



Consumer Data Industry Association
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Senator Anne Carney
Chair
Joint Committee on Judiciary
Room 438
Maine Senate
100 State House Station
Augusta, ME 04333

Representative Amy Kuhn
Chair
Joint Committee on Judiciary
Room 438
Maine House of Representatives
100 State House Station
Augusta, ME 04333

Chair Carney, Chair Kuhn and Members of the Committee:

On behalf of the Consumer Data Industry Association (CDIA), I write to share our perspective on LDs 1088, 1224, and 1822, the three comprehensive data privacy proposals under consideration by the committee. While CDIA would prefer a single, national standard, if Maine intends to adopt its own version, we respectfully request it align to the greatest extent possible with the models already adopted across the country. With that in mind, we are concerned by the definition of “publicly available information” incorporated into LD 1088 (§9602 24., on pg. 3, line 40 through pg. 4, line 26) and LD 1822 (§9602 31., on pg. 4, line 27) and instead encourage the committee to include the definition from LD 1224 (§9602 23., on pg. 3, line 36) in any final comprehensive data privacy proposal.

CDIA is the trade association representing consumer reporting agencies (“CRAs”), including the nationwide credit bureaus, regional and specialized credit bureaus, and background check and residential screening companies. Founded in 1906, CDIA promotes the responsible use of consumer data to help consumers achieve their financial goals and to help businesses, governments, and volunteer organizations avoid fraud and manage risk. Through data and analytics, CDIA members empower economic opportunity, thereby helping ensure fair and safe transactions for consumers and facilitating consumer’s access to financial products and other services suited to their unique needs.

In evaluating comprehensive data privacy proposals, CDIA focuses intently on a handful of critical provisions that align state privacy statutes with various federal laws governing different types of consumer data flows that our members must adhere to and the United States Constitution. This includes the Fair Credit Reporting Act (FCRA), which is regarded as one of the nation’s first privacy laws, the Gramm-Leach-Bliley Act (GLBA), the national financial privacy statute, and the Driver’s Privacy Protection Act (DPPA), which governs the sharing and use of motor vehicle records. Beyond specific statutes, CDIA also focuses on provisions related to the use of personal data to combat fraud, for employment purposes and how privacy statutes treat information contained in public records.

While CDIA is pleased that all of the proposals before the committee include provisions that contemplate the FCRA, data governed by GLBA, the DPPA, fraud and employment uses, we are concerned by the proposed definition of “publicly available information” in LD 1088 and LD 1822 that depart from the standard format utilized across the country, specifically LD1088’s §9602 24. B. (4) and LD 1822’s §9602 31. B. (4), excluding inferences derived from publicly available information from being exempt from the law. However, LD 1224 incorporates a definition of “publicly available information” that more closely aligns with the standard approach taken by other states and we encourage the committee to ensure any approved bill uses LD 1224’s definition (§9602 23., on pg. 3, line 36-40).

Our member companies rely on access to public records to ensure completeness and accuracy in relation to consumer reports, credit reports, background checks, and tenant screening products. Information from public records also helps support our members' identity verification, fraud detection, product recall, and benefits administration work. Some of CDIA's members collect, maintain, and share information with government and law enforcement agencies to assist with fraud prevention, including unemployment fraud, workers' compensation fraud and tax fraud.

Information from public records feeds into these critical processes and functions alongside other data streams that may be subject to federal laws like the FCRA, GLBA, or DPPA and exempt from all of the data privacy proposals before the committee. Invariably, combining this information, contrasting it against other sources, or comparing it necessitates making inferences, like whether the data is being placed in the right report, whether or not the data provided matches the expected data to verify an identity or detect fraud, to determine whether a consumer is the current owner of a vehicle requiring safety recall services, among others.

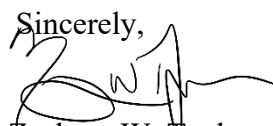
This is why we are concerned by the inclusion of clause B. (4) in the definition of "publicly available information" in both LD 1088 and LD 1822. By subjecting certain uses of public record information to the provisions of these proposed data privacy statutes, it seems to swallow other critical exemptions for certain federal statutes or other well-recognized and understood applications like fraud detection or employment uses.

Further, this limitation fails to contemplate when one item of data may be provided from multiple sources. Consider a consumer's address derived from a public record included in a consumer report. CDIA members would have challenges understanding whether, when combined with other information, if it is covered under the "publicly available information" provisions or excluded based on the FCRA exemption.

If the limitation at B. (4) from LD 1088 and LD 1822 is not removed, Maine's prospective comprehensive data privacy statute not only risks unintentionally complicating consumers' lives but also could empower fraudsters by giving them a pathway to cover their tracks at the same time they are victimizing Mainers. Surely this is not the legislature's intent.

CDIA members take concerns regarding privacy, data security, and appropriate uses of data seriously. We appreciate the recognition in all three of these proposals that the data and activities of our member companies are already tightly regulated by various federal laws and our industry serves a critical purpose for consumers, businesses, volunteer organizations, communities and the larger economy.

With that in mind, we respectfully request that the committee adopt the "publicly available information" definition from LD 1224 (§9602 23., on pg. 3, line 36-40) and preserve the exemptions for the FCRA, the DPPA, data regulated by GLBA, fraud detection, and employment purposes already in each of the proposals to ensure Maine's privacy statute aligns as closely as possible to the laws already adopted by other states. Thank you for your time and consideration.

Sincerely,

Zachary W. Taylor
Director, Government Relations
Consumer Data Industry Association