



LEGISLATIVE POSITION:

Unfavorable

Senate Bill 698

Consumer Protection – Online and Biometric Data Privacy

Senate Finance Committee

Wednesday, March 8, 2022

Dear Chairwoman Griffith and Members of the Committee:

Founded in 1968, the Maryland Chamber of Commerce is the leading voice for business in Maryland. We are a statewide coalition of more than 6,400 members and federated partners working to develop and promote strong public policy that ensures sustained economic recovery and growth for Maryland businesses, employees, and families.

Maryland Chamber of Commerce members place a high priority on consumer privacy and the business community is watching and learning from the experience of the five other states that have passed data privacy laws protecting biometric and other information. The Maryland General Assembly has considered versions of these laws in past sessions but has not reached a decision on a path forward for Maryland. SB 698 is a version of data privacy passed in four of those other states and contains strong consumer protections for a variety of data including biometric data, personal data, confidential data, and sensitive data.

However, SB 698 still maintains problematic provisions of SB 169 that will create significant hardships for Maryland employers and could result in stifling important advances in safety and security. As demonstrated from the business experience in the wake of the 2008 Illinois law, the threat and burden of frivolous class action litigation on local businesses will lead to a cooling effect in Maryland whereby Maryland companies will cease developing and utilizing pro-consumer, pro-privacy uses of biometric data like building security, user authentication, and fraud prevention. Interestingly, like mentioned above, four other states have passed versions of SB 698, but no other state has chosen to repeat the 2008 Illinois law. Further, there is currently strong consideration for repealing some of the provisions of that problematic policy.

It is important to note that while SB 698 and SB 169 calls for a “limited” private right of action, that will not prevent individuals from filing a suit, no matter the merit. Baseless actions will necessitate companies to defend themselves both in court and in public opinion. The need to show actual damages will not erase the legal fees, out-of-settlements, and damage in the public eye businesses will face. Again, the experience in Illinois bears out this truth with only one case ever

being brought to trial in the nearly 1,000 filed suits. We strongly urge the committee to consider an alternative enforcement mechanism that has not created such burdensome and costly litigation.

Finally, it is important to mention the advantage and potential cost savings in considering the policies of neighboring states and avoiding a patchwork of regulation. In a call for federal action on data privacy, the Information Technology & Innovation Foundation released a January 2022 evaluation on the cost of compliance in a 50-state patchwork system of privacy laws. The cost of compliance for Maryland was estimated at \$4.2 billion with the burden being shared equally for in and out-of-state compliance.¹ This is a strong argument to find similarities in policy adoption across states without federal action.

SB 698 is a large and complex piece of legislation, but the policy is the product of thorough conversations and negotiations in other states. Maryland residents and employers deserve privacy protections that safeguard sensitive data while promoting innovation and job creation. The Maryland Chamber of Commerce remains committed to working alongside the bill sponsors, this committee, and impacted partners to address the issues surrounding the safety and security of personal data. Making good and useful policy is in the best interest of everyone involved.

For these reasons, the Maryland Chamber of Commerce respectfully requests an **unfavorable report** on **SB 698**, as introduced.

¹ <https://itif.org/publications/2022/01/24/looming-cost-patchwork-state-privacy-laws/>

