April 9, 2025

House Judiciary Committee
Attn: Katy Peternel
107 North Main Street
Concord, New Hampshire 03301

Re: SB 263 – "criminalizing and creating a private right of action for the facilitation, encouragement, offer, solicitation, or recommendation of certain acts or actions through a responsive generative communication to a child" (Oppose)

Dear Chairman Lynn, Vice Chairman Mannion, and Members of the Judiciary Committee:

On behalf of the Computer & Communications Industry Association (CCIA), I write to respectfully oppose SB 263 in advance of the Judiciary Committee hearing on April 9, 2025. 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 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.[2] While CCIA shares the goal of increasing online safety, the bill raises the following concerns:

SB 263 lacks narrowly tailored definitions, creating uncertainty and risk for a wide range of covered businesses.

As currently written, the bill does not provide definitions that are clear enough to enable businesses to ensure they are in compliance. In fact, it does not provide any definitions at all. A wide range of businesses may be considered covered entities: "owner or operator of a computer online service, internet service, or bulletin board service, including a provider of an artificial intelligence (AI) chat program, large language model artificial intelligence bot, chat bot, character AI, or other computer application whose sole purpose is to provide responsive open-ended generative communication through the use of artificial intelligence."

The bill's language for what "constitutes endangering the welfare of a child" includes "if the communication is made with the intent to facilitate, encourage, offer, solicit, or recommend that the child imminently engage in" several vague and undefined categories, which may be interpreted differently based on subjective beliefs.

[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] Competitive Enterprise Institute, *Children Online Safety Tools*, https://cei.org/children-online-safety-tools/ (last updated Feb. 19, 2025).

Humans in general, especially children, exhibit very nuanced opinions surrounding what may be considered to be "sexually explicit"[3] conduct. The lived experiences of children, teens, and adults differ immensely, and businesses do not have a roadmap to users' lived experiences.

And because SB 263 creates a private right of action for "the child, the child's parent, or the child's next friend for damages," it would enable strategic lawsuits against businesses to enforce an individual's social preferences. The only solution a business wishing to avoid exposure to legal risk could conceivably arrive at is to bar all access to minor users that might even conceivably be viewed as harmful or explicit by a parent—and given the wide range of what humans may perceive as dangerous, that is tantamount to barring minor users from all access to services.

Given the complete lack of definitions for critical aspects of this bill, businesses will be unable to satisfactorily comply and will instead opt to not offer services that even potentially might meet the definition of a prohibited risk to individuals under the age of 18—or might choose not to develop those services at all.

This legislation may halt or limit services for individuals under 18, restricting teenagers' First Amendment right to information.

As noted above, the lack of narrowly tailored definitions—or any definitions whatsoever—could create an incentive to simply prohibit minors from using AI services rather than face potential legal action and hefty fines for non-compliance. The bill uses but does not define the term children, and the underlying statute that it would amend RSA 639:3 does not either, referring to both children under 18 and children under 16.

While some regulators allege that AI services such as chatbots may be negatively impacting teenagers' mental health, 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. For example, one study found that there is no evidence that associations between adolescents' digital technology engagement and mental health problems have increased.[4] And while no such study directly examining chatbot usage has been conducted, many studies regarding the use of chatbots to provide mental health support for adolescents suggest that there are significant potential benefits to such services.[5]

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[3] *See, e.g.*, *Reno v. ACLU*, 521 U.S. 844, 871 (1997) ("Could a speaker confidently assume that a serious discussion about birth control practices, homosexuality, the First Amendment issues raised by the Appendix to our Pacifica opinion, or the consequences of prison rape would not violate the CDA?"); *cf. Miller v. California*, 413 U.S. 15 (1973) (discussing the difficulty of defining obscenity).

[4] 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.

[5] *See, e.g.*, Martin & Richmond, *Conversational agents for Children's mental health and mental disorders: A scoping review*, 1 Computers in Human Behavior: Artificial Humans 100028 (2023), https://www.sciencedirect.com/science/article/pii/S2949882123000282; Koulouri *et al.*, *Chatbots to Support Young Adults' Mental Health: An Exploratory Study of Acceptability*, 12:2 ACM Transactions on Interactive Intelligent System Article 11 (2022), https://dl.acm.org/doi/pdf/10.1145/3485874; Dosovitsky & Bunge, *Development of a chatbot for depression: adolescent perceptions and recommendations*, 28 Child and Adolescent Mental Health 124 (2023), https://acamh.onlinelibrary.wiley.com/doi/pdf/10.1111/camh.12627.

Teens have a First Amendment right to access information, among other First Amendment rights. Speech cannot be suppressed in the name of "protecting" minor users online nor is a state legislative body or board the correct arbiter of what information is suitable for younger users to access. But that is precisely the effect of SB 263, both directly and indirectly restricting access to information and speech based on the age of a user without any proven risk of harm.

The private right of action would result in the proliferation of frivolous lawsuits and questionable claims, and exorbitant statutory damages.

SB 263 permits "a child, parent of such child, or next friend of such child" to bring legal action against a wide range of persons that have been accused of violating new regulations, including "any owner or operator of a computer online service, internet service, or bulletin board service," including a provider of an AI chat program, LLM AI bot, chat bot, character AI, or "other computer application". The bill would enable damages of a minimum of $1,000 per violation, as well as declaring that "the owner or operator of a computer service" shall be liable for any prevailing plaintiff's attorney's fees, but no safeguards in the other direction for fraudulent misrepresentation.

The uncabined "next friend" provision would not just enable a parent to sue as the "next friend" on behalf of their child, but also another individual or even any organization to also sue as a "next friend" even if the parents are in the picture. This is ripe for abuse or misuse by dissenting family members, overstepping educators or neighbors, or even unrelated trolls.

By creating a new private right of action, the measure would open the doors of New Hampshire'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 individuals in New Hampshire, disproportionately impacting smaller businesses and startups across the state.[6]

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While we share concerns about protecting child safety 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,

Megan Stokes
State Policy Director
Computer & Communications Industry Association

[6] Trevor Wagener, *State Regulation of Content Moderation Would Create Enormous Legal Costs for Platforms*, Broadband Breakfast (Mar. 23, 2021), https://broadbandbreakfast.com/trevor-wagener-state-regulation-of-content-moderation-would-create-enormous-legal-costs-for-platforms/.