

The Honorable Phil Scott
Governor of Vermont
109 State Street, Pavillion
Montpelier, VT 05609

Dear Governor Scott:

The American Consumer Institute is an independent education and research organization that promotes consumer-focused free-market solutions to state and federal policy challenges.

Lawmakers across the country are taking action to address the noble cause of child online safety—a goal that is shared by the American Consumer Institute. But those concerns will not be adequately addressed with age-appropriate design codes that rely on legally dubious policy actions to address a largely misunderstood problem.

By sending age-appropriate design code legislation (S. 69) to the Governor’s desk, the Vermont legislature makes it clear that it wishes to establish a “minimum duty of care” to ensure that covered business products and services do not cause compulsive usage, discrimination, or vaguely defined “foreseeable emotional distress” to minors. Reducing emotional distress sounds nice in theory, but determining what conduct constitutes emotional distress or compulsive usage are inherently grey areas.

Vermont’s specific case is made more complicated by its definitional reliance on 13 V.S.A. §1061(2), which defines “emotional distress” as “mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling.”¹ That definition is inherently subjective, which means interpretation will be left to the officials who enforce it. In response, companies will likely respond to these mandates by turning off or disabling certain online features—thereby creating an incentive to over-censor content, which invites legal challenge to the law.²

[1] 13 V.S.A. §1061(2)

[2] Josh Withrow, “Amended KOSA Places Lina Khan in Charge of Deciding What’s Best for Our Kids Online,” R Street Institute, April 17, 2024, <https://www.rstreet.org/commentary/amended-kosa-places-lina-khan-in-charge-of-deciding-whats-best-for-our-kids-online/>.

Unfortunately, the legislation also relies on a commonly misunderstood relationship between minors and social media use. A Consensus Study Report by the National Academy of Sciences, Engineering, and Medicine finds the relationship between social media and adolescent mental health is “mixed and weak.”³ Even famous researcher Jonathan Haidt finds only a measly 0.17 correlation between social media and declining mental health when anything below 0.2 is considered weak.⁴

The uncomfortable reality is that—even in an era of increasingly sophisticated datasets and research techniques—there is still much we do not know about the impact of social media use on youth mental wellbeing.⁵ It would therefore not be prudent for lawmakers to enshrine into law rules based on inconclusive evidence before the reason for declining mental health among teens is more clearly established. Lawmakers in the states—and in Washington—should approach the issue with caution and humility, both as a matter of policy and legality.

Unlike proposals in other states that rely on explicit age verification requirements to access social media, age-appropriate design codes, including Vermont’s preferred approach, implicitly impose those requirements by establishing certain standards companies must follow to make online content safe for children. As Alex Ambrose and Ash Johnson of the Information Technology & Innovation Foundation (ITIF) put it, “age-appropriate design codes are just age verification in disguise.”⁶

Importantly, if the Vermont approach is signed into law, the state should be prepared to defend its decision in court. Although the legislature has taken some notable steps to avoid legal issues, concerns still abound that the legislation will impose content-based speech regulation and create incentives to over-censor speech, among other legal concerns.⁷

Vermont is not the first state to pursue an age-appropriate design code, nor would it be the first state to run afoul of the First Amendment for this approach.⁸ Its proposal uniquely blends data privacy and child online regulation, but also structurally emulates parts of the California age-appropriate design code, which has already been enjoined by the United States District Court for the Northern District of California.⁹

[3] Tirzah Duren, “KOSA: A Solution in Search of a Problem,” Washington Times, July 23, 2024, <https://www.washingtontimes.com/news/2024/jul/23/kosa-solution-in-search-of-problem/>.

[4] Ibid.; and Spyridon N Papageorgiou, “On Correlation Coefficients and their Interpretation,” National Library of Medicine, Aug 26, 2022; 49(3):359–361. doi: 10.1177/14653125221076142.

[5] Will Rinehart, Teens and the Impact of Social Media, A Deep Dive Into Recent Work from Haidt, May 5, 2022, <https://www.williamrinehart.com/2022/teens-and-the-impact-of-social-media/>.

[6] Age-Appropriate Design Codes are Just Age Verification in Disguise, Information Technology & Innovation Foundation, May 24, 2024, <https://itif.org/publications/2024/05/24/age-appropriate-design-codes-are-age-verification-in-disguise/>.

[7] NetChoice Litigation Center, “Legislative Analysis: Vermont’s S. 69,” NetChoice, May 19, 2025, <https://legislature.vermont.gov/Documents/2026/Workgroups/House%20Commerce/Bills/S.69/Public%20Comments/S.69-Amy%20Bos-NetChoice%20Public%20Comments-5-21-2025.pdf>.

[8] Keir Lamont, “State Privacy News — 5/30,” May 30, 2025, <https://www.linkedin.com/pulse/state-privacy-news-530-keir-lamont-rjthe/?trackingId=s6cGqDJJ26TRFIHQyaYkYg%3D%3D>.

[9] NetChoice, LLC v. Bonta, No. 23-2969 (9th Cir. Aug. 16, 2024), <https://cdn.ca9.uscourts.gov/datastore/opinions/2024/08/16/23-2969.pdf>; and NetChoice, LLC v. Bonta, No. 22-cv-088861-BLF (9th Cir. Mar. 13, 2025), <https://netchoice.org/wp-content/uploads/2025/03/NetChoice-v-Bonta-CA-Speech-Code-PI-Granted-Mar-13-2025.pdf>.

Vermont's proposed age-appropriate design code is vague, legally dubious, and fails to fully grapple with the mistakes made by other states. A better approach to this kind of legislation would be to redefine the definitions and policy provisions to be clearer in their interpretation. The least policymakers should do is forestall heavy-handed policy action until more research is conducted, published, and debated. Once research on youth mental health and online activity has been solidified, policymakers should pursue policy action that is less likely to violate the First Amendment. In the meantime, Vermont's approach to protecting children online can be improved.

Sincerely,

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Director of Technology Policy
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