



**March 20, 2024**

Senate Finance Committee  
3 East  
Miller Senate Office Building  
Annapolis, Maryland 21401

## **RE: HB 567 - “Maryland Online Data Privacy Act of 2024” (Favorable with amendments)**

Dear Chair Beidle and Members of the Senate Finance Committee:

On behalf of the Computer & Communications Industry Association (CCIA)<sup>1</sup>, I write to respectfully oppose HB 567, unless further amended.

CCIA supports the enactment of comprehensive federal privacy legislation to promote a trustworthy information ecosystem characterized by clear and consistent consumer privacy rights and responsibilities for organizations that collect and process data. A uniform federal approach to the protection of consumer privacy throughout the economy is necessary to ensure that businesses have regulatory certainty in meeting their compliance obligations and that consumers are able to exercise their rights. CCIA appreciates, however, that in the absence of baseline federal privacy protections, state lawmakers are attempting to fill in the gaps. To inform these efforts, CCIA produced a set of principles to promote fair and accountable data practices.<sup>2</sup>

CCIA strongly supports the protection of consumer data and understands that Maryland residents are rightfully concerned about the proper safeguarding of their data. CCIA also appreciates the significant and continued effort that lawmakers have undertaken to strike the appropriate balance for meaningful protections while preserving benefits consumers receive and the ability for innovation to thrive. As you know, in the absence of a comprehensive law at the federal level, there is a growing number of states that have enacted their own laws. The majority of these laws harmonize a key set of definitions and concepts related to privacy.

While we appreciate the sponsors’ extensive work on this bill, as written, HB 567 still would diverge from existing frameworks in several key ways, as further detailed below. We appreciate your consideration.

### **Definitions and controller obligations should be clear and interoperable.**

CCIA appreciates the harmonization of the definitions for “targeted advertising” and “publicly available information”, however, further amendments would help to address persisting divergences.

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<sup>1</sup> CCIA is an international, not-for-profit trade association representing small, medium, and large communications and technology firms. For over 50 years, CCIA has promoted open markets, open systems, and open networks. For more information about CCIA please see: <https://www.ccianet.org/about>.

<sup>2</sup> Computer & Communications Industry Association, *Considerations for State Consumer Privacy Legislation: Principles to Promote Fair and Accountable Data Practices* (January, 2022), <https://www.ccianet.org/wp-content/uploads/2022/02/CCIA-State-Privacy-Principles.pdf>

Existing broad-based privacy laws typically recognize a core set of rights and protections including individual control, transparency of processing activities, and limitations on third-party disclosures. However, even minor statutory divergences between frameworks for key definitions or the scope of privacy obligations can create onerous costs for covered organizations. Therefore, CCIA encourages that any consumer privacy legislation is reasonably aligned with existing definitions and rights in other jurisdictions' privacy laws so as to avoid unnecessary costs to Maryland businesses.

As drafted, key definitions in HB 567 are likely to prompt significant statutory interpretation and compliance difficulties, even for businesses with existing familiarity with other US state laws. Specifically, CCIA recommends attention to the following terms to align definitions such as: "biometric data", and "consumer health data". We also suggest aligning the definition of "geofence" based on existing state laws, such as in Washington and New York. As currently written, the bill's definition of "geofence" is inconsistent and conflicts with the bill's definition of "precise geolocation data".

CCIA also suggests clarifying that the definition of "sensitive data" would encompass the personal data of a *known* child. This would be consistent with the *actual knowledge* standard under COPPA and remove ambiguity.

Finally, HB 567 would require a controller to obtain consumer consent prior to collecting personal data for content personalization or marketing. This provision would limit businesses' ability to conduct ad measurement, which would limit digital advertising for businesses large and small and have significant impacts on the internet economy. Personalization is also essential to the core value of the internet, and without it, online services would be far less efficient, and possibly unusable. Further, personalization serves a very different purpose than marketing – personalization helps online businesses create a safer and more enjoyable online experience from their users. The frameworks established in other states, such as Connecticut and Virginia address such exemptions. For example, Virginia's law includes the following under § 59.1-582, and CCIA recommends considering similar language:

*The obligations imposed on controllers or processors under this chapter shall not restrict a controller's or processor's ability to collect, use, or retain data to:*

- 1. Conduct internal research to develop, improve, or repair products, services, or technology;*
- 2. Effectuate a product recall;*
- 3. Identify and repair technical errors that impair existing or intended functionality; or*
- 4. Perform internal operations that are reasonably aligned with the expectations of the consumer or reasonably anticipated based on the consumer's existing relationship with the controller or are otherwise compatible with processing data in furtherance of the provision of a product or service specifically requested by a consumer or the performance of a contract to which the consumer is a party.*



## CCIA requests further clarification regarding the enforcement provisions.

CCIA appreciates Maryland lawmakers’ consideration of appropriate enforcement mechanisms for a comprehensive data privacy framework and requests further clarity that HB 567 would not permit consumers to bring legal action against businesses that have been accused of violating new regulations. Every state that has established a comprehensive consumer data privacy law to date has opted to invest enforcement authority with their respective state attorney general. Private rights of action on other issues in states, such as under the Illinois Biometric Information Privacy Act, have resulted in plaintiffs advancing frivolous claims with little evidence of actual injury. These lawsuits also prove extremely costly and time-intensive for all parties involved, including the state, and it is foreseeable that these costs would be passed on to individual consumers in Maryland, disproportionately impacting smaller businesses and startups across the state.

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CCIA and our members are committed to providing consumers with protections and rights concerning their personal data, however, further harmonization with established frameworks is needed. We appreciate your consideration of these comments and stand ready to provide additional information as the legislature considers proposals related to technology policy.

Sincerely,

Khara Boender  
State Policy Director  
Computer & Communications Industry Association