Testimony Neither For Nor Against LD 1088, "An Act to Enact the Maine Consumer Data Privacy Act" **and in Opposition to 1822, "**An Act to Enact the Maine Online Data Privacy Act"

Senator Carney, Representative Kuhn, and the distinguished members of the Committee on Judiciary, my name is Harris Van Pate and I serve as policy analyst for Maine Policy Institute. Maine Policy is a free-market think tank, a nonpartisan, non-profit organization that advocates for individual liberty and economic freedom in Maine. Thank you for the opportunity to provide testimony on LDs 1088 and 1822.

Position on LD 1088: Neither For Nor Against

While Maine Policy Institute prefers LD 1088 to 1822, both bills have weaknesses in several categories and need significant changes to properly balance privacy rights with free enterprise and speech principles.

Notably, LD 1088 establishes clear consumer rights and consent standards, particularly for teens aged 13 to 15, and recognizes key business exemptions, including employment data and contextual advertising. However, it still establishes a fair "willful disregard" standard for those collecting these Mainers' data.

The bill's thresholds—applying only to companies with 100,000+ consumers or those deriving 25% or more of revenue from data sales—are still stricter than many other privacy laws, but are at least less far-reaching than 1822. However, concerningly, the phase-in process of applying to smaller companies in 2028 undermines this bill's attempt at a light-handed privacy protection approach.

This bill could be altered to better balance consumers' privacy rights with Maine companies' speech rights and business needs. The third section of this testimony, "Concerns and Recommendations for Amendments," suggests changes to both bills before you today.

We commend this bill's inclusion of cure periods and flexible opt-in standards, which align with MPI's limited government and free enterprise principles. The bill attempts to account for individual liberties and privacy rights in its structure, though it still needs significant changes to do so thoroughly.

Position on LD 1822: Against

While LD 1822 shares the goal of strengthening data privacy protections, it represents a more aggressive regulatory model that may unintentionally stifle economic opportunity

and constitutional freedoms. We appreciate the bill's intention but urge caution and refinement.

Unlike LD 1088, LD 1822 flatly bans the sale and processing of sensitive data in certain circumstances and imposes requirements that exceed the norms of many state privacy laws. These provisions raise legitimate concerns about overreach, enforceability, and adverse impacts on speech, public engagement, and innovation.

Further, unlike LD 1088, LD 1822 prohibits data controllers from selling sensitive data, processing personal data of minors for targeted advertising or sale (even if the controller is unaware). Additionally, both bills largely stop companies from altering services provided based on whether a consumer agrees to information disclosure, a burdensome rule to apply to companies.

We do not oppose LD 1822's underlying objectives. However, this legislation should be significantly amended to preserve free expression and reduce unnecessary regulatory strain.

Concerns and Recommendations for Amendments

1. Preserving Free Expression and Consumer Choice

- **Amend the bills to further protect First Amendment activities**, including political speech and canvassing. The current geofencing restrictions could unintentionally limit advocacy or public health alerts.
- **Clarify that targeted advertising is allowed with affirmative consumer consent**, including for minors aged 13–15 with parental approval, rather than banning it outright. This balances family autonomy and free commercial speech.
- **Broaden the exemption for publicly available information** to include public records, journalistic activities, and widely disseminated content, preventing unintended restrictions on news, transparency, or public databases.
- **Consider the requirement to disclose third-party access** in limiting the bills' application, as many smaller controllers will have difficulty accessing, categorizing, and reporting data sales compared to better-resourced large organizations.

2. Reducing Regulatory Burdens on Small Businesses

- **Raise the bills' applicability thresholds** to mirror those in other states. For example, one such state only applies to companies that produce products or services targeted at in-state residents, generate $25 million in revenue annually,

and either control or process the personal data of at least 100,000 consumers annually, or derive over 50% of gross revenue from personal data sale and control the personal data of at least 25,00 people.[1] This would focus compliance on large-scale data operators, not local Maine businesses.

- **Expand nonprofit exemptions** to include all 501(c) tax-exempt organizations, ensuring that all nonprofits, trade associations, clubs, and unions are not inadvertently subjected to onerous requirements.
- **Maintain a permanent cure period or introduce a safe harbor** for companies that demonstrate good-faith compliance or use frameworks such as NIST or AICPA privacy standards. The bills provide shorter cure periods, and LD 1288 only creates a temporary one, but many other states have established permanent cure periods instead. This incentivizes strong privacy practices without imposing punitive burdens.

3. Supporting Common Business Practices

- **Amend LD 1822 to explicitly allow loyalty programs and discounts tied to voluntary data collection**. This will ensure that consumers can choose value-added services and businesses can continue innovative customer engagement models. This bill currently only allows loyalty programs that are not directly connected with data sales. If a loyalty program allows a company to pass on some of the profit of data sales to the consumer, it seems unfair to ban such a mutually beneficial agreement.
- **Clarify that "necessary" processing of sensitive data includes common operational needs**, such as service personalization, and internal analytics, provided consumers are informed and have opt-out options.
- **Moving away from necessity requirements and relying more on consumer opt-ins** will also allow greater flexibility in relationships between companies and their customers. While LD 1088's "reasonably necessary" language is a bit more vague, it matches the language of more pro-business laws. It allows greater discretion on the end of companies regarding what data to collect and what purposes justify its use.

4. Limiting Government Overreach

- **Restrict the Attorney General's enforcement authority** to actions consistent with published guidance and allow businesses a clear pathway to compliance. Agencies should not have unchecked discretion to demand internal documents or impose penalties for minor missteps.

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[1] https://www.akingump.com/en/insights/alerts/utah-consumer-privacy-act-what-businesses-need-to-know

- **Add a statutory review clause or sunset provision** that mandates reevaluation of the law's impact within two years of enactment. This ensures the law adapts to technology and focuses on real-world privacy risks, not theoretical harms.

Conclusion

These bills present broad regulatory schemes that warrant caution and refinement. We encourage the committee to amend LD 1088 to balance consumer privacy with economic liberty and constitutional values. Meanwhile, we believe that LD 1822 in its current form is too burdensome on Maine businesses and does not adequately balance speech and business interests with the right to privacy. Thank you for your time and consideration.