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

FROM: Hanna Abrams, Assistant Attorney General

RE: Senate Bill 571 – Consumer Protection – Online Products and Services –
Data of Children (Maryland Kids Code) (SUPPORT WITH
AMENDMENTS)

The Consumer Protection Division of the Office of the Attorney General supports Senate Bill 571 (“SB 571”), sponsored by Senators Kramer, Hester, and West, with amendments. Senate Bill 571 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)¹ 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.”² 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.

¹ 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.

² Md. Code Ann., Com. Law § 14-3702.

Until recently, technology companies have been able to create environments they know will harm children without any repercussions. For example, Meta’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.³ 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. Maryland, along with 40 other states, was forced to sue Meta for violations of COPPA to halt these practices, but existing laws are no longer adequate.

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. Senate Bill 571 narrowly tailors its regulation to directly advance the substantial governmental interest of protecting children by requiring platforms to assess any negative impacts that their products might have on children, prohibiting profiling by default, and limiting the processing of children’s data. In addition, SB 571 prohibits the use of deceptive design patterns that mislead and confuse underage users. Thus, SB 571 imposes permissible limits on *commercial* activity aimed at protecting children from documented harms.

We support SB 571 with four amendments that will conform it to Maryland’s existing consumer protection regulatory structure:

1. **Definition of Biometric Data:** Senate Bill 571 defines “biometric data” in a manner inconsistent with existing Maryland law. Introducing a different definition for the same term in related statutes will lead to confusion. The Division requests that the Economic Matters Committee conform the definition set forth in SB 571 to the definition found in the Maryland Personal Information Protection Act which defines “biometric data” to include “any other unique biological characteristics that *can be* used to uniquely authenticate a consumer’s identity” (Md. Com. Law § 14-3501(e)(1)(i)(6)).
2. **SB 571 offers lower penalties than those provided by the Consumer Protection Act.** The most vulnerable consumers, children, should have the strongest of protections, but the proposed penalties are *lower* than the penalties available under the Consumer Protection Act.⁴ Senate Bill 571 proposes a penalty structure that is weaker, and because there is a preexisting penalty structure, creates an unnecessary administrative and systemic burden. To ensure that children receive the most robust protections available, the Division recommends that page 22, in line 17, “Except for § 13-410 of this Article” be stricken, and lines 19-24 be deleted and replaced with: “(2) subject to the enforcement and penalty provisions contained in Title 13 of this article.”
3. **Remove the right to cure (§14-4609).** Under this provision, businesses would only be considered in violation if they failed to cure an alleged violation within ninety (90)

³ 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>.

⁴ Md. Com. Law § 14-310 provides for penalties up to \$10,000 for each violation and \$25,000 for subsequent violations.

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. Further, adding a right to cure fails to recognize that the Division’s existing practice has been and continues to be to attempt to resolve the overwhelming majority of complaints through mediation. Generally, the Division only pursues enforcement where there is a pattern or practice of violations.

4. **Delete lines 27-28 on page 23.** Clarifying the availability of relief under §13-408 would ensure that individual children who are harmed as a result of a violation have recourse. The Division does not represent individuals, but the harms addressed by SB 571 can be significant and individualized. The existing damages remedy balances the needs of the individual with the risks of overeager litigants by only permitting recovery in cases of actual harm.

Finally, the Consumer Protection Division will require additional resources in order to implement and enforce this bill. Accordingly, the Attorney General requested that the General Assembly create a Privacy Enforcement and Education Unit in the Consumer Protection Division, however it does not appear that the requested Unit will be funded this year. Although the requirements of some of the provisions of SB 571 are delayed until 2026, one provision, § 14-4606 (pages 20-21), takes effect on October 1, 2024. To give the Division the opportunity to seek sufficient resources to enforce SB 571, the Division requests that the effective date be delayed until October 1, 2025.

Senate Bill 571 aims to place accountability, user empowerment, and transparency at the heart of the rules for children’s online participation. Accordingly, we ask the Economic Matters Committee to consider SB 571 with the amendments discussed.

cc: Members, Economic Matters Committee
The Honorable Benjamin F. Kramer
The Honorable Katie Fry Hester
The Honorable Chris West