

Minnesota House Commerce Committee Hearing

HF 3724 Undermines Parental Choice, Fails Children and Teens, and Violates the First Amendment

March 15, 2022

Dear Chair Stephenson, Vice-Chair Kotyza-Witthuhn, and Members of the House Commerce Committee:

While well intentioned, we ask that you **not** advance HF 3724 as it:

- Undermines parental choice,
- Removes the access to beneficial technologies from young people, and
- Is a clear violation of the First Amendment.

Many policymakers and voters are understandably concerned about the content children and teenagers may be exposed to on and offline.

As a former educator myself, I understand the good intentions of these bills; however, proposals such as HF 3724 are not the solution and will be unconstitutional on First Amendment grounds.

As a result, even though the intentions of protecting teenagers are laudable, the committee should **not advance HF 3724**.

The Bill Undermines Parental Choice and Creates a False Sense of Security

Today parents have a wide range of opinions of what sort of content they deem appropriate for their children at any age. This includes their decision about whether or not to allow their teenagers to be on social media.

But HF 3724 would undermine parental choice as it dictates to content providers that these teens cannot interact in the ways technologies currently work. In doing so, HF 3724 sends a message to parents that the state, not parents, will determine the specific age at which a child or teenager is ready to interact with technology. Doing so takes away the option from parents to choose the balance and risks that work best for their family and determine when their teenager is ready to interact with technology.

Additionally, the law would create a false sense of security and might mean that parents and other adults won't have important conversations with teens about what to do when exposed to harmful content. With HF 3724, parents are less likely to engage in conversations with their teenagers on how to distinguish reliable sources or the distortion that can come from photo filters. Instead, parents may even let their teenagers engage on social media before they are ready or without critical online safety tools.

A better solution is to empower parents and teenagers to understand the content they consume online and make the appropriate choices. HF 3724 is a one-size-fits-all approach. HF 3724 lacks the nuances of different online experiences and treats all recommendations as equally harmful. The result could be that

parents are less likely to talk to their teenagers about the content they are consuming online and create more secretive behaviors around many devastating issues such as bullying, eating disorders, or depression.

The Bill Undermines Children and Teenager's Beneficial Usage of Technology and Requires More Data Collection

Definitions of terms like "social media" used in the bill are incredibly broad and presume all recommendations are potentially harmful to young people. The results would have a negative impact on children and teenager's ability to use technology in beneficial ways.

As most of us have experienced, many teenagers are often early adopters of new technologies and able to navigate it in unexpected ways. We should not presume all of these ways are harmful. In fact, teenagers who feel isolated and alone at school may be able to develop vibrant online communities based on different elements of their identity or their interests. Teenagers of color or with disabilities may be able to find a community online that reminds them they are beautiful when they may not fit in with the beauty norms of their peers at school.

But HF 3724 not only impacts those traditional social media platforms like Facebook or YouTube, it would potentially impact a far wider array of user generated content sites online including those that would be useful for research and education. For example, given that social media includes any website or app that "allows users to create, share, and view user-created content," this could include resources such as book review site GoodReads or even newspapers with comments sections. As a result, young people would be unable to receive recommendations done by algorithms that guide them to books based on their previous interests and reviews by similar readers. A newspaper might not be able to recommend further related news stories by algorithm to a student doing research if comments are attached.

Finally, while the goal of HF 3724 is to protect teenagers, it should be noted that it would actually require companies to collect *more* information about users under 18. It is unlikely that the proposal is technologically feasible in many cases, but even if it were, a company would have to know the age of the user and that they were located in Minnesota to then disable any algorithmic recommendations. In order to do so, information that might not otherwise be collected regarding age and location would be needed.

The Bill Violates the First Amendment

In *Sorrell v. IMS*, the Supreme Court ruled that information is speech and that a Vermont law could not prohibit the creation and dissemination of information including the selling of data to a database. Even more relevant here, multiple court cases have held that the distribution of speech, including by algorithms such as those used by search engines, are protected by the First Amendment. This proposal would result in the government restraining the distribution of speech by platforms and Minnesotans access to information. Thus, HF 3724 will be deemed by courts as a violation of the First Amendment.

And while the government is entitled to take reasonable steps to protect minors from harmful content that might otherwise be constitutionally protected, it may not do so in a way that is so broad it limits adults' access to legal content. In *Ashcroft v. ACLU*, the Supreme Court struck down a federal law that attempted to prevent the posting of content harmful to teenagers on the web due to such impact as well as the harm and chilling effect that the associated fines could have on legal protected speech. This bill will face similar challenges.

Given the negative impacts on parental choice and young people themselves, and its likely violations of the First Amendment, we ask you to **not** advance HF 3724.

Thank you and we welcome the opportunity to speak with you further about the protection of children and teens online.

Sincerely,

Jennifer Huddleston
Policy Counsel
NetChoice

NetChoice is a trade association that works to make the internet safe for free enterprise and free expression.