



## **Testimony on Senate Bill 1108 (an act concerning consumer privacy)**

Submitted by Scott Shepard, Policy Director

March 25, 2019

Good afternoon. My name is Scott Shepard. I am the Policy & Research Director for the Yankee Institute for Public Policy, Connecticut's free-market think tank. I submit this note in opposition to Senate Bill 1108.

A citizen's right to privacy is one of the fundamental rights of our Republic, protected in, among very many other places, the Fourth Amendment of the United States Constitution. We congratulate the committee for recalling the vitality of this right in the consumer realm, and encourage it to keep the right in mind in other areas, including the much more vital context of citizen rights to express political opinions anonymously.

This proposed bill, though, is a poor way to protect Connecticut citizens' privacy. It appears to be based almost entirely on a similar initiative in California, one that has been roundly castigated since its passage for its overbreadth, incautious and flawed construction, and host of negative unintended consequences.<sup>1</sup> There is nothing wrong with adopting *well-crafted and successful* legislation from sister states, but no excuse for adopting badly drafted and poorly conceived notions.

This bill is certainly the latter. In its current design, it would encourage businesses to keep all the personal consumer information they have in a single, easily accessible place, so that they can fulfill the obligations of the statute. This will of course render that information much more amenable to hacking and theft, including theft by requesting someone else's information. It is so overbroad as to be both impossible to comply with in the modern world and impossible to enforce neutrally and fairly.

---

<sup>1</sup> See, e.g., Jim Halpert & Tracy Shapiro, *Sharpen Your Pencils: California's AG's Office Announces Start of its Important CCPA Pre-Rulemaking and Schedule for Issuing its Important CCPA Rules*, DLA PIPER PUBLICATIONS (Feb. 13, 2019), available at <https://www.dlapiper.com/en/us/insights/publications/2019/02/sharpen-your-pencils/>; Andrew Kingman & Jim Halpert *CCPA Amendments Clarify Exemptions and Fix Some Technical Errors, but Significant Work Remains*, PRIVACY TRACKER (IAPP, Sept. 10, 2018), available at <https://iapp.org/news/a/cacpa-clarify-exemptions-and-fix-some-technical-errors-but-significant-work-remains/>; *CCPA Amended: Enforcement Delayed, Few Substantive Changes Made*, PRIVACY & INFORMATION SECURITY LAW BLOG (Sept 1, 2018) available at <https://www.huntonprivacyblog.com/2018/09/01/ccpa-amended-enforcement-delayed-substantive-changes-made/#>.

Perhaps most important to Connecticut in these grim economic times: it will as proposed create massive compliance costs, even while it will apply to any business that does any business in Connecticut. This will necessarily drive some Connecticut-based businesses another step closer to following so many of their former compeers by decamping to more business-friendly locales, while forcing others out of business. But, vitally, this ill-considered provision will have an additional unintended and negative consequence: it will drive businesses already based outside of Connecticut to exclude Connecticut residents from their services. Everyone has seen or heard commercials that declare quickly, at the end, "services not available in" various specific states. Connecticut, unlike California, lacks the size to be a national and international standard maker. Rather than subject themselves to massive new costs on behalf of Connecticut, businesses will stop serving us. This will result in fewer options for Connecticut's residents, and higher prices and lower quality for what remains.

There are thoughtful ways to protect consumers from misuse of their personal information without exacerbating the risks of theft of that very personal information while limiting customer choice and once again making residency in Connecticut harder and worse. Let's find that method, if necessary in a later session of the General Assembly, if necessary on our own. Let us not adopt deeply flawed and poorly drafted legislation from a jurisdiction not in any case renowned for its thoughtful and careful legislation just so that we can say that we got something done *now*. That's no way to go about governing a state.