

SENATE BILL 844

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CF HB 901

By: **Senators Kramer and West**

Introduced and read first time: February 6, 2023

Assigned to: Finance

A BILL ENTITLED

AN ACT concerning

Consumer Protection – Online Products and Services – Children’s Data

FOR the purpose of requiring a business that offers an online product likely to be accessed by children to complete a certain data protection impact assessment under certain circumstances; prohibiting a business from offering a certain online product before completing a data protection impact assessment; requiring businesses to document certain risks associated with certain online products; requiring certain privacy protections for certain online products; prohibiting certain data collection and sharing practices; providing certain exemptions; and generally relating to the protection of online privacy of children.

BY adding to

Article – Commercial Law

Section 14–4501 through 14–4513 to be under the new subtitle “Subtitle 45.

Maryland Age–Appropriate Design Code Act”

Annotated Code of Maryland

(2013 Replacement Volume and 2022 Supplement)

Preamble

WHEREAS, The United Nations Convention on the Rights of the Child recognizes that children need special safeguards and care in all aspects of their lives, specifying how children’s rights apply in the digital environment in General Comment No. 25; and

WHEREAS, As children spend more of their time interacting with the online world, the impact of the design of online products on their well-being has become a focus of significant concern; and

WHEREAS, There is widespread agreement at the international level, and bipartisan agreement in the United States, that more needs to be done to create a safer online space for children to learn, explore, and play; and

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



WHEREAS, Lawmakers around the globe have taken steps to enhance privacy protections for children based on the understanding that, in relation to data protection, greater privacy necessarily means greater security and well-being; and

WHEREAS, Children should be afforded protections not only by online products and services specifically directed at them, but by all online products they are likely to access, and thus businesses should take into account the unique needs of different age ranges, including the following developmental stages: 0 to 5 years of age, or “preliterate and early literacy”; 6 to 9 years of age, or “core primary school years”; 10 to 12 years of age, or “transition years”; 13 to 15 years of age, or “early teens”; and 16 to 17 years of age, or “approaching adulthood”; and

WHEREAS, While it is clear that the same data protection regime may not be appropriate for children of all ages, children of all ages should nonetheless be afforded privacy and protection, and online products should adopt data protection regimes appropriate for children of the ages likely to access those products; and

WHEREAS, According to the Pew Research Center, in 2022, 97% of American teenagers aged 13–17 used the Internet every day, with 46% responding they used the Internet almost constantly; and, additionally, 36% of teens reported being concerned about their social media use, while an earlier Pew Research Center study found that 59% of teens have been bullied or harassed online; and

WHEREAS, The findings of the Pew Research Center are not surprising, given what is known about controllers’ use of personal data and how it is utilized to inform manipulative practices, to which children are particularly vulnerable; and

WHEREAS, Online products that are likely to be accessed by children should offer strong privacy protections by design and by default, including by disabling features that profile children using their previous behavior, browsing history, or assumptions of their similarity to other children in order to offer them detrimental material; and

WHEREAS, Ensuring robust privacy, and thus safety, protections for children by design is consistent with federal safety laws and policies applied to children’s products, regulating everything from toys to clothing to furniture and games; and

WHEREAS, The consumer protections that federal safety laws apply to children’s products require these products to comply with certain safety standards by their very design, so that harms to children, and in some cases other consumers, are prevented; and

WHEREAS, It is the intent of the Maryland General Assembly that the Maryland Age-Appropriate Design Code Act promote innovation by businesses whose online products are likely to be accessed by children by ensuring that those online products are designed in a manner that recognizes the distinct needs of children within different age ranges; and

WHEREAS, It is the intent of the Maryland General Assembly that businesses covered by the Maryland Age-Appropriate Design Code Act may look to guidance and innovation in response to the Age-Appropriate Design Code established in the United Kingdom and California when developing online products that are likely to be accessed by children; now, therefore,

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Commercial Law

SUBTITLE 45. MARYLAND AGE-APPROPRIATE DESIGN CODE ACT.

14-4501.

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) (1) “AGGREGATE CONSUMER INFORMATION” MEANS INFORMATION:

(I) THAT RELATES TO A GROUP OR CATEGORY OF CONSUMERS;

(II) FROM WHICH INDIVIDUAL CONSUMER IDENTITIES HAVE BEEN REMOVED; AND

(III) THAT IS NOT LINKED OR REASONABLY LINKABLE TO ANY CONSUMER OR HOUSEHOLD, INCLUDING BY A DEVICE.

(2) “AGGREGATE CONSUMER INFORMATION” DOES NOT INCLUDE INDIVIDUAL CONSUMER RECORDS THAT HAVE BEEN DEIDENTIFIED.

