

Maine Broadband Coalition Testimony
In SUPPORT of LD 1902 and LD 1705
and in OPPOSITION to LD 1973
May 22, 2023



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

My name is Myles Smith, and I am the Executive Director of the Maine Broadband Coalition (MBC), a non-profit organization dedicated to expanding broadband access and digital equity in Maine. We represent dozens of organizations and thousands of internet users.

We submit this testimony today **in support of LD 1902 and LD 1705**, which brings strong new privacy protections, and **in opposition to LD 1973**, which needs to be strengthened to actually change the behaviors of tech companies that use our data for their purposes.

Maine led the nation in passing a landmark bill in 2019 that gave Maine internet users the option to opt-in to any use, sell, sharing or disclosure of their information by their Internet Service Providers (ISPs). It protected people from discrimination in prices or services if they refused to have their data used in this way, provided an individual right of action if the users' privacy was violated without consent, and limited what data ISPs could collect and required them to take reasonable steps to protect it.

That bill was supported by MBC members, including GWI, an ISP based in Maine that refused to profit off customer data anyway. Smaller Maine-based ISPs are unlikely to have enough user data to be of interest to buyers, unlike the larger ISPs such as Charter Communications (Spectrum), Comcast, and data mining and advertising firms like Google, Facebook, and Amazon. The bill passed on a bipartisan basis, 85-45 in the House of Representatives and unanimously in the Senate. Maine was one of two states that established this "opt-in" standard of privacy online.

This is the standard for internet privacy that we should build upon. Two bills before the committee today, LD 1902 and LD 1705, build upon the high privacy standards Maine set in 2019. These bills recognize the high sensitivity of personal health data and biometric identifiers and sets a high bar for the use of that data. It gives the individual the freedom to choose what data they share, and gives them the freedom to take action if their rights are violated.

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We have already seen the misuse of these types of data, such as the purchase of personal health data by politically-motivated actors who seek to influence individual behaviors. Biometric identifiers can be used to profile individuals, track their movements in public places, and are the basis of the police state in the People's Republic of China. We also appreciate that these bills make no special exception or distinction for how the data was collected. Technology companies scraping your data from your browsing history, where you navigate in your car, videos you post to social media and emails you send should not get a free pass to exploit the data they harvest from you. **We ask you to support LD 1902 and LD 1705.**

Unfortunately, LD 1973 does not yet meet the high standards for privacy that Mainers and this committee want to see. The bill was written to repeal the strong privacy protections of the 2019 ISP privacy law, and would otherwise codify Big Tech's current practices, requiring very little change or accountability. LD 1973 is largely copy-pasted from bills that Charter, Facebook, and other tech companies are trying to pass in the states, as the FTC and Congress have failed to take any action that protect the users they exploit. This draft does improve upon some of the industry practices, but its enforcement provisions are so weak that the bill would have no positive effect on the practices of these companies.

Here's some of what's in the bill:

- Returns to the "Notice and Consent" standard for most types of data, where providers of services force you to sign your rights away as part of a long terms of service document. This is distinct from the Opt-In approach Maine took in the ISP privacy law, which this bill would repeal.
- It gives companies broad discretion to collect any of your data that they can, not just what is necessary to provide you the service you are trying to use.
- It allows companies to discriminate against users who opt-out of privacy protections, by charging them more or refusing them service.
- Requires the Maine Attorney General to give tech companies a warning before taking any enforcement action, and gives those companies a very low burden of proof that they've complied.

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- Prohibits individuals from taking action against companies that violate their rights.

The big corporate ISPs that didn't like the precedent Maine set in 2019 challenged that law in court, claiming it was an unconstitutional violation of their free speech rights. They also complained that the law only applied to data that ISPs collect on users, not to data collected by data harvesters like Facebook, Amazon, and Google. On this point, we agree! The ISPs lost in federal court, paid Maine's Attorney General's costs, and dropped their appeal.

We appreciate the effort by members of this legislature to tackle this issue. We believe we should go further to protect our citizens' privacy. We already have a strong foundation in law. Let's extend our opt-in standard to other tech platforms. We'd be happy to work with the sponsors and other members on strengthening the proposed bill. As written, however, **we urge you to vote Ought Not to Pass on LD 1973**. We would be pleased to partner with the sponsors to improve the bill.