

Testimony of Katie McInnis for the Maryland Senate Hearing on the Maryland Online Consumer Protection Act

Before the Senate Finance Committee

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SB 0957 and HB 0784—SUPPORT WITH AMENDMENTS

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Thank you Chair Senator Delores G. Kelley and Vice Chair Senator Brian J. Feldman for this opportunity to speak with you today about the SB 0957—the Maryland Online Consumer Protection Act. My name is Katie McInnis and I serve as a policy counsel for the advocacy division of Consumer Reports.

Consumer Reports is an independent, nonprofit member organization. We use our rigorous research, consumer insights, journalism, and policy expertise to inform purchase decisions, improve the products and services that businesses deliver, and drive regulatory and fair competitive practices. We work to support and protect Americans' fundamental right to privacy; and this bill takes important steps to protect this critical liberty.

Unfortunately, the United States lacks comprehensive privacy protections to safeguard consumers' personal information, even as data collection and sharing practices have become more and more prolific and aggressive. And this bill could advance consumer protections in several important ways. For instance, it will give people access to the information that companies have about them, extends the right to control the sale of your data, and will allow consumers to request companies delete the private information they have about them. Importantly, the bill would prevent companies from retaliating against consumers for exercising their rights under this Act.

Consumers have repeatedly made it clear that they want more, not fewer, protections, and this legislation is a step in the right direction. For example, a recent Consumer Reports' survey found that 92 percent of Americans think companies should get permission before sharing or selling users' online data and that 70 percent of Americans lack confidence that their personal information is private and secure.¹

Consumers clearly desire the ability to limit data collection, detrimental uses, and unnecessary retention and sharing, but lack the ability to easily and efficiently exercise those preferences. Your

¹ *Consumers Less Confident About Healthcare, Data Privacy, and Car Safety, New Survey Finds*, CONSUMER REPORTS (May 11, 2017), <https://www.consumerreports.org/consumer-reports/consumers-less-confident-about-healthcare-data-privacy-and-car-safety/>.

bill could help change this dynamic for the better and give consumers more control over their personal data.

However, there are ways that the law should be improved to be more protective of consumers.

Most importantly, identity verification is not necessary for a consumer to opt-out of the sale of their personal information. Much of the data used for tracking consumers cannot be tied to an individual consumer. Accordingly, the California Consumer Privacy Act, one of the strongest state privacy bills, does not require verified opt-outs. Companies who send fraudulent opt-out requests could invite liability under existing law, but we could support a provision that prohibits companies from sending opt-out requests unless at a consumer's direction.

Second, a bill that relies upon consumers taking advantage of opt-out rights needs some sort of mechanism to let consumers opt out of whole categories of data sharing all at once—otherwise, the opt-out rights are not scalable and workable. In California, many companies are sending consumers to multiple sites in order to exercise their preferences.² For this reason, the California Attorney General has issued regulations requiring companies to treat universal signals like browser headers to be binding opt-out requests.³

Third, the business purpose exemption should be narrowed, limited to a set of specific operational purposes—otherwise, companies will try to use the data for unrelated purposes that consumers cannot control. Relatedly, we suggest putting more limits on what service providers can do pursuant to their contracts. Already, we are seeing companies try to get around the California Consumer Privacy Act through the service provider exemption.

Strong enforcement is essential. We urge the Committee to consider adding more resources for the Attorney General, and private enforcement of rights. Without effective enforcement, consumers will have no protection against companies who seek to violate their privacy.

Finally, lawmakers should resist efforts to water down or weaken the law. This legislation will give consumers needed protections and will not affect the existing profit model for online businesses.

We appreciate the leadership of Senators Lee, Benson, and Lam and Delegates Carey and Watson for introducing and sponsoring a bill to help protect Marylanders' personal information. And we look forward to working with you to advance critical privacy and security protections for all Maryland residents.

² See @jasonkint, TWITTER (Jan. 1, 2020), https://twitter.com/jason_kint/status/1212431443772788737.

³ See Proposed Regulations, California Consumer Privacy Act at § 999.315(c), CAL. DEP'T OF JUSTICE (Oct. 11, 2019), <https://www.oag.ca.gov/sites/all/files/agweb/pdfs/privacy/ccpa-proposed-regs.pdf>.