(C) (1) “BUSINESS” MEANS A SOLE PROPRIETORSHIP, LIMITED LIABILITY COMPANY, CORPORATION, ASSOCIATION, OR OTHER LEGAL ENTITY THAT:

(I) IS ORGANIZED OR OPERATED FOR THE PROFIT OR FINANCIAL BENEFIT OF ITS SHAREHOLDERS OR OTHER OWNERS;

(II) COLLECTS CONSUMERS’ PERSONAL INFORMATION, OR ON THE BEHALF OF WHICH ANOTHER COLLECTS CONSUMERS’ PERSONAL INFORMATION;

(III) ALONE, OR JOINTLY WITH ITS AFFILIATES OR SUBSIDIARIES, DETERMINES THE PURPOSES AND MEANS OF THE PROCESSING OF CONSUMERS’ PERSONAL INFORMATION;

- (IV) DOES BUSINESS IN THE STATE; AND
- (V) SATISFIES AT LEAST ONE OF THE FOLLOWING CRITERIA:
 - 1. THE BUSINESS HAS ANNUAL GROSS REVENUES IN EXCESS OF \$25,000,000, ADJUSTED EVERY ODD-NUMBERED YEAR TO REFLECT ADJUSTMENTS IN THE CONSUMER PRICE INDEX;
 - 2. THE BUSINESS ANNUALLY BUYS, RECEIVES, SELLS, OR SHARES THE PERSONAL INFORMATION OF 50,000 OR MORE CONSUMERS, HOUSEHOLDS, OR DEVICES, ALONE OR IN COMBINATION WITH ITS AFFILIATES OR SUBSIDIARIES, AND FOR THE BUSINESS'S COMMERCIAL PURPOSES; OR
 - 3. THE BUSINESS DERIVES AT LEAST 50% OF ITS ANNUAL REVENUES FROM THE SALE OF CONSUMERS' PERSONAL INFORMATION.

(2) "BUSINESS" INCLUDES:

- (I) AN ENTITY THAT CONTROLS OR IS CONTROLLED BY A BUSINESS AND THAT SHARES COMMON BRANDING WITH THAT BUSINESS; AND
- (II) A JOINT VENTURE OR PARTNERSHIP COMPOSED OF BUSINESSES IN WHICH EACH HAS AT LEAST A 40% INTEREST IN THE JOINT VENTURE OR PARTNERSHIP.

(D) "CHILD" MEANS A CONSUMER THAT IS UNDER THE AGE OF 18 YEARS.

(E) "COLLECT" MEANS TO ACTIVELY OR PASSIVELY BUY, RENT, GATHER, OBTAIN, RECEIVE, OR ACCESS ANY PERSONAL INFORMATION PERTAINING TO A CONSUMER OR OBSERVE A CONSUMER'S BEHAVIOR, BY ANY MEANS.

(F) "COMMON BRANDING" MEANS A SHARED NAME, SERVICE MARK, OR TRADEMARK THAT WOULD CAUSE A REASONABLE CONSUMER TO UNDERSTAND THAT TWO OR MORE ENTITIES ARE COMMONLY OWNED.

(G) "CONSUMER" MEANS AN INDIVIDUAL WHO IS A RESIDENT OF THE STATE, HOWEVER IDENTIFIED, INCLUDING BY ANY UNIQUE IDENTIFIER.

(H) "CONTROL" MEANS:

- (1) OWNERSHIP OF OR THE POWER TO VOTE MORE THAN 50% OF THE OUTSTANDING SHARES OF ANY CLASS OF VOTING SECURITY OF A BUSINESS;

(2) ANY MANNER OF CONTROL OVER THE ELECTION OF A MAJORITY OF THE DIRECTORS OF A BUSINESS, OR INDIVIDUALS EXERCISING SIMILAR FUNCTIONS; OR

(3) THE POWER TO EXERCISE A CONTROLLING INFLUENCE OVER THE MANAGEMENT OF A BUSINESS.

(I) “DARK PATTERN” MEANS A USER INTERFACE DESIGNED OR MANIPULATED WITH THE SUBSTANTIAL EFFECT OF SUBVERTING OR IMPAIRING USER AUTONOMY, DECISION MAKING, OR CHOICE.

(J) “DATA PROTECTION IMPACT ASSESSMENT” OR “ASSESSMENT” MEANS A SYSTEMATIC SURVEY TO ASSESS AND MITIGATE RISKS TO CHILDREN WHO ARE REASONABLY LIKELY TO ACCESS THE ONLINE PRODUCT AT ISSUE THAT ARISE FROM THE DATA MANAGEMENT PRACTICES OF THE BUSINESS AND THE PROVISION OF THE ONLINE PRODUCT.

(K) “DEFAULT” MEANS A PRESELECTED OPTION ADOPTED BY THE BUSINESS FOR AN ONLINE PRODUCT.

