



May 18, 2023

Testimony of John Brautigam, Esq., Legal Services for the Elderly, in support of LD 1705 – An Act to Give Consumers Control over Sensitive Personal Data by Requiring Consumer Consent Prior to Collection of Data.

Good morning, Senator Carney and Representative Moonen. On behalf of Legal Services for the Elderly I would like to offer brief comments in support of LD 1705. Legal Services for the Elderly (LSE) is a nonprofit legal services organization with the mission of providing free legal assistance to Maine's older adults when their basic human needs are threatened. Next year we will mark 50 years of service.

Biometric tracking refers to the use of unique physical or behavioral characteristics, such as fingerprints, facial recognition, or voice recognition, for identification or monitoring purposes.

In general, we believe that collecting this information can pose a threat to the privacy and security of individuals in Maine. We are concerned that older Mainers may be vulnerable to those harms, and for that reason we support measures intended to constrain the use of such information.

We support the provisions in LD 1705 requiring consent and disclosure, and we support the policy of destroying or deleting such information so that any risk of its misuse does not exist in perpetuity.

We agree that there are benefits to the information revolution. But the emergence of widespread data-harvesting systems of unprecedented scope and power – often for commercial benefit – poses unknown risks. LD 1705 would apply to much of that data harvesting activity.

Our ability to develop protective measures has not kept pace with technological change and the explosive innovation in the information ecosystem generally. Maine author Shoshana Zuboff explains these risks in her powerful book Surveillance Capitalism.

Older people may face certain challenges or vulnerabilities when it comes to biometric tracking:

1. Physical changes: As individuals age, physical changes can occur that might impact the accuracy and reliability of certain biometric measures. For example, wrinkles, changes in skin elasticity, or other age-related changes can potentially affect the accuracy of facial recognition systems.

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2. Health conditions: Older people may have certain health conditions that could impact biometric measurements. Conditions like arthritis or tremors could affect fingerprint scanning, while voice recognition might be impacted by vocal cord changes or speech difficulties.
3. Sensory impairments: Age-related sensory impairments, such as diminished vision or hearing, may pose challenges for biometric systems that rely on those senses. For instance, an older person with poor eyesight might face difficulties aligning their eyes for iris recognition.
4. Technology familiarity: Some older individuals may have less experience or familiarity with technology, including biometric systems. This lack of familiarity could lead to challenges in using or understanding the purpose and benefits of biometric tracking.

Two additional points. These challenges are not exclusive to older people, as individuals of any age can encounter issues with biometric tracking. Advances in technology will address some of these limitations, but we are not there yet.

Second, we do not subscribe to the stereotype that all older people are frail, vulnerable, and incapable of being self-reliant. All we are saying is that for some older people, these technologies may present a heightened risk.

The Maine Attorney General website shows that a home care company by the name of Personal Touch Home Care was the victim of a data breach involving biometric information. We are concerned that some older Mainers could be vulnerable if a home care company data breach leads to financial exploitation, ransomware, and similar harms.

One specific comment: Page 2, line 29 of the bill provides that facial surveillance information governed by Title 25, chapter 701 is not covered by the bill. We understand this to mean that the bill's prohibitions and required disclosures do not apply to law enforcement activities, but that facial surveillance by non-law enforcement entities is covered by the bill.

We support LD 1705 and thank Representative O'Neil for bringing this proposal forward and the American Civil Liberties Union of Maine for speaking out on this issue. Thank you.