



Opposition Statement SB541/HB567 – Request for Amendment

Maryland Online Data Privacy Act of 2024

Laura Bogley-Knickman, JD

Director of Legislation, Maryland Right to Life

We Oppose SB541/HB567 as written

On behalf of our 200,000 followers across the state, we respectfully yet strongly object to HB567/SB541 as written. This bill is unconstitutional, as it infringes on the First Amendment right to freedom of speech.

The bill infringes on First Amendment Free Speech

This bill, without due process of law, would deny free speech by prohibiting the use of geofencing within proximity of reproductive health clinics. Geofence marketing or “geofencing” is a commonly used location-based **marketing** and advertising strategy that allows you to send targeted ads to customers within a given geographical area. This marketing technology relies only on locating mobile signals within a triangulated area from a cell tower.

Geofencing technology locates cell phone signals but does not access data from cell phones or computers and therefore does not violate an individual’s right to privacy. This legal marketing method is a relatively less expensive way for a nonprofit or community-based organization to communicate with or educate potential customers. This bill would discriminately impose economic restrictions on the ability of Maryland nonprofits and other businesses to conduct business in the state. This violates the Equal Protection clause of the Constitution.

This bill discriminates on the content of speech by prohibiting geofence marketing only in proximity to “reproductive health” clinics and not other locations or business industries.

The offending section reads as follows and should be removed:

14–4604. A PERSON MAY NOT: (3) USE A GEOFENCE: (I) TO IDENTIFY, TRACK, COLLECT DATA FROM, OR SEND A NOTIFICATION TO A CONSUMER REGARDING THE CONSUMER’S CONSUMER HEALTH DATA; AND (II) WITHIN 1,750 FEET OF A MENTAL HEALTH FACILITY OR REPRODUCTIVE OR SEXUAL HEALTH FACILITY;

The bill denies women and girls Informed Consent

By limiting the use of geofencing in proximity to reproductive health clinics, the state would be denying women who seek reproductive health services, access to additional and/or alternative services related to reproductive health. In enacting this bill, the state would be denying Maryland women the right to informed consent by blocking access to educational and informational resources relevant to reproductive health. By denying women informed consent, the state subjects women to reproductive coercion and other forms of medical abuse.

Federal Precedent Prohibits Targeting Pro-life Speech

In conflict with federal court precedent, this bill attempts to **target and suppress pro-life speech** in Maryland. In [*Greater Baltimore Ctr. for Pregnancy Concerns, Inc. v. Mayor & City Council of Baltimore*, 879 F.3d 101 \(4th Cir. 2018\)](#), the City of Baltimore acting on behalf of abortion advocates, attempted unsuccessfully to put pro-life pregnancy centers out of business by enacting a targeted ordinance against commercial speech as "deceptive advertising".

The federal appeals court for the 4th Circuit affirmed the lower court's decision in favor of the pro-life pregnancy center, noting that ***"the City has considerable latitude in regulating public health and deceptive advertising. But Baltimore's chosen means here are too loose a fit with those ends, and in this case compel a politically and religiously motivated group to convey a message fundamentally at odds with its core beliefs and mission."*** The City also failed to establish that the pro-life pregnancy center was engaged in commercial or professional speech, which required the Court to apply higher scrutiny against the government action. Without proving the inefficacy of less restrictive alternatives, providing concrete evidence of deception, or more precisely targeting its regulation, the City did not prevail.

For these reasons we ask for your amendment to remove the offending provision or urge your unfavorable report.