SHANNON ZIMMERMAN

STATE REPRESENTATIVE • 30th ASSEMBLY DISTRICT

Assembly Bill 466
Senate Committee on Shared Revenue, Elections and Consumer Protection
December 19, 2023

Thank you Chairman Knodl and committee members for hearing testimony on Assembly Bill 466 today. I have dubbed this bill the Wisconsin Data Privacy Act because it will enshrine in Wisconsin statutes rights that will help consumers protect and control their personal data.

In short, the bill will allow any consumer in Wisconsin to ask a data collector what Personally Identifiable Information (PII) they have in their possession. The Department of Homeland Security defines PII as "any information that permits the identity of an individual to be directly or indirectly inferred". Beyond requesting a copy of the PII on file, consumers will be able to uncover how far and wide their information has been shared or sold. Finally, consumers will be able to request the deletion of their PII.

Americans have little faith that legitimate data collectors can collect and store data without that information falling into the wrong hands. A recent Pew Research poll indicated that 79% of respondents "are not too or not at all confident that companies will admit or take responsibility when they misuse or compromise data" and 81% "think the potential risks of data collection by companies outweigh the benefits". Even more astounding was the 81% of respondents who "believe they have very little or no control over the data companies collect about them".

Empowering consumers with the tools to control their personal data should be at the forefront of what we do in the Legislature. The adage, 'if you are not paying for the product, you are the product', has never been so true. Companies offer free products and services and in return, they are able to extract massive amounts of data from consumers. These companies then turn around and market that information to advertisers.

While the use of consumer personal data is ripe for abuse, technology still offers lifelines on many fronts. For example, the power of quantum computing can assist scientists and researchers in uncovering revolutionary findings. Curing cancer is legitimately on the horizon.

Thank you again for your time and attention to this proposal and I hope I can count on your support of this measure as we move forward.

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Rep.Zimmerman@legis.wi.gov

Testimony of

Michael Semmann

On Behalf of the

Wisconsin Grocers Association

Before the

Senate Committee on Shared Revenue, Elections and Consumer Protection

Senate Bill 642 & Assembly Bill 466

December 19, 2023

Chair Knodl and members of the Committee, thank you for the opportunity to testify today. The Wisconsin Grocers is currently in opposition to Senate Bill 642 and Assembly Bill 466. WGA believes the net result of this legislation will have a negative impact on Wisconsin's consumers and retail food industry due to the cost and complexity of compliance. WGA is part of the coalition of business organizations in opposition to this legislation.

The Wisconsin Grocers Association appreciates the changes made by the authors to Assembly Bill 466 and believes the changes move the bill in a direction that would be helpful to small businesses.

While Wisconsin is not on the leading edge of data privacy policy throughout the nation, the state is not lagging. Currently, there is no single, comprehensive federal law regulating how most companies collect, store, or share customer data in the United States. Instead, there are several disparate federal and state laws creating a complex regulatory structure at a macro level. This legislation would simply add to the mix of laws.

The retail food industry wants consumers to be informed and not confused when it comes to their shopping experience. The product of data privacy legislation can be confusing for consumers, especially when there are multiple laws that regulate different aspects of data privacy. This leads consumers to ignore information at best and potentially not receive the information they want or need.

While this specific legislation is very clear about the number of individuals in the two-tiers of regulation, the nature of regulation is to expand. Wisconsin's retail food industry struggles to hear about new regulations, only to be told by large multinational technology companies, don't worry, "we've got an app

for that." The result is higher costs and business owners deciding how to absorb or pass on those costs, all after two years of inflationary pressures.

Again, WGA applauds the spirit of this legislation and is very willing to work with the authors to illustrate current practices and potential impacts. I'll be happy to answer questions. Thank you for your consideration.

The Wisconsin Grocers Association (WGA) is a non-profit trade association established in 1900 to represent independent grocers and grocery chains, warehouses & brokers, vendors, suppliers, and manufacturers before all levels of government. The WGA provides educational and networking opportunities, leadership training, public affairs, and compliance information for its membership.

WGA and its membership have a significant Economic Impact in the state of Wisconsin. The WGA represents nearly 350 independent grocers with multiple locations across the state, more than 200 retail grocery chain stores, warehouses and distributors, convenience stores, food brokers and suppliers. Wisconsin grocers employ over 30,000 people with over $1 billion in payroll and generate more than $12 billion in annual sales in Wisconsin resulting in approximately $800 million in state sales tax revenue. (Data provided by The Food Institute).

