



January 30, 2024

House Committee on Technology & Infrastructure  
State Capitol - Building 1  
1900 Kanawha Boulevard East  
Charleston, WV 25305

## RE: HB 5226 - "Child Social Media Protection Bill" (Oppose)

Dear Chair Linville and Members of the House Committee on Technology & Infrastructure:

On behalf of the Computer & Communications Industry Association (CCIA), I write to respectfully oppose HB 5226 in advance of the House Committee on Technology & Infrastructure hearing on January 30, 2024.

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. In recent sessions, there has been a notable surge in state legislation concerning children's online safety. CCIA and our member companies have a shared interest in ensuring strong protections are in place to protect children and provide parents and adults with simple but effective tools to provide a safe online environment for their families.

CCIA holds a firm conviction that children are entitled to a higher level of security and privacy in their online experiences. Presently, our members are actively engaged in various initiatives to integrate robust protective design features into their websites and platforms.<sup>2</sup> CCIA's members have been leading the effort to implement settings and parental tools to individually tailor younger users' online use to the content and services that are suited to their unique lived experience and developmental needs. For example, various services allow parents to set time limits, provide enhanced privacy protections by default for known child users, and other tools to allow parents to block specific sites entirely.<sup>3</sup> This is also why CCIA supports the implementation of digital citizenship curriculum in schools, to not only educate children on proper social media use but also help educate parents on what mechanisms presently exist that they can use now to protect their children the way they see fit and based on their family's lived experiences.<sup>4</sup>

It should also be recognized that protecting children from harm online does not include a generalized power to restrict ideas to which one may be exposed. Speech that is neither obscene to young people nor subject to other legitimate laws cannot be suppressed solely to protect young online users from ideas or images that a legislative body disfavors. Proposals to keep children safe online should be established through a risk-based approach to developing protections for different ages of users and by focusing on tangible harm. While CCIA shares the goal of increasing online safety, this bill presents the following concerns.

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<sup>1</sup> 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>.

<sup>2</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>3</sup> Competitive Enterprise Institute, *Children Online Safety Tools*, <https://cei.org/children-online-safety-tools/>.

<sup>4</sup> See *supra* note 2.

## 1. HB 5226's provisions regarding liability for data collection and age verification will not achieve the bill's stated objectives.

HB 5226 would hold covered interactive computer services liable for failing to perform age verification but also requires the Secretary of the Department of Human Services to establish requirements for securely disposing of any information obtained by a social media company or its agent as a result of compliance with the bill. 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 virtual private networks (VPNs)<sup>5</sup> and other mechanisms to avoid location-specification age verification requirements 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 unintentionally violate.<sup>6</sup> A recent study from the Pew Research Center found that many Americans worry about children's online privacy but when asked about who is responsible for protecting children's online privacy, most (85%) say parents hold a great deal of responsibility for protecting kids' online privacy. 59% also say that tech companies bear the responsibility while 46% believe the government does. The study also highlights why it is important to consider the tradeoffs associated with age verification and consent proposals that would require the additional collection data; around 89% of Americans are very or somewhat concerned about social media platforms knowing personal information about kids.<sup>7</sup>

Further, a recent study shows that "reasonable age verification methods" do not currently exist. The Commission Nationale de l'Informatique et des Libertés (CNIL) analyzed several existing online age verification solutions but found that none of these options could satisfactorily meet three key standards: 1) providing sufficiently reliable verification; 2) allowing for complete coverage of the population, and; 3) respecting the protection of individuals' data, privacy, and security.<sup>8</sup> Though the intention to keep kids safe online is commendable, this bill is counterproductive to that initiative by requiring more data collection about young people.

<sup>5</sup> Cristiano Lima, *Utah's porn crackdown has a VPN problem*, The Washington Post (May 5, 2023),

<https://www.washingtonpost.com/politics/2023/05/05/utahs-porn-crackdown-has-vpn-problem/>.

<sup>6</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>7</sup> Colleen McClain, *How americans view data privacy*, Pew Research Center: Internet, Science & Tech (Oct. 18, 2023),

<https://www.pewresearch.org/internet/2023/10/18/how-americans-view-data-privacy/>.

<sup>8</sup> *Online age verification: balancing privacy and the protection of minors*, CNIL, (Sept. 22, 2022),

<https://www.cnil.fr/en/online-age-verification-balancing-privacy-and-protection-minors>.

## 2. HB 5226 lacks narrowly tailored definitions, creating serious compliance questions for both businesses and users.

As currently written, the bill does not provide definitions that are clear enough to enable businesses to comply. For example, “exercise of reasonable care” is not defined in this bill. Further, terms such as online “addiction” lack adequate scientific foundation. In the absence of any medical consensus on the topic, private businesses will not be able to coherently or consistently make diagnostic assessments of users. It is also very difficult to reliably describe what may “cause physical, mental, emotional, developmental, or material harms” to a child user. Humans in general, especially children, have very nuanced opinions surrounding what may be harmful to them. The lived experiences of children, teens, and adults differ immensely, and businesses do not have a roadmap to users’ lived experiences, and what could potentially cause them harm.

Digging deeper into the term online “addiction” and the lack of adequate scientific foundation, after the U.S. Surgeon General recently released an Advisory entitled *Social Media and Youth Mental Health*<sup>9</sup>, many were quick to highlight only the harms and risks detailed in the report. However, the report is much more nuanced and also discusses many potential benefits of social media use among children and adolescents. For example, the report concludes that social media provides young people with communities and connections with others who share identities, abilities, and interests. It can also provide access to important information and create a space for self-expression. It should also be highlighted that the report provides evidence that social media-based and other digitally-based mental health interventions may also be helpful for some children and adolescents by promoting help-seeking behaviors and serving as a gateway to initiating mental health care.

