



January 24, 2022

The Honorable Delores G. Kelley, Chair
Maryland Senate Finance Committee
Miller Senate Office Building, 3 East Wing
11 Bladen Street
Annapolis, MD 21401-1991

Re: SB 11, Maryland Online Consumer Protection and Child Safety Act — FAVORABLE

Dear Chair Kelley,

Consumer Reports¹ writes in support of the Maryland Online Consumer Protection and Child Safety Act (SB 11), which outlines a strong framework to protect consumer privacy. Though consumers in Europe and California enjoy baseline privacy protections, Maryland residents currently do not have similar basic privacy rights. SB 11 would address this by extending to Maryland consumers the right to access, delete, and stop the sale of their personal information, including through a global opt out.

These protections are long overdue: consumers are constantly tracked, and information about their online and offline activities are combined to provide detailed insights into a consumers' most personal characteristics, including health conditions, political affiliations, and sexual preferences. This information is sold as a matter of course, is used to deliver targeted advertising, facilitates differential pricing, and enables opaque algorithmic scoring—all of which can lead to disparate outcomes along racial and ethnic lines.

Privacy laws should set strong limits on the data that companies can collect and share so that consumers can use online services or apps safely without having to take any action, such as opting in or opting out. We recommend including a strong data minimization requirement that limits data collection and sharing to what is reasonably necessary to provide the service

¹ Founded in 1936, Consumer Reports (CR) is an independent, nonprofit and nonpartisan organization that works with consumers to create a fair and just marketplace. Known for its rigorous testing and ratings of products, CR advocates for laws and company practices that put consumers first. CR is dedicated to amplifying the voices of consumers to promote safety, digital rights, financial fairness, and sustainability. The organization surveys millions of Americans every year, reports extensively on the challenges and opportunities for today's consumers, and provides ad-free content and tools to 6 million members across the U.S.

requested by the consumer, as outlined in our model bill.² A strong default prohibition on data sharing is preferable to an opt-out based regime which relies on users to hunt down and navigate divergent opt-out processes for potentially thousands of different companies. Consumer Reports has documented that some California Consumer Privacy Act (CCPA) opt-out processes are so onerous that they have the effect of preventing consumers from stopping the sale of their information.³

But in the absence of strong data minimization requirements, at the very least, consumers need tools to ensure that they can better exercise their opt-out rights, such as a global opt out, which is provided by this bill. We appreciate that SB 11 requires companies to honor browser privacy signals as an opt out signal. Privacy researchers, advocates, and publishers have already created a “Do Not Sell” specification, the Global Privacy Control (GPC),⁴ which could help make the opt-out model more workable for consumers.⁵

In addition, we support several other key provisions in the bill:

- *Strong enforcement.* We applaud you for including a private right of action. Given the AG’s limited resources, a private right of action is key to incentivizing companies to comply. Further, it’s appropriate that consumers are able to hold companies accountable in some way for violating their rights. We also appreciate that there is no “right to cure” provision in administrative enforcement: this “get-out-of-jail-free” card ties the AG’s hands and signals that a company won’t be punished for breaking the law.
- *Non-discrimination.* SB 11 has strong non-discrimination language. The non-discrimination language in SB 11 clarifies that consumers cannot be charged for exercising their rights under the law. We appreciate the work that has been done to ensure that privacy protections aren’t just for those who can afford them.
- *Authorized agent rights.* We also appreciate that SB 11 allows consumers to delegate to third parties the ability to submit opt-out requests on their behalf—allowing for a practical option for consumers to exercise their privacy rights in an opt-out framework. Consumer Reports has already begun to experiment with submitting opt-out requests on

² *Model State Privacy Act*, CONSUMER REPORTS (Feb. 23, 2021), <https://advocacy.consumerreports.org/research/consumer-reports-model-state-data-privacy-act/>.

³ *Consumer Reports Study Finds Significant Obstacles to Exercising California Privacy Rights*, CONSUMER REPORTS (Oct. 1, 2020), https://advocacy.consumerreports.org/press_release/consumer-reports-study-finds-significant-obstacles-to-exercising-california-privacy-rights/.

⁴ Global Privacy Control, <https://globalprivacycontrol.org>.

⁵ Press release, *Announcing Global Privacy Control: Making it Easy for Consumers to Exercise Their Privacy Rights*, Global Privacy Control (Oct. 7, 2020), <https://globalprivacycontrol.org/press-release/20201007.html>.

consumers' behalf, with their permission, through the CCPA's authorized agent provisions. We found that consumers are enthusiastic about this option.⁶

For these reasons, we support SB 11. Thank you for your consideration.

Sincerely,

Maureen Mahoney
Senior Policy Analyst

cc: Members, Senate Finance Committee
The Honorable Susan Lee

⁶ Ginny Fahs, *Putting the CCPA into Practice: Piloting a CR Authorized Agent*, DIGITAL LAB AT CONSUMER REPORTS (Oct. 19, 2020), <https://medium.com/cr-digital-lab/putting-the-ccpa-into-practice-piloting-a-cr-authorized-agent-7301a72ca9f8>; Maureen Mahoney et al., *The State of Authorized Agent Opt Outs Under the California Consumer Privacy Act*, CONSUMER REPORTS (Feb. 2021), https://advocacy.consumerreports.org/wp-content/uploads/2021/02/CR_AuthorizedAgentCCPA_022021_VF_.pdf.