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Chair Jacquelyn Baginski
Rhode Island General Assembly
Rhode Island House Innovation Internet and Technology Committee
82 Smith Street
Providence, RI 02903

Dear Chair Baginski and Members of the Committee:

EPIC writes in support of the goals of H. 7632, the Rhode Island Age-Appropriate Design Code, but suggests amendments to make the bill more resistant to legal challenge.

The Electronic Privacy Information Center (EPIC) is an independent nonprofit research organization founded 30 years ago to protect privacy, freedom of expression, and democratic values in the information age.[1] In recent years, EPIC has been very involved in defending reasonable kids' online safety laws from the tech industry's First Amendment challenges. And we bring the expertise gained from our involvement in those legal challenges to help state legislators craft strong kids online safety laws that can withstand constitutional challenge.[2] EPIC supports the AADC approach and has published its own model AADC bill informed by our expertise in data protection, design regulation, the First Amendment, and Section 230.[3]

There is an urgent need for Rhode Island to pass the RI AADC. Kids spend a lot of time online—often more than they would like. This is by design.[4] Companies design their platforms to extract as much time and data as possible, and in the process they prey on minors' psychological vulnerabilities for profit.[5] These manipulative design strategies lead to compulsive use, depriving minors of control of their online experiences and subjecting them to heightened health, privacy, and data security risks, all so that companies can generate more revenue. The design of these platforms is what is harming kids and teens, and regulating design is the best solution.

Kids often have bad experiences online. Many of these experiences can be traced to their lack of control over key aspects of their online experiences, like who can contact them and what

[1] EPIC, *About EPIC*, https://epic.org/about/.
[2] EPIC, *Platform Accountability & Governance*, https://epic.org/issues/platform-accountability-governance/.
[3] EPIC, EPIC's Model Age-Appropriate Design Code, https://epic.org/epic-model-aadc/.
[4] *See* Arvind Narayanan, Understanding Social Media Recommendation Algorithms, The Knight First Amendment Institute at Columbia Univ. 20–22 (2023), https://knightcolumbia.org/content/understanding-social-media-recommendation-algorithms.
[5] 5Rights Foundation, Disrupted Childhood: The Cost of Persuasive Design 19-21 (Apr. 2023), https://5rightsfoundation.com/wp-content/uploads/2024/08/5rights_DisruptedChildhood_G.pdf.

content they see in their feeds. This lack of control undermines their autonomy and increases the risk of harms like cyberbullying, sexual exploitation, bodily injury, and mental health harms.

We do have a few suggestions for further strengthening the RI AADC and making it more resilient to a legal challenge. Industry groups such as NetChoice who have challenged AADCs in other states have brought vagueness claims in their attempts to enjoin laws that require them to change their harmful business practices. The Supreme Court has held that provisions of a law are unconstitutionally vague when people "of common intelligence must necessarily guess at its meaning."[6] Several provisions of the California AADC were recently held to be unconstitutionally vague by the Ninth Circuit, and so legislators need to carefully draft legislation to avoid vagueness.[7]

First, we suggest defining the term "reasonably likely to be accessed by children." The term is used multiple times in the bill and may be vulnerable to a vagueness challenge if left undefined. Other AADC and Kids Codes define this term. Adding a definition will promote consistency among AADC models around the country, provide useful guidance to covered entities, and lower litigation risk. We suggest the following definition:

> *"Reasonably likely to be accessed by children" means the online service, product, or feature is reasonably likely to be accessed by children based on any of the following indicators:*
>
> *i. the online service, product, or feature is directed to children, as defined by the Children's Online Privacy Protection Act, 15 U.S.C. §§ 6501–6506 and the Federal Trade Commission rules implementing that Act;*
>
> *ii. the online service, product, or feature is determined, based on competent and reliable evidence regarding audience composition, to be routinely accessed by an audience that is composed of at least two percent children; or*
>
> *iii. the covered business knew or should have known that at least two percent of the audience of the online service, product, or feature are children, provided that, in making this assessment, the business shall not collect or process any personal data that is not reasonably necessary to provide an online service, product, or feature with which a minor is actively and knowingly engaged."*

Second, the term "reasonably known to be used by children" in §6-48.2-4.(a)(1) should be changed to "reasonably likely to be access by children" so that the bill uses one consistent term to refer to the likelihood that children are using a product, service, or feature, and that term is defined. Third, we recommend slightly changing the term "high level of privacy" in §6-48.2-4.(a)(5) to "highest level of privacy."

