

February 21, 2024

Commerce Finance and Policy Committee
Chair: Rep. Zack Stephenson
Vice Chair: Rep. Carlie Kotyza-Witthuhn
449 State Office Building
St. Paul, MN 55155

Re: In support of the Age-Appropriate Design Code Act (HB 2257)

Dear Chair Stephenson and Vice Chair Kotyza-Witthuhn,

For over 25 years, I served founders and venture capitalists in Minnesota as a trusted financial and investment advisor. In developing those confided relationships, I mentored senior executives, sitting alongside them, guiding product design, business strategy, and often personal leadership choices. These experiences provided insights into how companies create great client, customer, and user-focused products and services. Leading businesses excel in addressing their customers' existing problems and anticipating future needs, guiding them through a collaborative journey toward effective solutions with open and transparent communication. These businesses prioritize understanding and fulfilling the Best Interests of the Customer.

This background is critical because the Minnesota Age-Appropriate Design Code (MN AADC) provides a beneficial framework for businesses to conceptualize building Artificially Intelligent, Algorithmic, and Autonomous (AAA) based online products and services that help, rather than harm, consumers. The MN AADC can guide companies in creating human-centric innovations focusing on solving customer problems. I will expand on this potential later.

With the proper perspective, businesses can see the MN AADC as enabling ethical AI-based design that creates value for both companies and users and, through that very relationship, for the State of Minnesota.

During my role as a Fellow at ForHumanity, a non-profit civil society organization dedicated to addressing risks associated with Ethics, Bias, Privacy, Trust, and Cybersecurity in Artificial Intelligence, Algorithmic, and Autonomous (AAA) Systems, I serve as a vital member of the Priority Drafting Team. We drafted AI audit certification schemes for various international laws, including GDPR, GDPR Children's Code, the EU AI Act, the Digital Services Act, the California Consumer Protection Act, and California's AADC. We ensure a harmonized set of criteria, allowing compliance with one to equate to compliance with all.

Our approach involves an engineering-oriented translation of legal principles into business language, facilitating practical implementation. The certification scheme

provides a binary (compliant/ non-compliant) set of criteria establishing the basis for independent third-party audits of AAA Systems.

Through this unique set of experiences, I submit this testimony to you in full support of the Minnesota Age-Appropriate Design Code.

The Minnesota Age-Appropriate Design Code (MN AADC) is not merely a regulatory framework but a pro-business strategy. This code stands at the intersection of consumer protection, particularly for vulnerable populations like children, and the development of robust, user-focused businesses that cater to the diverse needs of all stakeholders in Minnesota.

The MN AADC offers competitive advantages for businesses in our state. Implementing the MN AADC positions the state as a hub for innovation and ethical technology practices. Adhering to age-appropriate design principles, businesses gain a competitive edge by showcasing a commitment to user well-being, privacy, and responsible data processing. This approach aligns with evolving consumer expectations and sets a high standard for industry leaders.

The MN AADC, as a pro-business plan, fosters an environment where companies are compliant and leaders in ethical technology. It encourages innovation in product and service development while safeguarding vulnerable populations' interests, notably children. This duality creates a win-win scenario, enhancing Minnesota's reputation as a hub for technologically advanced, ethically responsible businesses.

At its core, the MN AADC champions a user-centric paradigm. By placing the needs and safety of users, especially children, at the forefront, businesses are prompted to design products and services that align with ethical standards. This enhances user trust and contributes to the development of a digital ecosystem where all stakeholders feel valued and protected.

User-centricity, as the MN AADC promotes, goes beyond compliance; it becomes a guiding principle for business operations. By fostering a culture that prioritizes the well-being of users, businesses not only fulfill their ethical obligations but also create a loyal customer base. This approach establishes a positive feedback loop, where satisfied users contribute to the growth and success of businesses committed to user-centric values.

The MN AADC represents a tremendous opportunity to take a balanced approach, for it will skew innovation in a positive upward trajectory, mitigating harms through demonstrated risk management frameworks. It is the catalyst that is good for business and a testament to a user-centric ethos. Embracing this code positions Minnesota as a pioneer in ethical technology practices, offering a unique and attractive proposition for

businesses looking to thrive in an environment that values consumer protection and entrepreneurial growth.¹

It is imperative to clarify that the challenges presented in the California Courts by NetChoice, the lobbying organization for Big Tech, do not revolve around the First Amendment. Section 230 protects them from user-generated content, but it's crucial to recognize that The First Amendment has exemptions for unprotected speech.

The focus of MN AADC is not on speech or content. Instead, it centers on the methodology employed by platforms and businesses in *designing their platforms* that, in turn, deliver content, collect, and process data from vulnerable populations, and potentially influence users into actions contrary to their best interests. AADC addresses the intricate use of artificial intelligence, algorithms, and autonomous systems.

Regrettably, many businesses overlook the crucial step of understanding how their AAA Systems deliver content, recommendations, or user interactions. This step, akin to a Data Protection Impact Assessment, is fundamental.

Business leaders continue to advocate for self-regulation for data practices and AAA Systems that interact with children, including how they use speech legally. However, a notable example is Meta (formerly Facebook), which, despite internal research revealing how its content delivery systems caused harm to users under 18, chose not to alter its algorithms.

The inability of Big Tech to self-regulate is underscored by a case brought forth by 33 State Attorneys General against Meta, outlining specific internal documents, communications, and business actions. These instances serve as tangible proof, emphasizing the need for frameworks like the AADC to address ethical dimensions in content delivery and user interactions.

In close, while NetChoice attempts to characterize consumer protections as infringing on free speech, this claim does not withstand scrutiny. The MN AADC does not limit what businesses can say or display to children. Instead, it reasonably protects how children's personal data is collected and used behind the scenes.

Companies remain free to curate any lawful content and offer any services to children. However, they cannot exploit excessive data collection and opaque, unauthorized uses to enable dangerous targeting. Speech is not the concern - unethical data practices are.

Additionally, personal data collection and sharing extends far beyond speech protections. Reasonable regulation of data practices that enable manipulation and harm does not equate to suppressing speech.

The MN AADC strikes a fair balance between protecting children and preserving innovative services. Companies willing to justify how their data practices benefit kids can still thrive under the Act. Those relying on unchecked exploitation of children's data to turn profits should face limitations.

While no legislation is perfect, the MN AADC offers a thoughtful framework to align incentives and ethics. Some refinements may be beneficial, but data protection for children is vital. I urge upholding core safeguards while working in good faith to address concrete impacts on valuable innovation. Protecting the most vulnerable among us should be the top priority as technology rapidly evolves.

I respectfully ask the Commerce Finance and Policy Committee to recommend passage of HB 2257 in the 2024 Legislative Session.

Sincerely,

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