Main Street
PRIVACY COALITION

March 18, 2024

Members of the Conference Committee on HB567/SB541
Maryland General Assembly
Legislative Services Building
90 State Circle
Annapolis, MD 21401

Re: Customer Loyalty Program Treatment in HB567/SB541

Dear House and Senate Conferees:

The Main Street Privacy Coalition (MSPC), a coalition of 20 national trade associations representing more than a million American businesses,[1] writes to express our opposition to HB 567, the Maryland Online Data Privacy Act of 2024. Unlike every other U.S. state privacy law, this House bill as drafted would deprive Marylanders (but not the residents of other states) of their right to choose among a wide variety of customer loyalty programs offered by all types of Main Street businesses, frustrating consumers' voluntary choices and desire for benefits, and hurting Maryland businesses. **We strongly urge conferees to exclude the unworkable language added to the loyalty programs clause by amendment to HB 567, and instead adopt the language provided in the Senate's companion bill SB 541 that properly preserves *bona fide* customer loyalty programs.**

The MSPC members represent a broad array of companies that line America's Main Streets. From retailers to Realtors®, hotels to home builders, grocery stores to restaurants, gas stations to travel plazas, and self-storage to convenience stores, including franchise establishments, MSPC member companies interact with consumers day in and day out. Our members' businesses can be found in every town, city and state in our nation, providing jobs, supporting our economy and serving Americans as a vital part of their communities. Collectively, the industries that MSPC trade groups represent directly employ approximately 34 million Americans and constitute over one-fifth of the U.S. economy by contributing $4.5 trillion (or 21.8%) to the U.S. gross domestic product.

Loyalty programs are a critical and ever-growing facet of today's business models employed by Maryland companies in our industry sectors. These programs are not their principal business model but rather are designed to provide discounts or rewards to their best customers to encourage future engagement. Further, these programs are already inherently privacy-protective because they typically require customers to affirmatively opt into the plan in order to receive discounts, rewards, or other benefits as a member of the program.

More importantly, it is clear that consumers overwhelmingly want these programs to remain legal.[2] Generally, most states that have enacted omnibus privacy laws contain language similar to SB 541, providing appropriate antidiscrimination provisions while also sufficiently

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[1] The Main Street Privacy Coalition website and member list may be accessed at: https://mainstreetprivacy.com.
[2] According to a survey conducted by Bond Brand Loyalty Inc., 79% of consumers say loyalty programs make them more likely to continue doing business with brands that offer them and 32% of consumers strongly agree that a loyalty program makes their brand experience better. Bond Brand Loyalty Inc., The Loyalty Report (2019) available at https://cdn2.hubspot.net/hubfs/352767/TLR%202019/Bond_US%20TLR19%20Exec%20Summary%20Launch%20Edition.pdf.

preserving these programs. However, the House amendment language within HB 567 would result in Maryland becoming the first state in the nation to threaten loyalty programs.

Specifically, HB 567 creates duplicative limitations on loyalty programs that are unnecessary because these businesses' loyalty plans already must comply with the bill's numerous disclosure and opt-out obligations regarding data sales and transfers to third parties. Even worse, the language effectively restricts these voluntary and transparent loyalty programs that protect consumer privacy more than uses of data that do not first require a consumer's opt-in after disclosure. As a result, HB 567 would ultimately impose the highest level of regulation **only** on Main Street businesses offering loyalty programs while continuing to permit other companies to sell or share data with less restriction under the bill.

In these respects, HB 567 goes far beyond the loyalty plan language within all other state privacy laws currently in effect and would inhibit the ability of consumers and businesses to voluntarily establish mutually beneficial business-customer relationships.

We appreciate lawmakers' interest in ensuring there are no unwarranted exemptions from the bill's existing requirements on data-sharing and transfers to third parties. Importantly, the loyalty language of **SB 541 does not exempt businesses with loyalty plans** from the bill's existing protections. Rather, SB 541 clarifies that its *anti-discrimination* provisions do not prevent offering loyalty plan price discounts or preferred service.

We have significant concerns that Maryland consumers will be immensely frustrated if they were to lose points or benefits from loyalty programs they belong to and enjoy in other states. We therefore urge conferees to permit Main Street businesses serving Maryland consumers to offer them the same loyalty programs they support and benefit from in all other states by adopting the language within SB 541.

Thank you for your attention to this important matter.

Sincerely,

Main Street Privacy Coalition