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Senate Finance Committee

Senate Bill 957 – Maryland Online Consumer Protection Act

SB 957 is landmark online privacy legislation that will empower Marylanders to better understand, protect and control what personal data is collected about them and how businesses utilize personal information to analyze your individual activities. Algorithms are the new temples that everyone from business, government and non-profits worship at the altar. While these devices have utility, they encourage data harvesting and packaging of individuals' information to a level of preciseness that they can predict and even modify your behavior.

Privacy is dying and our democratic institutions have been infected. Our values seem to carry less value than our purchasing power, or our social media connections. It is time to take back data ownership, it is time to take back our privacy. SB 957 is the privacy bill Marylanders require and a bill that should be easy for companies to implement because they already apply the same provisions to Californians. Is comprehensive personal information about Marylanders less important? Do we expect Congress to act?

Data recently surpassed oil as the most valuable asset in the world, because the personal data that businesses collect about us allow them to peer into even the most intimate and sensitive facets of our lives to market consumer goods and policy proposals to; but for all its value and sensitivity, the collection and sharing of Marylanders' personal information is not governed by comprehensive privacy protections beyond bare bones data breach notification laws that only touch personally identifiable information that traditionally was used to steal an identity. California recently enacted a more comprehensive law that has had an impact across the country, but some large corporations are limiting the benefits so they don't reach Marylanders. Not because they can't extend those benefits, but because they don't want to stop monetizing your

data, and can't be bothered to take measures to protect your privacy. We have worked with them to try and find compromise language but there is an ideological divide about the role of state government in the solution.

Many individuals around the globe already have protections to strengthen data ownership and consumer protection from digital advertising firms. Jurisdictions outside of Maryland have established rules of the road in this space, and those rules are already being enforced. In Europe, the General Data Privacy Regulation (GDPR) was implemented in 2018, and enforcement of a similar initiative in California, the California Consumer Protection Act (CCPA), began on January 1 of this year. The CCPA was used as a model for this legislation, and will be fully enforceable July 1st of this year, so we are waiting for final regulations, but we know the lay of the land already and don't need to wait for all of the details to fall into place to start policing this space. Elected officials around the world are taking action to give consumers the tools to protect themselves in the digital Wild West; it's time we do the same for consumers in Maryland.

The Maryland Online Consumer Privacy Act (MOCPA) affords Marylanders five basic rights in the digital landscape:

1. Marylanders will have the **right to know what categories of personal information a business will collect about them**, at or before the point of collection;
2. Marylanders will have the **right to obtain the specific personal information that businesses have collected** about them;
3. Marylanders will have the **right to know what personal information collected about them has been shared, sold or otherwise disclosed, to a third party**, and why that information was disclosed;
4. Marylanders will have the **right to request that a business delete the personal information they have collected** about that consumer;
5. Marylanders will have the **right to opt-out of future disclosure of their personal information to a third party**;

I want to highlight a few important sections and provisions in the bill that expand on these basic rights. Please walk through the bill with me, so I can help demystify these provisions one-by-one. Privacy is a complicated subject, but don't let the opposition muddy the waters, this is not rocket science.

Page 2 of the bill contains the definitions under Section 14-4201. Note that aggregate information that is not individualized is not subject to the provisions of the bill. The bill only applies to businesses that either have gross revenues in excess of $25 million, touches 100,000 consumers or households, or derives at least half of its annual revenues from selling consumers' personal information. A "consumer" is defined on the top of page 2 as an individual who resides in the state. There is an explicit business to business exception through this definition of consumer to be an individual who resides in Maryland. Page 5 contains the definition of

"personal information" and explicitly clarifies that de-identified consumer information is not included, nor is aggregate or publicly available information.

On page 7, Section 14-4202 is the notice provision and establishes the right of a consumer to know what personal information will be collected about them. This essentially codifies what any responsible business already discloses in their privacy policy, and adds that a business must notify a consumer of their new rights under this bill, namely, the right to request a copy of personal information, the right to delete that personal information, and the right to opt-out of third-party disclosure of personal information. The section also requires that a business notify a consumer before beginning to collect additional personal information from that consumer.

On page 8, Section 14-4203 establishes the right of a consumer to obtain their own personal information from a business. A business is required to 1) disclose all pieces of personal information that a business has collected about that consumer, 2) disclose how that information was collected, and 3) disclose what third-parties that information has been disclosed to, and for what purpose that information was disclosed. All of this information is to be provided free of charge to the consumer once every six months upon request; businesses are allowed to charge a reasonable fee or deny a request for subsequent requests made in a six-month period. This provision protects companies from excessive and repetitive compliance costs. There is a carve-out so that companies are not required to share the personal data of a consumer to that consumer if that disclosure would adversely affect the legal rights of another consumer. Further, none of the information detailed above is to be disclosed without a **verifiable consumer request** for that information.

