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Committee

THE MARYLAND HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401

HB 603 Testimony – The Maryland Kids Code
February 13, 2024
Economic Matters Committee

Chair Wilson, Vice Chair Crosby, Colleagues, thank you for the opportunity to present on my bill HB 603 to protect the health and safety of our young people online.

As you may remember from last session, then HB 901, Chair Wilson and I, introduced the Maryland Kids Code, a model Age Appropriate Design Code bill, to offer privacy and safety by design to Maryland children online.

This year, we are back with some policy updates but the same goal of disrupting tech's dangerous status quo when it comes to our children and teen's online experiences.

Since this Committee is familiar with the Kids Code, which was passed out of this committee and out of the House with 110 bipartisan votes in support, and this year's bill is part of leadership's legislative consumer protection package – I am going to focus my testimony on the ways the code has been updated since last year and preparing you for the ways this bill may be misrepresented.

Why We Need the Kids Code

We're here today because of Big Tech's current business model - which depends on these companies extracting as much data as possible from their consumers and using that data to either develop new products and features or making that data itself into a product to be sold to other individuals or corporations.

Simply put, more data means more profit, even if the methods of amassing that data and the way it used are known to be harmful. This has nothing to do with content or even commercial speech.

Time and again, advocates and whistleblowers have shown that Big Tech has prioritized profit over the well-being of the most vulnerable consumers in the market: children. At this moment, we seem to have reached a sort of breaking point - with over 40 state's attorney generals, including AG Brown, and numerous school districts, including 8 within our own state, suing Meta and other Big Tech companies for these practices.

As a result of these lawsuits and the whistleblowers that have played a role in them, we now have even more evidence of the dangers associated with the status quo. We now know Meta commissioned and utilized research on teens developing brains to design their products in ways that would capitalize on aspects of youth psychology that renders teens predisposed to impulse, peer pressure, and potentially harmful risky behavior. Meaning Meta used the latest in brain science to ensure their products were stickier and riskier for our kids instead of using that knowledge to make products safe.

We now know that 1 in 8 users under the age of 18 on Instagram have reported experiencing unwanted sexual advances on Instagram over the previous seven days. We now know that not only is Meta ignoring that reported unwanted contact, thanks to the New Mexico AG's lawsuit, but also connecting children to pedophiles and child sexual abuse materials.

This may seem like a content moderation issue, which companies want you think they can address on their own, but in reality data and design decisions are essential to these outcomes. For Meta's recommendation algorithms, and other design features, have been shown to feed children's accounts to adult predators while also recommending private Facebook groups focused on inappropriate topics, child sexual abuse material, and more to accounts belonging to minors. You may be wondering to yourself if this can really be the case - but it's important to remember that Meta's own research shows that they know when accounts belong to children - and are actually working with advertisers under the promise of being able to target advertisements to audiences of specific age ranges.

Although we now have this trove of evidence against Meta, it's important to remember that they're just the company currently in the hot seat rather than the only bad actor. All of the major platforms, including online gaming programs and platforms that extend beyond social media, operate with the same business goals in mind - they all have the same data driven profit goals informing design and data collection decisions.

It's past time we make them do something different.

Summary of Amendments

The bill before you today, has been strengthened in light of the conversations had and work done on HB 901.

We have incorporated key feedback from various stakeholders and also optimized the bill in light of lessons learned from the California Age Appropriate Design Code. This version of the bill has been better adapted to first amendment jurisprudence and the American legal ecosystem, while continuing to institute common-sense consumer protections and data privacy reforms that ensure digital products are designed in a privacy protective and age appropriate manner.

