



March 6, 2023

Senator Benjamin F. Kramer  
401 Miller Senate Office Building  
11 Bladen Street  
Annapolis, MD 21401

Senator Chris West  
322 James Senate Office Building  
11 Bladen Street  
Annapolis, MD 21401

Senator Melony Griffith  
Chair of the Maryland Senate  
Finance Committee  
3 East Miller Senate Office Building  
11 Bladen Street  
Annapolis, Maryland 21401

Senator Katherine Klausmeier  
Vice Chair of the Maryland Senate  
Finance Committee  
123 James Senate Office Building  
11 Bladen Street  
Annapolis, Maryland 21401

**RE: SB 844 – Maryland Age-Appropriate Design Code Act - Oppose**

Dear Senator Kramer, Senator West, Senator Griffith, and Senator Klausmeier:

We write to respectfully request you **to reconsider SB 844**, the Maryland Age-Appropriate Design Code Act.<sup>1</sup> While we strongly agree with protecting Maryland’s children online, this bill would subject an excessively large range of companies to severe requirements and restrictions that would hamper innovation and hurt Maryland consumers.

As the nation’s leading advertising and marketing trade associations, we collectively represent thousands of companies across the country. These companies range from small businesses to household brands, advertising agencies, and technology providers. Our combined membership includes more than 2,500 companies that power the commercial Internet, which accounted for 12 percent of total U.S. gross domestic product (“GDP”) in 2020.<sup>2</sup> Our group has more than a decade’s worth of hands-on experience it can bring to bear on matters related to consumer privacy and controls. We would welcome the opportunity to engage with you further issues with the bill outlined here.

**SB 844 is modeled after legislation in California that is currently subject to legal scrutiny.** Maryland should not advance a bill that is based on legislation being challenged in the courts.<sup>3</sup> SB 844 contains several provisions that very likely abridge First Amendment and Fourth Amendment protections, as well as the Due Process and Commerce Clause of the United States Constitution. Challenges to a very similar law enacted in California are already underway in California courts.<sup>4</sup> Maryland’s legislature should not follow in California’s footsteps by passing a law that abridges minors’ constitutional protections and risks being invalidated.

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<sup>1</sup> Maryland SB 844 (Gen. Sess. 2023), located [here](#).

<sup>2</sup> John Deighton and Leora Kornfeld, *The Economic Impact of the Market-Making Internet*, INTERACTIVE ADVERTISING BUREAU, 15 (Oct. 18, 2021), located at [https://www.iab.com/wp-content/uploads/2021/10/IAB\\_Economic\\_Impact\\_of\\_the\\_Market-Making\\_Internet\\_Study\\_2021-10.pdf](https://www.iab.com/wp-content/uploads/2021/10/IAB_Economic_Impact_of_the_Market-Making_Internet_Study_2021-10.pdf).

<sup>3</sup> Complaint, *NetChoice LLC v. Bonta* (N.D. Cal., Dec. 14, 2022), located [here](#).

<sup>4</sup> *Id.*

**SB 844's definition of child as "a consumer that is under the age of 18 years" goes far beyond other definitions in privacy laws.** The Children's Online Privacy Protection Act (COPPA) defines a child as an individual under 13 years of age, and no other state privacy law currently defines a child as under 18. This broad definition of a "child" in SB 844 would result in an environment where a toddler may be treated the same as a student about to enter college.

**In addition, SB 844 sweeps in any property that displays even minimal advertising that could appeal to U-18s, which will result in nearly every company falling under the bill's reach.** For example, the bill could be read to apply to the online offerings of clothing retailers, professional sports organizations, and restaurants, simply because it's possible 17-year-olds may access them. In addition, to help ensure "children" are not "likely" to access an online service, product or feature, businesses may require visitors to pass through "age gates" for access. Anyone attempting to access a website would have to provide specific age information to the site owner before reading its contents. The legislation would significantly hamper an individual's ability to seamlessly move from one website to the next to reach desired information or content. Moreover, the bill's onerous standards and broad reach will severely hinder companies from doing business in Maryland and degrade the consumer experience online.

**SB 844 would deprive Maryland's youth of access to and benefit from the Internet.** The bill would prevent Maryland's minors from accessing a wealth of information that otherwise would be at their fingertips. Shrinking the variety of content, viewpoints, voices, and information 17-year-olds can reach will not protect them, but instead will ensure they will not have the same experience with the Internet as their contemporaries living in other states, such as Virginia or Washington D.C. Maryland's youth do not require a protectionist shield from information about the world. SB 844 will turn off Maryland minors' access to the greatest informational resource in modern history.

**SB 844's definition of "child" to include teens will make them lose access to future opportunities.** The bill prohibits use of personal information about a child for any reason other than the reason the personal information was collected. This prohibition could functionally end access to information for Maryland high school seniors, which would deprive them of the ability to learn about colleges, trade programs, military recruitment, and myriad opportunities for their future. Maryland should not enact a law that could hurt minors' ability to plan for their futures.

While we understand the need to protect children as they navigate the Internet, SB 844 is the wrong way to accomplish this goal. The over-broad definitions included in the bill mean that while intended to protect children, the bill will apply to many websites and applications with intended audiences outside of this scope. Imposing the bill's requirements onto most of the Internet will decrease innovation, remove vital benefits of the internet for children, harm the consumer experience, and hamper the data driven economy.



We and our members support privacy protections for children. We believe, however, that SB 844 takes the wrong approach to such protections. We therefore respectfully ask you to decline to advance the bill.

Thank you in advance for your consideration of this letter.

Sincerely,

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