[6] *Connally v. General Construction Co.*, 269 U.S. 385, 391 (1926).
[7] *NetChoice, LLC v. Bonta*, No. 25-2366, 2026 WL 694471 (9th Cir. Mar. 12, 2026).

To improve clarity, and to avoid a successful vagueness challenge, we further suggest that the substantive provisions requiring adherence to the duty of care (§§ 6-48.2-4.(5), 6-48.2-5.(1), (2)(i), (7)) either explicitly refer to the company's analysis of risk in their DPIA or include a scienter requirement, which will implicitly refer to the DPIA. Section 6-48.2-5.(7) already includes a scienter requirement, and § 6-48.2-5.(1), which has a parallel construction, should be amended to use the same language. We suggest:

- § 6-48.2-4.(5) should read "configure all default privacy settings provided to known children by the online service, product, or feature to settings that offer ~~a high~~ the highest level of privacy, unless the covered entity can demonstrate in a DPIA required by § 6-48.2-4.(a)(1) a compelling reason that a different setting is consistent with the duty to use reasonable care to avoid any heightened risk of harm to children, as defined pursuant to the provisions of § 6-48.2–3(b)."
- § 6-48.2-5.(1) should read "process the personal data of any known child in a way that the covered entity knows, or has reason to know, ~~to be inconsistent~~ is not consistent with the duty to use reasonable care to avoid any heightened risk of harm to children, as defined pursuant to the provisions of § 6-48.2–3(b)."
- § 6-48.2-5.(2)(i) should read "the covered entity can demonstrate in a DPIA required by § 6-48.2-4.(a)(1) it has appropriate safeguards in place to ensure that profiling is consistent with the duty to use reasonable care to avoid any heightened risk of harm to known children."

Finally, we recommend that the RI AADC include a severability clause, unless there is a strong presumption of severability in Rhode Island law. In the event that a court holds certain provisions invalid, other sections can still remain enforceable. However, it is worth noting that the bill's current structure may impact severability. Many of the substantive provisions are tied to the duty of care, which is tied to the DPIA. Even with a severability clause, if either the duty of care or DPIA are held invalid, all of these provisions would likely fall together as they are not severable. We suggest the following severability clause from our model bill:

> *If any clause, sentence, paragraph, subdivision, section, or part of this article chapter shall be adjudged by a court of competent jurisdiction to be invalid, such invalidation shall be restricted only to the clause, sentence, paragraph, subdivision, section, or part that has been adjudged invalid and shall not affect, impair, or invalidate any other provision of this article chapter that can be given effect without the invalidated portions. It is the intent of the legislature that this article chapter would have been enacted even if such invalid provisions had not been included herein.*

* * *

Parents can't solve this problem on their own, and they shouldn't have to. The design of these platforms is the problem, and regulating design is the solution. The companies building

these products must take responsibility for their harmful design choices and be required to integrate privacy and safety into their products.

Thank you for the opportunity to submit testimony on this important bill. We have provided a copy of EPIC's Model AADC to the Committee. EPIC is eager to remain a resource for the Rhode Island Legislature as this bill moves through the legislative process. Please contact Suzanne Bernstein at bernstein@epic.org with any questions.

Respectfully submitted,

/s/ *Caitriona Fitzgerald*	/s/ *Megan Iorio*	/s/ *Suzanne Bernstein*
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