



TECHNET
THE VOICE OF THE
INNOVATION ECONOMY

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April 12, 2023

The Honorable Ron Latz
Chair, Minnesota Senate Judiciary Committee
95 University Avenue W.
3105 Minnesota Senate Bldg
St. Paul, MN 55155

RE: SF 2810 – Age-Appropriate Design Code

Dear Senator Latz,

On behalf of TechNet's member companies, I respectfully submit this letter of opposition to SF 2810, regarding age-appropriate design code.

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 over 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.

TechNet strongly believes children deserve a heightened level of security and privacy online and there are several efforts within the industry to incorporate protective design features into websites and platforms. Our companies have been at the forefront of 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. Our member companies are committed to providing a safe, age-appropriate experience for young people online; however, we are opposed to this bill's approach for several reasons.

The requirements in this bill would be difficult for our companies to implement. How these standards are enforced is deeply concerning, as it outlines requirements for business without identifying the steps to come into compliance. Additionally, this bill is preempted by the Children's Online Privacy Protection Act, or "COPPA". SF 2810 would change the threshold from COPPA's "directed to children" to "likely to

be accessed by children.” This is an overinclusive standard and would capture far more websites and platforms, subjecting them to this bill’s requirements, which, as noted, are difficult to interpret and implement. Consideration should be given to websites, such as online news, which are likely to be accessed by users of all ages and do not require visitors to register to view content.

The requirement that companies consider the “best interests” of children is incredibly difficult to interpret. Different companies, even parents in one household, can have very different interpretations of what is and isn’t in the “best interests” of children. In addition, the requirement that personal information cannot be used in a way that is demonstrably harmful to the physical, mental, or overall well-being of children is another example of the bill’s ambiguity. It’s unclear who decides what is considered demonstrably harmful and how that determination is made. TechNet believes that parents and guardians should maintain the ultimate responsibility to decide what is best for their children and families. As written, SF 2810 will impact parents’ and guardians’ rights to choose what types of content their children are able to access and could limit the ability of adult users to access member products and services. Given these stringent policies, this bill could very well limit access to important services or information for teens in the most vulnerable segments of the population including LGBTQ+ teens, teens in domestic abuse situations, and teens looking for reproductive health information.

SF 2810 would also require new standards for age verification. Age-verification is a complex challenge for our industry to address, requiring consideration of how to properly balance the interests of privacy and security. Stringent age-verification would require the collection of more personal information such as birthdates, addresses, and government IDs, which conflicts with data minimization principles. Efforts are ongoing to develop more privacy-protective ways to verify age online. Until there are industry-wide tools available, age-verification will continue to have tradeoffs regarding personal data collection and will be difficult to implement in practice. Further, unfortunately, no system is infallible.

This bill is based on the law recently enacted in California that would impact the structure and design of the Internet, ostensibly to protect minors, and would impose significant burdens on most online businesses. The law has a potentially sweeping impact on the entire internet. This is primarily because of the law’s provisions, including:

- Broad definition of a child as anyone under age 18
- Mandate to design services for children even if the services aren’t oriented to children
- Mandate to enforce community standards in reviews and other forums
- Elimination of secondary uses of data (such as analytics, product improvement, advertising, etc.)
- Onerous restrictions on collection and use of data, and
- Presumption that users are children unless proven otherwise.

Like the California law, SF 2810 would substantially limit how customer data can be used, shared, and retained and potentially prohibit or significantly limit the use of ad-supported business models. It would require companies to set default privacy settings to a high level and restrict use of algorithms to augment, inform, or analyze the customer experience unless the company can prove with reasonable certainty the user is not a minor. Companies would be required to prepare Data Protection Impact Assessments (DPIA) to assess and articulate a plan to mitigate risks that any existing or new feature or service could expose children to "harmful, or potentially harmful" content, conduct, targeted advertising, or contacts. Finally, it would eliminate enforcement discretion with respect to the business's terms, policies, and community standards.

While we would agree that the enforcement is best handled with the Attorney General's Office, we have concerns with how the Attorney General would protect our member companies' trade secrets. The bill requires companies to complete DPIA's for any product or service feature likely to be accessed by a child and make them available to the Attorney General. DPIA's will undoubtedly contain trade secrets into our member companies' services and products and the bill does not offer assurance to private companies as to how these DPIA's will be protected. Given this, we do appreciate the sponsor's inclusion of a cure period.

There is currently a lawsuit against the California AADC, which alleges that the AADC violates the First and Fourth Amendments and the Dormant Commerce Clause, is unconstitutionally vague, and is preempted by COPPA and Section 230 of the Communications Decency Act. Because of this pending litigation, TechNet recommends waiting until the litigation is concluded before considering similar legislation.

In conclusion, the best way to keep young people safe online is by promoting the education of safe internet practices. We support policies that help prepare young people to be a successful part of a global, interconnected, and technology-driven economy. Such policies include supporting digital learning resources and technology integration in student learning environments, fully funded K-12 education, and rigorous computer science standards. Digital citizenship education is a top priority for TechNet and its member companies. Several businesses participate in the Digital Trust & Safety Partnership (DTSP), which outlines best practices for those operating in the digital space. We would suggest that concerned stakeholders proactively partner with organizations and companies supporting digital citizenship and online safety education.

We recognize the importance of strong protections for Minnesota youth, but those efforts should account for teens' autonomy and aim to achieve consistency with emerging norms. For the above stated reasons, including pending litigation, TechNet is opposed to SF 2810 Thank you for your time and we look forward to continuing these discussions with you.

Thank you,

A handwritten signature in black ink, appearing to read 'Tyler Diers', written in a cursive style.

Tyler Diers
Executive Director, Midwest
TechNet