(L) “DEIDENTIFIED INFORMATION” MEANS INFORMATION THAT CANNOT BE USED TO REASONABLY INFER INFORMATION ABOUT, OR OTHERWISE BE LINKED TO, A PARTICULAR CONSUMER, IF THE BUSINESS THAT POSSESSES THE INFORMATION:

(1) TAKES REASONABLE MEASURES TO ENSURE THAT THE INFORMATION CANNOT BE ASSOCIATED WITH A CONSUMER OR HOUSEHOLD;

(2) COMMITS IN PUBLICLY AVAILABLE TERMS AND CONDITIONS OR IN A PUBLICLY AVAILABLE PRIVACY POLICY TO:

(I) MAINTAIN AND USE THE INFORMATION IN DEIDENTIFIED FORM; AND

(II) NOT ATTEMPT TO REIDENTIFY THE INFORMATION, EXCEPT FOR THE SOLE PURPOSE OF DETERMINING WHETHER THE BUSINESS’S DEIDENTIFICATION PROCESS SATISFIES THE REQUIREMENTS OF THIS SUBSECTION; AND

(3) CONTRACTUALLY OBLIGATES ANY RECIPIENTS OF THE INFORMATION TO COMPLY WITH ALL PROVISIONS OF THIS SUBSECTION.

(M) “LIKELY TO BE ACCESSED BY CHILDREN” MEANS REASONABLY EXPECTED THAT THE ONLINE SERVICE, PRODUCT, OR FEATURE WOULD BE ACCESSED BY CHILDREN, BASED ON SATISFYING ANY OF THE FOLLOWING CRITERIA:

(1) THE ONLINE PRODUCT IS DIRECTED TO CHILDREN AS DEFINED IN THE FEDERAL CHILDREN’S ONLINE PRIVACY PROTECTION ACT;

(2) THE ONLINE PRODUCT IS DETERMINED, BASED ON COMPETENT AND RELIABLE EVIDENCE REGARDING AUDIENCE COMPOSITION, TO BE ROUTINELY ACCESSED BY A SIGNIFICANT NUMBER OF CHILDREN;

(3) THE ONLINE PRODUCT IS SUBSTANTIALLY SIMILAR OR THE SAME AS AN ONLINE PRODUCT THAT SATISFIES ITEM (2) OF THIS SUBSECTION;

(4) THE ONLINE PRODUCT FEATURES ADVERTISEMENTS MARKETED TO CHILDREN;

(5) THE ONLINE PRODUCT HAS DESIGN ELEMENTS THAT ARE KNOWN TO BE OF INTEREST TO CHILDREN, SUCH AS GAMES, CARTOONS, MUSIC, AND CELEBRITIES WHO APPEAL TO CHILDREN; OR

(6) THE BUSINESS KNOWS, BASED ON INTERNAL RESEARCH, THAT A SIGNIFICANT AMOUNT OF THE ONLINE PRODUCT’S AUDIENCE IS CHILDREN.

(N) (1) “ONLINE PRODUCT” MEANS AN ONLINE SERVICE, PRODUCT, OR FEATURE.

(2) “ONLINE PRODUCT” DOES NOT INCLUDE:

(I) A TELECOMMUNICATIONS SERVICE, AS DEFINED IN 47 U.S.C. § 153; OR

(II) THE DELIVERY OR USE OF A PHYSICAL PRODUCT SOLD BY AN ONLINE RETAILER.

(O) (1) “PERSONAL INFORMATION” MEANS INFORMATION THAT IDENTIFIES, RELATES TO, DESCRIBES, IS REASONABLY CAPABLE OF BEING ASSOCIATED WITH, OR COULD REASONABLY BE LINKED, DIRECTLY OR INDIRECTLY, WITH A PARTICULAR CONSUMER OR HOUSEHOLD.

(2) “PERSONAL INFORMATION” DOES NOT INCLUDE:

(I) PUBLICLY AVAILABLE INFORMATION OR LAWFULLY OBTAINED, TRUTHFUL INFORMATION THAT IS OF PUBLIC CONCERN; OR

(II) CONSUMER INFORMATION THAT IS DEIDENTIFIED OR AGGREGATE CONSUMER INFORMATION.

(P) “PRECISE GEOLOCATION” MEANS ANY DATA THAT IS:

(1) DERIVED FROM A DEVICE; AND

(2) USED OR INTENDED TO BE USED TO LOCATE A CONSUMER WITHIN A GEOGRAPHIC AREA THAT IS LESS THAN OR EQUAL TO THE AREA OF A CIRCLE WITH A RADIUS OF 1,850 FEET.

(Q) (1) “PROFILING” MEANS ANY FORM OF AUTOMATED PROCESSING OF PERSONAL INFORMATION THAT USES PERSONAL INFORMATION TO EVALUATE CERTAIN ASPECTS RELATING TO AN INDIVIDUAL.

(2) “PROFILING” INCLUDES ANALYZING OR PREDICTING ASPECTS CONCERNING AN INDIVIDUAL’S PERFORMANCE AT WORK, ECONOMIC SITUATION, HEALTH, PERSONAL PREFERENCES, INTERESTS, RELIABILITY, BEHAVIOR, LOCATION, OR MOVEMENTS.