Key changes include:

- **Defines best interests of the child** so that covered entities understand what minimum duty of care is required for the use of children's data and design of products, services, or features accessed by a significant number of children. The definition is designed to capture well-recognized harms in American jurisprudence taken from caselaw and universally recognized language regarding discrimination. This definition specifies that this minimum duty of care requires business **to not use** the personal data of a child or design their online service, product,

or feature in a way that will:

- Benefit the business to the detriment of the child; and
- Results in: material physical or financial harm; severe psychological or emotional harm; a highly offensive intrusion on the responsible privacy expectations of the child; or discriminates against the child based upon race, color, religion, national origin, disability, sex, or sexual orientation.
- **Changes to “likely to access”:**
 - The amendments add a reasonableness standard to likely to access, and thus throughout the code. A reasonableness standard is a legal term of art that allows decision makers to weigh the reasonableness of the consideration before them, typically using a reasonable person standard. Here, reasonably was added in response to arguments that the bill would apply to every website and app, by updating “likely to access” to include a reasonableness standard ensure that the bill is focused on the digital products that most people will agree are likely to be accessed by children.
 - An actual knowledge standard was also added to the considerations a company may make when determining whether their digital product is reasonably likely to be accessed by children.
- **Changes to the Data Protection Impact Assessment (DPIA):** Realigns the assessment to focus on the online product, service, or feature’s compliance with the duty to act in the best interests of children - addressing alleged ambiguity. Continues to require covered entities develop a plan to ensure that all online products, services, or features provided by the company are designed and offered in a manner consistent with the best interests of children reasonably likely to access the online product, service, or feature. Requires the resulting plan include a description of steps the covered entity has and will take to comply with the duty to act in the best interests of children, as newly defined.
- **Changes to Age Estimation:** The Maryland Kids Code no longer requires age assurance measures proportionate to the product’s risk. In fact, the Maryland Kids Code no longer makes any specific age estimation requirements. The Code does continue to prohibit companies from collecting additional data for the purpose of determining a consumer’s age.
- **New Limitations:** The Maryland Kids Code now includes language that clearly expresses that the code shall not:
 - Be used to impose liability in a manner inconsistent with 47 USC Sec. 230 (i.e. federal law related to content moderation);
 - Prevent any child from deliberately or independently searching for or requesting content online;
 - Require a business to implement age-gating or other technical protection methods to prevent underage people from viewing a website or other content; or
 - Infringe on the existing rights and freedoms of children.

California Court Case

- Opposition will likely assert that the California AADC has been found unconstitutional by a Northern California District Court and therefore we should stand down and not take action to protect Maryland’s kids.
- First of all, the California case has not concluded. Yes - a lower court has issued an opinion that ruled in favor of NetChoice, but that decision has been appealed and we are unsure of how the 9th Circuit Court of Appeals will rule on this matter. We, as the Maryland General Assembly, have the duty and right to pass laws that regulate industries in ways that protect Maryland residents.
- The opposition groups pointing to the California lawsuit are attempting to circumvent this right through litigation and fear mongering. The decisions of a California District Court,

and even the 9th Circuit Court of appeal, is not binding on Maryland. Big Tech has deep pockets and intends for this litigation to go on for years. Maryland families are desperate - children need online privacy protections now.

- And you don't need to take just my word for it. Widespread outrage about the decision and how the District Court erred in its application of the law and understanding of the harms kids face resulted in more than 60 experts and advocacy groups - collectively representing more than 1.8 million Americans - submitting amicus briefs in support of the California AADC including our own Attorney General Anthony Brown.
- In their briefs, the amici – which include the American Academy of Pediatrics, American Psychological Association, American Federation of Teachers, law professors, Meta whistleblowers Frances Haugen and Arturo Bejar, the Federal Trade Commission, and a bipartisan group of 21 state Attorneys General – warn of the far-reaching dangers of upholding a September 2023 ruling by the District Court.

A Proven Model

Opposition will likely say the Maryland Kids Code is too unwieldy, too difficult to comply with. Yet the same core principles found within the Maryland Kids Code have been in effect in the UK since September 2021.

The internet did not break. Children, and adults, continue to be able to access the websites of their choosing, search for specific content, and use social media platforms, and generally continue about their business online in those countries that have already regulated tech in this way.

