

October 17, 2023

Hon. Anne Carney, Senate Chair
Hon. Matthew Moonen, House Chair
Joint Standing Committee on Judiciary
100 State House Station
Augusta, Maine 04333-0100

**RE: Testimony In Opposition to LD 1977, An Act to Create the Data Privacy and Protection Act
(Rep. O'Neil)**

Dear Sen. Carney, Rep. Moonen:

Please accept the following testimony from L.L. Bean in opposition to L.D. 1977. As you are likely aware, L.L.Bean is a Maine-based retailer offering products to consumers throughout the United States and worldwide. L.L.Bean operates using a stakeholder philosophy – including our customers and the community – under which every business decision to be made considers its impact on our stakeholders. L.L.Bean has always believed that our customers' privacy is important, takes pride in making responsible choices, and seeks to maintain the trust that we have earned.

To be clear, L.L.Bean does not oppose legislative efforts to enhance data privacy protections to Maine consumers. In fact, we support them. Upon the California Consumer Privacy Act becoming effective in 2021, L.L.Bean voluntarily chose to extend to all of our customers – regardless of where they live – the same basic rights afforded to our California customers by that legislation. In the absence of a federal law, we continue to welcome new state privacy laws. Maine citizens deserve to have the same data privacy protections being offered in other states.

As you know, the purpose of the comprehensive consumer privacy laws is to ensure consumers have control of their personal information and to require businesses to be transparent about how they use consumer data. All relevant bills should seek to accomplish that public policy.

There are now eleven U.S. states that have passed privacy laws creating a few good models for additional states like Maine to follow. These are models around which companies like L.L.Bean have built data privacy compliance models. Consistency across the 50 states is critical to provide businesses with a meaningful chance of compliance and consumers with clear expectations. Any decision by the Maine Legislature to “go it alone” and craft its own unique set of requirements will only serve to make compliance more challenging without providing Maine consumers any greater protections.

Successful state laws have certain themes in common.

First, each bill revolves around six basic rights: right to correct, delete, access, opt-out of the traditional sale of data and/or targeted advertising, appeal, and the right to be informed (privacy policy).

Second, they use standard terminology and definitions, such as Personal Information/Data and Sensitive Personal Information/Data.

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Third, they speak to how a business is required to treat a consumer's request, such as accepting requests from authorized agents, responding to requests within a certain time period, honoring a global opt-out request, and listing relevant exceptions to general privacy requirements.

LD 1977 is problematic for businesses in some areas, as noted below:

1. The bill deviates from existing legislative models. Here are just a few examples:
 - a. Only in Maine, "Sensitive Data" would include income level, information about an individual's family or social relationships, and online activities across the web.
 - i. The fact that a head of household has children living in their home is beneficial to know from a marketing perspective. While it certainly qualifies as Personal Information, it is not clear why it should require a business to meet the heightened obligations of Sensitive Data, which is commonly thought of as highly confidential in nature, such as biometric information or a social security number.
 - b. Only in Maine, businesses would be required to name every Service Provider with which it shares Personal Data.
 - i. Businesses are regularly signing new contracts and terminating/expiring contracts. A business' efforts are better served by focusing on the due diligence process around privacy and security rather than managing such a list in a public-facing document. In addition, these service providers do not operate using a customer-facing model and this would open those businesses to managing customer-facing communications.
 - c. Only in Maine, businesses would be required to obtain opt-in consent prior to using Personal Information for Targeted Advertising purposes.
 - i. This would be a first-of-its-kind requirement in the United States. Currently, the opt-in approach is specific to Sensitive Personal Information, which should have a stricter standard.
 - d. Only in Maine, there would be a private right of action (with the exception of CA that's PRA is relative to security only), opening up businesses to meritless lawsuits, without requiring a demonstration of harm, potentially based on a minor unintentional infraction.
2. The bill does not seek to solve unanswered questions in existing models. For example,
 - a. What reasonable exceptions should be afforded to businesses regarding the Right to Delete and Right to Access?

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- b. How can a business provide meaningful and accurate metrics that are consistent business-to-business, considering that a consumer's timely response is required to complete a request?
3. The bill presents new unanswered questions, for example:
 - a. Is the intent of the bill to cover employee data and business-to-business (B2B) information? Those segments are not specifically carved out.
 - b. What level of effort is a retailer expected to make to prevent personal information about a minor from being obtained and recorded?
 - c. When it comes to Artificial Intelligence, what is the definition of a "consequential risk of harm?"

Businesses require significant time and effort to comply with the complexity of these new privacy laws, to understand legislative intent, and to learn, grow, and innovate in the space. For the benefit of businesses and consumers alike, L.L.Bean encourages this Committee to adopt concepts and definitions from an existing state privacy law, like Connecticut.

In addition, no matter the model that is ultimately chosen, please recognize that Maine businesses will need ample time to comply. We recommend that any legislation passed in 2024 not become effective until the end of 2025 at the earliest and take into account the busy holiday season.

L.L.Bean appreciates the opportunity to provide this information to the Committee, and is happy to serve as a resource for any future questions or conversations regarding privacy. Our goal is to support Maine's legislators in passing a successful privacy bill in our home state.

Sincerely,



Christy Van Voorhees, Esq.
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Co-Chair, L.L.Bean Data Privacy Leadership Team

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