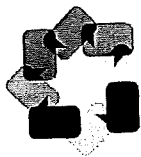


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May 22, 2023

Senator Anne Carney, Chair
Representative Matthew Moonen, Chair
Members of the Judiciary Committee

**RE: Testimony in QUALIFIED SUPPORT of LD 1973, An Act to Enact the Maine Consumer Privacy Act, and
OPPOSED to LD 1705, An Act to Give Consumers Control over Sensitive Personal Data by Requiring
Consumer Consent Prior to Collection of Data**

Dear Senator Carney, Representative Moonen and members of the Judiciary Committee:

My name is Curtis Picard and I am the President and CEO of the Retail Association of Maine. I am providing joint testimony on behalf of the Maine Grocers & Food Producers Association and the Retail Association of Maine. Our business trade associations represent Main Street businesses including independently owned and operated grocery stores and supermarkets, general merchandise retailers, convenience stores, distributors, and supporting partners — together representing more than 450 members statewide. Maine's retail sector employs more than 85,000 Mainers.

We appreciate your work on this important topic of data privacy as well as the opportunity to assist your efforts to create a workable public policy that both empowers Maine businesses and protects Maine consumers. Given the very short timeframe between these bills being released and the public hearing, we are operating under a few assumptions. Those assumptions are that LD 1973 is similar to the Maine privacy law, and LD 1705 is similar to last session's LD 1945 which was modeled after Illinois' biometric identifier law. We would like to go on record that we would support a privacy bill that mirrors Connecticut's law. Since I have not had a chance to review LD 1973 line by line, we are registering qualified support. If LD 1705 is like Illinois' biometric law, and similar to LD 1945, we are registering our objection to the bill.

Maine retailers believe that if data privacy regulation is to be successful — that is, if it will achieve its intended public policy goals — the regulations must be biased towards consumers. Consumers must be assured that the legislation is for their benefit and not just another mechanism for businesses to profit from them or, worse, take advantage of them. And this principle is fundamental to all Maine businesses that use consumer data as an element of doing business and serving their customers.

Maine retailers believe that the use of consumer data to better serve their customers is a fundamental part of their business. They have a long history of building trust and confidence with their customers, and they believe that this trust is essential to their success.

Retailers view customer data differently than data brokers or other businesses that do not have a direct relationship with consumers. To retailers, customer data is not a commodity to be sold or traded, it is a valuable asset that can be used to improve the customer experience. It is a core element of the customer relationship and key to retailer's success in serving consumers as they expect to be served. Maine retailers use customer data to personalize the shopping experience, offer targeted promotions, and improve customer service.

Retailers believe that data privacy regulations should be biased towards consumers. They believe that consumers should have control over their personal data, and that they should be able to trust that their data will be used responsibly. Maine retailers are committed to using consumer data in a responsible way. They believe that data privacy regulations can help to ensure that consumers' rights are protected, and that they can help to build trust between retailers and their customers. Retailers believe that data privacy regulations should be designed to protect consumers' privacy, while also allowing businesses to use data in a responsible way.

We wanted to leave you with some suggestions to consider as LD 1973 evolves:

- **Use a July 1st Effective Date for Maine Businesses, Not January 1st:** To avoid having the thousands of Maine retail establishments that employ more than 85,000 Mainer engage in a disruptive, significant implementation of new technology to comply with the Act during the busiest time of the year for retailers, it is critical to set the effective date of the Act for July 1, rather than January 1. The earlier effective date would require significant technical implementation in the midst of the busiest holiday sales period for the retail industry and could impact online operations at the worst possible time for retail employees and customers. For this same reason, Colorado set a July 1, 2023, effective date (more than two years after enactment of its law), and California has previously set July 1 as the effective date for some of its promulgated data privacy regulations. We urge you to similarly adopt a July 1 effective date that is at least two years after enactment of the state's first general privacy law.
- **Use A Two-Year Implementation Period:** Most states enacting general privacy laws for the first time have given businesses up to two years to implement the new privacy law, in order to ensure that they will have sufficient time to comply prior to enforcement of the law commencing. California, for example, provided more than two years to implement its latest CPRA, adopted by ballot initiative in 2021, and enforcement of the CCPA, the predecessor law in effect now, began over two years after its enactment in 2018. This implementation period is extremely important for retail establishments in Maine, nearly all of whom will be subject to the new privacy law (not exempt from it, as are other businesses). As a result, the effective date of the Act should be set far enough out to permit these Maine-based businesses to develop and achieve compliance with what will be a new law with new provisions for these businesses to follow. Two years is the fair and appropriate amount of time for implementation, as demonstrated by all other states that have enacted similar laws permitting two-year implementation periods before enforcement takes effect.
- **Permit Customer Loyalty Programs for Maine Consumers:** Retail customers love loyalty programs. Nearly 80% percent of consumers participate in at least one loyalty program and the average adult participates in more than nine.
- **Address Maine Small Business Protections:** As noted above, many of the thousands of Maine retail establishments are small businesses with a single location in the state of Maine. That is not unusual, as

approximately 95% of all retail establishments nationwide have less than 50 employees and only a single location.

- **Maintain A Notice & Cure Period:** It is important to all parties that a notice and cure period, of the kind included in the draft bill, be maintained and not removed from the bill prior to enactment.

Because this will be the first bill of its kind in the state of Maine, and its application will cover nearly all consumer-facing businesses of all sizes, there will be a considerable learning period for the regulated community, regulators, and consumers alike to fine-tune their expectations and responsibilities under the law. And it will take businesses, especially retailers, time to develop effective and efficient processes to promote compliance. This is true because most retail establishments have less than 50 employees in a single location, lack in-house legal counsel, and operate on very thin profit margins. This constrains their budgets and limits their ability to hire outside legal counsel that would be required to develop necessary methods to comply with this new law.

In regards to LD 1705, we have a number of concerns. This bill includes a very expansive private right of action that will only benefit trial lawyers. Illinois has a similar private right of action in their law, and more than 1,000 class action lawsuits have been filed in the last five years. Additionally, the Illinois law has caused businesses to avoid offering services that involve biometric identifiers because of the increased litigation risk.

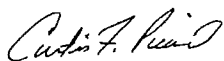
The bill, as written, will require entities to make available to the public a written policy that establishes a retention schedule and guidelines for permanently destroying an identifier, and has significant requirements for disclosing to individuals, upon request, a significant list of data that may be impossible to produce. This will lead to companies violating the law unknowingly.

Biometric identifiers are not new; they have been around for years. What is new, however, are the evolving applications that can provide consumers a number of benefits such as negating the need for multiple passwords, increased security systems such as Ring Door Bell and a variety of other new products that are produced. Features such as voice recognition in cars prevent distracted driving. We live in a world of new development of products that increase productivity and safety.

Putting overly burdensome constraints on policies that govern the possession of biometric identifiers needs to be crafted in a way that protects an individual's rights but does not hamper or discourage a business from the lawful use of an identifier associated with a person.

During your work on privacy, the Retail Association of Maine (and the Maine Grocers & Food Producers Association) will be happy to relay some of our ongoing concerns and the impacts on both Maine businesses and the consumers who purchase their products. It is in all of our best interests to get this right.

Thank you for the consideration of our comments.



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