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

March 8, 2023

**TO:** The Honorable Melony Griffith, Chair  
Finance Committee

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

**RE:** Senate Bill 844 – Consumer Protection – Online Products and Services –  
Children’s Data (SUPPORT WITH AMENDMENTS)

The Consumer Protection Division of the Office of the Attorney General supports Senate Bill 844 (“SB 844”), sponsored by Senators Kramer and West, with amendments. Senate Bill 844 places restrictions on what companies can do with children’s data, including tracking location and profiling, puts limitations on manipulative or deceptive design patterns, and includes transparency measures so users are aware of and consent to the use of their information.

Governments have an important interest in protecting children. Twenty-five years ago, the federal Children's Online Privacy Protection Act (COPPA)<sup>1</sup> was enacted to give parents control over what information is collected from their kids online. Then, 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 because Maryland’s legislature understood the importance of protecting children online. Today, however, these regulations are no longer adequate because the ways children interact with technology have evolved and the segments of children’s lives that online services touch have expanded exponentially.

Children face ever-expanding risks online 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 children’s vulnerabilities, technology companies create environments they know will harm children without any repercussions. For example,

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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.

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> Many companies also use deceptive design patterns (or dark patterns) to keep users engaged and lead them to make choices that run counter to their interests.

To address these documented harms, Senate Bill 844 narrowly tailors its regulation to directly advance the substantial governmental interest of protecting children by putting underage user safety at the heart of technical systems, emphasizing the need for default and embedded privacy protections, increasing transparency about the collection of personal information, and giving users easy control over privacy settings. In addition, SB 844 prohibits the use of deceptive design patterns that mislead and confuse underage users. Thus, SB 844 imposes permissible limits on *commercial* activity aimed at protecting children from documented harms.

Senate Bill 844 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 SB 844 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 SB 844. 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.
3. **Include the opportunity for individual recovery pursuant to the Consumer Protection Act.** Allowing individuals to enforce SB 844 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.

Senate Bill 844 aims to place accountability, user empowerment, and transparency at the heart of the rules for children’s online participation. Accordingly, we urge the Finance Committee to issue a favorable report on SB 844 with the amendments discussed.

cc: Members, Finance Committee  
The Honorable Benjamin F. Kramer  
The Honorable Chris West

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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>.