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Delivered via email

Re: Serious Concerns with New Jersey A.5750/S.4215

Dear New Jersey Leadership:

We are writing to express the Software & Information Industry Association's (SIIA's) opposition to A.5750/S.4215, an amended version of which has passed out of the Assembly Health Committee. By way of background, SIIA is a trade association representing more than 380 companies in the software, digital content, and information industries. Our members include the nation's leading publishers and innovative developers of digital products and services for K-20 education, as well as financial information providers, creators of software and platforms used by millions worldwide, and companies specializing in data analytics and information services.

We appreciate the intent of the sponsors to enact policies that protect children and teenagers in New Jersey from inappropriate content online. We acknowledge and support the broad agreement by state and federal lawmakers about the need to protect children’s privacy and safety. We also agree that establishing legal guardrails for businesses is important. In fact, many of our members have implemented reasonable controls and limited targeted advertising to children – and we support legislation with these goals in mind.

Although we share the sponsors’ concerns regarding children’s privacy, this bill as drafted is unlikely to withstand constitutional scrutiny, presents significant workability challenges, and limits the *benefits* of online interaction and community building for children and teens that would have a disproportionate effect on marginalized and underprivileged communities. These negative effects would be amplified by the bill’s inclusion of a private right of action (PRA).

First, as drafted, A.5750/S.4215 contains requirements that are unlikely to pass constitutional muster. The case of California’s Age-Appropriate Design Code is instructive. In *NetChoice v. Bonta*, a district court judge enjoined enforcement of that law in response to plaintiff’s First Amendment challenge. More specifically, the court found that even as applied to commercial speech, restricting minor speakers’ *access* to this information did not meet even the threshold for intermediate scrutiny. The primary culprit for this type of scrutiny is naturally age verification and burdensome parental consent policies that restrict minors’ access to information online. Avoiding such requirements will not only improve the bill’s chances of withstanding a First Amendment challenge, but as we further discuss, prevent a variety of additional unintended consequences.

Second, notwithstanding the constitutional infirmities with these requirements, age verification and complex parental consent requirements are often simply unworkable due to inconsistent consumer access to necessary technology and information. For example, this bill’s age verification requirement, as drafted, would require a form of government-issued ID, thus locking any who do not possess such an approved ID out of social media sites entirely. The bill’s parental consent requirement would create similar problems for children of unbanked parents – and as written, even parents who simply do not possess credit card information – restricting children’s access to valuable information when parents who would otherwise consent simply cannot due to their economic circumstances.

Third, both the age verification and parental consent requirements are likely to harm the youth the bill is intended to help. The age verification provision in this bill would require the collection of far *more* geolocation data on state residents, actually increasing these consumers’ privacy risks. Restricting minors from accessing social media sites because their parents are unable to consent is also likely to diminish opportunities for these minors’ development in a variety of contexts. Digital platforms have played a key role in creating community around the challenges faced by kids and teenagers, and many teens use social media to engage with their communities, connect with family and friends, and explore their hobbies and interests. Empowering these connections is even more salient for those belonging to minority groups, who, depending on their situations, may not be able to connect with other members of these



groups as easily in person. There is also likely to be a disproportionate effect on underprivileged youth who may not have access to information through alternative means – parents, school libraries, and teachers – if internet sources restrict accessibility in an attempt to comply with the new law. Limiting kids’ and teens’ access to all this information would deal an unfortunate blow to these substantial benefits.

Lastly, although we understand the initial appeal of a private right of action, the practical realities of enforcement would create significant unintended consequences for businesses while failing to help New Jersey consumers. PRAs for alleged privacy violations involve highly asymmetrical eDiscovery costs because they give rise to costly and disruptive eDiscovery into a business’s data operations. Because the plaintiff’s bar law firm rarely incurs any material expense in these scenarios, privacy class actions are an inviting opportunity for nuisance litigants. At the same time, recent studies have proven that PRAs do little to compensate consumers for privacy intrusions, *even when a privacy violation has been shown*. Instead, government enforcers, particularly State Attorneys General, are far better equipped both financially and in their understanding of privacy regulation to act in consumers’ best interest.

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Protecting children and teenagers from inappropriate or malicious content is a legitimate legislative priority, and SIIA supports efforts to provide meaningful protections to consumers while enabling critical, societally-beneficial uses of information and respecting constitutionally guaranteed free speech interests.

Thank you for considering our views.

Respectfully submitted,

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