In fact, no business operating in the United Kingdom, including the NetChoice members, challenged the Children's Code in court or otherwise asserted an inability to comply. Rather, several large companies have lauded the Children's Code and its implementing guidance:

- In October 2021, the head of TikTok's Public Policy for the Americas [testified before the US Senate](#) that TikTok "ha[s] voluntarily implemented much of the Age-Appropriate Design Code here in the United States" and that TikTok "strongly and enthusiastically support[s] that kind of child safety law."
- The Director of Government Affairs and Public Policy at Google UK [advised Parliament](#) in May 2022 that the Children's Code "has helped us determine new ways to keep users safe." And Google's President of Global Affairs [stated in a public post](#) that "good legislative models - like those based on age appropriate design principles - can help hold companies responsible for promoting safety and privacy, while enabling access to richer experiences for children and teens."

And there has been a wave of changes in response to those laws that have actually made the internet a better, safer, more developmentally appropriate place for all of us.

For example:

- Instagram now automatically sets the accounts of users under the age of 16 to private during the initial account set up, and adults can no longer direct message young people who do not follow them.

- TikTok automatically applies a 60-minute screen time limit to all accounts belonging to people under 18.
- Pinterest no longer shows children in the UK ads and their data is not shared or used outside of the service.
- Among Us now grants users the opportunity to manage data collection at sign-up and in-game, including the option to turn off a personalized game experience and opt out of all data collection.

It is critical to underscore that none of these changes require content to be removed or prohibit children from searching out specific information.

Key Kosa Differences

In light of the January 31 U.S. Senate Judiciary Committee hearing and resulting press - I did want to briefly speak to the federal Kids Online Safety Act. The two bills similarly focus on creating a better online world for children by requiring tech companies to modify their products and practices - targeting the design, settings, and other controls of online platforms and services. However, they differ in several key ways:

- The Maryland Kids Code uses a “reasonably likely to access” standard to determine whether a product is in scope - while KOSA is limited to actual knowledge or knowledge fairly implied on the basis of objective circumstances.
- The Maryland Kids Code prohibits the collection of children’s person data beyond what is necessary to provide the requested service and limits the use of that personal data to the service requested, whereas KOSA requires numerous disclosures for children and, where applicable, parents about how platforms collect and use minor’s data and how users may exercise their rights with respect to their personal data.
- The Maryland Kids Code includes anti-discrimination language to ensure the application of the law does not negatively impacted protected classes, in its current iteration KOSA does not include anti-discrimination language.

To close, I would just like to touch on why I chose this model of legislation to protect kids online. In addition to KOSA, there are also several states moving forward with bills that seek to ban youth from social media or implement strict parental controls in an effort to heavily modify their online experiences.

As a former educator, I was specifically interested in this approach because it includes and centers young people fighting for a pluralistic internet where everyone has the right to information, expression, and community. It also does not place additional burdens on parents or educators - but rather places the responsibility where it belongs, on the companies.

Ultimately, the Maryland Kids Code takes a hopeful approach to the online world - it suggests that with the increased data privacy and the right guardrails we can design the online world kids and teens deserve. **Last legislative session, this bill passed the Economic Matters Committee 16-6 and the full House 110-26. I ask this committee to once again provide a favorable report on HB 603.**

Quotes from Maryland Educators & Leaders on the Harms of Unregulated Tech:

“My friends and I can’t help but get on our phones to see what we’ve missed... limiting access to social media has had a positive impact on my mental health during the school day, and I hope that social media companies can find more ways to decrease the anxiety and depression my friends and I feel from social interactions online.”

- **Treeme Cannizzaro, 8th grade student, Hampstead Hill Academy, Baltimore City at a Press Conference on Class Action Suit Against Meta**

“Students in our district and across the nation are experiencing a growing mental health crisis because of social media companies and their addictive platforms...” “Our focus with this lawsuit is ensuring the well-being of our students and providing them with a healthy learning environment... (social media companies have made educating students) exponentially more difficult.”

- **Dr. Mark Bedell, Superintendent of Anne Arundel Schools on Class Action Suit Against Social Media**

“(Social media) hijacks normal, healthy thinking... it sucks up so much time and keeps the user wanting more and more. It’s not an overstatement to say it can steal big chunks of a childhood... the urge to check your phone is stronger than any consequence we have at school.”

- **Matthew Hornbeck, Principal, Hampstead Hill Academy, Baltimore City at a Press Conference on Class Action Suit Against Meta**

“(Baltimore) City schools have seen first-hand the negative mental health outcomes among students that reflect the most common symptoms of excessive social media use.”