(R) (1) “PUBLICLY AVAILABLE INFORMATION” MEANS INFORMATION THAT:

(I) IS LAWFULLY MADE AVAILABLE FROM FEDERAL, STATE, OR LOCAL GOVERNMENT RECORDS; OR

(II) A BUSINESS HAS A REASONABLE BASIS TO BELIEVE IS LAWFULLY MADE AVAILABLE TO THE GENERAL PUBLIC BY THE CONSUMER OR BY WIDELY DISTRIBUTED MEDIA.

(2) “PUBLICLY AVAILABLE INFORMATION” DOES NOT INCLUDE BIOMETRIC INFORMATION COLLECTED BY A BUSINESS ABOUT A CONSUMER WITHOUT THE CONSUMER’S KNOWLEDGE.

(S) “SELL” MEANS TO TRANSFER, RENT, RELEASE, DISCLOSE, DISSEMINATE, MAKE AVAILABLE, OR OTHERWISE COMMUNICATE, WHETHER ORALLY, IN WRITING, OR BY ELECTRONIC OR OTHER MEANS, A CONSUMER’S PERSONAL INFORMATION BY THE BUSINESS TO A THIRD PARTY FOR MONETARY OR OTHER VALUABLE CONSIDERATION.

(T) (1) "SENSITIVE PERSONAL INFORMATION" MEANS:

(I) PERSONAL INFORMATION THAT REVEALS A CONSUMER'S:

1. SOCIAL SECURITY NUMBER, DRIVER'S LICENSE NUMBER, STATE IDENTIFICATION CARD NUMBER, OR PASSPORT NUMBER;

2. ACCOUNT LOGIN INFORMATION, FINANCIAL ACCOUNT NUMBER, DEBIT CARD NUMBER, OR CREDIT CARD NUMBER, IN COMBINATION WITH ANY REQUIRED SECURITY OR ACCESS CODE, PASSWORD, OR CREDENTIALS THAT ALLOW ACCESS TO AN ACCOUNT;

3. PRECISE GEOLOCATION;

4. RACIAL OR ETHNIC ORIGIN OR RELIGIOUS OR PHILOSOPHICAL BELIEFS;

5. UNION MEMBERSHIP STATUS;

6. MAIL, E-MAIL, TEXT, OR MESSAGE CONTENTS, UNLESS THE BUSINESS IS THE INTENDED RECIPIENT; OR

7. GENETIC DATA;

(II) BIOMETRIC INFORMATION THAT IS OR MAY BE PROCESSED FOR THE PURPOSE OF UNIQUELY IDENTIFYING A CONSUMER;

(III) PERSONAL INFORMATION COLLECTED AND ANALYZED CONCERNING A CONSUMER'S HEALTH; OR

(IV) PERSONAL INFORMATION COLLECTED AND ANALYZED CONCERNING A CONSUMER'S SEX LIFE OR SEXUAL ORIENTATION.

(2) "SENSITIVE PERSONAL INFORMATION" DOES NOT INCLUDE PUBLICLY AVAILABLE INFORMATION.

(U) "SHARE" MEANS TO RENT, RELEASE, DISCLOSE, DISSEMINATE, MAKE AVAILABLE, TRANSFER, OR OTHERWISE COMMUNICATE, WHETHER ORALLY, IN WRITING, OR BY ELECTRONIC OR OTHER MEANS, A CONSUMER'S PERSONAL INFORMATION TO A THIRD PARTY FOR CROSS-CONTEXT BEHAVIORAL ADVERTISING WHETHER OR NOT FOR MONETARY OR OTHER VALUABLE CONSIDERATION, INCLUDING IN A TRANSACTION BETWEEN A BUSINESS AND A THIRD PARTY FOR

CROSS-CONTEXT BEHAVIORAL ADVERTISING FOR THE BENEFIT OF A BUSINESS IN WHICH NO MONEY IS EXCHANGED.

(V) "THIRD PARTY" MEANS A PERSON WHO IS NOT:

(1) THE BUSINESS WITH WHICH THE CONSUMER INTENTIONALLY INTERACTS AND THAT COLLECTS PERSONAL INFORMATION FROM THE CONSUMER AS PART OF THE CONSUMER'S INTERACTION WITH THE BUSINESS; OR

(2) A SERVICE PROVIDER FOR THE BUSINESS.

14-4502.

