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**OFFICE OF THE ATTORNEY GENERAL**  
**CONSUMER PROTECTION DIVISION**

March 1, 2023

**TO:** The Honorable C.T. Wilson, Chair  
Economic Matters Committee

**FROM:** Hanna Abrams, Assistant Attorney General

**RE:** House Bill 901 – Consumer Protection – Online Products and Services –  
Children’s Data (SUPPORT WITH AMENDMENTS)

The Consumer Protection Division of the Office of the Attorney General supports House Bill 901 (“HB 901”), sponsored by Delegates Solomon and Wilson, with amendments. House Bill 901 places restrictions on what companies can do with children’s data, including tracking location and profiling, puts limitations on manipulative design, and includes transparency measures so users are aware of and consent to the use of their information.

The daily choices we make are shaped by how they are presented to us. Social media platforms have notoriously applied this knowledge to their product design to build applications that keep users engaged regardless of the benefits or harms of their experience—design choices that are often referred to as deceptive design patterns.

Safety parameters exist to protect children in almost every arena. Twenty years ago, the federal Children's Online Privacy Protection Act (COPPA)<sup>1</sup> was created to give parents control over what information is collected from their kids online. And approximately ten years later, in 2009, the Maryland legislature passed the Online Child Safety Act to “promote the dissemination of qualifying parental controls for the protection of children in the State subject to appropriate and beneficial oversight by their parents and families.”<sup>2</sup> The Online Child Safety Act imposed additional requirements on providers, but the existing regulations are inadequate because the ways children interact with technology have evolved and the segments of children’s lives that online services touch have expanded exponentially.

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<sup>1</sup> COPPA requires websites and online services to obtain consent from parents before collecting personal information from kids younger than 13. Under the law, parents have the right to review their child's information, delete it and refuse to permit further collection.

<sup>2</sup> Md. Code Ann., Com. Law § 14-3702.

Special duties to protect children make sense for unique vulnerabilities such as exposure to mature content, sexual grooming or online bullying and harassment. Making the internet safer for children means fostering moderated, non-toxic online experiences for young audiences and ensuring that online services are not permitted to use deceptive design patterns or overlook the age of and impact on their audience.

Yet, despite these special duties, technology companies turn a blind eye to the impact their services' design has on children. They create environments they know will harm children without any repercussions. For example, Facebook's internal documents demonstrated that the company knew its Instagram app was harmful to teens and, even with this knowledge, began expanding to even younger audiences.<sup>3</sup>

House Bill 901 puts underage user safety at the heart of technical systems, by emphasizing the need for default and embedded privacy protections, increasing transparency about the collection of personal information for users and giving users easy control over privacy settings. House Bill 901 holds online platforms and services responsible for the safety of underage users by assessing, addressing, and mitigating potential harms before they occur. It requires platforms to study the impact of their design and algorithmic recommendations and make the findings available for audit, forcing accountability and incentivizing platforms to embed features that are designed to improve the wellbeing of children.

We support HB 901 with three amendments that will conform it to Maryland's existing consumer protection regulatory structure:

1. **Replace the enforcement and penalty structure (§14-4508) with references to Title 13.** The Consumer Protection Division already has an existing enforcement mechanism and penalty structure and it would be an unnecessary administrative and systemic burden to create a separate mechanism to enforce HB 901. We understand that the sponsor has submitted an amendment along these lines.
2. **Remove the right to cure (§14-4509).** Under this provision, businesses would only be considered in violation if they failed to cure an alleged violation within ninety (90) days of receiving notice of suspected noncompliance. This is an unwarranted and unnecessary "grace period" which would fundamentally alter and restrict the authority of the Division, dilute our ability to protect Maryland consumers, and impose a significant administrative burden on the Division. We are also concerned that it would incentivize businesses not to comply until a notice has been provided. Nor does the cure provision account for prior notices, which could mean deficiencies may be repeated.
3. **Include the opportunity for individual recovery pursuant to the Consumer Protection Act.** Allowing individuals to enforce HB 901 supplements the limited resources of the Attorney General's office and is necessary to ensure business' accountability. The Consumer Protection Act provides such a right. Contrary to the contentions of critics of the CPA's private right of action, the existing remedy balances the needs of the individual with the risks of overeager litigants by only permitting recovery in cases of actual harm.

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<sup>3</sup> J. Bursztynsky, *Facebook Documents Show How Toxic Instagram Is for Teens* (Sept. 14, 2021), <https://www.cnbc.com/2021/09/14/facebook-documents-show-how-toxic-instagram-is-for-teens-wsj.html>.

House Bill 901 aims to place accountability, user empowerment, and transparency at the heart of the rules for children's online participation. Accordingly, we urge the Economic Matters Committee to issue a favorable report on HB 995 with the amendments discussed.

cc: Members, Economic Matters Committee  
The Honorable Jared Solomon  
The Honorable C.T. Wilson