



January 23, 2023

House Civil Rights & Judiciary Committee
Attn: Hope Dorris
John L. O'Brien Building
P.O. Box 40600
Olympia, WA 98504-0600

Re: WA HB 1155 - Addressing the collection, sharing, and selling of consumer health data (Other)

Dear Chair Hansen and Members of the House Civil Rights & Judiciary Committee:

On behalf of the Computer & Communications Industry Association (CCIA), I write to respectfully express several concerns regarding HB 1155.

CCIA is an international, not-for-profit trade association representing a broad cross section of communications and technology firms. For over 50 years, CCIA has promoted open markets, open systems, and open networks. The Association supports the enactment of comprehensive federal privacy legislation in order to promote a trustworthy information ecosystem characterized by clear and consistent consumer privacy rights and responsibilities for organizations that collect data. A uniform federal approach to the protection of consumer privacy is necessary to ensure that businesses have regulatory certainty in meeting their compliance obligations and that consumers can understand and exercise their rights.

We appreciate, however, that in the absence of federal privacy protections, state lawmakers have a continued interest in enacting local legislation to guide businesses and protect consumers. CCIA strongly supports the protection of consumer health data and understands that Washington residents are rightfully concerned about the proper safeguarding of their health data. However, as currently written HB 1155 goes far beyond protecting such data, which could result in degraded consumer services and experience. 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.

While CCIA understands and supports the intent of the legislation, HB 1155 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. Overly broad and missing key definitions risk confusing consumers and complicating business compliance efforts.

As currently written, HB 1155 leaves numerous key concepts and terms undefined. Consumers would be provided with better protections if such definitions were included. The bill should define, among other terms, “precise geolocation information”, “third party”, and “process” or “processing”. The bill should also establish and clarify the responsibilities of parties according to the role. For example, the bill does not clarify how the law would apply to a third-party cloud storage provider that provides services to covered entities but does not directly interact with consumers.

CCIA suggests narrowing the definition of “consumer” to only residents of Washington. As drafted, HB 1155 would apply to all persons whose data is collected in the state, going beyond the bill’s intended aim. The bill’s vague language would make compliance efforts much more difficult for covered entities while also adding consumer confusion as it would be difficult to know when the law is applicable to them.

As “consumer health data” is so broadly defined as to include any data that “could be” health-related, the bill’s definitions create vast ambiguities about its scope. In effect, this would create an obligation for covered entities to establish an opt-in regime for the collection of all data. This would likely lead to significant enforcement penalties against businesses attempting to comply in good faith, especially coupled with the introduction of a new private right of action, as further detailed below.

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

HB 1155 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 Washington’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 Washington, disproportionately impacting smaller businesses and startups across the state. Further, every state that has established a comprehensive consumer data privacy law – California, Colorado, Connecticut, 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 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 your consideration of these comments and stand ready to provide additional information as the legislature considers proposals related to technology policy.

Sincerely,

Khara Boender
State Policy Director
Computer & Communications Industry Association