THIS SUBTITLE DOES NOT APPLY TO:

(1) PROTECTED HEALTH INFORMATION THAT IS COLLECTED BY A COVERED ENTITY OR BUSINESS ASSOCIATION GOVERNED BY THE PRIVACY SECURITY AND BREACH NOTIFICATION RULES IN 45 C.F.R. PARTS 160 AND 164, ESTABLISHED UNDER THE FEDERAL HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 AND THE FEDERAL HEALTH INFORMATION TECHNOLOGY FOR ECONOMIC AND CLINICAL HEALTH ACT;

(2) A HEALTH PROVIDER OR COVERED ENTITY GOVERNED BY THE PRIVACY SECURITY AND BREACH NOTIFICATION RULES IN 45 C.F.R. PARTS 160 AND 164, ESTABLISHED UNDER THE FEDERAL HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 AND THE FEDERAL HEALTH INFORMATION TECHNOLOGY FOR ECONOMIC AND CLINICAL HEALTH ACT, TO THE EXTENT THAT THE PROVIDER OR COVERED ENTITY MAINTAINS PATIENT INFORMATION IN THE SAME MANNER AS MEDICAL INFORMATION OR PROTECTED HEALTH INFORMATION AS DESCRIBED IN ITEM (1) OF THIS SECTION; OR

(3) INFORMATION COLLECTED AS PART OF A CLINICAL TRIAL SUBJECT TO THE FEDERAL POLICY FOR THE PROTECTION OF HUMAN SUBJECTS, IN ACCORDANCE WITH:

(I) GOOD CLINICAL PRACTICE GUIDELINES ISSUED BY THE INTERNATIONAL COUNCIL FOR HARMONISATION OF TECHNICAL REQUIREMENTS FOR PHARMACEUTICALS FOR HUMAN USE; OR

(II) HUMAN SUBJECT PROTECTION REQUIREMENTS OF THE U.S. FOOD AND DRUG ADMINISTRATION.

14-4503.

IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT:

(1) CHILDREN SHOULD BE AFFORDED PROTECTIONS NOT ONLY BY ONLINE PRODUCTS SPECIFICALLY DIRECTED AT THEM, BUT BY ALL ONLINE PRODUCTS THEY ARE LIKELY TO ACCESS;

(2) BUSINESSES THAT DEVELOP AND PROVIDE ONLINE SERVICES THAT CHILDREN ARE LIKELY TO ACCESS SHOULD CONSIDER THE BEST INTERESTS OF CHILDREN WHEN DESIGNING, DEVELOPING, AND PROVIDING THOSE ONLINE PRODUCTS; AND

(3) IF A CONFLICT ARISES BETWEEN COMMERCIAL INTERESTS AND THE BEST INTERESTS OF CHILDREN, COMPANIES THAT DEVELOP ONLINE PRODUCTS LIKELY TO BE ACCESSED BY CHILDREN SHALL GIVE PRIORITY TO THE PRIVACY, SAFETY, AND WELL-BEING OF CHILDREN OVER THOSE COMMERCIAL INTERESTS.

14-4504.

(A) THIS SECTION APPLIES ONLY TO AN ONLINE PRODUCT THAT IS OFFERED TO THE PUBLIC ON OR AFTER JULY 1, 2024.

(B) A BUSINESS THAT PROVIDES AN ONLINE PRODUCT LIKELY TO BE ACCESSED BY CHILDREN SHALL PREPARE A DATA PROTECTION IMPACT ASSESSMENT FOR THE ONLINE PRODUCT.

(C) THE DATA PROTECTION IMPACT ASSESSMENT SHALL:

(1) IDENTIFY THE PURPOSE OF THE ONLINE PRODUCT;

(2) IDENTIFY HOW THE ONLINE PRODUCT USES CHILDREN'S PERSONAL INFORMATION;

(3) IDENTIFY THE RISKS OF MATERIAL DETRIMENT TO CHILDREN THAT ARISE FROM THE DATA MANAGEMENT PRACTICES OF THE BUSINESS; AND

(4) ADDRESS, TO THE EXTENT APPLICABLE:

(I) WHETHER THE DESIGN OF THE ONLINE PRODUCT COULD HARM CHILDREN, INCLUDING BY EXPOSING THEM TO HARMFUL OR POTENTIALLY HARMFUL CONTENT ON THE ONLINE PRODUCT;

(II) WHETHER THE DESIGN OF THE ONLINE PRODUCT COULD LEAD TO CHILDREN EXPERIENCING OR BEING TARGETED BY HARMFUL, OR POTENTIALLY HARMFUL, CONTACTS ON THE ONLINE PRODUCT;

(III) WHETHER THE DESIGN OF THE ONLINE PRODUCT COULD ALLOW CHILDREN TO WITNESS, PARTICIPATE IN, OR BE SUBJECT TO HARMFUL OR POTENTIALLY HARMFUL CONDUCT ON THE ONLINE PRODUCT;

(IV) WHETHER THE DESIGN OF THE ONLINE PRODUCT COULD ALLOW CHILDREN TO BE PARTY TO OR BE EXPLOITED BY A HARMFUL, OR POTENTIALLY HARMFUL, CONTACT ON THE ONLINE PRODUCT;

(V) WHETHER ALGORITHMS USED BY THE ONLINE PRODUCT COULD HARM CHILDREN;

(VI) WHETHER TARGETED ADVERTISING SYSTEMS USED BY THE ONLINE PRODUCT COULD HARM CHILDREN;

(VII) WHETHER AND HOW THE ONLINE PRODUCT USES SYSTEM DESIGN FEATURES TO INCREASE, SUSTAIN, OR EXTEND USE BY CHILDREN, INCLUDING:

1. THE AUTOMATIC PLAYING OF MEDIA;
2. REWARDS FOR TIME SPENT; AND
3. NOTIFICATIONS; AND

(VIII) WHETHER, HOW, AND FOR WHAT PURPOSE THE ONLINE PRODUCT COLLECTS OR PROCESSES SENSITIVE PERSONAL INFORMATION OF CHILDREN.