NFIB

Customer Data Regulation Legislation Will Impose A Costly & Ambiguous Compliance Regime On Wisconsin Businesses Of *All* Sizes

December 19, 2023

The above group of associations requests the Wisconsin State Senate to oppose Senate Bill 642 and Assembly Bill 466, as amended. **While well-intentioned legislation, these bills will:**

- **Cost nearly $3 billion in compliance, $500+ million for *small businesses*;**
- **Exacerbate the increasing patchwork of regulations across the country, creating more confusion for consumers and businesses alike; and**
- **Limit the ability of businesses to lawfully comply by using ambiguous standards and limiting tools to engage with consumers.**

Staggering Compliance Costs Will Negatively Impact Businesses Small, Medium, and Large

The Information Technology & Innovation Foundation (ITIF) studied the cost of compliance with different state privacy laws and found that they **"could impose out-of-state costs of $98 billion and $112 billion annually" and the cost to *small businesses* could be as high as $23 billion annually.**[1] **In Wisconsin, complying with privacy laws across the country is estimated to cost $2.8 billion, *$600 million of which falls on small businesses*.**[2] Since publication, additional state regulatory regimes have been enacted and decade-high inflation has most certainly raised this cost estimate. Time, effort, and money that could be used to increase wages or hire new employees, offer innovative products, or provide better customer service will be **diverted toward compliance with more government regulation and particularly burden medium- & small-businesses.**

A State-By-State Patchwork Is Unworkable and Confusing For Consumers and Businesses

Twelve states have data regulatory frameworks.[3] An additional six states (including Wisconsin) have legislation pending.[4] Even when other states' regulatory regimes are used as a model, "each proposal remains unique," with its own nuances and exceptions having a compounding impact on compliance efforts.[5] Wisconsin should not exacerbate the web of state-by-state compliance by enacting this bill.

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[1] Daniel Castro, Luke Dascoli, and Gilligan Diebold, *The Looming Cost of a Patchwork of State Privacy Laws*, Information Technology & Innovation Foundation (January 24, 2022), available at: https://itif.org/publications/2022/01/24/looming-cost-patchwork-state-privacy-laws.

[2] *Id.*

[3] *2023 State Privacy Law Tracker*, Husch Blackwell LLP, available at: https://www.huschblackwell.com/2023-state-privacy-law-tracker, last accessed December 14, 2023.

[4] *Id.*

[5] https://www.cato.org/blog/patchwork-strikes-back-state-data-privacy-laws-after-2022-2023-legislative-session-0; https://news.bloomberglaw.com/us-law-week/consumer-data-privacy-laws-pose-new-mandates-in-spate-of-state.

Customer Data Regulation Legislation Will Impose A Costly & Ambiguous Compliance Regime On Wisconsin Businesses Of All Sizes

The bills exempt certain entities and include exceptions from the requirements of the bill, including some covered by ***federal privacy regulatory frameworks***. **The inclusion of these exceptions and exemptions shows that a unified, comprehensive, Federal approach to consumer data privacy is the most prudent action** to ensure that all businesses are on equal, competitive footing and not disadvantaged by mounting patchwork compliance costs.

Many companies and consumer-interfaces already require privacy policies as the private sector responds to market-driven consumer demands and preferences. Both major application marketplace platforms ***require*** a privacy policy.[6] The appearance of "Privacy Policy" or "Terms & Conditions" are nearly universal on every website, and increasingly, "Cookie Notice" pop-up windows and banners that allow consumers to review or choose their privacy settings. **Unfortunately, as amended, SB 642 and AB 466 would even prohibit the use of common, user-friendly privacy-choice engagement methods.**

The Bills, As Amended, Impose Ambiguous and Unreasonable Compliance Requirements

The bills, as amended, contains language that, on top of the underlying bill, exacerbates the compliance burden and unnecessarily penalizes businesses without an opportunity to come into compliance.

The amendments overly-narrow "consent" by **prohibiting common, consumer-friendly, straightforward options found nearly universally on websites today** and when providing a consumer product or service. These amendments will make doing business online excessively difficult by **chasing an unattainable standard while simultaneously burdening customers** with more disruptive means to provide information and obtain consent, **deterring a customer from engaging with or purchasing from a business**.

Similarly, the amendment **imposes an unattainable, undefined recurring requirement to conduct subjective impact assessments**. Businesses are subject to penalty if the assessment is not conducted with the frequency according to the subjective whim of the enforcer, each assessment adding to compliance costs and wasting employee time complying with government regulations and not serving customers.

The amendments also **sunsets the right to correct provision, giving businesses a reasonable opportunity to correct inadvertent non-compliance before an enforcement action. As initially drafted, repeated violations after correction are still subject to enforcement and fine**; it is unnecessary to potentially penalize businesses, including small- and medium-sized businesses, with per-violation monetary penalties without the opportunity to correct what could be non-malicious accidental non-compliance with a complicated and ambiguous regulatory regime.

