



Testimony of VPIRG Consumer Protection Advocate Zachary Tomanelli on H.121 – draft 6.1 - An Act Relating to Enhancing Consumer Privacy

Testimony before the House Commerce & Economic Development Committee
February 7, 2024

Introduction

Good morning. My name is Zachary Tomanelli and I am the consumer protection advocate for VPIRG, the Vermont Public Interest Research Group. For over 50 years, VPIRG has advocated for the public interest in policy debates concerning the environment, health care, consumer protection, and democracy, and so I thank you for this opportunity to share our thoughts on H.121.

Overview

I'll start by noting that VPIRG is broadly supportive of this bill and urges the committee to advance this bill with a favorable recommendation.

Vermont has taken great strides to better protect consumers' sensitive information in recent years through the enactment of our data broker registry law and student online privacy law, among others, but we've stopped short of enacting more comprehensive data privacy legislation that VPIRG thinks is necessary for giving Vermont consumers the broadest protections possible.

Fourteen other states have enacted some kind of comprehensive data privacy legislation in recent years. Those laws are not identical, and some are considerably more protective of consumers than others. Nevertheless, the movement on data privacy reforms in this diverse collection of states demonstrates that this isn't a partisan issue—the idea that consumers should have a reasonable amount of control over their own information transcends party lines.

This legislation is essential for our state to keep up with the rapidly changing data landscape, and provide Vermonters with critical, commonsense data protections.

Why this bill is necessary

VPIRG's support for this legislation is grounded in three essential principles:

- **Consumer privacy is a fundamental right.** We believe that consumers should be able to conduct transactions with data collectors under the assumption that any information the consumer provides as a part of that transaction will not be used or shared for purposes inconsistent with the completion of that transaction. This used to be the baseline assumption between consumers and data collectors – but the digitization and, importantly, monetization of data has upended this.

- **The proliferation of consumer data can have real tangible harms.** This isn't just about privacy for privacy's sake. The more that data is shared, spread, packaged, sold and analyzed – the greater the risk becomes for that data to be misused or fall into the hands of malicious actors, exposing consumers to scams, identity theft, unwanted tracking, and discrimination.
- **Our current protections leave significant gaps.** There isn't a comprehensive federal privacy law in the United States. The U.S. takes a sectoral approach to data privacy – which can make it difficult and confusing for consumers to exercise their privacy rights, as they often don't know what information is actually protected or which data collectors are covered by existing data privacy laws. Companies like data brokers, social media platforms, and most websites and apps have no legal requirement to keep consumer data private and secure.

It's VPIRG's position that we should enact policies that treat consumer data privacy as a default and, as much as possible, remove the onus from Vermonters themselves to exercise their privacy rights and place the responsibility on would-be data collectors to respect Vermonters' data privacy. This legislation achieves that in a variety of ways, but it should be noted that—like many of the state level data privacy bills enacted to date—this bill represents a fairly modest step in providing consumers with data privacy protections, especially when compared to more robust data privacy regimes, like those in Europe.

Important pro-consumer points in draft 6.1

As I noted – VPIRG is broadly supportive of this bill, so I wanted to highlight a few aspects in the latest version of the draft that are especially important to keep so that this remains as protective of consumers as possible.

- **Private right of action for violations:** We've seen time and again that privacy laws require robust enforcement to be maximally effective. The inclusion of a private right of action ensures robust enforcement of the law. We know that the resources of the Attorney General's office are not limitless. They may only be able to bring action for a handful of violations over the course of a year. Private rights of action ensure compliance and provide ordinary tech users recourse when their privacy rights have been violated. This legislation even takes the step of requiring consumers to notify data controllers of potential violations and provide those controllers the opportunity to cure those violations before action can be brought. This should satisfy any concerns industry has that this right of action will be used to bring so-called frivolous lawsuits against good faith actors who are not aware they are out of compliance with the law. It should also be noted that including a private right of action is one way the legislature can make this law more impactful for consumers without making the law more difficult or unique to comply with.
- **Information-based exemptions:** This bill largely adheres to information-based exemptions as opposed to entity-based exemptions – with the notable exception of exempting insurers as an entity (something we would recommend removing from the bill). Information-based exemptions are the only way to guard against creating potentially massive loopholes in the legislation. Many companies have created secondary lines of business based on the collection and sale of consumer data. Just because one part of a company may deal with data that is already protected by existing privacy laws, that should not exempt the entire company from adhering to

this law.

- **Additional protections regarding data brokers:** VPIRG strongly supported the data broker registry law that was enacted because of the unique nature of the relationship between data brokers and consumers--namely that there isn't one. Consumers do not interact directly with data brokers and therefore already have much less knowledge about and control over the information a data broker may have on them. As such, requiring data brokers to report the breach of brokered personal information, provide an opt-out, and perform adequate credentialing of their potential clients seems reasonable and necessary. Further, the inclusion of a global-opt out mechanism for data brokers in this bill is essential. It's impractical to expect consumers to individually opt-out with hundreds of data brokers.

Conclusion

In summary, VPIRG appreciates the Committee's time and attention to this matter, and we broadly support the proposed legislation, noting those areas for further consideration. We urge you to advance this bill. Thank you for the opportunity to present this testimony.