



Computer & Communications
Industry Association
Tech Advocacy Since 1972



August 16, 2022

Senate Medical Affairs Committee
Attn: Research Director
PO Box 142
Gressette Building 412
Columbia, SC 29202

Re: S. 1373 - "Equal Protection at Conception - No Exceptions - Act" (Oppose)

Dear Chair Verdin and Members of the Senate Medical Affairs Committee:

On behalf of the Computer & Communications Industry Association (CCIA),¹ I write to express several concerns about S. 1373 in advance of the Senate Medical Affairs Committee hearing on August 17, 2022.

CCIA is an international, not-for-profit trade association representing a broad cross section of communications and technology firms. Proposed regulations on the interstate provision of digital services therefore can have a significant impact on CCIA members. Recent sessions have seen an increasing volume of state legislation related to the regulation of what digital services host and how they host it. While recognizing that policymakers are appropriately interested in the digital services that make a growing contribution to the U.S. economy, these bills require study, as they may raise constitutional concerns and conflict with federal law, as we describe in greater detail in our comments included below.

1. Censoring access to information online violates the First Amendment.

S. 1373 would hold online services criminally liable for hosting information related to obtaining an abortion, knowing that the information will be used, or is reasonably likely to be used, for an abortion. This provision would censor a wide array of information online in clear violation of the First Amendment, infringing upon the rights of individuals to communicate freely online, and the rights of online platforms to host and distribute that speech. Moreover, 47 U.S.C. § 230 preempts state laws that seek to impose state criminal liability on a defendant based on third-party content.

¹ For 50 years, CCIA has promoted open markets, open systems, and open networks. CCIA members employ more than 1.6 million workers, invest more than \$100 billion in research and development, and contribute trillions of dollars in productivity to the global economy. A list of CCIA members is available at <https://www.ccianet.org/members>.



2. Restricting speech pertaining to services that are legal in other states would unlawfully regulate interstate commerce in services.

Abortive care services continue to be protected and considered legal at the federal level and in numerous other states across the country. By restricting the distribution of information about such lawful conduct in other jurisdictions, South Carolina would be unlawfully seeking to restrict an individual’s ability to access information about services available beyond the state’s borders. And by imposing upon digital services criminal liability for the interstate transmission of otherwise lawful information, South Carolina would be unduly burdening cross-border digital commerce. This infringement would constitute a violation of the Commerce Clause, which reserves to Congress the ability to regulate commerce “among the several States.”

3. The private right of action would result in the proliferation of lawsuits.

S. 1373 permits the state Attorney General, in addition to certain private individuals related to an unborn child, to bring a civil action against a person who violates the bill’s provisions. By creating a new private right of action, this legislation would open the doors of South Carolina's courthouses to speculative claims from plaintiffs. As speculative lawsuits prove extremely costly and time-intensive to litigants and the judiciary, it is foreseeable that these costs would be passed on not only to taxpayers, but also private citizen defendants, online services, and advertisers in South Carolina. These costly proceedings would disproportionately impact smaller businesses and startups across the state.² The bill also produces financial incentives to bring action against as many defendants as possible, putting numerous parties at significant legal risk.

We appreciate your consideration of these comments, and stand ready to provide additional information as the legislature considers proposals related to technology policy.

Sincerely,

Khara Boender
State Policy Director
Computer & Communications Industry Association

² Trevor Wagener, *State Regulation of Content Moderation Would Create Enormous Legal Costs for Platforms*, Broadband Breakfast (Mar. 23, 2021),

<https://broadbandbreakfast.com/2021/03/trevor-wagener-state-regulation-of-content-moderation-would-create-enormous-legal-costs-for-platforms>.