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TO: The Honorable C.T. Wilson, Chair
Economic Matters Committee

FROM: Hanna Abrams, Assistant Attorney General

RE: House Bill 807 – Consumer Protection – Online and Biometric Data
Privacy (SUPPORT)

The Consumer Protection Division of the Office of the Attorney General supports House Bill 807 (“HB 807”), sponsored by Delegate Love. House Bill 807 extends important privacy protections that empower Maryland consumers to protect themselves and their personal information.

The issues surrounding the use of personal data reach well beyond traditional notions of privacy – to issues like discrimination, algorithmic fairness, and accountability.¹ Right now, companies are collecting and selling increasing amounts of sensitive information about our lives without our knowledge or consent. Unlike consumers in California, Colorado, Connecticut, or even Europe, Maryland consumers have no way of knowing when this occurs and no ability to protect themselves. Businesses have previously raised concerns about interoperability and implementation challenges. House Bill 807 ensures that Maryland consumers have privacy rights while simultaneously ensuring interoperability with the privacy laws that have been enacted in Connecticut, Colorado and other states.

Companies are collecting information that gives strangers personal information about us including mental health, gender, religious beliefs, sexual preferences, and even our precise locations. The adtech industry regularly collects, shares, sells, and processes consumer data. At least 70% of mobile apps share data with third parties, and 15% of the apps reviewed were connected to *five or more* trackers.² For example, digital health companies and mobile apps

¹ See *Algorithmic Bias Detection and Mitigation* (Brookings, May 2019), <https://www.brookings.edu/research/algorithmic-bias-detection-and-mitigation-best-practices-and-policies-to-reduce-consumer-harms/>

² Lee Matthews, *70% Of Mobile Apps Share Your Data with Third Parties*, Forbes, (June 13, 2017), <https://www.forbes.com/sites/leemathews/2017/06/13/70-percent-of-mobile-apps-share-your-data-with-third-parties/#562270ce1569>.

share user health data with third parties for advertising purposes.³ The extraction of personal information, particularly because it is done frequently without consumer knowledge, poses a significant threat to both our privacy and our safety.

Once collected, this sensitive information is frequently sold to third parties with whom consumers have never had a relationship. Recently, a Duke University study found that data brokers were selling everything from a list of individuals suffering from anxiety to a spreadsheet entitled “Consumers with Clinical Depression in the United States.”⁴

There are real consequences to the collection of information. Personal information, collected and shared without consumer knowledge, has caused the loss of jobs⁵ and has led to threats to personal safety.⁶ The personal information collected also feeds into algorithms used for advertising and eligibility decisions that frequently produce discriminatory outcomes and restrict access to housing,⁷ employment,⁸ credit,⁹ and education.¹⁰

House Bill 807 provides individuals with some transparency into and control over how their data is used. This transparency, coupled with giving users the ability to access, correct, or delete their data, empowers individuals to protect themselves. They can reduce their data footprint, or remove their data from insecure third parties, minimizing the risk of fraud, identify theft, and exploitation.

We do, however, have concerns about the breadth of the exemptions in HB 807 that could serve to dilute the effect of the law, which we have shared with the sponsor. For example, page 11, lines 12 and 15-16, exempt “covered entities [and] business associates [under HIPAA]” and “an entity, or an affiliate of an entity, subject and in compliance with the federal Gramm-Leach-Bliley Act [GLBA]” respectively. While we acknowledge that there are other statutes that govern certain information, we want to ensure that sensitive information is governed by some

³ *FTC Enforcement Action to Bar GoodRx from Sharing Consumers’ Sensitive Health Info for Advertising* (Feb. 1, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/02/ftc-enforcement-action-bar-goodrx-sharing-consumers-sensitive-health-info-advertising>.

⁴ Drew Harwell, *Now For Sale: Data on Your Mental Health*, Washington Post (Feb.14, 2023), <https://www.washingtonpost.com/technology/2023/02/13/mental-health-data-brokers/>.

⁵ Molly Omstead, *A Prominent Priest Was Outed for Using Grindr. Experts Say It’s a Warning Sign*, Slate (July 21, 2020), <https://slate.com/technology/2021/07/catholic-priest-grindr-data-privacy.html>.

