

March 8, 2023

The Honorable Melony Griffith
Chair, Senate Finance Committee
Annapolis, MD 21401

Re: Amend SB698: Consumer Protection - Online and Biometric Data Privacy

Dear Chair Griffith,

This bill, SB698, is intended to protect the rights of consumers in the State of Maryland. We strongly support that goal, which is why CDIA is requesting that your committee amend some of the technical provisions to align with long-standing federal and state law. I write on behalf of the Consumer Data Industry Association (“CDIA”)¹ to respectfully request that amendment.

For over 110 years, CDIA and its members have stood to help protect the American economy and the American public. Since 1970, the federal Fair Credit Reporting Act (“FCRA”) has stood as a strong legal floor for background checks in the U.S. Maryland has its own version of the FCRA in the Commercial Law article since 1976. Among other things, these laws demand accuracy in background check processes and afford legal rights to consumers.

It is critically important for a state privacy law to recognize consumer protections that currently exist under federal privacy law. Any state privacy law should include clear and concise language exempting consumer data already regulated under the federal Fair Credit Reporting Act (FCRA)

The FCRA exemption on p.12 lines 28-33 is not sufficient. It only covers the exchange of information “to or from” a CRA and would not cover information held by a CRA or user not covered by GLBA or other data flows part of the consumer reporting ecosystem.

We suggest language substantially similar to:

This [act] [title] [chapter] does not apply to an activity involving personal information governed by the Fair Credit Reporting Act, section 1681 et seq., Title 15 of the United States Code, or otherwise used to generate a consumer report, by a consumer reporting agency, as defined by [15 U.S.C. Sec. 1681a\(f\)](#), by a furnisher of information, or by a person procuring or using a consumer report.

The Gramm-Leach-Bliley Act (GLBA) is, in significant part, a national financial privacy law. The law imposes requirements on businesses to limit the disclosure of information and allows consumers to opt-out of certain information sharing. We are happy to see some

¹ CDIA is the voice of the consumer reporting industry, representing consumer reporting agencies, including the nationwide credit bureaus, regional and specialized credit bureaus, background check and residential screening companies, and others. Founded in 1906, CDIA promotes the responsible use of consumer data to help consumers achieve their financial goals and to help businesses, governments, and volunteer organizations avoid fraud and manage risk. Through data and analytics, CDIA members empower economic opportunity all over the world, helping ensure fair and safe transactions for consumers, facilitating competition, and expanding consumers’ access to financial and other products suited to their unique needs.

protections included on p. 11 lines 15-16. However, This Entity-level GLBA exemption includes “in compliance with” language. There is no data-level exemption. The entity level only covers financial institutions and their affiliates, this is not sufficient because it would not reach third-party recipients holding GLBA-regulated and limited data.

We suggest an amendment substantially similar to:

This [act] [title] [chapter] does not apply to a financial institution as defined by [15 U.S.C. Sec. 6809\(3\)](#), or to personal information collected, processed, sold, or disclosed pursuant to the federal Gramm-Leach-Bliley Act ([Public Law 106-102](#)).

Finally, with regard to the definition of “publicly available information” found on page 8 lines 4-9. CDIA requests that “and” be changed to “or” to be more consistent with the data privacy laws passed in other states (see below) or use our model public records exemption language.

(W) “PUBLICLY AVAILABLE INFORMATION” MEANS INFORMATION THAT:

(1) IS LAWFULLY MADE AVAILABLE THROUGH:

(I) FEDERAL, STATE, OR LOCAL GOVERNMENT RECORDS; OR

(II) WIDELY DISTRIBUTED MEDIA; ~~AND~~ OR

(2) A CONTROLLER HAS A REASONABLE BASIS TO BELIEVE A CONSUMER HAS LAWFULLY MADE AVAILABLE TO THE GENERAL PUBLIC.

I am happy to answer any questions you may have. I thank you in advance for your consideration.

Sincerely,

Mike Carone
Manager of Government Relations