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Testimony in Support of LD 1902, *An Act to Protect Personal Health Data*

Senator Carney, Representative Moonen, and distinguished members of the Judiciary Committee, my name is Aaron Frey, and I have the privilege of serving as Maine's Attorney General. I am here today to speak in support of L.D. 1902, "An Act to Protect Personal Health Data."

Health data is the most sensitive information that can be collected from a person. While many people believe that this information is kept confidential by the entities who collect it, this is often not true. The Health Insurance Portability and Accountability Act, commonly known as HIPAA, primarily covers healthcare providers and health insurance plans. Health data collected by other entities, such as websites and apps, is largely unregulated. L.D. 1902 will close this gap and give fuller protection to our most private information.

L.D. 1902 is modeled on strong legislation drafted by the Washington Attorney General's Office, which recently passed the Washington Legislature and was signed into law by Washington's Governor. Similar legislation has been introduced in New York. L.D. 1902 will provide Mainers with important rights that give us greater ability to protect and control our health information. It broadly applies to all manner of entities that collect, share, or sell consumer health data. It requires these entities to prominently display health data privacy policies explaining what information they collect and what they do with it. Entities may not collect or share information without obtaining a person's express, informed, and unambiguous consent. A person can withdraw that consent at any time and can demand the deletion of data previously collected. Regulated entities must take certain measures to ensure the security of health data and delete it when no longer needed. It prohibits the use geofencing around health care facilities to prevent the identification and tracking of patients.

Violations are enforceable not only by the Attorney General, but also by individuals. This is important because my office cannot pursue every violation. We firmly believe that when consumers are given additional affirmative rights, those consumers should be able to enforce those rights without having to rely on other entities to do so. Absent a private right of action, there may be violations of consumer privacy rights that go unaddressed. The threat of a private right of action is also powerful deterrence.

Opponents of this measure may claim that it has constitutional infirmities. We are available to work with the sponsor and stakeholders to evaluate those claims and, if necessary, recommend amendments to make this bill as legally defensible as possible. If despite our efforts it is nonetheless challenged, my office stands ready to defend it.

Health data is uniquely sensitive and warrants special protection, which is precisely what this bill does. Protecting this data has become even more important in recent months, with efforts underway to intrude on the privacy of persons seeking abortion care, gender-affirming treatment, and other deeply personal procedures.

I urge this Committee to vote Ought to Pass on L.D. 1902.