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September 13, 2023

The Honorable C. E. (Cliff) Hayes Jr.
Chair
Joint Commission on Technology and Science
Virginia House of Delegates
Pocahontas Building
900 East Main Street, Room E417
Richmond, Virginia 23219

RE: HB 1688 (Brewer) and SB 1026 (Suetterlein) – Children’s Data Privacy

Dear Chairman Hayes and Members of the Commission,

On behalf of TechNet, I respectfully submit comments on HB 1688 and SB 1026, related to children’s data privacy.

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 4.5 million employees and countless customers in the fields of information technology, artificial intelligence, e-commerce, the sharing and gig economies, advanced energy, transportation, cybersecurity, venture capital, and finance.

TechNet and its member companies are committed to providing a safe, age-appropriate experience for young people online. TechNet agrees that protecting children’s data is a top priority; however, we remain opposed to HB 1688 and SB 1026 for several reasons.

Existing Law

The Virginia Legislature passed a comprehensive privacy law, the Virginia Consumer Data Protection Act (VCDPA), which went into effect on January 1, 2023. The VCDPA includes numerous new rights for all consumers, including significant rights to know what personal information is collected about them, and the rights to correct, delete, or port their personal data. Consumers also have the right to opt-out of targeted advertising, sale of their data, and profiling in furtherance of decisions that produce legal or similarly significant effects concerning consumers. These rights are exercisable by (or on behalf of) all consumers, without regard to age. Thus, children and teens have considerable privacy rights

and protections under this law. We urge the legislature to allow for sufficient time to pass to enable a full assessment of this law and how it is operating in practice before amending it. It is not prudent to change the rules for companies that have just rolled out mechanisms to enable these new rights.

Additional Data Collection

In order to meet the compliance obligations set forth in these bills, in many instances, companies may be required to collect more data about consumers to determine age. This is in direct contravention to the principle of data minimization which is a component of the VCDPA. Such an obligation would require companies to deploy new systems. These bills would require parental consent for any collection of data from consumers under 18 years of age. This would result in an untenable user experience and could subject teens to safety risks. This would also create delays and impediments to routine purchases or internet services by teens unless a parent is present to verify teens' actions each time.

One-Size-Fits-All

These bills take a one-size-fits-all approach and doesn't account for developmental differences. Experiences that might be appropriate for a child under 13 likely differ from those appropriate for a 17-year-old, and the law ought to account for that and give platforms room to tailor experiences appropriately. The legislation's failure to account for these differences means in practice, a 17-year-old might be ready for the responsibility of driving a car or preparing to vote, but under this bill would need parental consent to subscribe to an online newspaper or stream their favorite music.

Litigation

There is currently ongoing litigation in states on the issue of children's privacy (California – NetChoice v. Bonta). It would be imprudent of this legislature to consider enacting new laws prior to the adjudication of this pending legislation.

We recognize the importance of strong protections for young people online, but those efforts should account for data minimization, teens' autonomy, consistency with emerging norms, and the state's existing foundational privacy law. TechNet appreciates your consideration of this important issue. If you have any questions, please don't hesitate to reach out.

Sincerely,

Margaret Durkin

Margaret Durkin
TechNet Executive Director, Pennsylvania & the Mid-Atlantic