



February 12, 2024

The Honorable Pamela Beidle and Members of the Committee
Senate Finance Committee
Maryland General Assembly

RE: Senate Bill 541- Maryland Online Data Privacy of 2024

Dear Chair Beidle and Members of the Committee:

I am writing on behalf of the National Insurance Crime Bureau (“NICB”) to address concerns with Senate Bill 541 regarding consumer data privacy. As written, the bill would pose serious hardships on the ability of NICB – along with that of the Maryland Insurance Administration, our Maryland state and local law enforcement partners, and our member insurance companies – to combat insurance fraud.

Organization and Purpose

Headquartered in Des Plaines, Illinois, and with a 110-year history, the National Insurance Crime Bureau is the nation’s premier not-for-profit organization exclusively dedicated to leading a united effort to prevent insurance fraud through intelligence-driven operations.

NICB sits at the intersection between the insurance industry and law enforcement, helping to identify, prevent, and deter fraudulent insurance claims. NICB’s approximately 400 employees work with law enforcement entities, government agencies, prosecutors, and international crime-fighting organizations in pursuit of its mission. NICB is primarily funded by assessments on our nearly 1,200-member property-casualty insurance companies, car rental companies, and other strategic partners. While NICB provides value to our member companies, we also serve a significant public benefit by helping to stem the estimated billions of dollars in economic harm that insurance crime causes to individual policy holders across the country every year.

NICB maintains operations in every state around the country, including in Maryland where NICB works together with law enforcement, state agencies, and prosecutors in a joint effort to protect Maryland consumers. NICB is an unmatched and trusted partner in the fight against insurance fraud.

Maryland’s Fraud Mandate and Specific References to NICB in Statute

The Maryland General Assembly acknowledged the public policy benefits of enabling the flow of insurance fraud reporting by enacting a requirement that insurers report suspected fraud to the Insurance Fraud Division. Md. Insurance Code § 27-802; *see also* COMAR 31.04.15.05. The Insurance Fraud Division receives this information from most insurers through NICB’s Fraud Bureau Reporting System (FBRP). That same statute provides NICB immunity from civil liability by facilitating insurance fraud reporting information through the FBRP. *Id.* § 27-802(c)(1)(iii).

The General Assembly also recognized the importance of NICB’s mission by specifically naming NICB in statute as a mandatory member of the Maryland Vehicle Theft Prevention Council within the Department of State Police. Md. Public Safety Code § 2-702.

Applicability of Senate Bill 541 and News Sections of Articles 13 and 14 of the Annotated Code of Maryland

Senate Bill 541 establishes various consumer rights relating to their personal data. The bill applies to any “person” conducting business in Maryland. Unlike laws enacted in California, Utah, Virginia, and Connecticut, the bill does not provide any exemption for non-profit organizations.

Section (A) of 14-4612 of the bill does provide certain limitations on the reach of the statute in order for entities to cooperate with law enforcement agencies concerning conduct or activity that may violate federal, state or local laws and regulations. Although our Charter aligns with this provision, and NICB would benefit from this section, our understanding is that the language of Section 14-4612 (A) is not meant to provide a wholesale exemption for such activities – meaning that, notwithstanding our ability to continue fighting fraud and other insurance crimes consistent with our Charter, NICB would still be subject to consumer requests to, for example, delete their data. Even for non-viable requests under this bill, NICB would nevertheless bear the burden of proving to each consumer directly, or in litigation, that NICB’s activities fall within the exception. The obligation to do so would strain our organization’s resources to such a degree that our operations, and ability to protect Maryland policyholders, would be drastically encumbered and diminished.

