



SB541 Maryland Online Data Privacy Act of 2024
House Economic Matters Committee
March 26th, 2024

Position: Favorable with Amendments

Comments: The Maryland Retailers Alliance (MRA) supports the Senate version of the data privacy legislation which addresses many of our priority concerns. In particular, SB541, unlike its crossfile HB567, properly allows for the continuation of customer loyalty programs and includes cross-liability protections.

The State should protect the right of Maryland consumers and retailers to have loyalty programs on the terms they choose so long as the programs are bona fide. The legislature should not attempt to over-prescribe the design of customer loyalty programs, especially because customers choose to participate in them. Although HB567 would permit controllers outside of a loyalty program to sell data or use it for targeted advertising without an opt-in from the consumer, it would prohibit controllers that operate bona fide loyalty programs – which can be joined only with an opt-in – from making the same transfer in their loyalty program. This is inconsistent and unpredictable public policy, injecting confusion and uncertainty into the law. We oppose the revised language in HB567 as compared to SB541 as it would prevent Maryland consumers from enjoying the same benefits from participating in retailers’ loyalty plans that consumers would have in all other states. The legislature should maintain the language in SB541.

SB541 additionally provides appropriate liability protection by holding an actor that has engaged in the mishandling of data responsible for their own actions. The protection provided to third party controllers or processors in 14-4611(D) needs to run both ways to also protect controllers from the independent misconduct of third-party processors and controllers, as it does in most state privacy laws. Controllers must similarly be protected from the violations of the law by processors and third parties and held harmless unless they have actual knowledge the processor or third party intends to violate the law with the consumer data they receive from the controller. We urge the committee to maintain common-sense liability protections to protect controllers that are complying with the law from being held liable for violations by processors or third parties. The language referenced above (modeled on liability protection language adopted in other state privacy laws) ensures that all parties have the same cross-protections.

In addition to maintaining these important aspects of SB541 which address MRA’s top priorities within this area of policy, we would respectfully request the following amendments regarding data minimization and clarity around private right of action:

1. **Data Minimization:**

- **REQUESTED AMENDMENT:**
 - PG. 21, lines 21-22: Strike “strictly necessary” and replace with “reasonably necessary”
- **REASONING:**
 - No state has an opt in for targeted advertising. All states operate on an opt out basis which is a pro-consumer, pro-business decision that makes sense.
 - The definition of sensitive data includes things that could be revealed about a person based on purchases or clicks on items, but they would just be assumptions.

2. **Private Right of Action and Right to Cure**

- **REQUESTED AMENDMENT:**
 - Insert language that specifically states that there is no private right of action under the law established by SB541, i.e.: “Nothing in this bill shall be construed as providing the basis for, or subject to a private right of action.”
- **REASONING:**
 - The legislature previously has included similar language to ensure that there is no confusion regarding whether private action may be taken by citizens. Additionally, the right to cure included in this bill provides appropriate methods for addressing noncompliance. This right to cure is critical for the many small businesses across the state who are not familiar with data privacy laws in other states and may need an opportunity to correct a disclosure to a consumer.

We respectfully urge your favorable report with the above amendments. Thank you for your consideration.