Further, the report itself notes the lack of evidence to support a causative relationship between social media and anticipated negative impacts on younger users. For example, the research openly acknowledges that “...social media use may be a risk factor for mental health problems in adolescents. However, few longitudinal studies have investigated this association, and none have quantified the proportion of mental health problems among adolescents attributable to social media use.”<sup>10</sup> It is also reasonable to examine that compared to previous decades, young people face increased financial pressure, greater competition, more complex tertiary education pathways, and increased loneliness specifically due to the COVID-19 pandemic. Factors such as increased mental health resources and the general acceptance of having and reporting mental health conditions also play a role. In order to take a measured approach to these complicated and sensitive issues, it is imperative to remember that correlation does not equal causation.

## 3. This legislation may halt services for individuals under 18, hindering teenagers’ internet access and, consequently, restricting their First Amendment right to information. This includes access to supportive online communities that might 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 all users, including children, while also considering the compliance burden on

<sup>9</sup> U.S. Surgeon General, *Social Media and youth mental health*, U.S. Department of Health and Human Services (May 23, 2023), <https://www.hhs.gov/sites/default/files/sg-youth-mental-health-social-media-advisory.pdf>.

<sup>10</sup> Kayla Tormohlen, Kenneth Feder, Kira Riehm, *Associations Between Time Spent Using Social Media and Internalizing and Externalizing Problems Among US Youth*, *Jama Psychiatry* (Sept. 11, 2019), <https://jamanetwork.com/journals/jamapsychiatry/fullarticle/2749480>.

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 HB 5226 would implement more complex vetting requirements tied to parental consent for users under 18.

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 or resources to get help.

Serious concerns also arise when verifying whether a “parent or guardian” is in fact a minor’s legal parent or guardian. Many parents and legal guardians do not share the same last name as their children due to remarriage, adoption, or other cultural or family-oriented decisions. If there is no authentication that a “parent or guardian” is actually a minor’s legal parent or guardian, this may incentivize minors to ask other adults who are not their legal parent or guardian to verify their age on behalf of the minor to register for an account with an “interactive computer service.” It is also unclear who would be able to give consent to a minor in foster care or other nuanced familial situations, creating significant equity concerns. Further, scenarios where a legal parent or guardian is not located in West Virginia or is not a resident of the state creates significant confusion for consumers and businesses.

The hyperconnected nature of social media has led many to allege that online services may be negatively impacting teenagers’ mental health. However, some researchers argue that this theory is not well supported by existing evidence and repeats a “moral panic” argument frequently associated with new technologies and new modes of communication. Instead, social media effects are nuanced,<sup>11</sup> small at best, reciprocal over time, and gender-specific. Additionally, a study conducted by researchers from Columbia University, the University of Rochester, the University of Oxford, and the University of Cambridge found that there is no evidence that associations between adolescents’ digital technology engagement and mental health problems have increased.<sup>12</sup> Particularly, the study shows that depression’s relation to both TV and social media use was practically zero. The researchers also acknowledged that it is possible, for example, that as a given technology becomes adopted by most individuals in a group, even individuals who do not use that technology could become indirectly affected by it, either through its impacts on peers or by them being deprived of a novel communication platform in which social life now takes place.

#### **4. Age verification and parental consent requirements for online businesses are currently being litigated in several jurisdictions.**

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>13</sup> After 25 years, age authentication still remains a vexing technical and social challenge.<sup>14</sup> Ohio and Arkansas recently enacted legislation that would implement online parental consent and age verification requirements — each law is currently facing a legal

<sup>11</sup> Amy Orben *et al.*, *Social Media’s enduring effect on adolescent life satisfaction*, PNAS (May 6, 2019), <https://www.pnas.org/doi/10.1073/pnas.1902058116>.

<sup>12</sup> Amy Orben, Andrew K. Przybylski, Matti Vuorre, *There Is No Evidence That Associations Between Adolescents’ Digital Technology Engagement and Mental Health Problems Have Increased*, Sage Journals (May 3, 2021), <https://journals.sagepub.com/doi/10.1177/2167702621994549>.

<sup>13</sup> *Reno v. ACLU*, 521 U.S. 844 (1997).

<sup>14</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>.



challenge due to constitutional concerns, and judges recently put both laws on hold until these challenges can be fully reviewed. The fate of a similar law in Utah is also in jeopardy as it is also facing legal challenges.<sup>15</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 and passing on expensive litigation costs to taxpayers.

### 5. 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.

Additionally, research suggests that aggressive regulations, bills, and enforcement actions targeting tech would increase operating costs for regulated U.S. companies, reducing their market value and harming their shareholders. State and local government employee pension plans are leading shareholders in companies that would be targeted by such anti-tech policies, jeopardizing the retirement benefits of 27.9 million pension plan members nationwide, including teachers, firefighters, nurses, and police.<sup>16</sup>

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While we share the concerns of the sponsor and the House Committee on Technology & Infrastructure 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,

Jordan Rodell  
State Policy Manager  
Computer & Communications Industry Association

<sup>15</sup> *NetChoice, LLC v. Griffin* (W.D. Ark. 5:23-cv-05105); *NetChoice, LLC v. Yost* (S.D. Ohio 2:24-cv-00047); *NetChoice, LLC v. Reyes* (D. Utah 2:23-cv-00911); *Zoulek et al. v. Hass & Reyes* (D. Utah 2:24-cv-00031).

<sup>16</sup> *The cost of tech regulatory bills to state and local pension plans – state by state aggregates*, CCIA Research Center (Nov. 1, 2022), <https://research.ccianet.org/stats/cost-of-tech-regulation-bills-state-map/>.