

# Comment Report

Ways and Means

Date: 04/10/2023

Time: 03:00 PM

Location: RM 102, Sup. Ct. Consult

**Name:** Jordan Rodell

**Comment:** See attached. Thank you!



**April 10, 2023**

House Ways and Means Committee  
1007 East Grand Avenue  
Des Moines, Iowa 50319

**RE: HF 526 - "A bill for an act relating to social media users under eighteen years of age, making penalties applicable, and including applicability provisions." (Oppose)**

Dear Chair Kaufmann and Members of the House Ways and Means Committee:

On behalf of the Computer & Communications Industry Association (CCIA), I write to respectfully oppose HF 526.

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. Recent sessions have seen an increasing volume of state legislation related to the regulation of digital services. While recognizing that policymakers are appropriately interested in the digital services that make a growing contribution to the U.S. economy, these bills require study, as they may raise constitutional concerns, conflict with federal law, and risk impeding digital services companies in their efforts to restrict inappropriate or dangerous content on their platforms.<sup>2</sup>

CCIA strongly believes children deserve an enhanced level of security and privacy online. Currently, there are a number of efforts among our members to incorporate protective design features into their websites and platforms.<sup>3</sup> CCIA's members have been leading the effort in raising the standard for teen safety and privacy across our industry by creating new features, settings, parental tools, and protections that are age-appropriate and tailored to the differing developmental needs of young people.

**1. The bill lacks narrowly tailored definitions.**

As currently written, the bill applies to all social media users under 18 years of age. Due to the nuanced ways in which children under the age of 18 use the internet, it is imperative to appropriately tailor such treatments to their respective age groups. For example, if a 16-year-old is conducting research for a school project, it is expected that they would come across, learn from, and discern from a wider array of materials than a 7-year-old on the internet playing video games. We suggest adhering to the treatment of different age groups as defined under the age of 13 to align with the federal Children's Online Privacy Protection Act (COPPA) standard. This would also allow for those over 13, who use the internet much differently than their younger peers, to continue to benefit from its resources.

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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> Taylor Barkley, Aubrey Kirchhoff, & Will Rinehart, *5 things parents and lawmakers need to know about regulating and banning social media*, The CGO (Mar. 7, 2023), <https://www.thecgo.org/benchmark/5-things-parents-and-lawmakers-need-to-know-about-regulating-and-banning-social-media/>.

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

## **2. By requiring a “social media company” to deny services to all users under 18, HF 526 raises several questions regarding compliance and feasibility.**

In order to achieve meaningful children’s safety protections, it is imperative for businesses to have a roadmap of how to properly comply and avoid unintentional violations. This measure specifies that “a social media company shall not allow an individual younger than eighteen years of age in this state to maintain a social media account on the social media company’s internet site.” HF 526 would also hold a social media company liable for a violation of this clause – for that reason, businesses would be forced to estimate or verify the age of every user, not just those under 18. This would then require a company to collect age data about all of its users to determine who is and is not eligible to create an account. CCIA suggests clarifying how businesses are expected to estimate the age of users online. Without a proper mechanism in place, it is difficult for businesses to discern the age of every individual user which could lead to unintended violations.

CCIA cautions against conflating concepts regarding estimating the age of users. For example, when a website asks a user to make a self-attestation of their age, such as on a website for alcohol products, the owner of that website is not held liable if that user chooses to mischaracterize their identity. Similar self-attestation measures are currently in place for social media platforms and other digital services, and the burden is on the consumer to be forthcoming and honest about the age and birth dates they enter. This, however, would change under HF 526 – if online services were to rely on self-attestation for estimates but then in turn be held liable for mischaracterizations, this would present severe culpability concerns and treat the business as the bad actor. Further, it is unclear what impact the use of VPNs and similar mechanisms to evade age verification by users could have on organizations’ liability under this bill.

Age verification requirements raise questions about potential conflicts with data minimization principles and other consumer data privacy protection measures. CCIA is concerned that businesses may be forced to collect age verification data, which would paradoxically force companies to collect a higher volume of data on children.<sup>4</sup> Businesses may be forced to collect personal information they don’t want to collect and consumers don’t want to give, and that data collection creates extra privacy and security risks for everyone. When the Communications Decency Act was passed, there was an effort to sort the online population into kids and adults for different regulatory treatment. That requirement was struck down as unconstitutional because of the infeasibility. Yet, after 25 years, age authentication still remains a vexing technical and social challenge.<sup>5</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.

## **3. Restricting access to the internet for children also restricts their access to supportive communities that may not be accessible forums in their physical location.**

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.

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<sup>4</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>5</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>.

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>6</sup> small at best, reciprocal over time, and gender-specific. Teens themselves also paint a nuanced picture of the effects of social media. It is one in which majorities of teens credit these platforms<sup>7</sup> with deepening connections and providing a support network when they need it. In a recent survey, 80% of teens say that what they see on social media makes them feel more connected to what's going on in their friends' lives, while 71% say it makes them feel like they have a place where they can show their creative side. Additionally, 67% also say these platforms make them feel as if they have people who can support them through tough times.

