Attachment #4

State Privacy and Security Coalition, 6/20/18 letter and related attachment

STATE PRIVACY AND SECURITY COALITION

June 20, 2018

Nicholas A. Mattiello
Speaker, Rhode Island House of Representatives
State House Room 323
Providence, RI 02903

Rep. Evan Shanley
190 Viceroy Road
Warwick, Rhode Island 02886

Dear Mr. Speaker and Representative Shanley,

The State Privacy and Security Coalition, a coalition of 23 leading communications, technology, media, and retail companies and six trade associations, still strongly opposes H. 7111 Sub A, as redrafted on June 19.

We sincerely appreciate your time earlier this week, and also appreciate the good intentions motivating this legislation. However, our members oppose this legislation for the following reasons:

- A number of the concerns we raised in our meeting were not addressed in the re-draft. For example, the definition of "Categories of Personal Information," while slightly edited, still remains far broader than and very different from any definition found anywhere in the nation, and even that definition does not provide certainty about how to comply, because it "includes, but is not limited to," the categories listed. Moreover, these categories include elements that no consumer would believe to be "personal" in nature, including user-generated content, educational information, employment information, property records, and user-generated photographs.

- Additionally, the amended bill remains very unclear as to whether it requires an accounting within 30 days of all disclosures of a state resident's information over the previous 12 months organized by specific categories of data in the bill, as 6-48.1-4 requires identification of "all categories of personal information that the operator collects through the website or online service **about individual customers** who use or visit its commercial website or online service." As we explained in our meeting, this is poor data security practice that adds tens of millions of dollars in compliance costs to every business with an online presence in the state, while adding little value to consumers, particularly when the categories of information are so overbroad.

- The addition of the provision regarding children 13-18 years old would require companies to segregate that information separately from all other information collected, which goes against standard security practices, and is a process discouraged in other forms by the Federal Trade Commission.

We have attached a document detailing our members' other concerns with this bill. With only three days left in this session, we believe that the risks associated with passing such confusing and disruptive legislation far outweigh any minimal benefit that might be gained.

Again, we appreciate the intent behind this legislation, but strongly oppose it.

Respectfully,

Andrew A. Kingman
Counsel, State Privacy and Security Coalition

RI H. 7111A IS UNWORKABLE, AND WOULD CRIPPLE RHODE ISLAND'S INNOVATION ECONOMY

- While drafted with good intentions, H. 7111A is a dramatic departure from every other clear, consistent state privacy law across the nation. This legislation would hurt local app developers, in-state businesses, and any national company with an online presence in Rhode Island.

- The bill would require operators to proactively identify, retrieve, and specially segregate the information of children (ages 13-18, inclusive), which goes against standard security practices, and is a process discouraged in other forms by the Federal Trade Commission.

- Because the definition of "customer" is "a resident of [Rhode Island]," this would force companies to segregate all online traffic they receive from Rhode Island, and treat that traffic in an entirely different manner than users from other states.
    - Consequently, the bill would require companies to change the way they process data collection and disclosure as soon as a single piece of personal information was collected online from a single Rhode Island resident. In other words, the first Rhode Island user of an operator's website will change the way every company that does business in Rhode Island composes its privacy policy nationally.

- The amended bill remains very unclear as to whether it requires an accounting within 30 days of all disclosures of a state resident's information over the previous 12 months organized by specific categories of data in the bill. If it does, the bill would impose tens of millions of dollars of expense on businesses with an online presence in Rhode Island and more than 10 employees.
    - 6-48.1-4 (1): "An operator of a commercial website...shall...identify all categories of personal information that the operator collects through a website...**about individual customers.**"
    - Keeping data in a non-identifiable format – so that consumer data elements are not linked to an identifiable individual – is one of the most effective, widely accepted data practices available. This legislation would require companies to abandon that practice and link all consumer information to a specific individual, **materially undermining consumer privacy and data security.**

- 6-48.1-4(2): the bill requires identification of "all categories of third-party persons or entities with whom the operator MAY disclose that 'personally identifiable information.'" Because categories of data are spelled out in more than a page of detail but a "category of third-party person" is undefined, this is very confusing.

- 6-48.1-4 includes a requirement to put the required disclosures in a customer agreement or incorporated addendum or in another conspicuous location on website or

online service platform; but in 6-48.1-5 it suggests that this information should be made available to customers individually based on a customer-by-customer request for the prior 12 months. So, there appears to be a general disclosure requirement, and then a "by customer" requirement (yet, that requirement is never actually specifically mandated).

- The definition of "Categories of Personal Information" is an outlier not found in a single state law, and is at once both burdensome and open-ended ("includes, but is not limited to") from a compliance perspective, failing to provide guidance as to what notice is required. No other state uses these categories in a privacy notice statute because it imposes millions of dollars in compliance costs with minimal consumer benefit.
    - There is minimal benefit to consumers because these categories that are listed include many categories of information that **are not personally identifiable**, and which consumers do not expect to be confidential or private (user-generated content, educational information, professional information, user-generated photographs, etc.).

- The bill is confusing in many of its provisions and requirements. In particular, it contains two exceptions that would never apply:
    - The first is an exception from a notifiable disclosure for affiliate sharing that does not apply in any case in which the affiliate is a distinct corporate entity (no affiliate would ever qualify).
    - The second is an exception from a notifiable disclosure for disclosures to service providers, because **this prohibits any use of subcontractors** and requires that the business "effectively enforces" contractual prohibitions against the recipient re-using or re-disclosing the data. Effective enforcement of this provision is impossible.
    - Both exceptions are complex and confusing, and the categories of information in the bill are themselves difficult to operationalize.