



April 12, 2024

Virginia General Assembly
1000 Bank Street
Richmond, VA 23219

RE: HB 707/SB 361, as amended - "Consumer Data Protection Act; protections for children." (Oppose)

On behalf of the Computer & Communications Industry Association (CCIA), I write to respectfully request that you reject Governor Youngkin's amendments in the nature of a substitute on HB 707/SB 361. CCIA was previously neutral on HB 707/SB 361, but the most recent amendments raise concerns similar to those we expressed during the previous legislative session in 2023 and 2024 concerning SB 432.

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. 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 for the purpose of advancing 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

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.

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 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.

As amended by Governor Youngkin, HB 707/SB 361 may restrict access to the internet for younger users curtailing their First Amendment right to information and denying them entry to supportive online communities that might be unavailable in their local 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 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. Under HB 707/SB 361’s amended language, users between 14 and 17 could face a similar fate as the amended version of HB 707/SB 361 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.

HB 707/SB 361, as amended, would require covered services to obtain parental consent consistent with regulations promulgated by the Federal Trade Commission (FTC) for compliance with obtaining verifiable parental consent in accordance with COPPA. However, equity concerns already exist regarding COPPA and verified parental consent, and these would be exacerbated by applying it to the larger internet ecosystem by expanding these requirements to users between 14 and 17. The FTC is currently reviewing COPPA in light of changes in technology and CCIA advises against raising this age gate to avoid infringing upon First Amendment rights.

Serious concerns also arise when verifying whether a “parent or legal guardian” is in fact a teen user’s legal parent or guardian. For example, 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 provide consent on behalf of the minor. 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.

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,⁵ 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.⁶ 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.

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 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.⁷ 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.

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.

⁵ 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>.

⁶ 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>.

⁷ *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).



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.⁸

* * * * *

While we share concerns regarding the safety of young people online, we encourage lawmakers to resist advancing the amended version of this legislation that is not adequately tailored to this objective. We appreciate your consideration of these comments and stand ready to provide additional information as the General Assembly considers proposals related to technology policy.

Respectfully submitted,

Khara Boender
State Policy Director
Computer & Communications Industry Association

⁸ *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/>.