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March 6, 2023

The Honorable Melony Griffith
Miller Senate Office Building, 3 East Wing
11 Bladen Street, Annapolis, MD 21401

RE: SB 844 - Consumer Protection - Online Products and Services - Children's Data

Dear Chair Griffith and Members of the Committee,

On behalf of TechNet's member companies, I respectfully submit this letter of opposition to SB 844, regarding 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 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 has offices in Austin, Boston, Chicago, Denver, Harrisburg, Olympia, Sacramento, Silicon Valley, and Washington, D.C.

TechNet strongly believes children deserve a heightened level of security and privacy and there are several efforts within the industry to incorporate protective design features into their websites and platforms. Our companies have been at the forefront of raising standards for teen safety and privacy across the 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 there is little guidance and contains an aggressive approach to fines and penalties. This bill outlines requirements for business without illustrating the steps to

come into compliance. Additionally, this bill is preempted by the Children’s Online Privacy Protection Act, or “COPPA”. SB 844 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 and subject 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, will 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 that is ambiguous. It’s unclear who decides what is considered demonstrably harmful and how that determination is made. TechNet believes that parents and guardians should have smart choices so they can maintain the ultimate power to decide what is best for their children and families. As written, SB 844 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 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.

SB 844 would also require new standards for age verification. Age-verification is a complex challenge for our industry to address and requires consideration of how to properly balance the interests of privacy and security. Stringent age-verification requirements would require the collection of more personal information such as birthdates, addresses, and government IDs. The standard in this bill would require companies to collect more personal information, which conflicts with data minimization principles. Efforts are ongoing to develop more privacy protective ways to verify age online. But until there are industry-wide tools available, age-verification will continue to have tradeoffs and be difficult to implement in practice. Unfortunately, no system is infallible.

California recently enacted the California Age-Appropriate Design Code Act. The AADC 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:

- A 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.

This law 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 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. There is currently a lawsuit against the 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.

TechNet would suggest shifting the focus to an omnibus privacy solution, such as Connecticut's model. Other states' omnibus privacy laws already include children's data protections. Other rights in comprehensive privacy laws include rights to access, correct, port, and delete personal data. An omnibus privacy law to cover the protection of minors would provide for increased flexibility for Maryland businesses, parents, and those under eighteen, as well as the interoperability between states.

We recognize the importance of strong protections for children and teens, 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 SB 844. Thank you for your time and we look forward to continuing these discussions with you.

Sincerely,

Margaret Durkin

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