⁶ See Technology Safety, *Data Privacy Day 2019: Location Data & Survivor Safety* (Jan. 28, 2019), <https://www.techsafety.org/blog/2019/1/30/data-privacy-day-2019-location-data-amp-survivor-safety>.

⁷ Julia Angwin et al., *Facebook (Still) Letting Housing Advertisers Exclude Users By Race*, ProPublica (Nov. 21, 2017), <https://www.propublica.org/article/facebook-advertising-discrimination-housing-race-sex-national-origin>.

⁸ Julia Angwin et al., *Facebook Job Ads Raise Concerns About Age Discrimination*, N.Y. Times (Dec. 20, 2017), <https://www.nytimes.com/2017/12/20/business/facebook-job-ads.html>.

⁹ A Berkeley study found that biases in “algorithmic strategic pricing” have resulted in Black and Latino borrowers paying higher interest rates on home purchase and refinance loans as compared to White and Asian borrowers. This difference costs them \$250 million to \$500 million every year. Laura Counts, *Minority homebuyers face widespread statistical lending discrimination, study finds*, Haas School of Business at the University of California, Berkeley, (Nov. 13, 2018), <http://newsroom.haas.berkeley.edu/minority-homebuyers-face-widespread-statistical-lending-discrimination-study-finds/>; Google’s search engine used to serve users ads for payday loans when they ran searches for terms associated with financial distress, such as “I need money to pay my rent.” Upturn, *Led Astray: Online Lead Generation and Payday Loans*, (Oct. 2015), <https://www.upturn.org/reports/2015/led-astray/>.

¹⁰ Yeshimabeit Millner and Amy Traub, *Data Capitalism and Algorithmic Racism, Data for Black Lives and Demos* (2021), https://www.demos.org/sites/default/files/2021-05/Demos_%20D4BL_Data_Capitalism_Algorithmic_Racism.pdf

form of privacy regulation. As drafted, HB 807 exempts *entities* that operate under the GLBA and HIPAA entirely, even if the personal information they collect is not governed by those laws. For example, banks that operate pursuant to the GLBA collect information from non-customers and drugstores collect information about its customers that has nothing to do with the pharmacy-portion of the store. To exempt these entities would leave significant gaps in the privacy protections that HB 807 provides consumers. The Division believes it is important that personal information be governed by a privacy regulation, whether state or federal, and recommends that these exemptions be stricken and any carve-outs be limited to the *personal information* collected “pursuant and in accordance with” the applicable federal law.

We also have concerns about the exemptions to the definition of “targeted advertising” on page 10, lines 1-4, because they permit targeted advertising based on consumer activities on specific websites without a consumer request. Moreover, because the definition of “affiliate” includes all entities with common branding (page 3, line 9), the Division is concerned that large businesses with many affiliates will take this as permission to advertise about any of their affiliates without regard to whether the consumer has ever visited any of the affiliates’ websites.

Finally, we think it is important to ensure that definitions be consistent across related statutes. Maryland’s Personal Information Protection Act includes a definition of “personal information” that is similar, but not identical to the definition of “confidential data” in HB 807.

We also would like the Committee to consider whether lower thresholds might be appropriate in Maryland for example, in California, a much larger state, the threshold is lower: it is only 50,000 consumers, households, or devices.

House Bill 807 incorporates the separately introduced Biometric Data Privacy bill (HB 33) which ensures that immutable identity traits – biometrics – are not collected without consent and are never sold. Biometrics, because of their unchanging nature, make a person particularly vulnerable to identity theft and when stolen, cannot be altered like financial information. Companies’ unfettered collection of this information is a security threat and it is particularly important for companies to obtain consent and for consumers to be aware of which companies hold their biometrics. The Division has separately submitted support for HB 33.

Maryland was on the forefront of consumer privacy when it enacted its data security protections and this bill would continue in that tradition. We urge the Economic Matters Committee to issue a favorable report on HB 807.¹¹

cc: Members, Economic Matters Committee
The Honorable Sara Love

¹¹ The Division has been in contact with industry representatives and understands that a workgroup may be in the works to address the concerns of both consumers and industry.