February 9, 2024

The Honorable C.T. Wilson
Chair
House Economic Matters Committee
Maryland House of Delegates
231 Taylor House Office Building
6 Bladen Street
Annapolis, MD 21401

RE: HB 567 (Love) - Maryland Online Data Privacy Act of 2024.

Dear Chair Wilson and Members of the Committee,

On behalf of TechNet, I'm writing to offer remarks on HB 567 related to omnibus data privacy.

TechNet is the national, bipartisan network of technology CEOs and senior executives that promotes the growth of the innovation economy by advocating a targeted policy agenda at the federal and 50-state level. TechNet's diverse membership includes dynamic American businesses ranging from startups to the most iconic companies on the planet and represents over 4.2 million employees and countless customers in the fields of information technology, e-commerce, the sharing and gig economies, advanced energy, cybersecurity, venture capital, and finance. TechNet has offices in Austin, Boston, Chicago, Denver, Harrisburg, Olympia, Sacramento, Silicon Valley, and Washington, D.C.

We appreciate your leadership and thoughtful approach to consumer data privacy. The technology industry is fully committed to securing privacy and security for consumers and engages in a wide range of practices to provide consumers with notice, choices about how their data is used, as well as control over their data. TechNet believes that any consumer privacy bill should be oriented around building consumers' trust and fostering innovation and competitiveness. New privacy laws should provide strong safeguards to consumers while also allowing the industry to continue to innovate. These new laws should be based upon a uniform set of standards to avoid imposing a patchwork of policies across jurisdictions.

Thank you to Delegate Love for including TechNet in the stakeholder process early on and for incorporating several of our suggested changes. As mentioned during discussions with the sponsors, interoperability among states is key in the absence of a federal privacy standard. As such, TechNet continues to seek changes to HB 567, which are outlined below.

Definitions

TechNet requests that definitions in the bill align with other states' models. Specifically, we request that the definition of "Biometric Data" include the language "are used", as opposed to "can be used", and "identify" instead of "authenticate". For "Consumer Health Data", we request this definition be aligned with Connecticut's definition to avoid a different set of data being covered by each state. We also request that "status" in the definition be struck and replaced with "condition or diagnosis". For "Sale" and "Targeted Advertising", we request those match other states. For "De-identified Data", we request that the requirement of publicly committing not be limited to a privacy policy or terms and conditions. On "Precise Geolocation", we request a comma after "contents of communication". This is a clarifying change, universal among states. For "Sensitive Data", we suggest using the language "known child" and "for the purpose of uniquely identifying an individual" after genetic data or biometric data. No other state uses a "knows or has reason to know" standard.

Enforcement

TechNet requests at least a one-year effective date, right to cure period, and clarifying language around prohibiting private rights of action. Companies, large and small, will need adequate time to come into compliance with this bill by implementing consent mechanisms, renegotiating all existing contracts with vendors, and establishing new teams for Data Protection Assessments, among several others. A right to cure period allows for injunctive relief for the consumer and allows time for businesses to right any perceived wrongs while coming into compliance with this bill. TechNet thanks the sponsor for their intention to not include a private right of action in this legislation; however, to avoid loopholes, TechNet requests the below language to take that intent a step further.

- THE ATTORNEY GENERAL SHALL HAVE EXCLUSIVE ENFORCEMENT AUTHORITY TO ENFORCE VIOLATIONS OF THIS ACT. NOTHING IN THIS ACT SHALL BE CONSTRUED AS PROVIDING THE BASIS FOR, OR BE SUBJECT TO, A PRIVATE RIGHT OF ACTION FOR VIOLATIONS OF THIS OR ANY OTHER LAW.

14-4607 – Controller Responsibilities

On page 19 of the bill, please strike lines 27 through 29 dealing with content personalization. Content personalization is a major outlier and strays from other states' models. Regarding the standard of "knew or should have known", TechNet is requesting that phrase be struck and replaced with "has actual knowledge or willfully disregards…". To our knowledge, no other state has a "knew or should have known" standard, so we have aligned this to the standard in most other states.

Finally, as other state AGs develop their own lists of approved opt-out signals, we believe it makes sense to state that if a controller is working from a list of approved signals by another state AGO, it shall be deemed in compliance with this section.

Additional requests are appended in this document and have been shared with the sponsors ahead of this hearing.

TechNet joins industry partners and strongly encourages Maryland to look to the protections for consumers included in other states' omnibus privacy laws to avoid a patchwork of state laws that are difficult to comply with and confusing for consumers. Our members are committed to being collaborative in Maryland as the process moves forward. Please continue to consider TechNet's members a resource in this effort. Thank you for your time and we look forward to continuing these discussions with you.

Sincerely,

Margaret Durkin

Margaret Durkin
TechNet Executive Director, Pennsylvania & the Mid-Atlantic

MD COMPREHENSIVE PRIVACY BILL (HB 567 / SB 541)
TOP PRIORITIES

1. **Definitions:**
   a. **Biometric Data**
      i. "Are used" vs. "Can be used" (overinclusive)
      ii. "Identify" vs. Authenticate (underinclusive)
   b. **Consumer Health Data**
      i. Match to CT (implementing language as well)
         1. Sale w/ consent permitted for all sensitive data
   c. **Sale**
      i. Match exceptions to all other states
   d. **Targeted Advertising**
      i. Match to all other states
   e. **Deidentified Data**
      i. "publicly commits"
   f. **Precise Geolocation**
      i. "Contents of communications**, or**"
   g. **Sensitive Data**
      i. Biometric/genetic "for the purpose of uniquely identifying…"
      ii. "Known child" instead of "reason to know"

2. **Enforcement**
   a. "Nothing in this act…" and "AG exclusive authority" language
      i. "This act does not prevent a consumer from pursuing any other remedy provided by law."
   b. Right to Cure
   c. Effective Date
   d. Preemption

3. **§14-4607**
   a. Delete Consent for use of marketing/personalization if sole use (not in any of the 13 states, can be deceiving).
   b. Align Data minimization with all 13 other states
   c. Prohibition on selling sensitive data <u>without the consumer's consent</u>
   d. "Actual knowledge or willfully disregards…" instead of "known or should have known" phrasing

4. **DPA Requirements**
   a. "For each algorithm used"
   b. "On a regular basis"
   c. DPA's not retroactive

5. **Exemptions**
   a. Conduct solely internal research

b. No liability for misuse by other party if no actual knowledge
c. Exemptions for current MD Medical Records/Information statutes
d. GLB – add data
e. HIPAA/Healthcare alignment with other states

6. **Non-Conforming Provisions that Do Not Advance Privacy/Tweaks**
   a. 14-4608(A)(3)(II) and (III) deletion
   b. 14-4608(B)(1) deletion
   c. 14-4607(D)(4) conformance with CT (Privacy Policy) or CO if needed (as outlined in redline)
   d. 14-4608(D)(4) – Delete third party reference
   e. 14-4605(E)(2)(III) deletion
   f. Delete 14-4612(B)(1) exception
   g. 14-4606(A) – clarify that opt-out mechanism applies only to sale/targeted advertising
   h. Replace all references to "Person" with "A controller or processor"
   i. Add consent requirement to (A)(9)