



May 22, 2023

Chair Anne Carney
Chair Matt Moonen
Joint Standing Committee on the Judiciary
Maine Legislature
100 State House Station
Room 438
Augusta, ME 04333

Re: LD 1705, An Act To Regulate the Use of Biometric Identifiers—SUPPORT

Dear Chair Carney and Chair Moonen,

Consumer Reports¹ writes in support of LD 1705, an act to protect the privacy of biometric information. Though the collection and monetization of Maine consumers' personal data has dramatically expanded over the last thirty years, consumers have almost no say over whether their biometric information will be shared by a company with countless others. This important proposal will protect biometric information by default, ensure that consumers cannot be charged for protecting their data, and provides appropriate incentives for companies to comply.

Biometric data clearly warrants these additional protections. Collection and retention of such data leaves it vulnerable to unwanted disclosure, either intentional or otherwise. Biometric data is commonly used to confirm consumers' identity and can easily be exploited for identity theft and fraud purposes. Unlike a credit card number, the consumer's biometric information cannot be changed, making its unwanted disclosure all the more dangerous.² But concerns about inappropriate disclosure go far beyond its potential misuse for the purposes of fraud. Aside from the inherent privacy interest in keeping this information private, the disclosure of biometric

¹ Founded in 1936, Consumer Reports (CR) is an independent, nonprofit and nonpartisan organization that works with consumers to create a fair and just marketplace. Known for its rigorous testing and ratings of products, CR advocates for laws and company practices that put consumers first. CR is dedicated to amplifying the voices of consumers to promote safety, digital rights, financial fairness, and sustainability. The organization surveys millions of Americans every year, reports extensively on the challenges and opportunities for today's consumers, and provides ad-free content and tools to 6 million members across the U.S.

² Angela Chen, *Why a DNA Data Breach Is Much Worse than a Credit Card Leak*, The Verge (Jun. 6, 2018), <https://www.theverge.com/2018/6/6/17435166/myheritage-dna-breach-genetic-privacy-bioethics>.

data—for example, of voice recordings—could lead to reputational or emotional harm. Particularly in light of the plethora of data breaches in recent years, biometric data should have these additional protections.³

We appreciate that the bill includes the following key protections:

- *Restrictions on collection without consent and a ban on sales.* Measures largely based on an opt-out model could require consumers to contact many different companies in order to fully protect their privacy—which simply isn't workable. Making matters worse, Consumer Reports has documented that some opt-out processes are so onerous that they have the effect of preventing consumers from stopping the sale of their information.⁴ In contrast, LD 1705 would require that companies obtain consumers' written permission before collecting, using, or sharing their biometric data, and prohibits the onward sale of that data outright.
- *Non-discrimination.* We appreciate that the bill includes strong non-discrimination language that clarifies that consumers cannot be charged for exercising their rights under the law. Such protections are important: otherwise, privacy rights are only extended to those who can afford to pay for them.
- *Strong enforcement.* Importantly, the bill includes a private right of action to better ensure compliance. Under an AG-only enforcement framework, businesses that recognize that the AG is only capable of bringing a handful of enforcement actions each year might simply ignore the law and take their chances in evading detection. Further, it's appropriate that consumers are able to hold companies accountable in some way for violating their rights.

For these reasons, we urge you to secure key privacy protections for Maine consumers by voting in favor of LD 1705.

Sincerely,

Matt Schwartz
Policy Analyst

³ See, e.g. *Data leak exposes unchangeable biometric data of over 1 million people*, MIT Technology Review, (Aug. 14, 2019),

<https://www.technologyreview.com/2019/08/14/133723/data-leak-exposes-unchangeable-biometric-data-of-over-1-million-people/>.

⁴ Maureen Mahoney, *California Consumer Privacy Act: Are Consumers' Rights Protected*, Consumer Reports (Oct. 1, 2020),

https://advocacy.consumerreports.org/wp-content/uploads/2020/09/CR_CCPA-Are-Consumers-Digital-Rights-Protected_092020_vf.pdf.