



TECHNET
THE VOICE OF THE
INNOVATION ECONOMY

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January 25, 2022

The Honorable Senator Delores Kelly, Chair
The Honorable Senator Brian Feldman, Vice Chair
Senate Finance Committee
Miller Senate Office Building
Annapolis, Maryland 21401

Re: SB 11 – Maryland Online Consumer Protection and Child Safety Act

Dear Chair Kelly, Vice Chair Feldman, and members of the Committee:

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 four 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, Olympia, Sacramento, San Francisco, Silicon Valley, and Washington, D.C.

TechNet's member companies place a high priority on consumer 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 supports a federal standard that establishes a uniform set of rights and responsibilities for all Americans. The global nature of data demands a federal policy, and even the most well-designed state statute will ultimately contribute to a patchwork of different standards across the country, resulting in steep compliance costs and consumer confusion.

In the absence of a uniform standard, TechNet urges states considering their own legislation to consider interoperability with existing models as the default position. Specifically, states should look to the most recent examples of Virginia and Colorado, which have taken lessons learned from US and global privacy law and present a clearer, more explicit explanation of consumer rights and controller responsibilities.

SB 11 instead pulls from the California model, which even as we discuss this, remains a moving target. CA businesses and consumers currently live under a privacy regime enacted in 2018 and interpreted through a long series of rulemakings by the Attorney General's office. That regime will be supplanted in 2023 by a new authority, the California

Privacy Protection Agency, tasked with enforcing a 2020 law, which is the subject of a current series of rulemakings by the new agency. Already this state of affairs has caused significant confusion for businesses and consumers alike, as the provisions in the new law and actions by the AG have differed, and occasionally contradicted one another.

TechNet members believe that privacy legislation should connect specific remedies to specific privacy harms. A truly effective privacy law is as explicit as possible – it should be clear what is expected of companies and what rights consumers can avail themselves of. The Virginia Consumer Data Protection Act (VCPDA) in particular improves upon the CA experience with tighter definitions and more explicit instruction in statute, leaving fewer details to be worked out administratively. TechNet believes the key definitions in the VCPDA more accurately reflect the current privacy landscape, including the different types of data and the critical delineations between controllers and processors of data.

Additionally, SB 11 places the enforcement of this new law under Title 13, which includes a private right of action. Experience in other states has shown that a private right of action in privacy statute can mean that any unintentional or perceived violation could result in ruinous liability for companies. The penalties imposed under the bill would enable class action firms to wield this law as a cudgel against well-meaning businesses to extract significant settlements from companies with little or no actual value delivered to the consumer. Central enforcement by the Attorney General with a right to cure period ensures that justice is meted out evenly, and that enforcement actions are targeted at those causing actual harm to Maryland residents, not just those that offer the opportunity for a lucrative settlement.

Thank you for your consideration. Please consider TechNet and our members a resource as the Committee addresses these complex issues.

Sincerely,



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