(D) (1) A DATA PROTECTION IMPACT ASSESSMENT PREPARED BY A BUSINESS FOR THE PURPOSE OF COMPLIANCE WITH ANY OTHER LAW COMPLIES WITH THIS SECTION IF THE ASSESSMENT MEETS THE REQUIREMENTS OF THIS SECTION.

(2) A SINGLE DATA PROTECTION IMPACT ASSESSMENT MAY CONTAIN MULTIPLE SIMILAR PROCESSING OPERATIONS THAT PRESENT SIMILAR RISKS, ONLY IF EACH RELEVANT ONLINE PRODUCT IS ADDRESSED.

(E) A BUSINESS SHALL COMPLETE A DATA PROTECTION IMPACT ASSESSMENT ON OR BEFORE JUNE 30, 2024, FOR ANY ONLINE PRODUCT OFFERED TO THE PUBLIC THAT IS LIKELY TO BE ACCESSED BY CHILDREN BEFORE THAT DATE.

14-4505.

(A) A BUSINESS THAT PROVIDES AN ONLINE PRODUCT LIKELY TO BE ACCESSED BY CHILDREN MAY NOT OFFER THE PRODUCT TO THE PUBLIC BEFORE COMPLETING A DATA PROTECTION IMPACT ASSESSMENT.

(B) A BUSINESS THAT COMPLETES A DATA PROTECTION IMPACT ASSESSMENT REQUIRED BY THIS SECTION SHALL:

(1) MAINTAIN DOCUMENTATION OF THE ASSESSMENT FOR AS LONG AS THE ONLINE PRODUCT IS LIKELY TO BE ACCESSED BY CHILDREN;

(2) REVIEW EACH DATA PROTECTION IMPACT ASSESSMENT EVERY 2 YEARS;

(3) DOCUMENT ANY RISK OF MATERIAL DETERIMENT TO CHILDREN THAT ARISES FROM THE DATA MANAGEMENT PRACTICE OF THE BUSINESS IDENTIFIED IN THE ASSESSMENT;

(4) CREATE A PLAN TO MITIGATE OR ELIMINATE THE RISK BEFORE THE ONLINE PRODUCT IS MADE AVAILABLE TO CHILDREN;

(5) (I) ESTIMATE THE AGE OF CHILD USERS WITH A REASONABLE LEVEL OF CERTAINTY APPROPRIATE TO THE RISKS THAT ARISE FROM THE DATA MANAGEMENT PRACTICES OF THE BUSINESS; OR

(II) APPLY TO ALL CONSUMERS THE PRIVACY AND DATA PROTECTIONS AFFORDED TO CHILDREN;

(6) CONFIGURE ALL DEFAULT PRIVACY SETTINGS PROVIDED TO CHILDREN BY THE ONLINE PRODUCT TO OFFER A HIGH LEVEL OF PRIVACY, UNLESS THE BUSINESS CAN DEMONSTRATE A COMPELLING REASON THAT A DIFFERENT SETTING IS IN THE BEST INTEREST OF CHILDREN;

(7) PROVIDE ANY PRIVACY INFORMATION, TERMS OF SERVICE, POLICIES, AND COMMUNITY STANDARDS CONCISELY, PROMINENTLY, AND USING CLEAR LANGUAGE SUITED TO THE AGE OF CHILDREN LIKELY TO ACCESS THE ONLINE PRODUCT;

(8) PROVIDE AN OBVIOUS SIGNAL TO THE CHILD WHEN THE CHILD'S LOCATION IS BEING MONITORED OR TRACKED, IF THE ONLINE PRODUCT ALLOWS THE CHILD'S PARENT, GUARDIAN, OR ANY OTHER CONSUMER TO TRACK THE CHILD'S LOCATION;

(9) ENFORCE PUBLISHED TERMS, POLICIES, AND COMMUNITY STANDARDS ESTABLISHED BY THE BUSINESS, INCLUDING PRIVACY POLICIES, AND THOSE REGARDING CHILDREN; AND

(10) PROVIDE PROMINENT, ACCESSIBLE, AND RESPONSIVE TOOLS TO HELP CHILDREN OR THEIR PARENTS OR GUARDIANS, IF APPLICABLE, EXERCISE THEIR PRIVACY RIGHTS AND REPORT CONCERNs.

