



THE MARYLAND HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401

Written Testimony on HB 1365 – Commercial Law – Online Data Privacy – Limits on Data Collection

March 4, 2025

Good afternoon, Chair Wilson, Vice Chair Crosby, and members of the Economic Matters Committee,

I am Delegate Andrea Harrison, and I am here to present HB 1365 Online Data Privacy – Limits on Data Collection. This bill is aimed at limiting the collection of personal data to what is adequate, relevant, and reasonably necessary for the purposes for which the data is processed, as disclosed to consumers, by persons or entities that handle consumer (personal) data.

House Bill 1365, which seeks to bring the data minimization standard in the comprehensive bill passed last session in line with the data minimization framework found in the European General Data Protection Regulation, as well as the other 18 states - including California, Oregon, Rhode Island, New Jersey, and Delaware - that have also passed comprehensive privacy frameworks which now cover over 100 million consumers in the United States.

Certainly, this provision in Maryland has garnered attention as a national leader when it first passed and has been lauded as a premier. However, as businesses have looked at how to implement this, my understanding is that this novel approach is creating significant confusion and, there is concern about how the consumer online and app experience for Marylanders could likely to be increasingly negative and could even lead to consumer consent fatigue.

Current language in the law, which goes into effect in October of this year, requires that businesses collect and process only the data that is “reasonably necessary to provide the specific product or service requested by the consumer.”

While on paper this makes sense as it is certainly the goal to protect our resident’s personal data, in practice, what I am hearing is that this language may well require that businesses create new pop-up, click-through boxes on their websites and apps just for Maryland residents to satisfy the “requested by the consumer” standard. Due to the way this law is structured, these click-through boxes cannot be framed as requests for consent, because that is not permitted in this context, but other compliance mechanisms to document that the consumer wants or has requested or is OK with these types of updates or new product requests. Further, adding these additional “consent boxes” could lead residents to simply ‘click through’ and they may not actually read what they are consenting to because there may be so many consent boxes that would be required under this regulation. I bet many of us find them annoying to deal with (as is) when we just want to get to the page or app we’re trying to use. As a result, we may not actually be providing more privacy, but rather simply providing more consent and because

we are frustrated, we are not looking at what we are consenting to-because the letter of the law has been met and not necessarily the spirit of the law. This underscores the discussion last session where a number of comments were made to the effect that privacy policies are effectively useless because businesses can put whatever they want in them, and then so long as they are doing those activities, they are safe from enforcement and can proceed with invasive methods of data collection. This does not necessarily protect consumer data privacy.

The “requested by” standard also turns off routine and non-harmful data flows, which prevents businesses from making systematic and routine updates to their products and services for Marylanders, and would not allow businesses to suggest product recommendations for new products and services that the consumer did not “specifically request,” but that the business believes the consumer would want or would like to consider. And again, we do not know exactly how this will look because no other state in the country has moved in this direction. Instead, since Maryland has taken this path, potentially at the expense of the consumer experience, our neighbors in Virginia and Washington DC may have access to better, or newer products and services than our residents.

Maryland’s privacy law already has a provision that says if you do anything different than what is “adequate, relevant and reasonably necessary.” But simply putting an activity in your privacy policy that is designed to be vaguely worded, and misleading is in fact a violation of the language that HB 1365 proposes.

I also want to state that the more that we go away from using clear statements in privacy policies as our basic enforcement standard, and the more we move to subjective judgments about what has been “requested” by the consumer for a “specific” product or service, the less clear it will be for those enforcers to determine who is violating this law and who is working to comply with it in good faith.

At the end of the day, Maryland is not - and should not be - bound by what other states have done or the prevailing views on a particular public policy issue. HB 1365 would simply advance Maryland's standard to a standard that is more in line with what the rest of the world and what the rest of our country is doing. In my view, it is important that our residents and constituents do not fall victim to consent fatigue, have the same privacy protections as other states, and the same access to goods and services. Thank you and I respectfully request a favorable report on HB 1365.