



February 10, 2023

The Honorable Michael Marcotte
Chair, Committee on Commerce and Economic Development
Vermont House of Representatives
106 Private Pond Rd.
Newport, Vermont 05855

Via email: mmarcotte@leg.state.vt.us

CC: House Committee on Commerce and Economic Development

RE: Opposition to H.121 Relating to Consumer Privacy

Chair Marcotte, Vice Chair Jerome, and Committee Members,

On behalf of CTIA®, the trade association for the wireless communications industry, I write express our opposition to H.121. Our members support strong consumer privacy protections, including empowering consumers with the rights necessary to control their data. This bill regulates various components of consumer privacy but lacks clear definitions and would be interpreted too broadly. CTIA believes this legislation would create inconsistent protections and obligations and create conflicts with other state and federal laws.

Consumer privacy is an important issue and the stakes involved in consumer privacy legislation are high. State-by-state regulation of consumer privacy will create an unworkable patchwork that will also lead to consumer confusion. That is why CTIA strongly supports ongoing efforts within the federal government to develop a uniform national approach to consumer privacy. Deviating from clearly defined definitions, obligations and privacy protections could have serious consequences for consumers, innovation, and competition in Vermont. Heterogeneous state regulations would only complicate federal efforts and impose serious compliance challenges on businesses, ultimately confusing consumers. Federal legislation is the only way to ensure clear, consistent privacy protection for consumers and certainty for businesses.

House Bill 121 looks to create regulations with respect to data brokers, imposes requirements on all data collectors, and looks to model a problematic biometric privacy law. The bill's ambiguous language would result in numerous compliance issues. The language is drafted too broadly and lacks definitions and guidance for companies, which would result in the bill being interpreted too broadly



and putting both large and small businesses at risk of costly litigation. For example, while the definition of “Brokered personal information” looks to target consumer data share with third parties, there is no definition for third parties. Additionally, the July 1, 2023 effective date is too soon and would be a nearly impossible deadline for businesses to be able to properly prepare for these changes and comply.

Further, part of this bill is modeled after a biometric privacy law in Illinois, enacted in 2008, which has led to a myriad of lawsuits and little consumer protection. Vermont should not look to replicate this problematic law. The private right of action contained in HB 121 would subject companies to the risk of expensive litigation that primarily benefits the plaintiffs’ bar and offers little relief to consumers. Through September of 2021, according to a search of court filings, plaintiffs’ lawyers have filed over 900 cases alleging violations under the BIPA law in Illinois. This bill raises complex issues and replicates an outdated and litigious statute, passed over a decade ago. No other state has enacted a bill similar to the problematic BIPA law, and Vermont should not either.

While federal consumer privacy law is ultimately the only way to ensure consumers’ privacy is adequately protected, CTIA understands without federal action, states will continue to fill the vacuum. Rather than creating yet another version of state privacy legislation that will further fracture the country into a patchwork of state laws that will confuse consumers and burden businesses, CTIA would recommend that Vermont looks to other comprehensive models, like those enacted in Virginia and Connecticut. These laws set forth strong consumer privacy rights and protections, and impose robust but clear obligations on businesses. By aligning with these models, Vermont can ensure consistent privacy protections and interoperability with other state frameworks. This will promote consistent consumer protection and will help Vermont businesses with implementation.

In closing, we reiterate our concern about the enactment of state laws that further fragment privacy legislation across the country. We recommend a different path to try to protect consumer privacy in Vermont. For these reasons, CTIA respectfully opposes HB 121. Thank you for your consideration.

Sincerely,

Jake Lestock
Director
State Legislative Affairs