14–4506.

A BUSINESS THAT PROVIDES AN ONLINE PRODUCT LIKELY TO BE ACCESSED BY CHILDREN MAY NOT:

(1) USE THE PERSONAL INFORMATION OF A CHILD IN A WAY THAT THE BUSINESS KNOWS, OR HAS REASON TO KNOW, IS MATERIALLY DETERIMENTAL TO THE PHYSICAL HEALTH, MENTAL HEALTH, OR WELL-BEING OF A CHILD;

(2) PROFILE A CHILD BY DEFAULT, UNLESS:

(I) THE BUSINESS CAN DEMONSTRATE, TO THE ATTORNEY GENERAL'S SATISFACTION, THAT THE BUSINESS HAS APPROPRIATE SAFEGUARDS IN PLACE TO PROTECT CHILDREN; AND

(II) 1. PROFILING IS NECESSARY TO PROVIDE THE ONLINE PRODUCT REQUEST, AND IS DONE ONLY WITH RESPECT TO THE ASPECTS OF THE ONLINE PRODUCT WITH WHICH THE CHILD IS ACTIVELY AND KNOWINGLY ENGAGED; OR

2. THE BUSINESS CAN DEMONSTRATE A COMPELLING REASON THAT PROFILING IS IN THE BEST INTERESTS OF CHILDREN;

(3) COLLECT, SELL, SHARE, OR RETAIN ANY PERSONAL INFORMATION THAT IS UNNECESSARY TO PROVIDE AN ONLINE PRODUCT THAT A CHILD IS ACTIVELY AND KNOWINGLY ENGAGED WITH, UNLESS THE BUSINESS CAN DEMONSTRATE A COMPELLING REASON THAT THE COLLECTION, SALE, SHARING, OR RETENTION OF THE PERSONAL INFORMATION IS IN THE BEST INTERESTS OF CHILDREN LIKELY TO ACCESS THE ONLINE PRODUCT;

(4) USE THE PERSONAL INFORMATION OF A CHILD END-USER FOR ANY REASON OTHER THAN THAT FOR WHICH THE PERSONAL INFORMATION WAS COLLECTED, UNLESS THE BUSINESS CAN DEMONSTRATE A COMPELLING REASON THAT THE USE OF THE PERSONAL INFORMATION IS IN THE BEST INTERESTS OF CHILDREN LIKELY TO ACCESS THE ONLINE PRODUCT;

(5) COLLECT, SELL, OR SHARE ANY PRECISE GEOLOCATION INFORMATION OF CHILDREN BY DEFAULT, UNLESS THE COLLECTION OF THAT INFORMATION IS STRICTLY NECESSARY IN ORDER FOR THE BUSINESS TO PROVIDE THE ONLINE PRODUCT REQUESTED, AND THEN MAY ONLY DO SO FOR THE LIMITED TIME THAT THE COLLECTION OF PRECISE GEOLOCATION INFORMATION IS NECESSARY TO PROVIDE THE ONLINE PRODUCT;

(6) COLLECT ANY PRECISE GEOLOCATION INFORMATION OF A CHILD WITHOUT PROVIDING AN OBVIOUS SIGN TO THE CHILD FOR THE DURATION THAT THE PRECISE GEOLOCATION INFORMATION IS BEING COLLECTED;

(7) USE DARK PATTERNS TO:

(I) LEAD OR ENCOURAGE CHILDREN TO PROVIDE PERSONAL INFORMATION BEYOND WHAT IS REASONABLY EXPECTED TO PROVIDE THE ONLINE PRODUCT;

(II) CIRCUMVENT PRIVACY PROTECTIONS; OR

(III) TAKE ANY ACTION THAT THE BUSINESS KNOWS, OR HAS REASON TO KNOW, IS MATERIALLY DETRIMENTAL TO THE CHILD'S PHYSICAL HEALTH, MENTAL HEALTH, OR WELL-BEING; OR

(8) USE ANY PERSONAL INFORMATION COLLECTED TO ESTIMATE AGE OR AGE RANGE FOR ANY OTHER PURPOSE, RETAIN THE PERSONAL INFORMATION LONGER THAN NECESSARY TO ESTIMATE AGE, OR ATTEMPT AGE ASSURANCE IN A WAY THAT IS DISPROPORTIONATE TO THE RISKS AND DATA PRACTICE OF AN ONLINE PRODUCT.

14-4507.

(A) WITHIN 3 BUSINESS DAYS AFTER RECEIVING A WRITTEN REQUEST FROM THE ATTORNEY GENERAL, A BUSINESS THAT PROVIDES AN ONLINE PRODUCT LIKELY TO BE ACCESSED BY CHILDREN SHALL PROVIDE TO THE ATTORNEY GENERAL A LIST OF ALL DATA PROTECTION IMPACT ASSESSMENTS THE BUSINESS HAS COMPLETED UNDER § 14-4504 OF THIS SUBTITLE.

