf.

As currently written, the bill defines a child 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. The bill would also require businesses to provide any privacy information, terms of service, policies, and community standards concisely, prominently, and using “clear language suited to the age of children likely to access that online service, product, or feature”. The definition of “clear language suited to the age of children likely to access online services” is not defined and leaves room for significant subjective interpretation. If a child is defined as anyone under 18, one could expect a wide variation of reading comprehension skills across such a wide age group — a 17-year-old would presumably have better reading comprehension skills than that of a 5-year-old. Without “clear language” being defined, the law is difficult to comply with.

This legislation does not provide how a user’s age will be estimated and how penalties for those who do not abide by the law will be enforced. This measure provides broad strokes of *what* is expected of businesses but does not portend *how* businesses may achieve those objectives. Instead, businesses are expected to estimate ages to a “reasonable level of certainty”. Without a proper explanation of how businesses are expected to estimate the age of users online, it is difficult for businesses to discern the age of every individual user which could lead to unintended violations. To achieve compliance and avoid the proposed penalties for violations, it is likely that age estimation would amount to age verification.² Such verification requirements then raise questions about potential conflicts with data minimization principles and other consumer data privacy protection measures. We are concerned that businesses may be forced to collect age verification data, which would paradoxically force companies to collect a higher volume of data on children.³ Businesses may be forced to collect 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. This forced data collection would also 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 Minnesota 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.

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, children of racial or other minority groups may not live in an area where they can easily connect with others that represent and relate to their own unique experiences. Teens themselves paint a nuanced picture of the effects of social media. It is one in which majorities credit these platforms⁴ with deepening connections and providing a support network when they need it. In a recent survey, 71% of teens say social media makes them feel like they have a place where they can show their creative side, and 67% also say these platforms make them feel as if they have people who can support them through tough times.

Many proponents of the Age Appropriate Design Code in the United States claim that the United Kingdom’s internet is “still working.” However, this mischaracterizes the approach. U.K. businesses processing personal data about U.K. children are not required to implement “age estimations” or other requirements in this bill in order to operate. U.K. legislators avoided imposing “age verification” or similar higher thresholds upon organizations, recognizing the tension between higher accuracy and further data collection. Further, the U.K. Age Appropriate Design Code is not a law, but regulatory guidance. It is possible for a business to comply with U.K. law while not following the U.K. AADC. In fact, the U.K. Data Protection Act (“DPA”) explicitly states that a *“failure by a person to act in accordance with a provision of a code issued under section 125(4) does not of itself make that person liable to legal proceedings in a court or tribunal.”*⁵ The code was designed by the U.K. Information Commissioner’s Office to meet its obligations under the U.K. DPA to prepare a code or suggestions for safe practice. Under U.S. law, where the bill’s language would be legally enforceable, covered entities would be forced

² 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>.

³ 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>.

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/>.

⁵ *Age appropriate design: A code of practice for online services*, ICO (Retrieved March 2, 2023), <https://ico.org.uk/for-organisations/guide-to-data-protection/ico-codes-of-practice/age-appropriate-design-a-code-of-practice-for-online-services/>.

to implement age verification measures to avoid potential liability – even if they did not want to direct their services to children.

While we have concerns about SF 2744, we are committed to working to ensure that children’s online safety concerns are appropriately addressed and hope to work with members of the Legislature on this important and complicated matter.

Sincerely,

Association of National Advertisers
Chamber of Progress
Computer & Communications Industry Association
Minnesota Technology Association
NetChoice
Software & Information Industry Association
State Privacy & Security Coalition
TechNet