

April 6, 2020

Governor Larry Hogan
The Maryland State House
100 State Circle
Annapolis, MD 21301

Re: Urgent Veto Request - HB 732

Dear Governor Hogan:

MPA – The Association of Magazine Media, the trade association of the magazine industry, writes to express our extreme concern over the digital advertising tax provision that was incorporated into a broader taxation legislative package recently passed by the legislature.

A discriminatory tax on digital advertising revenue would negatively affect local media outlets providing essential news information to Maryland communities, impose pass-through costs on local Maryland businesses and non-profits in an already challenging economic climate, and pose serious constitutional concerns.

We urge you to veto HB 732.

MPA's members are magazine media brands that span a vast range of genres across print, digital, mobile and video media. Marylanders are enthusiastic magazine media readers, with just under five million magazine subscriptions going to Maryland consumers each year. Maryland is home to dozens of magazines that publish in the state. Most of these magazines also produce digital content and likely receive significant revenue support from digital advertising online, including advertising from key Maryland industries.

In this time of great public health concern, trusted media sources play an essential role in providing valuable information to the communities they serve. Newsgathering and media are recognized as critical infrastructure sectors according to the Department of Homeland Security's Cybersecurity and Infrastructure Security Agency. We appreciate your use of this designation of critical infrastructure in Executive Order Number 20-03-23-01, which will ensure Marylanders may continue to receive important updates from the magazines that serve their communities.

Digital advertising is an important revenue source that allows magazine publishers to provide trusted, vital information to their readers. Digital advertising revenue is particularly important at a time when many news and media outlets – including magazine publishers – have temporarily suspended paywalls to allow people access to information on breaking news events, including the current public health emergency.

The economic sectors of bio-health, financial services, travel and tourism, and information technology comprise the largest categories of digital advertising expenditures nationally, and they are also key drivers of the Maryland economy. While the proposed tax's payment structure would affect most Maryland businesses, the disproportionate impact would be to these high priority sectors.

Particularly in a time of extreme economic uncertainty, digital advertising is an affordable awareness and audience generation tool for brick and mortar businesses and non-profit organizations. Imposing additional costs to local businesses, even if passed through from larger advertising entities, could jeopardize the viability of local news resources, harm local businesses, and prolong the economic recovery for the state in normal times. In the current political, public health and economic environment, such a measure is all the more misguided.

By increasing the overall cost of digital advertising, the impact of the tax would be felt by both Maryland industries and media outlets. Proponents of the tax have focused their discussions on the financial impact to large advertising platforms. In reality, the financial impact of the tax would be felt by all entities in the advertising ecosystem, including an expected increase in costs to Maryland's businesses and non-profits. A gross revenue-based tax applied on advertising platforms would ripple through to local businesses and non-profits, and from the local businesses onto their customers, Maryland taxpayers.

The proposal also raises serious First Amendment concerns because it singles out one form of speech – digital commercial speech – for taxation. By imposing a tax on a specific channel of advertising revenue, including and especially on interfaces associated with news media, the bill raises concerns about restrictions on commercial speech, political speech and ideological speech on digital advertising platforms. Indeed, the legislation's Fiscal and Policy Note identifies the Maryland Court of Appeals ruling in 1958 that found a sales tax on advertising proposed by Baltimore City was unconstitutional. In the event of a legal challenge on these matters, Maryland taxpayers would incur the cost of defending the troubling tax.

If enacted, the proposed tax measure will harm magazine media and other news sources serving Maryland, Maryland's businesses and non-profits across all sectors, and Maryland's taxpayers.

On behalf of the magazine media industry, MPA respectfully urges you to veto HB 732.

Respectfully submitted,

Rita Cohen
Senior Vice President

Emily Emery
Director, Digital Policy