



Maryland | Delaware | DC Press Association

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To: Senate Finance Committee

From: Rebecca Snyder, Executive Director, MDDC Press Association

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Re: **SB541 - OPPOSE**

The Maryland-Delaware-District of Columbia Press Association represents a diverse membership of newspaper publications, from large metro dailies such as the Washington Post and the Baltimore Sun, to hometown newspapers such as the Star Democrat and Maryland Independent, to publications such as The Daily Record, Baltimore Jewish Times, and online-only publications such as the Baltimore Banner, MoCo 360, Maryland Matters and Baltimore Brew.

The Press Association cannot support SB 541 as written. Previous versions of the bill were more strictly tailored to biometric data and the Press Association chose not to weigh in. We have concerns with recent changes to the bill, now called the Maryland Online Data Privacy Act of 2024.

We believe some modifications in this year's version of the bill could impose unintended negative consequences on Maryland's news media entities, which in turn would curtail access to vital journalism resources for the state's residents.

We have been working with the House sponsor on these proposed amendments and look forward to continuing those conversations. Three top concerns are highlighted below, and we welcome the opportunity to provide further feedback and redlines as you consider the legislation.

- 1. Geofencing:** We recognize the Legislature's intent in including restrictions on the use of geofencing in sensitive health-related settings. However, we believe the new language may contain a drafting error that would create a technical violation for common advertising practices completely unrelated to the protected facility.

Connecticut's amended privacy legislation [Public Act No. 23-56](#) reads:

"No person shall:...(C) use a geofence to establish a virtual boundary that is within one thousand seven hundred fifty feet of any mental health facility or reproductive or sexual health facility *for the purpose of* identifying, tracking, collecting data from or sending any notification to a consumer regarding the consumer's consumer health data; or (D) sell, or offer to sell, consumer health data without first obtaining the consumer's consent."

In contrast, HB 0567 reads: "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; OR



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(4) SELL OR OFFER TO SELL CONSUMER HEALTH DATA WITHOUT THE CONSENT OF THE CONSUMER WHOSE HEALTH DATA IS TO BE SOLD OR OFFERED TO BE SOLD. “

As drafted, the Maryland Online Data Privacy Act of 2024 could restrict the ability to use a geofence to send notifications to or communicate with consumers, even with their consent. The reordering of the section would also prohibit the use of a geofence within 1,750 of a facility regardless of purpose. Particularly in densely developed urban and suburban areas, there is a high likelihood of colocation of pharmacies and other medical practices with the protected facilities in question. The effect is highly likely to result in unintended technical violations of the bill.

Worse, the language could severely impact the ability of local merchants and businesses who happen to be within 1750 feet of a facility to engage in effective and compliant marketing and advertising practices to draw attention to and benefit businesses. Local news media entities often provide some services on behalf of these businesses. We urge adoption of the Connecticut language.

2. Controller Data Collection Limitations: We have two concerns with new bill language.

First, sections 14-4607. (A) (1), (3), (5) and (6) contain language that mirrors other legislation, most notably Connecticut, but with slight changes in sentence drafting. These changes could have the unintended consequence of banning any marketing, sale of sensitive data, or the processing of data that is consistent with COPPA. We welcome the opportunity to suggest technical redlines to restore the intent of the bill.

Second, the previous version, 2023’s HB 0807, contained controller duties that were largely similar to those with other states, such as Connecticut: “A controller shall limit the collection of personal data to what is adequate, relevant, and reasonably necessary to collect for the purposes for which the data is processed” which is consistent with well-understood principles of data minimization.

The exact section in HB 0567 has been modified as follows:

“14-4607. (B) (1) A CONTROLLER SHALL: (I) LIMIT THE COLLECTION OF PERSONAL DATA TO WHAT IS REASONABLY NECESSARY AND PROPORTIONATE TO PROVIDE OR MAINTAIN A SPECIFIC PRODUCT OR SERVICE REQUESTED BY THE CONSUMER TO WHOM THE DATA PERTAINS;

Advertising is a secondary purpose of all businesses. They sell a specific product and this language is so limiting that it would preclude them from selling or offering by email, advertising or other item, for other items. Small biz & news media have secondary purpose. We believe the language as written will preclude any good faith, beneficial to consumers advertising. We are concerned the amended language would prohibit well-understood, expected data processing tasks done in service of common activities such as research and development, audience analysis, or marketing.

Most critically, as written, the language serves as a *de facto* opt-in for targeted advertising, which directly conflicts with the clearly outlined sections in the bill that outline opt-out requirements for targeted advertising.

3. Enforcement: Consistent with other states’ comprehensive consumer privacy legislation, we appreciate that the Maryland Online Data Privacy Act of 2024 does not include a private right of action. However, we note the addition of the following language:

“14-4613. (B) THIS SECTION DOES NOT PREVENT A CONSUMER FROM PURSUING ANY OTHER REMEDY PROVIDED BY LAW.”

Okay with adding AG piece, doesn’t want to foreclose the possibility of other laws that would allow prosecution. Negotiation with big tech.

As evidenced by discussions over the state’s anti-SLAPP legislation, news media entities are disproportionately vulnerable to baseless, frivolous lawsuits. Given Maryland’s robust ability to enforce unfair, abusive, or deceptive trade practices under Title 13, we recommend striking the language above from the bill, and/or adding the following:

“THE ATTORNEY GENERAL SHALL HAVE EXCLUSIVE AUTHORITY TO ENFORCE VIOLATIONS OF SECTIONS OF THIS ACT.”

We look forward to working with the sponsor on these technical amendments. Until these amendments are made, we urge an unfavorable report.