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

FROM: Hanna Abrams, Assistant Attorney General

RE: House Bill 603– 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 House Bill (“HB 603”), sponsored by Delegate Solomon, Chair Wilson, and Delegate Love, with amendments. House Bill 603 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. House Bill 603 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, HB 603 prohibits the use of deceptive design patterns that mislead and confuse underage users. Thus, HB 603 imposes permissible limits on *commercial* activity aimed at protecting children from documented harms.

We support HB 603 with three amendments that will conform it to Maryland’s existing consumer protection regulatory structure:

1. **Utilize the existing penalty structure found in 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 603.⁴
2. **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) 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 HB 603 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. Given the potential significant and individualized harms that we have seen in connection with children and social media, we believe that parents should have the ability to pursue a remedy where appropriate.

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

⁴ After §14-4608(a)(1) add: “(2) subject to the enforcement and penalty provisions contained in Title 13 of this article” and delete §14-4608(b)-(c).

House Bill 603 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 603 with the amendments discussed.

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