

March 1, 2023

House Economic Matters Committee
Attn: Robert K. Smith, Tiffany Clark, and Erica White
Room 231
House Office Building
6 Bladen Street
Annapolis, Maryland 21401

Re: HB 995 - Consumer Law - Health Data Privacy (Unfavorable)

Dear Chair Wilson and Members of the House Economic Matters Committee:

On behalf of the Computer & Communications Industry Association (CCIA)¹, I write to respectfully oppose HB 995, Consumer Law - Health Data Privacy. 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.²

CCIA strongly supports the protection of consumer data and understands that Maryland residents are rightfully concerned about the proper safeguarding of their data, including health data. However, as currently written the bill includes several provisions that raise concerns. We appreciate the committee's consideration of our comments regarding several areas for potential improvement.

1. Definitions should be more-narrowly defined.

CCIA suggests narrowing the definition of "personal information" to better align with existing privacy laws and mitigate issues caused with the current overbreadth. The bill's current definition includes "internet or other electronic network activity information, including browsing history, search history, and information regarding a consumer's interaction with a website, application, or advertisement". This would include a broad swath of information far beyond the health data that the bill seeks to regulate. In effect, this would create an obligation

¹ 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>.

² 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>

for covered entities to establish an opt-in regime for the collection of all data. This would likely lead to significant enforcement penalties against businesses attempting to comply in good faith, especially coupled with the introduction of a new private right of action, as further detailed below.

CCIA is also concerned about the scope of the prohibition on geofencing, given that such a feature offers significant benefit and utility to both individuals and for covered entities. These types of benefits range from smoother check in processes, analytics around resource management, to facilitating security mechanisms and consumer feedback. CCIA suggests aligning this definition, throughout the bill, with other privacy laws that focus on the precise nature of geolocation data.

2. Sufficient time is needed to allow covered entities to understand and comply with newly established requirements.

HB 995 fails to provide covered entities with a sufficient onramp to achieve compliance. A successful privacy framework should ensure that businesses have an appropriate and reasonable opportunity to clarify the measures that need to be taken to fully comply with new requirements. Recently enacted privacy laws in California, Colorado and Virginia included two-year delays in enforcement of those laws. CCIA recommends that any privacy legislation advanced in Maryland include a comparable lead time to allow covered entities to come into compliance and would therefore recommend amending the current October 1, 2023 effective date included in HB 995 to a later date.

3. Investing enforcement authority solely with the state attorney general and providing a cure period would be beneficial to consumers and businesses alike.

HB 995 permits consumers to bring legal action against businesses that have been accused of violating new regulations. By creating a new private right of action, the measure would open the doors of Maryland's courthouses to plaintiffs advancing frivolous claims with little evidence of actual injury. Lawsuits also prove extremely costly and time-intensive – it is foreseeable that these costs would be passed on to individual consumers in Maryland, disproportionately impacting smaller businesses and startups across the state. Further, every state that has established a comprehensive consumer data privacy law – California, Colorado, Connecticut, Utah and Virginia – has opted to invest enforcement authority with their respective state attorney general. This allows for the leveraging of technical expertise concerning enforcement authority, placing public interest at the forefront.

CCIA recommends that the legislation include a cure period of at least 30 days. This would allow for actors operating in good faith to correct an unknowing or technical violation, reserving formal lawsuits and violation penalties for the bad actors that the bill intends to address. This would also focus the government's limited resources on enforcing the law's provisions for those that persist in violations despite being made aware of such alleged violations. Such notice allows consumers to receive injunctive relief, but without the time and expense of bringing a formal suit. Businesses would also be better equipped with the time and resources to address potential privacy changes rather than shifting focus to defending against litigation.



4. As Maryland considers several measures aimed at addressing data privacy, CCIA recommends a comprehensive consumer data privacy bill rather than a sectoral approach.

As Maryland reviews various proposals targeted to addressing different components of consumer data privacy, CCIA encourages the legislature to adopt a comprehensive approach rather than piecemeal bills. If Maryland chooses that route, CCIA encourages lawmakers to review existing broad-based privacy laws that recognize a core set of rights and protections including individual control, transparency of processing activities, and limitations on third-party disclosures. This approach would encourage consistency and harmonization across state lines and would avoid creating statutory divergences between frameworks for key definitions or the scope of privacy obligations that risk creating onerous costs for covered organizations.

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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