

Bruce C. Gerrity
bgerrity@preti.com
207.623.5300

October 17, 2023

Sen. Anne Carney, Chair
Committee on Judiciary
Cross Building, Room 438
Augusta, ME 04330

Rep. Matt Moonen, Chair
Committee on Judiciary
Cross Building, Room 438
Augusta, ME 04330

RE: LD 1977 – An Act to Create the Data Privacy and Protection Act

Dear Senator Carney and Representative Moonen,

These comments are submitted in opposition to LD 1977 by the Maine Automobile Dealers Association (“MADA” or “the Association”). MADA is the association of all new car and truck dealers in the State of Maine. Dealers are located in every county and most cities in Maine. Maine’s new car dealers employ some 6,000 employees. They provide products which are absolutely crucial to the operation of the transportation system of the State, the ability of individuals to get to and from work, the ability to seek medical care and for myriad other purposes.

MADA opposes LD 1977 for a number of reasons. Predictably, and consistent with MADA’s opposition to other privacy bills the Committee has heard this session, MADA opposes the private right of action set forth in §9620 of the bill. Respectfully, the Committee is well aware of the reasons for this opposition. It will be extraordinarily expensive. It will open the door to civil litigation throughout the State, significantly burdening new car dealers and other employers throughout Maine, clogging the dockets of Maine courts and proposes to allow crippling damages on Maine businesses. In no way do the perceived social benefits of allowing any individual to sue for any asserted “privacy” purpose, regardless of its significance or damage to the individual, compare with the damage to businesses throughout Maine. In addition, enforcement measures by the Attorney General are more than sufficient to protect the interests of citizens of the State of Maine. The Attorney General’s office has a well earned reputation for aggressively protecting consumer rights. In addition, a number of other agencies have regulatory authority over issues that touch on the provisions of LD 1977 and protect consumers through the various enforcement powers of these other agencies. These agencies include, for example, the Maine Bureau of Banking, the Maine Bureau of Consumer Credit Protection, the Maine Bureau of Insurance and the Motor Vehicle Division of the Office of the Secretary of State.

In essence, the provisions of §9620, specifically as related to a private right of action, appear to be geared more towards punishment than anything else. There is no limitation on any consumer’s ability to bring an action and no consequences for frivolous actions (other than an after the fact complaint and trial for malicious prosecution, which does not include, for example, attorney’s fees for the business).

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In addition, the Association opposes the bill as being overbroad and confusing. For example, the definition of “Covered data,” which plays a pivotal role throughout the bill, is at best unclear if not indecipherable. What is “derived data”? What does it mean for “information” that is “linked or reasonably linkable alone or in combination with other information, to an individual or device that identifies or is linked or reasonably linkable to an individual?” The bill requires disclosures in “covered languages” which are identified as including 10 languages with the most speakers in the United States. This, of course, burdens dealers with significant costs, data juggling, and notices that must be provided in writing or electronically in 10 different formats. Will there be notice in writing for languages virtually no one in Maine speak? What if an individual speaks more than one language? Must disclosures be provided in multiple languages to a single individual?

“Sensitive data” includes, for example, a driver’s license number. Driver’s licenses are used throughout the State for many purposes. In particular, under one of the multiple federal FTC rules auto dealers must comply with, the “Red Flags Rule,” dealers are required to retain driver’s licenses and other personal identifying information to assist in identifying an individual. The sensitive data standard is impossible to apply or protect. Moreover, in at least one instance, personal information that LD 1977 would declare sensitive or subject to privacy protections must be publicly disclosed on the window of a used car for sale (10 M.R.S. §1475(2-A)(B)).

“Sensitive data” includes, in subsection 13(F) (pg 3, ln 11-17), any type of device or technology that “identifies or is linked or reasonably linkable to one or more individuals” with sufficient precision to identify them within a range of 1,850 feet or less. This presumably includes the “black box” on a number of different automobile makes and models which provide critical data in evaluating when and how an accident might have happened; it also impacts information provided by a manufacturer location system in cars to provide the ability for the individual to notify the manufacturer, the police or others in the event of an accident or other mishap. Where is this protection in relation to law enforcement, emergency personnel, tow truck services or a good Samaritan?

Maine auto dealers all have data agreements with their manufacturers. Dealers have very limited real world ability to block manufacturer access, particularly since in many instances dealers are required to use manufacturer information platforms. Manufacturers seek customer-based information for a variety of reasons, including recalls, warranty claims, advertising of various products which may be of interest to a particular individual with a particular vehicle and to affiliates. This routinely includes data that would be captured as “private” under LD 1977. The Maine Legislature has enacted provisions relating to the manner in which auto dealer data can and should be shared (10 M.R.S. §1174(3)(V)).

Maine auto dealers are already regulated under a variety of state and federal privacy standards identified in more detail in MADA response to Committee requests for information for the work session on all of the privacy bills. For example, the federal Affordable Care Act which involves dealerships and healthcare plans, the Americans with Disabilities Act, the Consolidated

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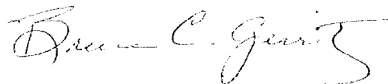
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Omnibus Budget Reconciliation Act (“COBRA”), the electronic deposit of employee taxes and electronic records retention by dealers and the Internal Revenue Service, the Employee Polygraph Protection Act (polygraph using biometric data), the Family and Medical Leave Act, the federal Civil Rights Act, the Genetic Information Nondiscrimination Act, the federal Safeguard Standards, the Driver Privacy Protection Act, the FTC Privacy Rule, the Gramm Leach Bliley Act, the Magnuson Moss Warranty Act, and numerous others. This does not include numerous provisions of Title 9-A (Consumer Credit Code), Title 9-B (Financial Institutions), Article 2 of Title 11 (Uniform Commercial Code-Sales), Title 5, ch. 10 (Unfair Trade Practices Act), Title 10, ch. 217 (Used Car Information Act), and numerous other provisions. Given all these controls which directly protect or impact privacy rights, LD 1977 is not only unnecessary, it adds confusion to an already saturated field.

One of the difficulties consumers and dealers experience in today’s world is completing all the forms and disclosures necessary to finalize the sale of an automobile. The result has been that the various disclosures required as part of these transactions become “white noise.” Even though the opportunity to read and review documents is presented, consumers sign these documents often without reading them or after only a cursory review. The notices and disclosures associated with provisions of LD 1977 only further complicate a process that has become so cumbersome and unwieldy that many, if not most consumers ignore or have little sense of the various rights and obligations attendant to the sale of a vehicle (or any other product).

Accordingly, the Association registers its strong opposition to LD 1977.

Respectfully submitted,



Bruce C. Gerrity

cc: Committee members
Janet Stocco, OPLA Analyst
Susan Pinette, Committee Clerk