May 22, 2023

The Honorable Anne Carney          The Honorable Matt Moonen
Chair                              Chair
Judiciary Committee                Judiciary Committee
Maine Senate                       Maine House of Representatives
Room 320, State House              Room 333, State House
3 State House Station              2 State House Station
Augusta, Maine 04333               Augusta, Maine 04333

RE:     LD 1902 (O'Neil) - An Act to Protect Personal Health Data.
        LD 1705 (O'Neil) - An Act to Give Consumers Control over Sensitive
        Personal Data by Requiring Consumer Consent Prior to Collection of Data.
        LD 1629 (Brakey) - RESOLUTION, Proposing an Amendment to the
        Constitution of Maine to Recognize the Right to Personal Privacy.
        LD 1973 (Keim) - An Act to Enact the Maine Consumer Privacy Act.

Dear Chairs Carney and Moonen and Members of the Committee,

TechNet respectfully submits comments on the consumer privacy bills before your committee today.

*TechNet is the national, bipartisan network of technology CEOs and senior executives that promotes the growth of the innovation economy by advocating a targeted policy agenda at the federal and 50-state level. TechNet's diverse membership includes dynamic American businesses ranging from startups to the most iconic companies on the planet and represents over five million employees and countless customers in the fields of information technology, e-commerce, the sharing and gig economies, advanced energy, cybersecurity, venture capital, and finance. TechNet has offices in Austin, Boston, Chicago, Denver, Harrisburg, Olympia, Sacramento, Silicon Valley, and Washington, D.C.*

TechNet and its member companies place a high priority on consumer privacy. The technology industry is fully committed to securing privacy and security for consumers and engages in a wide range of practices to provide consumers with notice, choices about how their data is used, as well as control over their data.

TechNet supports a federal standard that establishes a uniform set of rights and responsibilities for all Americans.

The global nature of data demands a federal policy, and even the most well-designed state statute will ultimately contribute to a patchwork of different standards across the country, resulting in steep compliance costs and consumer confusion.  In the absence of a nationwide standard, however, interoperability with existing state laws is paramount.  TechNet and its member companies have several concerns about the bills being considered before you today.

### LD 1902 (O'Neil) - An Act to Protect Personal Health Data.

This bill presents a problematic private right of action (PRA).  PRAs can lead to frivolous lawsuits, which could force businesses to close their doors altogether in the state of Maine.  We believe enforcement is more appropriately placed exclusively with the Attorney General's Office, particularly for such a nascent policy area where good actors in the market are doing everything they can to comply with these highly technical and varying requirements which differ from state-to-state and between the states and the feds.

There is no "entity-level carveout" for HIPAA covered entities, only protected health information itself is carved out.

The definition of "consumer health data" is broad and vague.  Subsection (M) states that health data can include any information that is "derived" or "extrapolated from non-health information".  This would go far beyond the normal and commonsense categories of health data, such as data tracking heartbeats, menstrual cycles, or medication use.  This overly broad definition would have serious and unintended repercussions throughout the market.  Other definitions are also vague.  For example, the bill defines "health data" as purchasing medication, but medication is not further defined.  Therefore, this definition could potentially apply to everything in the personal care or health aisles of every grocery store or pharmacy.

Finally, the bill could lead to consent fatigue due to the various requirements put on consumers.

### LD 1705 (O'Neil) - An Act to Give Consumers Control over Sensitive Personal Data by Requiring Consumer Consent Prior to Collection of Data.

LD 1705 contains troubling biometrics language which could be covered and resolved through an omnibus privacy solution.  The biometrics language in LD 1705 is modeled after Illinois language that has not been adopted anywhere else due to significant cybersecurity risks.

The bill also requires developing and making available to the public a written policy that establishes a retention schedule and guidelines for permanently destroying an

individual's biometric identifier.  Many companies already have similar policies, such as privacy policies, and such requirements create a disproportionate burden on companies.

This legislation also contains a private right of action.  As mentioned previously, PRAs are problematic for the stated reasons.

## LD 1629 (Brakey) - RESOLUTION, Proposing an Amendment to the Constitution of Maine to Recognize the Right to Personal Privacy.

The process for enacting strong consumer privacy standards deserves a thoughtful approach and extensive stakeholder involvement.  The ballot question posed in LD 1629 is vague and doesn't allow for a specific explanation of what consumer privacy entails.

## LD 1973 (Keim) - An Act to Enact the Maine Consumer Privacy Act.

LD 1973 appears closely modeled on the Connecticut Data Privacy Act (CTDPA) but does contain a unique distinction.  If passed, organizations will be required to obtain consent, or an opt-in, to process the personal data of a consumer for the purposes of targeted advertising, the sale of personal data, or profiling.  We recommend that the bill requires an opt-out, rather an opt-in, as enacted in other states.

While LD 1705 had an effective date stated, the other three bills do not.  If enacted, companies would need at least a year to comply with several potential new mandates.

TechNet joins industry partners and strongly encourages the Maine Legislature to look to the protections for consumers included in other states' omnibus privacy laws, such as Connecticut, to avoid a patchwork of state laws that are difficult to comply with and confusing for consumers.  Furthermore, an omnibus privacy solution would cover all types of consumer data, including health data and biometrics.  We would welcome the opportunity to work with your office to address issues of privacy protection without unintended consequences.  Please consider TechNet's members a resource in this effort.  Thank you for your time and we look forward to continuing these discussions with you.

Sincerely,

Margaret Durkin

Margaret Durkin
TechNet Executive Director, Pennsylvania & the Mid-Atlantic