

February 12, 2020

The Honorable Delores Kelley, Chair  
Senate Finance Committee  
3 East, Miller State Office Building  
Annapolis, MD 21401

RE: Senate Bill 201 - Commercial Law - Personal Information Protection Act – Revisions - OPPOSED

Dear Senator Kelley,

I am writing in my capacity as both the Legislative Chairman of the Building Owners and Managers Association of Greater Baltimore (BOMA), and as a member of its Board of Directors, to express BOMA's concerns regarding the referenced legislation.

BOMA, through its nearly 300 members, represents owners and managers of all types of commercial property, comprising 143 million square feet of office space in Baltimore and Central Maryland. Our members' facilities support over 19,000 jobs and contribute \$2.5 billion to the Maryland economy each year.

Our specific concern with Senate Bill 201 may be found in new language on page 3, lines 4-9. This language is broadly drafted, and significantly expands the definition of "personal information" under current Maryland law. The additional language could be construed to include data which has long been considered to be both confidential and proprietary to an employer. In effect, it could transform the property of the employer into property of the employee, in the form of "personal information." We do not believe this result is intended under SB 201.

As an example, "activity-tracking data" under the bill could include an employer's email system, internet services or other computer programs (either on employer-provided computers or employer-provided phones or tablets). Such a result would conflict with the legal recognition granted by Federal and State courts to the principle that an employee has no privacy interest in data transmitted or received on such employer-provided devices. Many companies, including BOMA members, have employee policies which so state, and these policies are acknowledged by the employee at time of employment or when an employee begins to use these devices. While the intent of the bill may be to address a broader issue (e.g. search engine privacy), the language as drafted, if SB 201 is enacted, may create a credible claim by an employee that an employer may not review an employee's use of an employer-provided hardware or networks.

BOMA believes that such consequences, even if unintended, are potentially damaging to the business model of BOMA members. As an example, an employee could divulge with impunity information that is considered confidential and proprietary to the employer, and the statute could be used improperly as a shield against an employer who seeks to discover such disclosure.

While there are other concerns as well, many of which would affect businesses generally, we hope this example illustrates both the problems that could be caused by this legislation and the need to be precise in determining the scope of personal information that, as a matter of public policy, requires legislative protection.

For these reasons, BOMA respectfully requests an unfavorable report on Senate Bill 201.

Sincerely,



Kevin J. Bauer