



TECHNET
THE VOICE OF THE
INNOVATION ECONOMY

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March 4, 2024

The Honorable Michael Marcotte, Chair
House Committee on Commerce and Economic Development
115 State Street
Montpelier, VT 05633

Re: HB 121 – An Act Relating to Enhancing Consumer Privacy

Dear Chair Marcotte and members of the Committee:

I write on behalf of TechNet’s members in regard to HB 121, a comprehensive data privacy bill. HB 121 largely reflects successful models adopted in more than a dozen other jurisdictions, however, it also contains significant outlier provisions which, if adopted, threaten interoperability, create consumer confusion, and could result in disastrous liability for Vermont businesses.

TechNet is the national, bipartisan network of technology CEOs and senior executives that promotes the growth of the innovation economy by advocating a targeted policy agenda at the federal and 50-state level. TechNet’s diverse membership includes dynamic American businesses ranging from startups to the most iconic companies on the planet and represents over 4.2 million employees and countless customers in the fields of information technology, artificial intelligence, e-commerce, the sharing and gig economies, advanced energy, transportation, cybersecurity, venture capital, and finance.

Our member companies place a high priority on consumer privacy. The technology industry is fully committed to securing privacy and security for consumers and engages in a wide range of practices to provide consumers with notice, choices about how their data is used, as well as control over their data. TechNet supports a federal standard that establishes a uniform set of rights and responsibilities for all Americans. The global nature of data demands a federal policy, and even the most well-designed state statute will ultimately contribute to a patchwork of different standards across the country, resulting in steep compliance costs and consumer confusion. In the absence of a nationwide standard, however, interoperability with existing state laws is paramount. HB 121 as drafted is not interoperable.

Like other comprehensive data privacy laws adopted in states like Connecticut, New Hampshire, Delaware, and others, HB 121 is built on a framework of consumer

rights and controller responsibilities in the processing and use of personal data, including heightened protections for sensitive data such as biometric information and information collected from children.

By aligning its privacy law to the prevailing model in peer states, Vermont legislators can ensure that residents have clear and easy-to-understand rights, and companies have actionable directives to build or expand their compliance frameworks. The outlier provisions in the latest draft of HB 121 will complicate interoperability, drive up compliance costs, and expose Vermont businesses to potentially ruinous liability through the inclusion of a private right of action.

Definitions

The definition of “targeted advertising” is extremely broad and in combination with the exceptions it is unclear what it would encompass. The interoperable standard in other states is that targeted ads are those that are based on consumers’ activities on non-affiliated websites and apps over time. Including ads based on minors as a class is a radical departure from definitions in other states and could make it impossible limit exposure to minors of advertising that is age-inappropriate.

The new definition of “consumer” includes a person who is in the state of Vermont at a given time. The only way a company could comply with this provision is to constantly track the location of consumers, which is entirely counter to the goals of the rest of the legislation.

Enforcement

Privacy law is complex and it is possible for even the best-intentioned platform to fall short on occasion. The inclusion of a private right of action virtually ensures that this statute will encourage unnecessary, settlement-seeking litigation that does not serve Vermonters beyond a cottage industry of class action firms. Recent studies by [Littler Law Firm](#) and [Chamber of Progress](#) both conclude that the 300-400 lawsuits filed annually in recent years under Illinois’ Biometric Information Privacy Act have been crippling to businesses in the state and delivered little to no real value to consumers beyond a small cottage industry of law firms. Sole enforcement by the state’s Attorney General’s office ensures that companies are held to compliance standards and litigation is targeted at true bad actors.

Thank you for your consideration. TechNet’s member companies are fully supportive of a comprehensive data privacy regime that is interoperable with existing standards, that empowers consumers to take control of their personal data, provides resources for enforcement through the state’s Attorney General, and provides companies with a clear roadmap to compliance without the threat of frivolous litigation. Please do not hesitate to contact me if I can provide any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Gilrein".

Christopher Gilrein
Executive Director, Northeast
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