- **Josh Civin, Baltimore City Schools Chief Legal Officer at a Press Conference on Class Action Suit Against Meta**

“I would really encourage parents to talk to their children about social media, the correct usage of social media, and also to just put those phones down every now and then and connect person to person.”

- **Dr. Cynthia McCabe, Superintendent of Carroll County Public Schools on Class Action Suit Against Social Media**

“What we've seen recently - the game changer - is the actual mental health impact social media is having on students during the school day when they are supposed to be learning.”

- **Dr. Jeffrey Lawson, Superintendent of Cecil County Schools on Class Action Suit Against Social Media**

“Hopefully this lawsuit provides pressure for some action in terms of how to better create products that are geared to children... a fake reality, at those pivotal developmental ages, has more of an impact on behavioral health... it also isolates you.”

- **Maria Navarro, Charles County Public Schools Superintendent on Class Action Suit Against Social Media**

“(Social media is) a huge distraction in our schools and in our classrooms... Students are lacking the ability to express their emotions in a positive way... we see a lot more negative expressions.”

- **Cheryl Davis, Principal, Henry E. Lackey High School on Class Action Suit Against Social Media**

“There is no respite... students leave for the day and the talking/anger continues onto Instagram or Snapchat, and then the students come to school upset over what is on social media.”

- **Nicholas Grey, Teacher, Henry E. Lackey High School on Class Action Suit Against Social Media**

“Students in our district and throughout the nation are grappling with a mounting mental health crisis... our primary objective with this lawsuit is to safeguard the well-being of our students and provide them with the best learning environment possible.”

- **Dr. Cheryl Dyson, Superintendent, Frederick County Public Schools on Class Action Suit Against Social Media**

“Unfortunately, the mental health needs of our students are increasing exponentially, and the detrimental effects of addictive social media apps are making the jobs of educators so much more difficult... as a result, critical funding is having to be allocated to providing increased mental health supports so our students are able to focus on learning... this is an unnecessary burden, and it is crucial for these companies to acknowledge their responsibility in this crisis that profoundly impacts our youth.”

- **Antonia Watts, Chair, Howard County Board of Education on Class Action Suit Against Social Media**

“For too long these companies have exploited developing minds, contributing to a youth mental health crisis nationwide... schools feel the burden when kids come to school struggling to focus, depressed and in need of intensive mental health services.”

- **Bernard Hennigan, Director of Student Services, Howard County Public Schools on Class Action Suit Against Social Media**

“Our lawsuit says, ‘By intentionally funneling youths into addictive habits through the continuous use and reliance on their products, these social media conglomerates have achieved breathtaking profits. But those profits come at a significant cost; the addictive behaviors that social media encourages—and, indeed, enables—has caused depression, anxiety, suicidal

ideations, eating disorders, suicide attempts, and completed suicide among minors. Defendants knowingly exploited their most vulnerable users—children in Montgomery County and throughout the world—to drive corporate profit.”

- **Marc Elrich, County Executive, Montgomery County on Class Action Suit Against Social Media**

“We want to have people come and learn skills about how to manage their time how to manage stress how to support each other how to talk about difficult things and one thing that we realized is that just getting people together in a space to see that they’re not alone in helping them support each other and celebrate each other.”

- **Dr. Patricia Kapunan, Chief Medical Officer, Montgomery County Public Schools on Class Action Suit Against Social Media**

“Our primary goal is to ensure the safety and well-being of our children, allowing them to learn and receive the highest quality education possible... unfortunately, students in our district and throughout the nation are confronting unparalleled mental health and learning challenges caused by their addiction to social media, intensified by detrimental algorithms and features. It is imperative that these companies take responsibility for their role in this crisis affecting our youth.”

- **Judy Mickens-Murray, Chair, Prince George’s County Board of Education on Class Action Suit Against Social Media**

“Our country is facing a youth mental health crisis fueled by young people’s extensive and compulsive use of, and reliance on, social media platforms like Facebook and Instagram... this has placed an entire generation of young people in jeopardy.”

