

The Honorable Kesha Ram Hinsdale, Chair  
Senate Committee on Economic Development, Housing, and General Affairs  
Vermont General Assembly

April 17, 2024

Re: House Bill 121, An act relating to enhancing consumer privacy

Dear Senator Ram Hinsdale and Distinguished Committee Members,

On behalf of the American Council of Life Insurers (ACLI), thank you for the opportunity to submit comments on House Bill 121, An act relating to enhancing consumer privacy. We appreciate the time and care taken by the House Committee on Commerce and Economic Development to craft an exemption for insurers, which are already subject to comprehensive federal and state privacy laws and regulations, including the federal Gramm-Leach-Bliley Act (GLBA). However, we remain concerned that the state-specific exemption in the bill would create unnecessary administrative burdens for insurers that operate in multiple states, as well as inconsistent protections for consumers. In addition, we agree with your committee's concern about the private right of action and appreciate your willingness to remove it from the bill and, instead, direct further study by experts in privacy.

#### Gramm-Leach-Bliley Act Exemption

Life insurers have ably managed consumers' confidential health and financial data for over 175 years. We collect and use personal information for the benefit of consumers and industry alike. Personal information allows insurers to know and understand individuals for purposes of recommending appropriate products, effectively managing risk, complying with a complex array of federal, state, and sector-specific laws and regulations, and performing other essential business functions such as underwriting, paying claims, providing customer service, and combating fraud. Personal information is also fundamental to insurers' abilities to provide the innovative insurance and financial products that consumers seek.

Insurance consumers are protected by a wide range of state and federal laws safeguarding their information from unauthorized use, and they can expect life insurers to make smart and responsible decisions to keep personal information secure. As technologies advance, our dedication to protecting consumers' information never changes. In fact, our industry's record of responsible stewardship of consumer information can serve as a model as policymakers seek to protect consumers in other ways.

American Council of Life Insurers | 101 Constitution Ave, NW, Suite 700 | Washington, DC 20001-2133

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The American Council of Life Insurers is the leading trade association driving public policy and advocacy on behalf of the life insurance industry. 90 million American families rely on the life insurance industry for financial protection and retirement security. ACLI's member companies are dedicated to protecting consumers' financial wellbeing through life insurance, annuities, retirement plans, long-term care insurance, disability income insurance, reinsurance, and dental, vision and other supplemental benefits. ACLI's 275 member companies represent 93 percent of industry assets in the United States.

As passed by the House, H. 121 would exempt “a person regulated pursuant to part 3 of Title 8 (chapters 101–165) other than a person that, alone or in combination with another person, establishes and maintains a self-insurance program and that does not otherwise engage in the business of entering into policies of insurance.” Again, ACLI appreciates the consideration given by the House Committee on Commerce and Economic Development to providing an appropriate exemption for insurers. However, ACLI believes that this language would unintentionally add a layer of complexity for life insurers as they navigate the intricate landscape of privacy laws.

Existing federal and state requirements for insurers, particularly the GLBA, provide a complex, broad, and rigorous regulatory framework that requires our industry to protect the privacy, use, and security of customers’ personal information. They reflect a critically important balance between consumers’ legitimate privacy concerns and the proper use of personal information to the benefit of existing and prospective customers.

Varied exemptions within state comprehensive privacy laws would potentially lead to divergent compliance obligations for regulated businesses. Like the exemption for insurers in Oregon law on which it is based, the exemption H. 121 would tie to the unique definitions and standards in the state’s insurance code. This would be problematic for insurers that operate in multiple states because different state standards would create significant administrative burdens, as well as inconsistent protections for consumers. An entity-level GLBA exemption, on the other hand, would align obligations for insurers to federal standards, promoting efficiency, cost-effectiveness, and a harmonized approach to consumer protection.

For these reasons, ACLI respectfully requests that your committee amend H. 121 to exempt entities, affiliates, and data subject to the GLBA.

### Private Right of Action

As you know, if H. 121 were to explicitly create a private right of action, it would make Vermont the only state to allow private litigants and their attorneys to bring lawsuits for violations of its comprehensive privacy law<sup>1</sup>. Although the bill would exempt insurers from its scope, we remain concerned about the inclusion of a private right of action and believe that enforcement by the attorney general—not plaintiffs’ lawyers—would best protect Vermonters.

I have attached a report by the U.S. Chamber Institute for Legal Reform on the Illinois Biometric Information Privacy Act (BIPA). The report states that between 2008 when BIPA was enacted and September 2021, plaintiffs’ lawyers filed over 900 lawsuits alleging BIPA violations and attorneys’ fees constitute a significant share of the settlements and awards. For example, in 2021, Facebook settled a \$650 million settlement for violations of BIPA. Attorneys’ fees totaled \$97.5 million, while class members received \$350 each. Lawsuits do not just impact large companies like Facebook. The Illinois Chamber of Commerce has noted that small businesses are facing the brunt of the BIPA lawsuits.<sup>2</sup>

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<sup>1</sup> Other state laws have created private rights of action that are either limited in scope or apply only to a limited set of health data. The California Consumer Privacy Act (CCPA) provides California residents with a limited private right of action for violations of the CCPA’s requirement to implement reasonable security measures. The Illinois Biometric Information Privacy Act and Washington My Health My Data Act allow private rights of action with respect to consumer biometric and/or health data.

<sup>2</sup> [ILR Briefly: A Bad Match: Illinois and the Biometric Information Privacy Act - ILR \(instituteforlegalreform.com\)](https://www.instituteforlegalreform.com/ILR-Briefly-A-Bad-Match-Illinois-and-the-Biometric-Information-Privacy-Act)

We appreciate that your committee is concerned about this type of impact on Vermont businesses, particularly when they will need time to understand and navigate the complexities of a comprehensive new set of privacy requirements. We respectfully encourage you not to reinstate any private right of action.

Thank you, again, for the opportunity to provide comments on H. 121. Please feel free to contact me with any questions.

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized initial 'J' followed by a horizontal line extending to the right.

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