



February 7, 2024

Senate General Laws and Technology Committee
Attn: Committee Clerks Eric Bingham and Andrew Horton
1000 Bank Street
Richmond, VA 23219

**RE: SB 359 - "Consumer Data Protection Act; social media platforms, addictive feed."
(Oppose)**

Dear Chair Ebbin and Members of the Senate General Laws and Technology Committee:

On behalf of the Computer & Communications Industry Association (CCIA), I write to respectfully oppose SB 359 in advance of the Senate General Laws and Technology Committee hearing on February 7, 2024.

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. 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.² 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.³

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.⁴ In fact, the Virginia General Assembly passed HB 1575 in 2023 establishing the Internet Safety Advisory Council to advance the goal of safe use of media and technology by students and teachers in public elementary and secondary schools in the Commonwealth. Among other duties, the Council must develop instructional content on the risks of transmitting personal information on the internet and the importance of privacy protection.

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

¹ 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>.

² 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/>.

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

⁴ See *supra* note 2.



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.

1. SB 359's provisions regarding liability for age verification and parental consent will not achieve the bill's stated objectives.

SB 359 holds covered social media companies liable to perform age verification to determine that the user is not a minor. However, 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.⁵

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.⁶

Further, 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.⁷ 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.

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 that are not their legal parent or guardian to verify their age on behalf of the minor to register for an account with a "large social media platform." 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 Virginia or is not a resident of the state creates significant confusion for consumers and businesses. Additionally, it is unclear what impact users' employment of virtual

⁵ 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>.

⁶ 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/>.

⁷ *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>.

private networks (VPNs)⁸ and other mechanisms to avoid location-specification age verification requirements could have on organizations' liability under this bill.

2. Terms such as “addiction” in this online context 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 and what could be considered an “addictive feed.” Digging deeper into the term “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*⁹, 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. The report further details that the buffering effects against stress that online social support from peers provides can be especially important for youth who are often marginalized, including racial, ethnic, sexual, and gender minorities.¹⁰ 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.”¹¹ 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 standard of conduct and the lack of definitions with adequate scientific foundation could create an incentive to simply prohibit minors from using digital services rather than face potential legal action for non-compliance. As previously mentioned, the First Amendment, including the right to access information, is applicable to teens. Speech cannot be suppressed in the name of “protecting” minor users online nor is a

⁸ 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/>.

⁹ 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>.

¹⁰ Jennifer Marino, Matthew Berger, Megan Lim, Melody Taba, Rachel Skinner, *Social Media use and health and well-being of lesbian, gay, bisexual, transgender, and Queer Youth: Systematic Review*, Journal of Medical Internet Research (Sept. 22, 2021), <https://www.jmir.org/2022/9/e38449>.

¹¹ 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>.



state legislative body the arbiter of what information is suitable for younger users to access. Moreover, 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. An online central meeting place where kids can share their experiences and find support can have positive impacts.

The connected nature of social media has led some regulators 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,¹² individualized, 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.¹³ Particularly, the study shows that depression has virtually no causal relation to TV or social media.

CCIA believes that an alternative to solving these complex issues is to work with businesses to continue their ongoing private efforts to implement mechanisms such as daily time limits or child-safe searching so that parents can have control over their own child’s social media use.

4. Parental consent requirements for online businesses are currently being litigated in several jurisdictions.

Ohio and Arkansas recently enacted legislation that would implement online parental consent and age verification requirements – each law is currently facing a legal 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.¹⁴ 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.

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While we share the concerns of the sponsor and the Senate General Laws and Technology Committee 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 General Assembly considers proposals related to technology policy.

Sincerely,

Khara Boender

¹² 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>.

¹³ 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>.

¹⁴ *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).



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