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May 22, 2023

The Honorable Anne Carney, Senate Chair
The Honorable Matt Moonen, House Chair
Maine State Legislature
Judiciary Committee
230 State Street
Augusta, Maine 04330

Dear Chair Carney, Chair Moonen, and Members of the Committee:

EPIC writes regarding LD 1973, The Maine Consumer Privacy Act. Though LD 1973 is well intentioned, there have been many lessons learned about necessary elements in a strong privacy bill in recent years and I believe that there is a stronger model that the Committee should consider – LD 1977 sponsored by Representative Margaret O'Neil.

The Electronic Privacy Information Center (EPIC) is an independent nonprofit research organization in Washington, DC, established in 1994 to protect privacy, freedom of expression, and democratic values in the information age.[1] EPIC has long advocated for comprehensive privacy laws at both the state and federal level.[2]

Last year in Congress, bipartisan leaders in both the House and Senate proposed the American Data Privacy and Protection Act ("ADPPA"). The bill went through extensive negotiations between members of Congress of both parties, industry, civil rights groups, and consumer protection and privacy groups. The ADPPA received overwhelming bipartisan support in the House Energy & Commerce Committee, where it was favorably approved on a 53-2 vote. Unfortunately, Congress failed to enact ADPPA, but state legislators can now take advantage of the outcome of those negotiations by modeling a state bill on the bipartisan consensus language in ADPPA. LD 1977 is based on ADPPA and provides the Maine Legislature with that opportunity.

LD 1973 requires entities to obtain the opt-in consent of individuals before using their data for targeted advertising, selling their data, or profiling them. Unfortunately, consent is ineffective and burdensome on individuals. Consent forces individuals to either agree to data practices or not use the service. Consent is not used in other areas of consumer protection – you can't consent to a car without seatbelts or to unsafe drinking water. Rather, consumer protection laws should set baseline protections that prevent unfair and unsafe practices. LD 1977 sets a baseline data minimization requirement that sets it apart from LD 1973. That requirement means that entities only may collect, use, and transfer data that is "reasonably necessary and proportionate" to provide or

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[1] EPIC, *About EPIC*, https://epic.org/epic/about.html.
[2] *See e.g. Protecting America's Consumers: Bipartisan Legislation to Strengthen Data Privacy and Security: Hearing before the Subcomm. on Consumer Protection & Comm. of the H. Comm. on Energy & Comm.*, 117th Cong. (2022) (testimony of Caitriona Fitzgerald, Deputy Director, EPIC), https://epic.org/wp-content/uploads/2022/06/Testimony_Fitzgerald_CPC_2022.06.14.pdf.

maintain a product or service requested by the individual (or pursuant to certain enumerated purposes.) This puts the burden of protecting privacy on the entities collecting personal data, rather than on individuals. And it means that data practices will be better in line with a consumer's expectations.

Data minimization is essential for both consumers and businesses. Data minimization principles provide much needed standards for data security, access, and accountability, assign responsibilities with respect to user data, and restrict data collection and use. Indeed, a data minimization rule can provide clear guidance to businesses when designing and implementing systems for data collection, storage, use, and transfer. And data security will be improved because personal data that is not collected in the first place cannot be at risk of a data breach.

The recently passed update to the California Consumer Privacy Act also includes provisions requiring a limited form of data minimization.[3] The key with a data minimization provision is to ensure it is tied to the specific product or service requested by the individual, not simply to whatever purpose the collecting entity decides it wants to collect data for.

Individuals should be allowed to browse the internet or scroll through their favorite apps without worrying whether companies will use their own data in ways they do not anticipate. Data minimization offers a practical solution to a broken internet ecosystem by providing clear limits on how companies can collect and use data. LD 1977 sets out a model for data minimization that was subject to intense scrutiny by many parties as its federal counterpart moved through Congress. Maine can now take advantage of that bipartisan consensus language.

EPIC asks the Committee to hold a hearing on LD 1977 and consider it as an alternative to LD 1973. If EPIC can be of any assistance to the Committee, please contact EPIC Deputy Director Caitriona Fitzgerald at fitzgerald@epic.org.

Sincerely,

/s/ Caitriona Fitzgerald
Caitriona Fitzgerald
EPIC Deputy Director

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[3] Cal. Civ. Code § 1798.100(c).