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INNOVATION ECONOMY

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January 31, 2024

The Honorable William Smith, Jr.
Chair
Senate Judicial Proceedings Committee
Maryland Senate
2 East
Miller Senate Office Building
Annapolis, Maryland 21401

RE: SB 382 (Salling) - Criminal Law - Display of Obscene Materials to Minors - Age Verification - TechNet Opposition

Dear Chairman Smith and Members of the Committee,

On behalf of TechNet, I'm writing to offer comments on SB 382, related to the display of obscene materials to minors and age verification.

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 4.2 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.

Online services enable freedom of expression for consumers, and companies have a vested interest in moderating their platforms to create a safe, welcoming online community for users. In order to ensure users understand the rules they are expected to follow, the industry has been at the leading edge of providing greater access and information regarding their moderation policies and practices.

While the intent of SB 382 is laudable, we believe that this bill is out of step with other bills on this topic. The bill as drafted is incredibly broad and TechNet is concerned that the term website operator will sweep up more businesses into the bill's requirements than intended.

Further, interoperability with other states is key in the absence of a federal standard. We ask that if the General Assembly wants to pass something on this

topic, they should align the bill to other state models, such as Louisiana HB 142 from 2022. That enacted bill can be found below the contents of this letter.

While we understand the intent of this legislation, we are concerned about the unintended consequences of its broad interpretation. Thank you for your time and we look forward to continuing these discussions with you.

Sincerely,

Margaret Durkin

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

ACT No. 440

2022 Regular Session

HOUSE BILL NO. 142

BY REPRESENTATIVES SCHLEGEL, ADAMS, AMEDEE, BACALA, BISHOP, BUTLER, CARRIER, CREWS, EDMONDS, EDMONSTON, FIRMENT, FISHER, FONTENOT, FREIBERG, GAROFALO, HARRIS, HODGES, HORTON, MIKE JOHNSON, KERNER, MOORE, CHARLES OWEN, PHELPS, RISER, ROMERO, SCHAMERHORN, SEABAUGH, SELDERS, VILLIO, WHEAT, WRIGHT, AND ZERINGUE AND SENATORS BARROW, BERNARD, BOUDREAUX, BOUIE, CATHEY, CLOUD, FESI, HENRY, HEWITT, JACKSON, MILLIGAN, ROBERT MILLS, MIZELL, MORRIS, STINE, WARD, AND WOMACK

1 AN ACT

2 To enact R.S. 9:2800.28, relative to material harmful to minors; to provide for liability for
3 the publishing or distribution of material harmful to minors on the internet; to
4 provide for reasonable age verification; to provide for legislative intent; to provide
5 for individual rights of action; to provide for attorney fees, court costs, and punitive
6 damages; to provide for exceptions; to provide for definitions; to provide for an
7 effective date; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 9:2800.28 is hereby enacted to read as follows:

10 §2800.28. Liability for publishers and distributors of material harmful to minors

11 A. The provisions of this Section are intended to provide a civil remedy for
12 damages against commercial entities who distribute material harmful to minors. As
13 recognized in House Concurrent Resolution No. 100 of the 2017 Regular Session of
14 the Legislature and Senate Concurrent Resolution No. 56 of the 2019 Regular
15 Session of the Legislature, pornography is creating a public health crisis and having
16 a corroding influence on minors. Due to advances in technology, the universal
17 availability of the internet, and limited age verification requirements, minors are

1 exposed to pornography earlier in age. Pornography contributes to the hyper-
2 sexualization of teens and prepubescent children and may lead to low self-esteem,
3 body image disorders, an increase in problematic sexual activity at younger ages, and
4 increased desire among adolescents to engage in risky sexual behavior. Pornography
5 may also impact brain development and functioning, contribute to emotional and
6 medical illnesses, shape deviant sexual arousal, and lead to difficulty in forming or
7 maintaining positive, intimate relationships, as well as promoting problematic or
8 harmful sexual behaviors and addiction.

9 B.(1) Any commercial entity that knowingly and intentionally publishes or
10 distributes material harmful to minors on the internet from a website that contains
11 a substantial portion of such material shall be held liable if the entity fails to perform
12 reasonable age verification methods to verify the age of individuals attempting to
13 access the material.

