



H. 121 Testimony

February 8, 2024

House Committee on Commerce and Economic Development

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- Common Good Vermont, a statewide program of United Way of Northwest Vermont, is a trusted resource and nonpartisan advocate for the State's more than 6300 nonprofit organizations. These organizations provide vital services, good jobs, and civic engagement opportunities that make our communities stronger, yet most are small to mid-sized with 70% of organizations generating less than \$100K per year in annual revenue.
- First, thank you to the committee for its work on this important issue. Common Good Vermont is generally supportive of this bill and values the necessary protections it provides to consumers. We do, however, have concerns about applying the same level of regulation across the board, as it holds nonprofits to the same standard as large corporations using data on a much greater scale in very different ways.
- Nonprofits understand the importance of protecting the data of their clients and supporters and should be considered partners in creating practical and responsible data privacy policies that serve both individual and societal interests.
 - Maintaining the trust of donors and the communities who nonprofits serve is critical to sustaining and advancing their missions. Breach of this trust could lead to irreputable damage to their reputation, not only hurting their ability to raise funds, but also their relationship with those they serve.
 - Organizations largely take appropriate steps to protect consumer data, relative to their size and mission. For example, an organization such as a mental health provider handling sensitive client information must have much more robust data protection policies and practices in place than a small arts organization.
 - Most organizations, regardless of size, depend on third-party services that are PCI compliant (that meet Payment Card Industry Data Security Standards) to accept donations and payments. They may also utilize Customer Relationship Management (CRM) software, databases, or third-party services to securely store, manage, process, and/or analyze collected personal data. Others may use third party apps that support clients and donors to engage with their organization or off them as a voluntary resource for individuals.
 - Large third-party corporations holding data entrusted to them by many organizations pose not only a greater risk to consumer data but are also greater targets for bad actors. Ensuring that these corporations are maintaining the highest level of data security is where we should be focusing regulatory measures.
 - Keeping privacy front of mind, organizations do rely on consumer information to inform their work. Whether it is analyzing aggregated, depersonalized data to assess need and impact or understanding the interests of their supporters to deliver communications to those who are most likely to benefit, this information helps organizations operate more efficiently and effectively.



- Some nonprofits also utilize consumer data to identify new donors. This information helps organizations, including those providing services on behalf of the state, fill growing funding gaps. While we agree that consumers should have the right to opt out of having their information sold by data brokers, there is concern that a general opt-out could impact nonprofits' ability to raise funds during an already challenging economic time.
- In considering consumer privacy protections, we must weigh the tradeoffs between individual and societal interests.
 - Nonprofits collect and utilize data for the common good, rather than for profit.
 - Should a small nonprofit with a strong base of supporters be held to the same standards as a giant tech corporation?
 - Nonprofits are already operating at capacity with limited resources. While they may utilize consumer data, they are not doing so anywhere near the scale or level of large corporations. Holding nonprofits, and small businesses for that matter, to the same standard without the benefit means that they bear a disproportionate burden which fails to level the playing field.
 - Another important consideration, as raised by ADS earlier this week, is that many nonprofits with State grants and contracts are managing data on behalf of the State. There are many instances, including disaster response, in which they need to provide personal information to the State where an opt-out would not be appropriate.
 - In addition to a potential carveout for government, there also needs to be clarity around data collecting, controlling and processing roles, particularly when the government is contracting with an outside organization.
 - Following up on the 211 discussions, I want to clarify that 211 was not responsible for sharing information with a third-party. The State contracted with Crisis Clean Up, a third-party volunteer service, and shared information with them to connect individuals with volunteers if immediate assistance was requested by checking a box. 211's role in crisis response is to collect voluntary damage reports based on what is required by FEMA. This information was shared with the State Emergency Management department so they could communicate this information with municipalities for response needs and the federal government for recovery funding. The damage report form clearly states that information will be shared with local, state and federal government. Once shared with the State, who is the controller of this information?
- If nonprofits of a certain scale are required to comply, clarity around regulations and responsibilities will be critical to support compliance. We appreciate the inclusion of education and outreach measures in Section 2, but it's also important to ensure that there is clarity in statute, too. **A few areas we would like to see further clarity around or have questions about include:**
 - Data Assessment: What specifically is required?
 - Targeted Advertising: What does "advertisement" mean in this case? Would a fundraising email be considered an advertisement?
 - How are controller/processor roles shared in partnership situations? Such as State/Contractor.
 - Do applicability thresholds refer to unique or gross consumers? For example, if a controller or processor maintains separate records for, say, donors and clients, how is overlap counted?
 - More clarification around what publicly available information is would be helpful.



- How should information collected on paper be handled? For example, if someone signs up for a mailing list at an event, what privacy notice is required?
- Lastly, how will guidance be created if there is so much flexibility in statute? Can stakeholders be involved?
- Considerations and Recommendations
 - **Capacity and Cost:** Nonprofits will need to make significant updates to their existing data policies, data management practices, and even technology. This takes time and resources away from the mission work of organizations with tight budgets and already tapped capacity. The required investments will disproportionately impact nonprofits compared to a large corporation.
 - One example is in Colorado, which did NOT include a nonprofit exemption, there have been organizations that have had to spend up to \$40,000 on consultants to help them comply with new regulations.
 - **Private Right of Action:** We support the intention of this clause and appreciate the inclusion of a cure period, but are concerned that even with a cure period, the time and resources required to respond to potentially unfounded claims could be overly onerous. If private action first went through a third party such as CAP or an oversight board, this would mitigate our concerns and save consumers from pursuing costly litigation that may or may not make them whole.
 - **Effective Date:** The current effective date does not provide organizations, especially nonprofits, adequate runway to prepare for compliance. We recommend that the effective date be no sooner than July 1, 2025. Oregon pushed out the effective date an additional year for nonprofits and we recommend that Vermont do the same.
 - **Applicability Threshold:** While our preference would be for a sector-wide exemption for nonprofits, if this is not possible, we urge the committee to increase the applicability threshold substantially to reflect the size of the corporation rather than the size of the State population.
 - Most states, regardless of size, have applied a consumer threshold of 100,000.
 - The current threshold of 6,500 consumers represents just 1% of Vermont's population. This is the lowest population percentage for all states except California, though their threshold is set at the standard 100,000.
- Thank you for the opportunity to weigh in on this bill and I'm happy to answer any questions.