



May 22, 2023

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

Re: LD 1973 - An Act to Enact the Maine Consumer Privacy Act.

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 raise some concerns with LD 1973, An Act to Enact the Maine Consumer Privacy Act.

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. We appreciate several of the components that the Legislature has put forward in LD 1973, particularly when it comes to attorney general enforcement authority and the inclusion of a cure period in the act, but would like to highlight a few areas that raise concerns. We appreciate the committee's consideration of our comments regarding several areas for potential improvement.

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>



1. Establishing a default “opt-in” approach will lead to consumer consent fatigue, ultimately creating a poor user experience online.

LD 1973 would establish an “opt-in” requirement in order to allow for the processing of the personal data of a consumer for the purposes of targeted advertising, or to the sale of consumer’s personal data, among other items. The use of an “opt-in” approach should be limited to the processing or sale of a consumer’s sensitive data (the first of which consumer consent is already required under the bill). Extending an “opt-in” approach beyond those items would likely lead to “consent fatigue” amongst consumers, decreasing the utility of the actual control while also creating a worse user experience, where every internet webpage greets them with a consent request pop-up. Maine should follow the model of every other state that has passed a comprehensive state data privacy law, and utilize an opt-out model when it comes to the sale and processing of consumer data.

2. Definitions should be amended to promote interoperability with other states’ existing privacy frameworks.

While LD 1973 does pull from several other states’ existing privacy laws, several of the definitions included could be amended slightly to better align with language in other states. Minor statutory divergences between frameworks for key definitions or the scope of privacy obligations can create onerous costs for covered organizations. CCIA encourages lawmakers to reasonably align any newly created privacy framework with existing definitions and rights in other jurisdictions’ privacy laws so as to avoid unnecessary costs to Maine businesses. To that end, CCIA suggests that the Legislature consider the following amendments (changes highlighted in red):

“4. Consent. "Consent" means a clear affirmative act signifying a consumer's freely given, specific, informed and unambiguous agreement to allow the processing of personal data relating to the consumer. "Consent" may include a written statement, including by electronic means, **or any other unambiguous affirmative action.**”

- This addition would align with Connecticut and Virginia’s definition of consent.

“15. Processor. "Processor" means a person, **or legal entity**, that processes personal data on behalf of a controller.”

- The current definition is too narrow and would omit other entities that process consumer data. This addition would align Maine with Connecticut and Virginia.

“19. Sale of personal data. "Sale of personal data" means the exchange of personal data for monetary **or other valuable** consideration by the controller to a 3rd party.”



- Amending this language would help ensure that common and important practices like companies’ sharing of information with third-party advertising networks and analytics providers are not affected or treated as a sale. This language matches the model used in California.

“22. Trade secret. "Trade secret" has the same meaning as in Title 10, section 1542, subsection 4 and shall also include sensitive business information.”

- Currently, a controller is not obligated to respond to a consumer request only if it would reveal a trade secret. Businesses should not be forced to share sensitive business information and expanding this language would help sufficiently and appropriately protect businesses when complying with consumer requests, such as confirming whether or not a controller is processing the personal data of the consumer.

3. The bill should provide a clear and sufficient on-ramp for operators to understand the legislation and establish mechanisms for compliance.

Currently, LD 1973 does not include an effective date, and providing operators with a sufficient timeline to come into compliance with the provisions outlined in the bill is an important component of a successful comprehensive data privacy law. Recently enacted privacy laws in California, Colorado and Virginia included two-year delays in the enforcement of those laws. CCIA recommends that any privacy legislation advanced in Maine include a comparable lead time to allow entities to come into compliance. Therefore, we suggest that an effective date no earlier than January 1, 2025 be included in the legislation.

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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