14 (2) Any commercial entity or third party that performs the required age
15 verification shall not retain any identifying information of the individual after access
16 has been granted to the material.

17 (3)(a) Any commercial entity that is found to have violated this Section shall
18 be liable to an individual for damages resulting from a minor's accessing the
19 material, including court costs and reasonable attorney fees as ordered by the court.

20 (b) A commercial entity that is found to have knowingly retained identifying
21 information of the individual after access has been granted to the individual shall be
22 liable to the individual for damages resulting from retaining the identifying
23 information, including court costs and reasonable attorney fees as ordered by the
24 court.

25 C.(1) This Section shall not apply to any bona fide news or public interest
26 broadcast, website video, report, or event and shall not be construed to affect the
27 rights of any news-gathering organizations.

1 (2) No internet service provider, or its affiliates or subsidiaries, search
2 engine, or cloud service provider shall be held to have violated the provisions of this
3 Section solely for providing access or connection to or from a website or other
4 information or content on the internet or a facility, system, or network not under that
5 provider's control including transmission, downloading, intermediate storage, access
6 software, or other to the extent such provider is not responsible for the creation of
7 the content of the communication that constitutes material harmful to minors.

8 D. For purposes of this Section:

9 (1) "Commercial entity" includes corporations, limited liability companies,
10 partnerships, limited partnerships, sole proprietorships, or other legally recognized
11 entities.

12 (2) "Distribute" means to issue, sell, give, provide, deliver, transfer,
13 transmute, circulate, or disseminate by any means.

14 (3) "Internet" means the international computer network of both federal and
15 non-federal interoperable packet switched data networks.

16 (4) "Material harmful to minors" is defined as all of the following:

17 (a) Any material that the average person, applying contemporary community
18 standards would find, taking the material as a whole and with respect to minors, is
19 designed to appeal to, or is designed to pander to, the prurient interest.

20 (b) Any of the following material that exploits, is devoted to, or principally
21 consists of descriptions of actual, simulated, or animated display or depiction of any
22 of the following, in a manner patently offensive with respect to minors:

23 (i) Pubic hair, anus, vulva, genitals, or nipple of the female breast.

24 (ii) Touching, caressing, or fondling of nipples, breasts, buttocks, anuses, or
25 genitals.

26 (iii) Sexual intercourse, masturbation, sodomy, bestiality, oral copulation,
27 flagellation, excretory functions, exhibitions, or any other sexual act.

28 (c) The material taken as a whole lacks serious literary, artistic, political, or
29 scientific value for minors.

1 (5) "Minor" means any person under the age of eighteen years.

2 (6) "News-gathering organization" means any of the following:

3 (a) An employee of a newspaper, news publication, or news source, printed
4 or on an online or mobile platform, of current news and public interest, while
5 operating as an employee as provided in this Subparagraph, who can provide
6 documentation of such employment with the newspaper, news publication, or news
7 source.

8 (b) An employee of a radio broadcast station, television broadcast station,
9 cable television operator, or wire service while operating as an employee as provided
10 in this Subparagraph, who can provide documentation of such employment.

11 (7) "Publish" means to communicate or make information available to
12 another person or entity on a publicly available internet website.

13 (8) "Reasonable age verification methods" include verifying that the person
14 seeking to access the material is eighteen years of age or older by using any of the
15 following methods:

16 (a) Provide a digitized identification card as defined in R.S. 51:3211.

17 (b) Require the person attempting to access the material to comply with a
18 commercial age verification system that verifies in one or more of the following
19 ways:

20 (i) Government-issued identification.

21 (ii) Any commercially reasonable method that relies on public or private
22 transactional data to verify the age of the person attempting to access the information
23 is at least eighteen years of age or older.

24 (9) "Substantial portion" means more than thirty-three and one-third percent
25 of total material on a website, which meets the definition of "material harmful to
26 minors" as defined by this Section.

1 (10) "Transactional data" means a sequence of information that documents
 2 an exchange, agreement, or transfer between an individual, commercial entity, or
 3 third party used for the purpose of satisfying a request or event. Transactional data
 4 can include but is not limited to records from mortgage, education, and employment
 5 entities.

Section 2. This Act shall be effective on January 1, 2023.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____