(B) WITHIN 5 BUSINESS DAYS AFTER RECEIVING A WRITTEN REQUEST FROM THE ATTORNEY GENERAL, THE BUSINESS SHALL PROVIDE TO THE ATTORNEY GENERAL ANY DATA PROTECTION IMPACT ASSESSMENT COMPLETED UNDER § 14-4504 OF THIS SUBTITLE.

(C) TO THE EXTENT THAT ANY DISCLOSURE REQUIRED UNDER SUBSECTION (B) OF THIS SECTION INCLUDES INFORMATION SUBJECT TO ATTORNEY-CLIENT PRIVILEGE OR WORK PRODUCT PROTECTION, THE DISCLOSURE MAY NOT CONSTITUTE A WAIVER OF THAT PRIVILEGE OR PROTECTION.

14-4508.

(A) THE ATTORNEY GENERAL MAY FILE A CIVIL ACTION IN A COURT OF COMPETENT JURISDICTION AGAINST A BUSINESS THAT VIOLATES THIS SUBTITLE FOR RECOVERY OF A CIVIL PENALTY OR INJUNCTION OR BOTH.

(B) A BUSINESS THAT VIOLATES THIS SUBTITLE SHALL BE LIABLE FOR A CIVIL PENALTY OF NOT MORE THAN:

(1) \$2,500 PER AFFECTED CHILD FOR EACH NEGLIGENT VIOLATION;
OR

(2) \$7,500 PER AFFECTED CHILD FOR EACH INTENTIONAL VIOLATION.

(C) IN ADDITION TO A CIVIL PENALTY UNDER SUBSECTION (B) OF THIS SECTION, A BUSINESS THAT VIOLATES THIS SUBTITLE IS SUBJECT TO INJUNCTION AND OTHER APPROPRIATE RELIEF.

(D) CIVIL PENALTIES, FEES, AND EXPENSES RECOVERED UNDER THIS SECTION SHALL BE DEPOSITED IN THE GENERAL FUND WITH THE INTENT THAT THEY BE USED TO FULLY OFFSET COSTS INCURRED BY THE ATTORNEY GENERAL IN CONNECTION WITH THIS SUBTITLE.

14-4509.

(A) IF A BUSINESS IS IN SUBSTANTIAL COMPLIANCE WITH THE REQUIREMENTS OF §§ 14-4504 THROUGH 14-4506 OF THIS SUBTITLE, THE ATTORNEY GENERAL SHALL PROVIDE WRITTEN NOTICE TO THE BUSINESS BEFORE FILING AN ACTION UNDER § 14-4508 OF THIS SUBTITLE.

(B) NOTICE GIVEN UNDER SUBSECTION (A) OF THIS SECTION SHALL IDENTIFY THE SPECIFIC PROVISIONS OF THIS SUBTITLE THAT THE ATTORNEY GENERAL ALLEGES HAVE BEEN OR ARE BEING VIOLATED.

(C) A BUSINESS MAY NOT BE LIABLE FOR A CIVIL PENALTY FOR ANY VIOLATION FOR WHICH NOTICE IS GIVEN UNDER SUBSECTION (A) OF THIS SECTION IF THE BUSINESS:

(1) CURES ANY VIOLATION SPECIFIED IN THE ATTORNEY GENERAL'S NOTICE WITHIN 90 DAYS AFTER RECEIVING NOTICE UNDER SUBSECTION (A) OF THIS SECTION;

(2) PROVIDES THE ATTORNEY GENERAL WITH A WRITTEN STATEMENT THAT THE ALLEGED VIOLATIONS HAVE BEEN CURED; AND

(3) TAKES MEASURES TO PREVENT FUTURE VIOLATIONS THAT THE ATTORNEY GENERAL AGREES TO BE SUFFICIENT.

14-4510.

NOTHING IN THIS SUBTITLE MAY BE INTERPRETED TO PROVIDE A PRIVATE RIGHT OF ACTION UNDER THIS SUBTITLE OR ANY OTHER LAW.

14-4511.

THE SHARING OF PERSONAL INFORMATION WITHIN A JOINT VENTURE OR PARTNERSHIP IS SUBJECT TO THE REQUIREMENTS OF THIS SUBTITLE AS THOUGH THE JOINT VENTURE OR PARTNERSHIP DOES NOT EXIST.

14-4512.

NOTWITHSTANDING ANY OTHER LAW, A DATA PROTECTION IMPACT ASSESSMENT IS PROTECTED AS CONFIDENTIAL AND SHALL BE EXEMPT FROM PUBLIC DISCLOSURE, INCLUDING UNDER THE MARYLAND PUBLIC INFORMATION ACT.

14-4513.

THIS SUBTITLE MAY BE CITED AS THE MARYLAND AGE-APPROPRIATE DESIGN CODE ACT.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2023.