



Maryland | Delaware | DC Press Association

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To: House Economic Matters Committee

From: Rebecca Snyder, Executive Director, MDDC Press Association

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Re: HB603 - OPPOSE

The Maryland-Delaware-District of Columbia Press Association represents a diverse membership of newspaper publications, from large metro dailies such as the Washington Post and the Baltimore Sun, to hometown newspapers such as the Star Democrat and Maryland Independent, to publications such as The Daily Record, Baltimore Jewish Times, and online-only publications such as the Baltimore Banner, MoCo 360, Maryland Matters and Baltimore Brew.

The Press Association cannot support HB 603 as written. The goals of the legislation, protecting children from undue digital influence and advertising are laudable, however, this legislation captures news media and its efforts to support news operations through advertising in its cross hairs. We appreciate the work and compromise that went into discussions with the sponsor last year to clarify that content is not the focus and we believe the bill is better for it. However, in reviewing the new bill to last year's version, there remain a few areas of concern.

Ideally, there would be an exemption for news media, either using language from the federal Kids Online Safety Act, or Maryland's own definition of a "news media entity." Free speech restraints would have a disproportionate impact on consumers of news media. Because the Maryland Kid Code's knowledge standard is "reasonably likely to be accessed" and not an actual knowledge standard, the bill imposes a practical quandary for covered entities, including news media entities. Publishers would need to choose between verifying the age of individual users or, alternately, adjusting content and data processing practices for all users. An unknown bar means that publishers must go through all the steps in the bill to protect themselves, often at significant costs.

The California Age Appropriate Design Code Act (CAADCA) was enjoined as overly broad because its prescriptive requirements for age estimation and the requirement to apply data protection for both children and adults could restrain a great deal of free speech, as content providers may choose not to cover topics or events that may be of interest to children at all, in order to avoid running afoul of the CAADCA. If enacted without amendment, the Maryland Kids Code could face similar challenges as its knowledge standard could restrain a great deal of free speech if covered entities choose to either exclude children entirely or limit adults' access to that which is (arbitrarily) age-appropriate for minors.

In striking down the California Age Appropriate Design Code Act, Judge Labson Freeman found that requiring covered businesses to consider various potential harms to children would make it "almost certain that news organizations and others will take steps to prevent those under the age of 18 from accessing online news content, features, or services."



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Other areas of concern include:

1. We believe the bill's broad definition of "profiling" would include virtually any form of automated processing, including that used to support advertising, which is a critical revenue stream for sustaining the news media industry. The trusted, curated content is the "online product" of news media, but the language as written could significantly curtail expected targeted advertising practices, which we understand is not the bill's intent. We again recommend amending the language to 14-4606.(2)(1) to state: "Profiling is necessary to provide or support the online product, and is done only with respect to the aspects of the online product that the child is actively and knowingly engaged with; or The covered entity can demonstrate a compelling reason that profiling is in the best interests of children not materially detrimental to the child."

We appreciate the additional qualification that limits the definition of "profiling" to processing that results in an assessment or judgment about an individual, but believe these could be overbroad. We instead recommend following other states' profiling language: Amend 14-4601.(S)(2) to state: "" profiling" does not include the processing of personal data that does not result in an assessment or judgment about an individual—legal or similarly significant effects concerning an individual."

2. In recognition of the expanded provisos included in 14-4610, we suggest including additional language that explicitly acknowledges the right of free speech pursuant to the First Amendment, as modeled by other states' enacted consumer privacy legislation. Add to 14-4610.(5): "Nothing in this chapter shall be construed as an obligation imposed on operators that adversely affects the rights or freedoms of any persons, such as exercising the right of free speech under the First Amendment to the United States Constitution."
3. The expanded definition of "collect" to include active and passive data from the consumer, especially when coupled with the bill's lack of an actual knowledge standard, opens the door to unknowing statutory violations of the bill where no harm was intended.

We recommend reverting to the prior definition of "collect" at 14-4601.(F), consistent with other legislative efforts around data processing.

4. Expanding "personal data" to include "derived data" to incorporate correlations, predictions, assumptions, inferences, or conclusions similarly expands the likelihood of an unknowing statutory violation. Critically, it has not been included in other children's online safety legislation in this format. We recommend reverting to the prior bill version's incorporation and striking 14-4601.(M).

We urge an unfavorable report.