#### **4. 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. This particularly applies to new small businesses that tend to operate with more limited resources and could be constrained by costs associated with compliance. While larger companies may be able to more easily absorb such costs, it could disproportionately prevent new smaller start-ups from entering the market.

Further, careful consideration of what constitutes best practice should involve conversations with practitioners and relevant stakeholders. Online businesses are already taking steps to ensure a safer and more trustworthy internet — recently, leading online businesses announced<sup>8</sup> that they have been voluntarily participating in the Digital Trust & Safety Partnership (DTSP) to develop and implement best practices and recently reported on the efforts to implement these commitments.<sup>9</sup> We urge lawmakers to study both the benefits and drawbacks of teen safety and privacy requirements and to engage with practitioners and stakeholders to support the ongoing development of practicable solutions.

#### **5. Providing a cure period would be beneficial to consumers and businesses alike.**

CCIA recommends that the legislation include a cure period of at least 30 days. This would allow for actors operating in good faith to correct an unknowing or technical violation, reserving formal lawsuits and violation penalties for the bad actors that the bill intends to address. This would also focus the government's limited resources on enforcing the law's provisions for those that persist in violations despite being made aware of

<sup>6</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>7</sup> Monica Anderson et al., *Connection, creativity and drama: Teen life on social media in 2022*, Pew Research Center: Internet, Science & Tech (Nov. 17, 2022), <https://www.pewresearch.org/internet/2022/11/16/connection-creativity-and-drama-teen-life-on-social-media-in-2022/>.

<sup>8</sup> Margaret Harding McGill, *Tech giants list principles for handling harmful content*, Axios (Feb. 18, 2021), <https://www.axios.com/techgiants-list-principles-for-handling-harmful-content-5c9cfba9-05bc-49ad-846a-baf01abf5976.html>.

<sup>9</sup> See, e.g., DTSP, *The Safe Assessments: An Inaugural Evaluation of Trust & Safety Best Practices* (July 2022), [https://dtspartnership.org/wp-content/uploads/2022/07/DTSP\\_Report\\_Safe\\_Assessments.pdf](https://dtspartnership.org/wp-content/uploads/2022/07/DTSP_Report_Safe_Assessments.pdf) (Appendix III: Links to Publicly Available Company Resources), at 37.



such alleged violations. Such notice allows consumers to receive injunctive relief, but without the time and expense of bringing a formal suit.

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While we share the concerns of the sponsor and the 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 Legislature considers proposals related to technology policy.

Sincerely,

Jordan Rodell  
State Policy Manager  
Computer & Communications Industry Association

**Name:** Andrew O'Connor

**Comment:** Please find our attached comments. Thank you.



April 10, 2023

Dear Chair Kaufmann, Vice Chair Kniff McCulla, Ranking Member Jacoby, and Members of the House Ways and Means Committee,

Entertainment Software Association (ESA), the trade association representing video game publishers and console makers, respectfully submits this letter in opposition to Iowa House File 526 (HF 526). This bill would implement a requirement for social media platforms to obtain parental consent before collecting personal information from individuals known to be younger than 18 years old.

Video games are not social media platforms. They are platforms that have a primary purpose of gameplay. Nonetheless, given the broad definition of “social media platform,” some video game services might meet this definition. Among other things, game platforms allow users to create an account and communicate with each other, functions that are captured by the present definition. Importantly, however, these functions are in service to the overall gameplay experience, which is the principal draw. Given that video games do not raise the same concerns as social media platforms, the definition of “social media platform” should be revised to exclude video games:

4. “Social media platform” means . . . . The term does not include any of the following:
  - (a) an internet service provider
  - (b) electronic mail
  - (c) an online service, application, or internet site that consists primarily of news, sports, entertainment or other content preselected by the provider that is not user-generated and where interactive functionality is incidental to, directly related to, or dependent upon the provision of content.
  - (d) a platform that has the primary purpose of providing access to an interactive gaming, virtual gaming, or online service, that allows the creation and uploading of content for the purpose of interactive gaming, entertainment, or associated entertainment, and the communications related to that content.**

This amended definition will preserve the intended focus on social media platforms while avoiding adverse impacts on video games, where the considerations are different.

There are other problems with the bill. HF 526 would require parental consent for collecting personal information from U18 children. Federal law already requires parental consent to collect PI from known U13 children, under the Children’s Online Privacy Protection Act (COPPA) framework. Historically, U13 has served as a good age threshold because after that age, kids are more likely to evade age restrictions and sneak around parental oversight of their online activities.



Our industry has extensive experience complying with the well-established federal framework on children's privacy, which specifies procedures for obtaining parental consent and determining age. The Federal Trade Commission (FTC) has devoted substantial thought to parental consent and, under its rule implementing COPPA, identified a set of specific procedures that companies can rely upon to obtain parental consent for collecting personal information from minors under 13 years old. No consumer privacy law requires a company to obtain parental consent for children 13-17. We urge this committee to develop regulations that do not conflict with existing legal standards, specifically do not pass legislation requiring businesses to obtain parental consent from teens to access game platforms.

