



January 9, 2024

Senator Erin K. Maye Quade
95 University Avenue W.
Minnesota Senate Bldg., Room 3227
St. Paul, MN 55155

Senator Melissa H. Wiklund
95 University Avenue W.
Minnesota Senate Bldg., Room 2107
St. Paul, MN 55155

Senator Kelly L. Morrison
Assistant Majority Leader
Minnesota Senate
95 University Avenue W.
Minnesota Senate Bldg., Room 3205
St. Paul, MN 55155

Senator Bonnie Westlin
Chair of the Legislative Commission on
Data Practices
95 University Avenue W.
Minnesota Senate Bldg., Room 3403
St. Paul, MN 55155

Representative Jamie Becker-Finn
Vice Chair of the Legislative Commission on
Data Practices
559 State Office Building
St. Paul, MN 55155

RE: SF 2810 – Minnesota Age-Appropriate Design Code Act – Oppose

Dear Senator Maye Quade, Senator Wiklund, Senator Morrison, Senator Westlin, and Representative Becker-Finn:

We write to respectfully request that you **reconsider SF 2810**, the “Minnesota Age-Appropriate Design Code Act.”¹ While we strongly agree with protecting Minnesota’s children and teens online, this bill would subject an excessively large range of companies to severe requirements and restrictions that would hamper innovation and hurt Minnesota consumers.

As the nation’s leading advertising and marketing trade associations, we collectively represent thousands of companies across the country. These companies range from small businesses to household brands, advertising agencies, and technology providers. Our combined membership includes more than 2,500 companies that power the commercial Internet, which accounted for 12 percent of total U.S. gross domestic product (“GDP”) in 2020.² Our group has more than a decade’s worth of hands-on experience it can bring to bear on matters related to consumer privacy and controls. We would welcome the opportunity to engage with you further on the specific issues we have with the bill outlined below.

SF 2810 is modeled after legislation in California that is currently subject to legal scrutiny. Minnesota should not advance a bill that is based on legislation being challenged in the courts.³ SF 2810 contains several provisions that very likely abridge First Amendment and Fourth Amendment protections

¹ Minnesota SF 2810 (Reg. Sess. 2023-2024), located [here](#).

² John Deighton and Leora Kornfeld, *The Economic Impact of the Market-Making Internet*, INTERACTIVE ADVERTISING BUREAU, 15 (Oct. 18, 2021), located at https://www.iab.com/wp-content/uploads/2021/10/IAB_Economic_Impact_of_the_Market-Making_Internet_Study_2021-10.pdf.

³ Complaint, *NetChoice LLC v. Bonta* (N.D. Cal., Dec. 14, 2022), located [here](#).

as well as the Due Process and Commerce Clause of the United States Constitution. Challenges to a very similar law enacted in California are already underway in California courts.⁴ Further, the U.S. District Court for the Northern District of California has preliminarily enjoined enforcement of the California law, reasoning that the complaint challenging the law's enforceability is likely to succeed on the claim that the California law violates the First Amendment by not adequately tailoring its restrictions on commercial speech to achieve a substantial governmental interest in protecting minors' wellbeing.⁵ Minnesota's Legislature should not follow in California's footsteps by passing a law that abridges minors' constitutional protections and risks being invalidated.

SF 2810's definition of child as "a consumer who is under 18 years of age" goes far beyond other definitions in privacy laws. The Children's Online Privacy Protection Act ("COPPA") defines a child as an individual under 13 years of age, and no other state privacy law currently in effect defines a child as under 18 ("U-18"). This broad definition of a "child" in SF 2810 would result in an environment where a toddler may be treated the same as a student about to enter college.

In addition, SF 2810 sweeps in any digital property that displays even minimal advertising that could appeal to U-18s, which will result in nearly every company falling under the bill's reach. For example, the bill could be read to apply to the online offerings of clothing retailers, professional sports organizations, and restaurants, simply because it's possible 17-year-olds may access them. In addition, to help ensure "children" are not "likely" to access an online service, product, or feature, businesses may require online visitors to pass through "age gates" for access. Anyone attempting to access a website would have to provide specific age information to the site owner before reading its contents. The legislation would significantly hamper an individual's ability to seamlessly move from one website to the next to reach desired information or content. Moreover, the bill's onerous standards and broad reach will severely hinder companies from doing business in Minnesota and degrade the consumer experience online.

SF 2810 would deprive Minnesota's youth of access to and benefits from the Internet. The bill would prevent Minnesota minors from accessing a wealth of information that otherwise would be at their fingertips. Shrinking the variety of content, viewpoints, voices, and information 17-year-olds can reach will not protect them but instead will ensure they will not have the same experience with the Internet as their contemporaries living in other states. SF 2810 will turn off or severely limit Minnesota minors' access to the greatest informational resource in modern history.

SF 2810's definition of "child" to include teens will make them lose access to future opportunities. The bill prohibits the use of personal information about a child for any reason other than the reason the personal information was collected. This prohibition could functionally end access to information about future options for Minnesota high school seniors, which would deprive them of the ability to learn about colleges, trade programs, military recruitment, employment opportunities, and a myriad of other interest areas. Minnesota should not enact a law that could hurt minors' ability to plan for their futures.

The overly broad definitions included in the bill would apply to many websites and applications with intended audiences outside of this scope. Imposing the bill's requirements onto most of the Internet

⁴ *Id.*

⁵ Order Granting Motion for Preliminary Injunction, *NetChoice LLC v. Bonta* (N.D. Cal., Dec. 14, 2022), located [here](#).

will decrease innovation, remove vital benefits of the Internet for teens, harm the consumer experience, and hamper the data-driven economy.

* * *

We and our members support privacy protections for children and teens. We believe, however, that SF 2810 takes the wrong approach to such matters. We therefore respectfully ask you to decline to advance the bill.

Thank you in advance for your consideration of this letter.

Sincerely,

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