



AMERICAN CIVIL LIBERTIES UNION

Oregon

March 7, 2023

Senate Committee on Judiciary
Oregon State Legislature
900 Court St. NE
Salem, OR 97301

RE: Testimony in Support of Senate Bill 619

Dear Chair Prozanski, Vice-Chair Thatcher, and Committee Members:

Thank you for the opportunity to provide testimony on behalf of the American Civil Liberties Union of Oregon (ACLU of Oregon). The ACLU of Oregon is a nonpartisan, nonprofit organization dedicated to preserving and enhancing civil liberties and civil rights, with more than 28,000 members statewide. Our work often involves issues located in the crosshairs of privacy and technology, so we welcome Senate Bill 619, which provides consumers with crucial privacy protections and the right to exercise control over their own personal information.

It is virtually impossible for consumers to navigate today's technology-saturated world without providing reams of personal information to private companies and other third-party entities. Anyone who browses the internet, owns a smartphone, or has a GPS-enabled car, for instance, has—knowingly or unknowingly—entrusted their personal data to the keeping of corporations. Such data is a valuable commodity, fueling the dizzying valuations of some of the world's most profitable companies; the private sector has little incentive to self-regulate. Research has shown that consumers are profoundly troubled by this reality, with a 2019 study indicating that 79% of Americans are concerned about the way their data is used by companies.¹ Similarly high percentages report feeling that they have very little or no control over the data companies collect about them (81%), and do not trust that companies will be transparent about or accept responsibility for misuses or compromises of consumer data (79%).²

In the absence of comprehensive federal data privacy legislation, it has fallen to states to address public concerns on this issue. We are eager to see Oregon adopt a privacy-proactive stance by providing consumers with meaningful rights and protections regarding the use of their information by third-parties. Among other things, SB 619 will:

¹ Pew Research Center, *Americans and Privacy: Concerned, Confused, and Feeling Lack of Control Over Their Personal Information* (Nov. 15, 2019), <https://guides.libraries.uc.edu/c.php?g=222561&p=1472886>.

² *Id.*

- **Provide transparency.** Consumers will be entitled to information regarding whether a given entity is collecting their data, and if so, the type of data and with whom it has been shared. Consumers will also be able to request copies of their data. Further, entities that collect consumer information will be required to explain the purpose for that collection.
- **Enable consumer control.** Consumers will have the right to correct inaccuracies in their personal data, require the deletion of their data, and revoke consent to collect or process their data.
- **Minimize data collection.** Rather than operating *carte blanche*, entities that collect consumer data will be required to limit their collection and use of that information to only what is necessary.
- **Mitigate the risks of data-driven discrimination.** Consumer data can be used in ways that exacerbate existing social inequities. For instance, online platforms may target advertisements for critical opportunities and services to some demographic groups and not others. In practice, this means that younger audiences may see more job postings than older audiences,³ or that people of color may not receive the same access to rental listings as white people.⁴ This bill includes important prohibitions to minimize and mitigate these risks.
- **Empower consumers to hold companies accountable.** This bill includes a private right of action, meaning that Oregon consumers will have the right to sue companies and other entities that violate their privacy rights. This provision is *crucial*. It means that Oregonians will be empowered to vindicate their own rights, instead of hoping that the government will take action when companies violate the law. This reduces the burden on strained government agencies and allows consumers to hold companies directly accountable. It also mirrors the enforcement mechanisms of many other laws designed to protect the public, from prohibitions on wiretapping to statutes on employment discrimination and clean water. We know that this provision is controversial and will be highly contested by industry players—but that is because it provides this bill with real bite, and consumers with real power.

In addition to the above protections, we appreciate that SB 619’s definition of “biometric data” is not limited to information that identifies a specific person, but encompasses de-identified or unidentified measures of biological characteristics (such as gait, iris pattern, fingerprint, etc.). Because biometric data is so sensitive—and even in a de-identified state is capable of revealing intimate details such as health conditions, genetic traits, and family relations—we agree that it deserves heightened protection under the law even if it is not actively or currently being used for identification purposes.

³ Julia Angwin, Noam Scheiber, & Ariana Tobin, *Facebook Job Ads Raise Concerns About Age Discrimination*, NYTimes, Dec. 20, 2017, <https://www.nytimes.com/2017/12/20/business/facebook-job-ads.html>

⁴ Julia Angwin, Ariana Tobin, & Madeleine Varner, *Facebook (Still) Letting Housing Advertisers Exclude Users By Race*, ProPublica, Nov. 21, 2017, <https://www.propublica.org/article/facebook-advertising-discrimination-housing-race-sex-national-origin>

Similarly, we appreciate that the bill’s definition of “personal data” includes data associated with *devices* that are linkable to one or more consumers in a household, rather than being limited to data directly associated with a *person*. Because devices like smartphones, tablets, smart watches, and home assistants—to name just a few—are so ubiquitous and collect such large quantities of data about their users, we believe it is important to include them within the scope of this bill’s protections. This is particularly true because the personal data on such devices may not be directly associated with a given consumer but could be easily linked to the correct person(s) with minimal investigation.

SB 619 is not perfect, and could be further aligned with a consumer-centric, privacy-focused approach to data regulation. For instance:

- The bill provides consumers with the right to opt out of data collection and processing, which means the default assumption is that consumers consent to the collection and use of their data. We would prefer to see an opt-in model, which inverts this assumption, creating a default in which consumers do not consent to data collection unless they explicitly state otherwise. In the absence of an opt-in model, we would like to see opt-out rights strengthened by ensuring that they extend to all commercial data sharing and targeted advertising, and clarifying that companies cannot repeatedly ask consumers to revisit their opt-out decision.
- The private right of action could be strengthened by the inclusion of monetary relief as a remedy for injured consumers.
- While we appreciate that the right to cure has an expiration date, we would prefer to see it removed entirely. We are concerned that, in practice, this provision allows companies to operate with impunity and escape punishment when caught violating the law.
- The bill includes an exception permitting companies to cooperate with law enforcement agencies concerning “conduct or activity” that the company “reasonably and in good faith believes may violate” the law. We are concerned that this provision may allow companies to voluntarily supply law enforcement with user information in the absence of legal process. This is particularly worrisome in light of the post-*Dobbs* reproductive health landscape around the country; we would like to see it clarified that data processors may not, for instance, voluntarily supply law enforcement in Texas with user information to address a “good faith,” perceived violation of the state’s abortion restrictions. As a general matter, we believe that third-party hosts of consumer information should safeguard that data until compelled to disclose it pursuant to the appropriate legal process.

That said, SB 619 is a critical step in the right direction for Oregonians’ privacy rights. It would provide real and meaningful protections for Oregon consumers, and the private right of action would empower Oregonians to stand up for themselves when their rights are violated.

Thank you,

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