



June 27, 2024

The Honorable Tyrone Carter
Chair
Committee on Regulatory Reform
Michigan House of Representatives
Room 375, Capitol Building
100 North Capitol Avenue, Lansing, MI 48933

RE: HB 5823 - "Age-Appropriate Design Code Act"

Dear Chair Carter and members of the committee,

On behalf of Chamber of Progress – a tech industry association supporting public policies to build a more inclusive country in which all people benefit from technological leaps – I write today to **urge you to oppose HB 5823**, which will degrade online services for users of *all* ages, compromise online privacy, disproportionately harm historically marginalized youth, and threaten to violate First Amendment rights, likely leading to a protracted and unwinnable legal battle.

We recognize the efforts of HB 5823 to address harm to minors, and we remain committed to advocating for policies that prioritize online safety for young people. However, we must also emphasize the importance of safeguarding fundamental rights such as freedom of speech and privacy, and we are concerned about the potential harm this bill may cause to youth in Michigan.

HB 5823 would undermine the privacy and online experiences for *all* users

As written, HB 5823 would effectively require covered companies to determine the identity and age of ALL users through a “commercially reasonable method” of “age estimation.” Inviting an independent third party doesn’t diminish privacy concerns regarding age verification; it merely relocates it. In fact, estimating the age of a user will require more data, acting contrary to data minimization efforts. Moreover, many adult users reasonably would prefer not to share their

identifying information with online services - creating an unpleasant dilemma for adult users: turn over sensitive personal data to access protected speech online, or forego enjoyment of that online service entirely.

Moreover, compelling companies to gather personal information from so many users threatens cybersecurity. Specifically, services that cater to LGBTQ+ communities would be at particular risk for targeting since their data could be used for cyberbullying or blackmail. Privacy violations online often lead to offline violence. In 2022, 54% of LGBTQ+ survey respondents reported experiencing severe harassment, including stalking, physical threats, and doxing.¹ And more broadly, malevolent actors will see any covered company as a ripe target for ransomware attacks.

Platforms may over-moderate for all users, disparately impacting historically marginalized youth

HB 5823's requirement for covered platforms to act in the "best interests of a child" in the development and provision of their services or products is concerning because the definition of this term is overly broad, subject to various interpretations, and lacks clear guidance on its specific requirements. This could lead to inconsistent enforcement, create legal uncertainties, and force covered platforms to become the arbiter of appropriate content for children of all age ranges and circumstances.

Such ambiguous provisions in HB 5823 will cause social media platforms to avoid litigation by over-moderating, resulting in a diminished experience for users of *all* ages and restricting vulnerable youth from the resources they need the most. Marginalized and at-risk youth have the most to gain from social media engagement, particularly if they face adversity or isolation offline. A majority of adolescents report² that social media helps them feel more accepted (58%), like they have people who can support them through tough times (67%), like they have a place to show their creative side (71%), and more connected to what's going on in their friends' lives (80%).

HB 5823 risks restricting content for LGBTQ+ youth who use social media to find friends, seek emotional support, and search for information about their identities and health - especially those growing up in unsupportive families or

¹ <https://www.adl.org/sites/default/files/pdfs/2022-09/Online-Hate-and-Harassment-Survey-2022.pdf>

² <https://www.pewresearch.org/internet/2022/11/16/connection-creativity-and-drama-teen-life-on-social-media-in-2022/>

communities.³ The bills' provisions would also disproportionately impact young people of color, as social media has provided a platform for teens and students of color to speak up against racial prejudice, with 82% of Black and Hispanic users stating that social media is effective for creating sustained social movements and preserving historically-marginalized groups' access to protected speech.⁴

We agree that greater protections for young users are needed, but this bill's requirements would undermine those protections and harm vulnerable users.

Data Protection Impact Assessments guarantee litigation and raise major First Amendment issues

For any business providing an “online service, product, or feature” that is “likely to be accessed by children,” HB 5823 mandates that the platform complete Data Protection Impact Assessments (DPIAs) whenever a new service, product, or feature is introduced. Because all websites could be accessed by a child and all websites carry a nonzero risk of harm to children, HB 5823's DPIA requirements effectively chill internet services from developing new products and features—even products and features that could materially benefit and improve safety for children—to avoid future litigation risks associated with their DPIAs.

Furthermore, recent rulings from courts in Arkansas,⁵ California,⁶ and Ohio⁷ underscore the principle that regulatory measures impacting the core editorial and curatorial functions of social media companies, even when intended to safeguard young users, are subject to rigorous constitutional scrutiny under the First Amendment.

HB 5823 directly contradicts established legal precedent. The First Amendment restricts governmental interference with both the editorial discretion of private entities and the rights of individuals, regardless of age, to access lawful expression. HB 5823, through its content-based and speaker-based restrictions,

³ <https://www.nytimes.com/2023/05/24/upshot/social-media-lgbtq-benefits.html>

⁴ <https://www.pewresearch.org/internet/2022/08/10/teens-social-media-and-technology-2022/>

⁵ *NetChoice, LLC v. Griffin*, No. 5:23-cv-05105 (W.D. Ark. filed June 29, 2023). “If the State’s purpose is to restrict access to constitutionally protected speech based on the State’s belief that such speech is harmful to minors, then arguably Act 689 would be subject to strict scrutiny.”

⁶ *NetChoice, LLC v. Bonta*, No. 5:2022cv08861 (N.D. Cal. 2023). “[T]he Act’s restrictions on the functionality of the services limit the availability and use of information by certain speakers and for certain purposes and thus regulate[s] protected speech.”

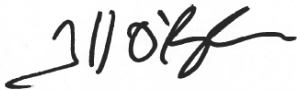
⁷ *NetChoice, LLC v. Yost*, 2024 WL104336 (S.D. Ohio Jan. 9, 2024). “As the [Supreme] Court explained, ‘[s]uch laws do not enforce parental authority over children’s speech and religion; they impose governmental authority, subject only to a parental veto.’ The Act appears to be exactly that sort of law. And like other content-based regulations, these sorts of laws are subject to strict scrutiny.”

unequivocally infringes upon these fundamental freedoms. Moreover, similar legislative efforts aimed at restricting minors' access to protected speech have been met with significant judicial skepticism.⁸ Courts have consistently demanded a compelling justification for such measures, alongside concrete evidence of their necessity and effectiveness in mitigating harm. The failure to meet this high bar of constitutional scrutiny renders these attempts legally untenable.

As such, HB 5823 not only contravenes core constitutional values but also is likely to be adjudicated as unconstitutional on the grounds of the First Amendment, among other legal and policy considerations.

For these reasons, we urge you to **oppose HB 5823**.

Sincerely,

A handwritten signature in black ink, appearing to read "T O'Boyle", with a stylized flourish at the end.

Todd O'Boyle
Senior Director, Technology Policy
Chamber of Progress

⁸ The *Griffin* Court noted “[E]ven though the State’s goal of internet safety for minors is admirable, ‘the governmental interest in protecting children does not justify an unnecessarily broad suppression of speech addressed to adults.’” Similarly, the *Bonta* and *Yost* Courts found that the California Age Appropriate Design Code is not based on any direct evidence demonstrating a causal link between social media use and harm to younger users.