



**March 18, 2025**

Arkansas Senate  
Attn: Judiciary Committee  
500 Woodlane Street, Suite 320  
Little Rock, Arkansas 72201-1090

**Re: HB 1726 – “Arkansas Kids Online Safety Act” (Oppose)**

Dear Chair Clark and Members of the Senate Judiciary Committee:

On behalf of the Computer & Communications Industry Association (CCIA), I write to respectfully oppose HB 1726. CCIA opposed the previous version, HB 1083, and continues to have concerns. 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.

CCIA firmly believes that children are entitled to greater security and privacy online. Our members have designed and developed settings and parental tools to individually tailor younger users’ online use to their 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 allow parents to block specific sites entirely.<sup>2</sup> This is also why CCIA supports implementing digital citizenship curricula in schools, to not only educate children on proper social media use but also help teach parents how they can use existing mechanisms and tools to protect their children as they see fit.<sup>3</sup>

However, 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.<sup>4</sup> While CCIA shares the goal of increasing online safety, this bill continues to present the following concerns.

**HB 1726 lacks narrowly tailored definitions, creating serious compliance questions for both businesses and users.**

HB 1726 would result in contradictory standards that will not protect young internet users, and, in fact, would make them less safe. HB 1726’s “duty of care” aimed at “prevention of harm to minors” requires “covered platforms” to “take reasonable measures” to “avoid any heightened risk of harm to minors,” including “patterns of use that indicate or encourage

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

<sup>3</sup> Jordan Rodell, *Why Implementing Education is a Logical Starting Point for Children’s Safety Online*, Disruptive Competition Project (Feb. 7, 2023),

<https://project-disco.org/privacy/020723-why-implementing-education-is-a-logical-starting-point-for-childrens-safety-online/>.

<sup>4</sup> *Erznoznik v. City of Jacksonville*, 422 U.S. 205, 212–14 (1975). See also *FCC v. Pacifica Found.*, 438 U.S. 726, 749–50 (1978); *Pinkus v. United States*, 436 U.S. 293, 296–98 (1978).



addiction-like behaviors”. As explained below, terms such as “addiction” lack adequate scientific foundation. Courts have not opined on what a duty of care to protect children online means for operators of digital services. Therefore, litigation across the country would likely set conflicting standards to define reasonable conduct, making it impossible for businesses to operate nationwide. Clearly defined definitions and scope are crucial to ensuring that policymakers’ intent is met without conflicting regulation and litigation that redefines rights and frustrates goals.

Many of the bill’s definitions are not clear enough to enable businesses to comply. For example, “reasonable care” and “reasonable measures” are not defined in this bill. HB 1726’s broad knowledge standard includes not just actual knowledge but also “knowledge fairly implied on the basis of objective circumstances.” Legislation should clearly define the applicability standards set within. Without clear standards in place, digital services providers will not know how to comply or will be forced to expend considerable resources that impose barriers to competition and innovation.

Furthermore, the bill defines a “minor” as anyone 16 or under, and a “child” as anyone 12 or under, and does not appear to use these terms clearly or consistently. We suggest changing the definition of “minor” to a user under the age of 13 to align with the federal Children’s Online Privacy Protection Act (COPPA) standard, which represents the nationwide compromise.

### **Terms such as “addictive” in this online context lack adequate scientific foundation.**

Humans engage in various compulsive and repetitive behaviors — some of which may negatively impact physical and/or mental health. These could range from binge eating unhealthy foods to exercising excessively to watching favorite shows for hours on end. However, these behaviors do not necessarily amount to “addictions”. The most recent edition of the *Diagnostic and Statistical Manual of Mental Disorders: Fifth Edition Text Revision (DSM-5-TR)* declined to include definitions for “Internet gaming disorder,” “Internet addiction,” “excessive use of the Internet,” or “excessive use of social media,” noting that “[g]ambling disorder is currently the only non-substance-related disorder included in the *DSM-5-TR* chapter ‘Substance-Related and Addictive Disorders.’”<sup>5</sup>

Without any medical consensus on the topic, private businesses cannot be expected to make coherent or consistent diagnostic assessments of what might constitute “addiction” or “addiction-like behaviors.” A simpler and clearer approach would be to specify what types of data businesses may process under what circumstances, rather than attempting to relate such rules to vague concepts like “addiction.”

<sup>5</sup> Am. Psychiatric Ass’n, *Diagnostic and Statistical Manual of Mental Disorders: Fifth Edition Text Revision* (2022).