Although all entities within the scope of S.B. 541 would incur some level of compliance costs, the policy reasons for excluding NICB from these burdens are several-fold. First, NICB provides significant benefits to the general public and to the millions of consumers who are victims of insurance fraud. Second, as a non-profit organization that serves a public interest, NICB is not equally situated with private entities that typically establish more complex compliance infrastructure for private-sector-related obligations. For a public-service non-profit operating on an extremely lean budget, the potential cost of complying with S.B. 541 would drastically reduce the benefits NICB provides to the overall public good – without any associated benefit to consumers. Third, NICB’s required responses to individual consumer requests, or involvement in civil litigation, would likely expose otherwise covert criminal investigations. For example, if an illicit actor who is involved in multiple criminal conspiracies demands that NICB confirm that we are processing that individual’s data and requests access to that data, a mere response from NICB tying that information to a fraud-related purpose would provide a clear signal to that individual, thereby exposing any criminal investigation. Lastly, imposing what is essentially a “compliance, response, reporting and litigation” obligation – without any benefit to consumers – is wholly inconsistent with current insurance fraud reporting statutes and civil immunity provisions referenced above, which were enacted to facilitate the mandatory flow of insurance fraud information to Maryland state authorities. *See* Md. Insurance Code § 27-802; COMAR 31.04.15.05.

In addition to the constraints that the fraud limitation would provide as set forth above, that section would not provide NICB any protection for our operations relating to catastrophic events. For example, NICB provides invaluable assistance to federal, state, and local emergency response agencies and law enforcement entities in response to hurricanes, tornados, floods and other natural disasters. NICB partners with these entities in the lead up to and immediate aftermath of these events. NICB often deploys agents to assist with emergency responders and law enforcement in many different ways. The Geospatial Insurance Consortium (GIC), which is an initiative developed by NICB, has become an integral part of public agencies’ overall response plans to significant catastrophic events. GIC is an information sharing partnership designed to provide aerial maps and other information to help response agencies efficiently allocate their resources to the most heavily impacted areas. NICB provides sensitive information for purposes of taking aerial images and facilitating the flow of imagery information to emergency responders and law enforcement. This service is available as a result of partnerships with several public and private organizations and is provided at no cost to the public.

If the bill were enacted as is, the GIC program would be substantially impacted and could ultimately be shut down because not all critical information obtained and provided through the program would neatly apply within the limitation of Section 14-4612 (A). As a consequence, the service would be unavailable to public agencies and their overall response management plan. Without access to that information, the ability for first responders and law enforcement to successfully deploy resources in the most efficient way possible would be severely reduced. Moreover, information that NICB provides on an as-needed basis could be eliminated, further reducing the effectiveness of the public response to catastrophic events.

Proposed Changes and Policy Rationale

Consistent with longstanding public policy determinations already enshrined in Maryland law referenced above, NICB respectfully requests a narrow exemption to S.B. 541 by amending the following language into Section 14-4603 (A):

(4) a not-for-profit entity that collects, processes, uses, or shares data solely in relation to identifying, investigating, or assisting:

(I) Law enforcement agencies in connection with suspected insurance-related criminal or fraudulent acts; or

(II) First responders in connection with catastrophic events

The policy reasons for such an exclusion are several-fold. First, NICB provides significant benefits to the general public, and to the millions of consumers who are victims of insurance fraud, in particular. Our law enforcement partners will bear testament to the enormous value NICB delivers. Second, NICB's mission is to lead a united effort to combat and prevent insurance crime. Subjecting NICB to data subject demands and potential litigation costs would be inconsistent with the plain language, intent, and spirit of the insurance fraud immunity statutes and the wholesale immunity provisions outlined above that are specifically designed to protect the sharing of information for insurance fraud reporting purposes. Even with the limitations described above, the bill would be at odds with that grant of immunity. Finally, the bill would not only impose significant compliance costs but could also substantially impact or eliminate NICB's catastrophic event response programs, thereby potentially diminishing and drastically reducing the benefits that NICB provides to the overall public good.

Conclusion

We appreciate your consideration of our concerns. I welcome the opportunity to follow up directly with your staff to discuss these issues in more detail. In the meantime, if you have any questions or need additional information, please contact me at edecampos@nicb.org or 847.989.7104.

Respectfully,



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National Insurance Crime Bureau