



April 4, 2023

Hon. Michael Marcotte and Members of the Committee
Committee on Commerce and Economic Development
Vermont House of Representatives

RE: H. 121 – Enhancing Consumer Privacy

Dear Chair Marcotte and Members of the Committee:

I am writing to address concerns with H.121 regarding consumer data protection. As written, the bill would pose serious hardships on the ability of our organization, the National Insurance Crime Bureau (“NICB”) to combat insurance fraud.

Organization and Business Purpose

Headquartered in Des Plaines, Illinois, and with a 110-year history, NICB is the nation’s premier not-for-profit organization exclusively dedicated to leading a united effort to prevent insurance crime and fraud through intelligence-driven operations. NICB is primarily funded by assessments on our nearly 1,200-member property-casualty insurance companies, car rental companies, and other strategic partners.

NICB sits at the intersection between the insurance industry and law enforcement, helping to identify, prevent, and deter fraudulent insurance claims. NICB’s approximately 400 employees work with law enforcement entities, government agencies, prosecutors, and international crime-fighting organizations in pursuit of its mission. While NICB provides value to our member companies, we also serve a significant public benefit by helping to stem the estimated billions of dollars in economic harm that insurance crime causes to individual policy holders across the country every year.

NICB maintains operations in every state around the country, including in Vermont where NICB is an unmatched and trusted partner in the fight against insurance fraud. NICB analysts and agents work daily with local, state and federal law enforcement and regulatory agencies to provide assistance in all manner of cases. NICB maintains close relationships with Vermont state agencies which can directly speak to NICB’s value, including the Vermont State Police, Vermont Department of Motor Vehicles, and many others.

Vermont’s Insurance Fraud Reporting and Immunity Statutes

Recognizing the adverse impact of insurance crime on the citizens of Vermont, the legislature enacted a law requiring Vermont insurers to prepare and implement an anti-fraud plan.¹ By statute, the plan must include specific procedures to report suspected insurance fraud to law enforcement and regulatory authorities in Vermont. In support of that mandate, NICB collects insurance fraud information from our insurance company members through NICB’s Fraud Bureau Reporting Program (FBRP). The FBRP connects through the National Association of Insurance Commissioner’s OFRS system to deliver fraud reporting information to Vermont regulators. In addition to mandating that information be provided to the State, the Vermont General Assembly also recognized the importance of reporting insurance crime and fraud information to law enforcement by enacting statutes providing civil immunity to insurers and insurance professionals delivering such information to law enforcement agencies in Vermont.²

¹ 8 V.S.A. § 4750

² 13 V.S.A. § 2031; 8 V.S.A. § 3672

Applicability of H. 121 to NICB

Unlike several enacted comprehensive consumer data privacy laws, including California, Utah, and Connecticut, that broadly exempt non-profit entities, H. 121 does not. NICB would therefore not be exempt as a non-profit under the existing language. The changes proposed by the Attorney General's office do provide limitations on the reach of the proposed law for purposes of preventing, detecting, and protecting against fraud and illegal activity. Although our charter aligns with this provision, and NICB would benefit from this section, this language is not meant to provide a wholesale entity-level exemption – meaning that, notwithstanding our ability to continue fighting fraud and other insurance crimes consistent with our charter, NICB would still be subject to consumer requests to, for example, delete their data. Even for non-viable requests under the statute, NICB would nevertheless bear the burden of proving to each consumer directly, or in litigation, that NICB's activities fall within the limitation. The obligation to do so would strain our organization's resources to such a degree that our operations, and ability to protect Vermont consumers, would be significantly encumbered.

Policy Rationale and Request

The policy reasons for excluding NICB from these burdens are several-fold. First, NICB provides significant benefits to the millions of consumers who are victims of insurance fraud. Second, as a non-profit organization that serves a public interest, NICB is not equally situated with private entities that typically establish more complex compliance infrastructure for private-sector-related obligations. Furthermore, NICB's required responses to individual consumer requests would likely expose otherwise covert criminal investigations. In addition, imposing what is essentially a "compliance, response, reporting and litigation" obligation – without any benefit to consumers – is wholly inconsistent with Vermont's insurance fraud reporting requirements and civil immunity provisions referenced above. Finally, NICB would not be afforded protection for our operations relating to our natural disaster response. The Geospatial Insurance Consortium (GIC), which is an initiative developed by NICB, has become an integral part of public agencies' overall response plans to significant catastrophic events by providing aerial imagery and other information, at no cost to the public, to help response agencies efficiently allocate their resources to the most heavily impacted areas.

Consistent with longstanding public policy determinations already considered and enacted in Vermont law, NICB respectfully requests an amendment to ensure its wholesale exemption from the Act. As a 501(c)(4) non-profit entity, NICB is exempt from California, Connecticut, and Utah consumer data privacy laws. Laws enacted in Virginia and Iowa also provide NICB specific entity-level exemptions after discussions with bill sponsors in each state. We are making significant progress obtaining entity-level exemptions in other states and are happy to update you with the status of those bills.

We appreciate your consideration of our concerns. We welcome the opportunity to follow up directly with your committee to discuss these issues in more detail. In the meantime, if you have any questions or need additional information, please contact me at hhandler@nicb.org or 312-771-3974.

Sincerely,



Howard Handler, MPPA

Senior Director

Strategy, Policy, and Government Affairs