To meet the requirements of the bill, and to avoid substantial liability, social media platforms would need to age verify all of their users so that they could be certain to seek parental consent when collecting personal information from U18 users. Age verification raises several constitutional issues.

Age verification may involve collecting and confirming identification information from each user, which creates a financial penalty on sites that make speech available while deterring adults from accessing material they have a First Amendment right to read and view. The effect would be analogous to asking every bookseller to ask each customer for proof of age before permitting them to browse in the store because the store carries some material that is not suitable for minors. Age-verification systems also deprive internet browsers of their anonymity. Many browsers will decide not to view material rather than reveal their identity. This deprives those readers of access to First Amendment-protected material such as the video games they seek to play. In turn, this reduces traffic on websites. The loss of traffic can reduce the income of websites and limit the ability to communicate with a wider audience.

Age verification mandates, whether express or implied, also violate the Commerce Clause of the U.S. Constitution, which reserves to Congress the power to regulate interstate commerce. Since the Internet goes beyond the borders of Iowa, all websites would be required to determine who is a resident of Iowa to comply with this bill. Websites would have to demand proof of geographic location and require proof of age from every user, which means the legislation would apply to every website on the Internet. Courts across the country have repeatedly struck down state laws that seek to regulate online content as unconstitutional burdens on interstate commerce.

Due to constitutionality and scoping concerns as well as the interplay with the federal COPPA framework, we respectfully request that this committee not pass HF 526.

Sincerely,

Andrew O'Connor  
Director, State Government Affairs  
Entertainment Software Association

**Name:** Ruthie Barko

**Comment:** Please find attached a letter outlining TechNet's concerns with HF 526 for today's hearing.



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April 10, 2023

The Honorable Bobby Kaufmann  
Chair  
Ways and Means Committee  
Iowa State House of Representatives  
1007 E. Grand Avenue  
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The Honorable Barb Kniff McCulla  
Vice Chair  
Ways and Means Committee  
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The Honorable David Jacoby  
Ranking Member  
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**RE: HF 526, A bill for an act relating to social media users under eighteen years of age, H. Ways and Means Hearing, TechNet Oppose**

Dear Chair Kaufmann, Vice Chair Kniff McCulla, Ranking Member Jacoby and Members of the House Ways and Means Committee:

I write on behalf of TechNet respectfully in opposition to HF 526, which presents onerous burdens for social media companies and online platforms and for the Iowans who use them. We outlined these concerns with similar bills that have been heard this year in Iowa, and must continue to highlight these issues for the Committee, asking you not to advance the bill because of the negative repercussions outlined below.

*TechNet is the national, bipartisan network of technology CEOs and senior executives that promotes the growth of the innovation economy by advocating a targeted policy agenda at the federal and 50-state level. TechNet's diverse membership includes dynamic American businesses ranging from startups to the most iconic companies on the planet and represents more than five million employees and countless customers in the fields of information technology, e-commerce, the sharing and gig economies, advanced energy, cybersecurity, venture capital, and finance.*

Our members are committed to online safety and work very hard to give users the tools to create the online experience that fits their needs and their family's needs. An educated consumer armed with technology is always the best protection against unwanted online interactions. TechNet members have empowered consumers with a number of tools to customize their online experience. Whether by activating

parental controls on streaming television services or smartphone apps that help families manage their digital life across all connected devices, families have options when it comes to filtering content online.

Additionally, there are many commercial, as well as free, content filtering and blocking solutions available that enable consumers to protect their families and themselves from illegal or inappropriate content. These solutions are widely available as both integrated and independent solutions for a wide range of technologies.

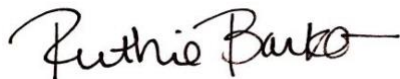
While it seems like a simple requirement to enact, the age verification requirements in this bill are problematic. Age verification results in capturing massive amounts of sensitive personally identifiable information. Because of the civil penalties included in the bill, social media platforms would likely have no choice but to treat all users as if they are under the age of 18, resulting in age verification to be required before an Iowa citizen accesses any content online.

This is a monumental undertaking, not just social media companies and online platforms, but a wide variety of companies with users in Iowa would be forced to take drastic measures in order to comply with this age verification requirement on the sites they offer. It is important to keep in mind that using a driver's license or government issued ID, as well as most other forms of age verification that would be compliant with the requirements of this bill, result in a new collection of sensitive personal information that is not currently being collected by social media companies and other online platforms. This is claiming to solve one problem, by mandating the collection of more data that potentially creates other issues.

While we appreciate the goal of this bill to protect minors online, it will effectively force all users to hand over tranches of sensitive and personally identifiable data – just to use the internet.

For these reasons, TechNet must respectfully oppose HF 526. TechNet will continue to work with the Ways and Means Committee on this issue and seeks common solutions that are in the best interest of Iowans. We thank you in advance for your consideration of our comments, please do not hesitate to reach out with any questions.

Best,



Ruthie Barko  
Executive Director, Colorado & the Central U.S.  
TechNet

Cc: Members of the House Ways and Means Committee