



June 22, 2023

Assembly Commerce and Economic Development Committee
Attn: Robert C. Rothberg
State House Annex
Trenton, NJ 08625

RE: A.5069 - An Act Prohibiting the Use of Certain Addictive Practices or Features by Social Media Platforms and Supplementing Title 56 of the Revised Statutes.

Dear Chair Timberlake and Members of the Assembly Commerce and Economic Development Committee:

On behalf of the Computer & Communications Industry Association (CCIA), I write to respectfully oppose A.5069, An Act Prohibiting the Use of Certain Addictive Practices or Features by Social Media Platforms and Supplementing Title 56 of the Revised Statutes.

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 proposed legislation being considered by the Committee.

1. This bill may actually put New Jersey residents at greater risk of harm, including children that the bills seek to protect.

This legislation will inevitably result in companies being required to collect additional information about all users, including adults. As currently drafted, A. 5069 does not provide any examples of how businesses are to

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/>.

go about determining which of their users are under the age of 18, but inevitably these unspecified 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.⁴ Businesses may be forced to accumulate personal information they do not 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 and members of other vulnerable communities, 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.

California also recently enacted legislation that would implement similar age verification measures which is currently being challenged for similar reasons.⁵ 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. Ongoing efforts by the Legislature to study social media use by minors should be allowed to be completed.

The Legislature is currently moving forward with legislation that would establish a Commission to study the use and effects of social media on students, and put forward proposals to mitigate the impact of social media on students' health and academic performance (A. 1992/S. 715). The establishment of this Commission and the subsequent study it will produce will provide the Legislature with an in-depth expert analysis of the topic A.5069 aims to get at, as well as a slate of recommendations on how best to proceed to address any concerns. We recommend that the Legislature move forward with the establishment of the Commission, and that the Commission be allowed to fully complete its study, prior to the consideration of A.5069 to ensure that the Legislature's efforts to fully understand the topic are able to run its course.

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

A. 5069 permits users to bring civil action against companies that have been accused of violating new regulations. By creating a new private right of action, the measure would open the doors of New Jersey'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 New Jersey, disproportionately impacting smaller businesses and startups across the state.⁶

It is also important to note that the civil penalty for each violation does not allow companies the opportunity to course correct and consult with the Attorney General to find a solutions-based approach. We suggest putting in place a cure period to allow businesses the chance to come into compliance and help ensure that these unintended events are not likely to occur again. 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

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-standar>
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⁵ *NetChoice v. Bonta* (N.D. Cal. 22-cv-08861).

⁶ 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>



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. Businesses would also be better equipped with the time and resources to address potential privacy changes rather than shifting focus to defending against litigation.

4. Sufficient time would be needed to allow covered entities to understand and comply with newly established requirements.

A. 5069 fails to provide businesses with a sufficient onramp to achieve compliance. CCIA recommends that any legislation advanced in New Jersey include sufficient lead time to allow businesses to establish systems to bring themselves into compliance with the new regulations, which is why we propose pushing back the effective date to at least one year following the date of enactment.

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While we share lawmakers’ concerns regarding the potential impact the internet may have on children and appreciate your consideration of these comments. CCIA stands ready to provide additional information as your office considers proposals related to technology policy.

Sincerely,

Alexander Spyropoulos
Regional State Policy Manager - Northeast
Computer & Communications Industry Association