- **Anthony Brown, Attorney General of Maryland General Assembly at a Press Conference on Class Action Suit Against Meta**

“As child and adolescent psychiatrists and pediatricians, we have seen firsthand how social media hurts our young patients’ mental health and well-being.”

- **From the Baltimore Sun Editorial: *‘Social media hurts’: Maryland doctors plead for action to protect young people* / GUEST COMMENTARY, written by Dr. Sarah Edwards, Dr. Gloria Reeves, and Dr. Mutiat Onigbanjo, doctors at the University of Maryland’s Children Hospital and faculty at the University of Maryland School of Medicine**

How many more kids will be victimized before we make the digital world safer for them?

[BALTIMORE SUN EDITORIAL BOARD](#)

February 5, 2024

As briefly satisfying as it may have been to watch some [Big Tech CEOs squirm](#) under a bipartisan grilling from the U.S. Senate Judiciary Committee Wednesday — including an outright apology from Meta CEO Mark Zuckerberg to parents who say social media contributed to their child’s exploitation and, in some cases, death — it’s also fair to wonder if a dysfunctional Congress is capable of doing much about online youth safety. Senators can make withering speeches, but let’s see them pass actual legislation that might hold the Instagrams, the TikToks, the Discords, the Snap Chats and the Xs of the world accountable for the harm they inflict on youth and then get it on President Joe Biden’s desk. Remember, this is the crowd who is up in arms about border security but can’t quite bring themselves to make a deal to accomplish much of what they seek. They are talkers, not doers.

That’s why protecting kids online from predators, inappropriate content, and having their personal information collected may be best accomplished not in Washington, D.C., but in state capitals. Next week in Annapolis, the House Economic Matters Committee is set to have its first public hearing on House Bill 603, which would require online platforms to take steps to protect children. This would include creating a confidential “data protection impact assessment” of any online product. Should that product be found to be harmful to kids, the company could be forced to pay fines in the thousands of dollars for each offense. The proposed statute, called the [Maryland Kids Code](#), is modeled after a similar approach taken in California and in the United Kingdom.

It’s beyond horrifying that so little has been done to date. As much as we recognize that privacy and First Amendment rights to free speech are inevitably linked to issues of content, experiences like that of Todd Minor Sr. who last month wrote on these pages about the death of his 12-year-old son Matthew (“[A TikTok challenge killed our son, now we fight for other children’s safety](#),” Jan. 24), should never happen. Matthew died after participating in an online “choking challenge” in which people were encouraged to cut off their air supply until passing out from lack of oxygen. Since the 2019 incident, Minor and his wife have been advocating for “shifting the burden of online safety from resting solely on families to being shared with the digital platforms themselves from the moment they design their products.” That seems a perfectly reasonable goal to us — and surely to even the most vigilant of parents who can’t hover over every child every minute of the day in a world linked to the internet by laptops, cellphones, watches and tablets at home, at school, at friends’ homes, and on and on.

Similar [legislation passed the Maryland House of Delegates](#) last year by a large margin before dying in the state Senate. Supporters fear it will face headwinds from lobbyists representing Big Tech companies again, perhaps even including those whose CEOs demonstrated such contrition in

D.C. They'd like to quietly kill it — “quietly” because even tech purveyors know public opinion runs against them. In Maryland, it's estimated that two-thirds of high-schoolers spend three hours or more in front of a screen, while three-quarters of social media platforms use artificial intelligence or “AI” to recommend children's profiles to strangers, advocates for Maryland Kids Code say. It simply can't be that difficult to offer some protection, like banning the use of a child's personal data unless given explicit permission.

Admittedly, matters involving what is often termed “[age appropriate design code](#)” can be complex. But is there really a good argument for selling personal information about kids? Other than making bigger profits (at what could prove a terrible price), we just don't see it. Would this problem be preferably addressed at the national and perhaps even international level? Absolutely, but we can't afford to wait for the miracle required for Congress to get its act together, nor even for some of the savvier tech companies to take voluntary measures. The stakes are simply too high. Maryland has an opportunity to be a leader in online child protection, and lawmakers ought to seize it sooner rather than later. Perhaps if more states like Maryland take this chance, Congress may yet act.

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