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The Honorable Mike Lefor
Industry, Business, and Labor Committee
North Dakota State Capitol
600 East Boulevard
Bismarck, ND 58505-0360

Re: CDIA Opposition to HB 1330, concerning data privacy

Dear Chairman Lefor:

I write on behalf of the Consumer Data Industry Association (CDIA) to express our opposition to House Bill HB 1330, an act concerning consumer privacy. Although, this bill strives to create privacy legislation aimed at protecting consumers. As drafted, it has the potential to create significant unintended consequences that could undermine privacy and data security for consumers in North Dakota.

The Consumer Data Industry Association (CDIA) is the voice of the consumer reporting industry, representing consumer reporting agencies including the nationwide credit bureaus, regional and specialized credit bureaus, background check companies, and others. Founded in 1906, CDIA promotes the responsible use of consumer data to help consumers achieve their financial goals, and to help businesses, governments and volunteer organizations avoid fraud and manage risk. Through data and analytics, CDIA members empower economic opportunity, helping ensure fair and safe transactions for consumers, facilitating competition and expanding consumers' access to financial and other products suited to their unique needs.

We believe the solution to privacy concerns are best handled at the federal level rather than a patchwork of privacy regulations by the states. The federal government has regulated data privacy for decades and has taken a thoughtful approach in recognizing the different types of data collected and the different uses of that data at the sectoral level. This is important because not all sectors collect the same type of data or use it in the same manner. Therefore, it is difficult to apply a single regulatory standard that governs the uses of all data without potentially creating harmful, unintended consequences.

Fair Credit Reporting Act

All of our members are regulated under the Fair Credit Reporting Act (FCRA). The FCRA outlines the purposes for which a consumer report may be furnished to a requestor. Under the

FCRA, consumers have the right to access all information in their credit reports, including the sources of the information, and the right to disclosure of their credit scores. A consumer may request one free credit report, from each of the nationwide credit reporting agencies (CRAs). Consumers have the right to dispute the completeness or accuracy of information contained in their files.

Beyond providing information that allows individuals to access credit, insurance, screening for employment, the information contained in consumer credit reporting databases aid in many other ways. Location services is one of the ways our members' databases assist law enforcement and state agencies. For example, when police are trying to locate a fugitive or a witness to a crime, they will often rely on one of our members' databases to find a more accurate address to locate the individual.

Fraud Prevention is another way that CDIA members' data are beneficial to states. Prevention of unemployment fraud, workers' compensation fraud and tax fraud are a few areas where this data can be useful. For example, when an individual applies for unemployment benefits with a state, the state labor department can contract with one of our member companies and have the ability to do a search to see if that individual has W2 information reported elsewhere and is working. This can prevent fraud against the state. The same is true if someone has applied for workers' compensation benefits from the state, the individual's name can be searched by one of our members' databases to see if they are working elsewhere. Tax fraud is another area, someone could have the ability to claim a tax exemption in one state but when compared with our members' records one could find if the individual was living elsewhere and claiming that as a primary residence.

Unintended Consequence of Opt-In Provisions

An example of potential harm that HB 1330 fails to recognize is applying an "opt-in" to fraud prevention databases. Companies that provide essential information to government and law enforcement to assist with fraud prevention, such as prevention of unemployment fraud, workers' compensation fraud and tax fraud would be subject to a consumer's ability to delete their information from those databases by choosing not to "opt-in". The consequence of this would be that our member companies could no longer offer fraud prevention services to state agencies, without first tipping off the individual in question, who was potentially trying to defraud the state. In addition, if a consumer has objected to a service provider processing their personal data, it is much easier for that person to encounter identity fraud. This is because the information used to verify the individual would no longer be available in our members' databases as a resource to confirm one's identity. Thus, making it easier for someone to steal another's identity. These are just a few of the examples of how this bill is problematic.

In 2019-2020 CDIA participated in the North Dakota legislature's interim study on data privacy. After careful consideration the committee rejected the need for a new state-led privacy regulation, preferring to leave the discussion at the federal level. The committee recognized that a patchwork of state privacy laws has the potential to harm small businesses and consumers in North Dakota. CDIA continues to have similar concerns regarding HB 1330 that we outlined during the legislature's interim study on data privacy.

Summary

Our members take very seriously the concerns of privacy and data security and use data fairly, responsibly and thoughtfully. There is a long history of privacy regulations federally at the sectoral level that considers the unique needs of data used in each industry. I would encourage you to distinguish between these unique uses of data, and whether or not new regulations are necessary. Existing federal statutes govern most uses of data and how it is gathered, collected and disseminated. A bill that attempts to create one regulation, that is applied across all sectors, fails to distinguish the unique uses of data, and the existing federal statutes that regulate differing industries.

For these reasons above, we respectfully oppose HB 1330. Thank you for your consideration of our comments. I would be happy to answer any further questions the Committee might have.

Sincerely,



Sarah M. Ohs

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