



May 22, 2023

Committee on Judiciary
Attn: Susan Pinette, Committee Clerk
State House
100 State House Station
Augusta, ME 04333

Re: LD 1902 - An Act to Protect Personal Health Data.

Dear Co-Chair Carney, Co-Chair Moonen, and Members of the Committee on Judiciary:

On behalf of the Computer & Communications Industry Association (CCIA), I write to respectfully oppose LD 1902, An Act to Protect Personal Health Data.

CCIA is an international, not-for-profit trade association representing a broad cross-section of communications and technology firms.¹ CCIA supports the enactment of comprehensive federal privacy legislation to promote a trustworthy information ecosystem characterized by clear and consistent consumer privacy rights and responsibilities for organizations that collect and process data. A uniform federal approach to the protection of consumer privacy throughout the economy is necessary to ensure that businesses have regulatory certainty in meeting their compliance obligations and that consumers are able to exercise their rights. CCIA appreciates, however, that in the absence of baseline federal privacy protections, state lawmakers are attempting to fill in the gaps. To inform these efforts, CCIA produced a set of principles to promote fair and accountable data practices.²

CCIA strongly supports the protection of consumer data and understands that Maine residents are rightfully concerned about the proper safeguarding of their data, particularly when it comes to their health information. However, as currently written, LD 1902 includes several provisions that raise concerns. We appreciate the committee's consideration of our comments regarding several areas for potential improvement.

1. "Consumer health data" and "location data" should be more narrowly defined.

¹ For 50 years, CCIA has promoted open markets, open systems, and open networks. CCIA members employ more than 1.6 million workers, invest more than \$100 billion in research and development, and contribute trillions of dollars in productivity to the global economy. A list of CCIA members is available at <https://www.ccianet.org/members>.

² Computer & Communications Industry Association, *Considerations for State Consumer Privacy Legislation: Principles to Promote Fair and Accountable Data Practices* (January, 2022), <https://www.ccianet.org/wp-content/uploads/2022/02/CCIA-State-Privacy-Principles.pdf>



While CCIA understands and supports the intent of the legislation, LD 1902 defines “consumer health data” so broadly that it would include data about daily consumer activities and purchases, by including “efforts to research or obtain health services or supplies” and any data that relates to “products that...affirm an individual’s gender identity,” or are related to “bodily functions”. This broad definition could apply to regular purchase items such as feminine care products, sexual health products, undergarments, or items as simple as toilet paper. By including routine purchases such as hygienic products within the scope of this legislation, consumers would constantly be required to provide consent in the course of normal transactions. This would inevitably lead to consent fatigue while not actively contributing to accomplishing the legislation’s intent.

The definition of location data should also be more narrowly tailored. CCIA suggests adjusting the language to “precise location data that could reasonably indicate a consumer’s primary purpose to acquire or receive reproductive or sexual health services” or targeting the definition to data that regulated entities may use to determine whether individuals have accessed reproductive or gender-affirming care services, as this would better accomplish the legislation’s goals while preserving the utility of other consumer services. As currently written, a device would not be able to collect a consumer’s current location data to provide them with directions to where they are seeking to go, whether that be home, the nearest grocery store, or otherwise.

2. Investing enforcement authority with the state attorney general and providing a cure period would be beneficial to consumers and businesses alike.

LD 1902 permits consumers to bring legal action against companies that have been accused of violating new regulations. By creating a new private right of action, the measure would open the doors of Maine’s courthouses to plaintiffs advancing frivolous claims with little evidence of actual injury. Lawsuits also prove extremely costly and time-intensive – it is foreseeable that these costs would be passed on to individual consumers in Maine, disproportionately impacting smaller businesses and startups across the state. Further, every state that has established a comprehensive consumer data privacy law – California, Colorado, Connecticut, Indiana, Iowa, Utah and Virginia – has opted to invest enforcement authority with their respective state attorney general. This allows for the leveraging of technical expertise concerning enforcement authority, placing public interest at the forefront.

CCIA recommends that the legislation be amended to include a cure period of at least 30 days. This would allow for actors operating in good faith to correct an unknowing or technical violation, reserving formal lawsuits and violation penalties for the bad actors that the bill intends to address. This would also focus the government’s limited resources on enforcing the law’s provisions for those that persist in violations despite being made aware of such alleged violations. Such notice allows consumers to

receive injunctive relief, but without the time and expense of bringing a formal suit. Businesses would also be better equipped with the time and resources to address potential privacy changes rather than shifting focus to defending against litigation.

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We appreciate the Joint Committee's consideration of these comments and stand ready to provide additional information as the Legislature considers proposals related to technology policy.

Sincerely,
Alexander Spyropoulos
Regional State Policy Manager - Northeast
Computer & Communications Industry Association