TECHNET
THE VOICE OF THE
INNOVATION ECONOMY

TechNet Northwest | Telephone 253.441.5272
P.O. Box 7036, Olympia, WA 98501
www.technet.org | @TechNet_NW

March 7, 2023

Senate Judiciary Committee
900 Court Street, NE
Salem, OR 97301

Chair Prozanski, Vice Chair Thatcher, and Members of the Committee:

Re: Oppose SB 619

I write to express our concerns with SB 619 and must respectfully oppose the legislation in its current form. TechNet's commitment to a collaborative effort is demonstrated by our participation on the Attorney General Task Force for nearly three years for which industry priorities were elevated throughout the process.

TechNet is the national, bipartisan network of technology companies that promotes the growth of the innovation economy by advocating a targeted policy agenda at the federal and 50-state level. TechNet's diverse membership includes dynamic American businesses ranging from startups to the most iconic companies on the planet and represents over five million employees and countless customers in the fields of information technology, e-commerce, the sharing and gig economies, advanced energy, cybersecurity, venture capital, and finance.

Our member companies place a high priority on consumer privacy. The technology industry is fully committed to securing privacy and security for consumers and engages in a wide range of practices to provide consumers with notice, choices about how their data are used, and control over their data. TechNet supports a federal standard that establishes a uniform set of rights and responsibilities for all Americans. Even the most well-designed state statute will ultimately contribute to a patchwork of different standards across the country. Understanding that states will move forward in the absence of federal law, we ask that the Committee consider a few changes to this bill should it move forward.

<u>Enforcement</u>
TechNet opposes the inclusion of a private right of action because any unintentional or perceived violation could result in damaging liability for

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companies. PRAs are not effective methods of enforcement, as they can very easily be misused and lead to frivolous lawsuits. Litigation leads to uneven and inconsistent outcomes. In turn, some businesses may choose to stop doing business in Oregon or be forced to cease operations altogether. The Attorney General is the only appropriate entity to enforce such action. By shifting the focus away from the threat of civil suits, companies will be able to devote resources to complying with privacy laws instead of dealing with frivolous litigation.

Similarly, we oppose the inclusion of liability for corporate directors and officers in Section 9(4)(b). Naming directors and officers will make it more complex to implement and open the door to additional lawsuits. It is also inconsistent with every other state that has legislated on this issue.

Global Opt Out

As drafted, there are no guidelines on reciprocity, consumer authentication, and developer responsibilities for a universal opt-out because they don't exist. Currently, tools are being developed to comply with California and Colorado statutes related to profiling, but they are impossible to adhere to because of its novelty.

Biometric Data

Undoubtedly, biometrics has a critical role in the security and anti-fraud spaces, and its protections are a top priority for our members. In section 1(3)(a), we continue to ask that the definition of "biometric data" be limited to uniquely identifying of a specific individual. Leaving it drafted as is will create inconsistency with other state laws and increased compliance burdens on businesses already subject to extensive regulation. Incorporating this revision would not undermine protection of the data that the state cited as examples, as such data would still be subject to privacy protections provided by the law (such as the limitation on processing for additional purposes). This approach offers more protections to Oregon consumers and allows for flexible interoperability across state lines.

Inclusion of "Household" and "Devices"

Section 2(a)(b) no other state law includes devices – in part because they don't necessarily represent individual people. One person may have numerous devices, which would inflate the number of small businesses impacted by the legislation.

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Disclosures

Section 3(1)(a)(B) provides that consumers may obtain from a controller, a list of specific third parties to which the controller has disclosed the consumer's personal data, with the exception of naming natural persons. This obligation would burden small and large businesses by requiring the creation and adoption of internal technology and software functionality to track data flow with a level of granularity that does not exist currently. Additionally, such a requirement risks violating trade secret laws and forcing businesses to violate the terms of individual customer contracts by requiring disclosure of individual customers and propriety information. Conversely, disclosing categories provides consumers with a meaningful way of understanding the wide range of uses for which consumer data can be shared, including financial, cyber, and risk mitigation services, without the overwhelming costs and operational burden to controllers. For these reasons, all states that have enacted comprehensive data privacy language have rejected specific third-party disclosure requirements.

Portability Right

Section 3(d) while we support consumers' ability to transfer their data efficiently, the language as drafted is overly broad and would provide an unfair competitive advantage to other entities if they see: the kinds of data other companies compile on behalf of consumers, the manner for which it's structured, and benefit from the work another company performed to make the data useful. The European Union's General Data Protection Regulation (GDPR) contains narrowed portability language for this reason, which includes portability for data provided by the consumer only.

Children's Privacy

Section 5(b)(c) creates a "constructive knowledge" standard that undercuts the real meaning of "known" under the law. Moreover, the standard does not apply at the federal level. In addition, the language implies that companies must have age gates, but it's expressly stated in the Children's Online Privacy Protection Act (COPPA) that age gates are not mandated. Unfortunately, as written, the bill would require more collection of personal data because age verification for every consumer will be required, which would result in less privacy for consumers.

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We request alignment with Colorado, Connecticut, Virginia, and Utah statutes.

TechNet joins industry partners and strongly encourages Oregon to look to the protections for consumers included in other states' omnibus privacy laws to avoid a patchwork of state laws that are difficult to comply with and confusing for consumers. We would welcome the opportunity to work with you to address issues of privacy protection without unintended consequences. Please consider TechNet's members a resource in this effort. Thank you for your time and we look forward to continuing these discussions with you.

Respectfully submitted,

Ashley Sutton
Executive Director
Washington & the Northwest
TechNet
Asutton@technet.org