"Verifiable consumer request" is an important item to understand, as it is required for a consumer to exercise many of the rights enshrined in this bill. Our bill doesn't define verifiable consumer request clearly, instead, we defer to the Attorney General to develop those regulations. The California Consumer Protection Act uses the exact same language as we do in our bill, and the California Attorney General has been able to define verifiable consumer request effectively and with nuance to require different levels of verification for access to data of different sensitivities. By requiring a verifiable consumer request, we protect consumers and companies from others fraudulent access or deletion of their data.

On page 11, Section 14-4205 establishes the right of a consumer to request that a business delete their personal information. We include a robust set of carve-outs that mirror the California law to ensure that we balance the privacy interests of a consumer against the need of a business to maintain information to deliver services, engage in research, protect other consumers' personal information, and comply with other legal obligations. This is the provision the banks and insurance companies don't want to follow. They are going to argue they should be exempt as an institution because they don't sell data to third parties under the federal banking and insurance law known as the Gramm-Leach-Bliley Act (GLBA). What they won't tell you is that they don't want to allow you to delete your data that is not covered under the federal GLBA. We have a

solution for them in the loyalty card section. The bill already explicitly carves out all information already covered under the GLBA, and their request is to be carved out of having to delete data that is unassociated with the GLBA information they are collecting, without even clarifying what they would use that data for in the future.

Jumping ahead a bit to page 15, subsection (6) of 14-4208 explicitly does not apply to personal information collected, processed, sold, or disclosed under the GLBA and implementing regulations. If there is personal information the banks have about you that is not covered under the GLBA, it should be covered under this legislation. There is no need for a carve out with the loyalty card exception language.

On page 12, Section 14-4206 establishes the right of a consumer to opt-out of all disclosure of their personal data to a third party. The section establishes a ban on the disclosure of the third-party disclosure of an individual under 16 years old, in line with the California provision. Section 14-4206 allows consumers to opt-out of third-party ***disclosure***, this is a clarification from the California law that referred only to sales but has expanded the scope of that definition to cover entities like Facebook that argue they don't sell data. The goal of this section is to protect consumer privacy by preventing third-party access to consumer data; weather that data was sold or simply shared with the third-party by the collecting party is irrelevant for the purpose of the legislation. The industry groups see potential gaps in the law as loopholes to drive their organizations through safely without regulation, we must be vigilant to not allow the exceptions to gut the rule.

But we are happy to extend certain protections such as the loyalty programs. We have an amendment to make it possible for businesses to have a loyalty program, which provides certain benefits to customers who want to waive their right under this section to be able to delete their information. This should satisfy the bank and insurance companies' main concerns that they don't want to have to delete information upon request. On page 13, Section 14-4207 importantly provides that a company cannot discriminate against a consumer for exercising any of the rights established above but for loyalty program there would be an exception for the right to delete provision.

These protections and provisions are akin to a consumer bill of rights for the 21st century.

I'm sure you've noticed that I've referenced California a number of times in my testimony, and that's because, for almost every intent and purpose other than strengthening the third-party opt-out under 14-4206, this bill is an attempt to mimic the thresholds within the California Consumer Protection Act.

There are ongoing discussions about federal data privacy legislation, but because many of those discussions center around preemption goal rather than protecting privacy and with Congress' general dysfunction, we don't see those efforts materializing anytime soon. Industry argues that if a federal privacy law does not preempt state action soon, a 50-state patchwork of different

privacy standards will develop. That patchwork, the argument goes, would stifle the innovative spirit of the internet because only the very largest companies would be able to navigate the complicated and expensive compliance costs associated with such a patchwork. What we are showing here in Maryland is that the states can follow California's lead and we don't have to wait for Congress to act. Why would we wait for **more than a few years** for Congress to compromise on what would almost certainly be **weaker privacy protections than those that already exist in California, when we can force companies that are already offering strong protections to Californians to simply extend those same protection to Marylanders too.**

A number of companies already allow non-Californians to exercise the rights established under the CCPA. Right now, it doesn't matter if you're a Marylander or a Californian, you can request that Amazon, Netflix, Facebook and Uber, among others, delete your personal information or not sell that information to a third-party, and those businesses will comply. However, if you're a Marylander and want to the same thing with the information that AT&T, Disney, eBay, Equifax, Marriott, Lyft and dozens of more companies, those businesses will not comply with your request, **even though they are complying with those same requests for consumers in California**. There are no compelling differences between these companies; on one side is Uber and Amazon, on the other is Lyft and eBay, the only difference is whether they have chosen to offer the same protections to all Americans that they are already required to offer to Californians.

The patchwork we should be concerned about isn't one that drives up compliance costs for businesses; it's one that allows business to offer strong privacy protections to some consumers and weak protections to others, simply because they can save a dime by doing so. By passing this bill, we can show Maryland consumers that their privacy is just as important as the privacy of California consumers, and we can show the federal government that the states can limit compliance costs for business without undercutting the strong protections California has enshrined.

As mentioned before, there are some amendments in your packet to clean up some drafting mistakes concerning the loyalty program and to provide additional consistency with the California Consumer Protection Act.

For all these reasons, I respectfully request a favorable report on SB957, as amended.