## **If enacted, HB 1726 may result in denying services to all users under 18. Limiting access to the internet for children curtails their First Amendment right to information accessibility, including access to supportive communities that may not be open-discussion forums in their physical location.**

The vague duty of care and lack of narrowly tailored definitions could incentivize businesses to simply prohibit minors from using digital services rather than face potential legal action and hefty fines for non-compliance. The First Amendment, including the right to access information, is applicable to teens.<sup>6</sup> Moreover, requiring businesses to deny access to social networking sites or other online resources may also unintentionally restrict children's ability to access and connect with like-minded individuals and communities. For example, children of certain 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 to allege that online services may be negatively impacting teenagers' mental health. However, researchers explain that this theory is not well supported by existing evidence and repeats a 'moral panic' argument frequently associated with new technologies and modes of communication. Instead, social media effects are nuanced,<sup>7</sup> individualized, reciprocal over time, and gender-specific. A study conducted by researchers from several leading universities found that there is no evidence that associations between adolescents' digital technology engagement and mental health problems have increased.<sup>8</sup> Particularly, the study shows that depression has virtually no causal relation to TV or social media.

As explained above, 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.

## **HB 1726's ambiguous duties will mandate restrictive content and design practices that silence voices.**

For over 80 years, courts have held that the First Amendment protects individuals and businesses from government interference that blocks or compels speech.<sup>9</sup> These protections are crucial for internet companies to engage in appropriate content moderation practices that limit dangerous and unwanted content online. HB 1726 implements restrictions on design features that will lead to increased data collection from minors and over-removal of constitutionally protected content.

<sup>6</sup> See, e.g., *Reno v. ACLU*, 521 U.S. 844, 874-75 (1997).

<sup>7</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>8</sup> Amy Orben et al., *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>9</sup> See, e.g., *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943); *Erznoznik*, 422 U.S. at 212-14; *Reno*, 521 U.S. at 874-75.



The internet is an integral component of community building and social expression. However, the proposed design restrictions would create a chilling barrier that only hurts internet users. Communities who may be unable to freely express themselves or find like-minded individuals offline will be further cut off from these valuable resources online.

### Age determination 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>10</sup> After 25 years, age authentication still remains a vexing technical and social challenge.<sup>11</sup> Despite purporting not to require age verification or age gating, compliance with the bill’s extensive age-related provisions would be impossible without age determination.

Recent state legislation that would implement online age verification or estimation and parental consent measures is currently facing numerous constitutional challenges, and numerous federal judges have placed laws on hold until these challenges can be fully reviewed, including in Arkansas, California, Mississippi, Ohio, Tennessee, Texas, and Utah.<sup>12</sup> In California, for instance, a federal judge recently issued a preliminary injunction against a state age-appropriate design code law with many similar or equivalent provisions, finding the law to be “content-based on its face”<sup>13</sup> and to “likely fail strict scrutiny.”<sup>14</sup> CCIA anticipates that these forthcoming rulings may clarify which age determination requirements are Constitutionally permissible. CCIA therefore 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 sponsors and the Committee regarding young people’s safety online, we encourage members to resist advancing legislation that does not serve this objective. We appreciate consideration of these comments and stand ready to provide additional information as the Legislature considers proposals related to technology policy.

Sincerely,

Tom Mann  
State Policy Manager, South  
Computer & Communications Industry Association

<sup>10</sup> *Reno*, 521 U.S. at 855-57, 862 (1997).

<sup>11</sup> Jackie Snow, *Why age verification is so difficult for websites*, Wall St. J. (Feb. 27, 2022), <https://www.wsj.com/articles/why-age-verification-is-difficult-for-websites-11645829728>.

<sup>12</sup> See, e.g., *NetChoice v. Bonta*, No. 24-cv-07885, 2025 WL 28610 (N.D. Cal. Jan. 2, 2025); *NetChoice v. Bonta*, No. 22-cv-08861, 2024 WL 5264045 (N.D. Cal. Dec. 31, 2024); *NetChoice, LLC v. Reyes*, No. 23-cv-00911, 2024 WL 4135626 (D. Utah Sept. 10, 2024); *NetChoice, LLC v. Fitch*, No. 24-cv-00170, 2024 WL 3276409 (S.D. Miss. July 1, 2024); *NetChoice, LLC v. Yost*, 716 F. Supp. 3d 539 (S.D. Ohio 2024); *NetChoice, LLC v. Griffin*, No. 23-cv-05105, 2023 WL 5660155 (W.D. Ark. Aug. 31, 2023); *Comput. & Commc’ns Indus. Ass’n et al. v. Paxton*, No. 24-cv-00849, 2024 WL 4051786 (W.D. Tex. Aug. 30, 2024).

<sup>13</sup> *NetChoice v. Bonta*, No. 22-cv-08861, 2025 WL 807961 (N.D. Cal. Mar. 13, 2025).

<sup>14</sup> *Id.* at 23.