



Consumer Federation of America

1620 I Street, N.W., Suite 200 * Washington, DC 20006

March 5, 2019

Delores Kelley, Chair
Senate Finance Committee
3 East, Miller Senate Office Building
Annapolis, MD 21401

RE: SB 613 Online Consumer Protection Act

Dear Chairwoman Kelley:

On behalf of Consumer Protection of America, an association of nonprofit consumer organizations across the country, including in Maryland, I am writing to urge your committee to give favorable consideration to HB 901, the Online Consumer Protection Act. We confront a crisis in the United States in which digital giants invade our private lives, spy on our families, and gather our most intimate facts, on a mass scale, for profit. The time to act to protect our privacy is now.

States have always led the way on privacy and many other consumer protection issues. Every state in the country has enacted data breach notification requirements. States continue to innovate in this area, enacting laws concerning data security,¹ data brokers,² the privacy of biometric data,³ and the right to know about collection of data online.⁴ The new California Consumer Privacy Protection Act (CCPA),⁵ which take effect next year, has garnered much attention lately.

We welcome these initiatives and support the efforts in the Maryland legislature to provide more effective privacy protection for consumers in your state. HB 901 takes a common-sense approach to online privacy by requiring covered businesses to:

- Notify consumers whose personal information they collect about the types of information involved, the purposes for which the data are used, used, and the types of third parties to which it is disclosed;
- Tell consumers that they can ask to see their data, request that it be not be disclosed to third parties, and have it deleted, which appropriate exceptions;
- Not collect additional types of personal information or use the data for additional purposes without notice to the consumer;

¹ See Illinois data security statute at <http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2702&ChapterID=67>

² See Vermont data broker statute at <https://legislature.vermont.gov/bill/status/2018/H.764>

³ See Texas biometric privacy statute at <https://codes.findlaw.com/tx/business-and-commerce-code/bus-com-sect-503-001.html>

⁴ See Nevada right to know statute at <https://www.leg.state.nv.us/NRS/NRS-603A.html#NRS603ASec220>

⁵ See CCPA at https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB1121

Consumers would also have the right to ask where the data came from, the names of the third parties to which it has been disclosed, and for what purpose. If businesses have online privacy policies, information about their data practices and consumers' rights pursuant to the law would need to be provided. Crucially, bill addresses the problem that consumers commonly face of "take it or leave it" terms of service by prohibiting covered businesses from denying goods or services to those who choose to exercise their privacy rights, and it would prevent discrimination against those consumers in the form of higher prices or providing them with a different level of quality or service. Finally, the bill provides for strong enforcement by the Maryland Attorney General and would void any attempt to limit or waive consumers' rights or remedies.

This bill reflects fair information principles that have become the norm in democratic countries around the world and form the foundation for the General Data Protection Regulation (GDPR) in Europe. Unfortunately, the United States has been the outlier for many years, and it is in reaction to the GDPR and increasing action on the state level that some powerful companies and trade groups are now demanding that Congress enact a national standard that would provide for minimal privacy rights, weak enforcement, and sweeping state preemption.

Maryland legislators will undoubtedly be bombarded with "the sky is falling" prophecies and pleas to water down this bill to prevent economic disaster. The sky is not going to fall and businesses will adapt to the public policy parameters that you set for them. You will also be inundated with industry studies purporting to show that consumers are happy to trade their data for certain benefits. This is false.⁶

In summary, the transparency and control over their data that this legislation would give to consumers is reasonable, feasible, and long-overdue. Businesses should be able to thrive when consumers are not surprised by secret and unwanted data collection and use and confident that their privacy is respected. We will be happy to work with you to advance this important legislation.

Sincerely yours,

A handwritten signature in cursive script that reads "Susan Grant".

Susan Grant
Director of Consumer Protection and Privacy
Consumer Federation of America

⁶ See Turow, Joseph and Hennessy, Michael and Draper, Nora, *The Tradeoff Fallacy: How Marketers are Misrepresenting American Consumers and Opening Them Up to Exploitation* (June 26, 2015). Available at SSRN: <https://ssrn.com/abstract=2820060> or <http://dx.doi.org/10.2139/ssrn.2820060>; see also blog by Susan Grant at <https://consumerfed.org/false-trade-offs-for-privacy/>