

**TESTIMONY ON 19-S 234**  
**AN ACT RELATING TO COMMERCIAL LAW – CONSUMER PRIVACY PROTECTION**  
**April 30, 2019**

The ACLU appreciates the opportunity to provide commentary on S 234, which concerns the sale and maintenance of consumers' personal information by businesses. We are generally very supportive of the provisions within this legislation and commend the limitations it sets on the use of personal information. However, we do wish to focus on two aspects which we believe could be amended to strengthen the goal of the bill.

In the arena of data privacy and consumer rights, opt-in procedures, as opposed to the opt-out option that this bill includes, are significantly more transparent and intentional. While opt-out mechanisms place the burden of protecting consumer rights on the consumers themselves, and in some cases may not adequately inform the consumer of the ability to opt-out, opt-in procedures give consumers the opportunity to deliberately decide if they wish to permit the sale of their personal data, and, as such, give the consumer a substantial amount of autonomy in the potential marketing of their data.

We therefore encourage the committee to replace Section 6-48.1-7 on page 11, which outlines the opt-out procedure, with a requirement that consumers must instead opt-in for their information to be sold and disseminated by a business.

We would also encourage that the remedies for violations of the law be strengthened. Section 6-48.1-11 on page 14, which outlines enforcement of the legislation, appears to give significant leeway to businesses which may have mishandled customer data or violated any provisions of the chapter. For example, under subsection (b), if a consumer wants to challenge violations of this law, the business is only required to rectify the situation and inform the consumer in writing that the violations have been "cured" and that no violations will occur in the future. Should the business comply with this, the consumer has no right to take action for individual or class-wide damages.

Unfortunately, with some violations, impact could be permanent and demands a right to damages. For instance, if a consumer opts out of having their personal information sold, and the business sells the data regardless, this is an irreversible and unmitigable violation. A promise on behalf of the business that the violation has been rectified strikes us as insufficient compared to the violation to the consumer. Additionally, this provision gives little incentive for businesses to adhere to these laws in the first place if they are aware that violations would not necessarily breed financial penalties or possible legal action.

We also strongly encourage the addition of language which would allow a successful plaintiff to recover their attorneys' fees in bringing suit. There will be little motivation to aggrieved individuals to bring suit where the statutory damages available to them are under \$1,000 and less than the cost of hiring an attorney to seek those damages.

Finally, we find that Section 6-48.1-8 on pages 11 and 12 has language that is in tension with itself. While provision (a)(1)(ii) on page 12 stipulates that companies may not charge different rates for services,



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including through the use of “discounts or other benefits,” (a)(2) explicitly allows for this if the difference in service is “reasonably related to the value provided to the consumer by the consumer’s data.” We believe that this could allow for businesses to offer inferior quality of service at higher prices to consumers who opt-out of having their personal information collected and sold by the business, which essentially imposes a financial penalty on those who choose to keep their information private. This also would appear to negate the intention of the inclusion of any anti-discrimination language within this legislation.

Again, we support this bill’s thrust in seeking to provide customers some control over the information collected on them by businesses, but we hope that our suggestions for strengthening that control will be given serious consideration. We appreciate the opportunity to offer these comments.