* * *

Technological innovation has revolutionized how we buy groceries, bank and pay bills, discover and view entertainment, find a ride across town or to and from the airport, order food and other goods, and much more, by providing unprecedented convenience and opportunities. **While well intentioned, state-by-state consumer privacy regulations will be cost-prohibitive for businesses and confusing for both businesses and consumers. As such, please oppose SB 642 and AB 466.**

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[6] https://9to5mac.com/2018/08/31/new-app-store-rules-will-require-all-apps-to-have-a-privacy-policy/;
https://support.google.com/googleplay/android-developer/answer/9859455?hl=en;
https://play.google.com/about/developer-distribution-agreement.html;
https://support.google.com/googleplay/android-developer/answer/10144311?hl=en#1&2&3&4&5&6&7&87&9

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December 19, 2023

Senator Daniel Knodl, Chair
Room 108 South
State Capitol
PO Box 7882
Madison, WI 53707

Senator Dan Feyen, Vice-Chair
Room 306 South
State Capitol
PO Box 7882
Madison, WI 53707

RE: Assembly Bill 466 -- An Act to create 134.985 of the statutes; Relating to consumer data protection and providing a penalty

Chair Knodl, Vice-Chair Feyen, and Members of the Committee,

We appreciate your willingness to support the overall effort to provide confidence to your constituents that their data privacy is secured. Assembly Bill 466 would provide the residents of Wisconsin with transparency and control over their personal data and provide new privacy protections and support this legislation with one additional amendment. AdvaMed appreciates the opportunity to provide comments regarding AB 466 before the committee.

AdvaMed is the largest medical technology association, representing the innovators and manufacturers transforming health care through earlier disease detection, less invasive procedures, and more effective treatments. Our more than 450 members range from small, emerging companies to large multinationals and include traditional device, diagnostic, and digital health technology companies.

We appreciate the lead authors' engagement on this legislation and are grateful for her consideration to this point. Unlike other industries, health care is already subject to extensive regulation at the federal level. Our work on this bill – and similar legislation around the country – is focused on avoiding conflict between state and federal laws and ensuring both the continued delivery of high-quality patient care and ensuring essential health research is not disrupted.

We support this legislation and its goal to further clarify how healthcare now, and in the future, will be safeguarded for patients and their health care. Though this legislation does contain nearly all the language advancing these objectives, it is

missing one key provision: Information used, disclosed, and maintained as Limited Data Set under HIPAA.

Limited Data Set

Limited data sets may be used for research, public health activities, and health care operations purposes. The recipient need not be a covered entity or business associate but must nonetheless enter into a data use agreement requiring them to protect the information. This exemption enables the sharing of protected health information for crucial purposes without compromising patient privacy.

We request adding a bullet to Section 8(c)3.:

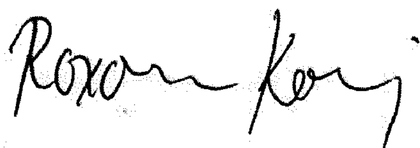
"Information included in a limited data set as described at 45 C.F.R. 164.514(e), to the extent that the information is used, disclosed and maintained in the manner specified at 45 C.F.R. 164.514(e)."

Conclusion

To date, fourteen states have passed their data privacy reform laws that include the healthcare amendments currently included in AB 466 as well as the clause on limited data sets. Most recently, New Hampshire has nearly passed their legislation inclusive of all key healthcare exemptions including the requested amendment. We encourage the committee to follow suit and ensure that there continues to be alignment across the country. Our State MedTech Alliance partner, BioForward also supports this amendment.

Thank you Chair Knodl and Vice-Chair Feyen, for your consideration and we look forward to working with you and the committee on these amendments.

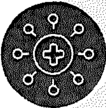
Sincerely,



Roxolana Kozyckyj
Senior Director, State Government and Regional Affairs
AdvaMed

AdvaMed
Advanced Medical Technology Association

Health Data Privacy Priorities



Safeguard Patient Data

AdvaMed members are committed to ensuring personal health data is protected and safeguarded. AdvaMed exemptions do not expand allowable use of data but instead ensure companies can continue to access appropriate health information while complying with all federal laws.

IMPACT: *AdvaMed model exemptions ensure a streamlined process for patients and providers and provide consistency across the country.*

Continue Fostering Patient Centered Innovation

Patients are at the center of everything our members do. Our exemptions allow cutting-edge medical research that is vital for improving patient access, outcomes, and quality of life to continue uninterrupted.

IMPACT: *Existing federal privacy requirements govern how a research study and participants interact with their data. Without an exemption for this agreement in state legislation, important clinical studies could be irreparably compromised or invalidated.*

Keep Quality of Care High, Costs Low

Health care should always put patients and their safety first. Our exemptions ensure physicians and patients have access to critical life or death information in a timely manner and ensure providers are not bogged down with duplicative paperwork.

IMPACT: *An implantable device may be experiencing complications that require the manufacturer to contact the patient or provider to send important device recall information. Without an exemption, this critical information could not be shared.*

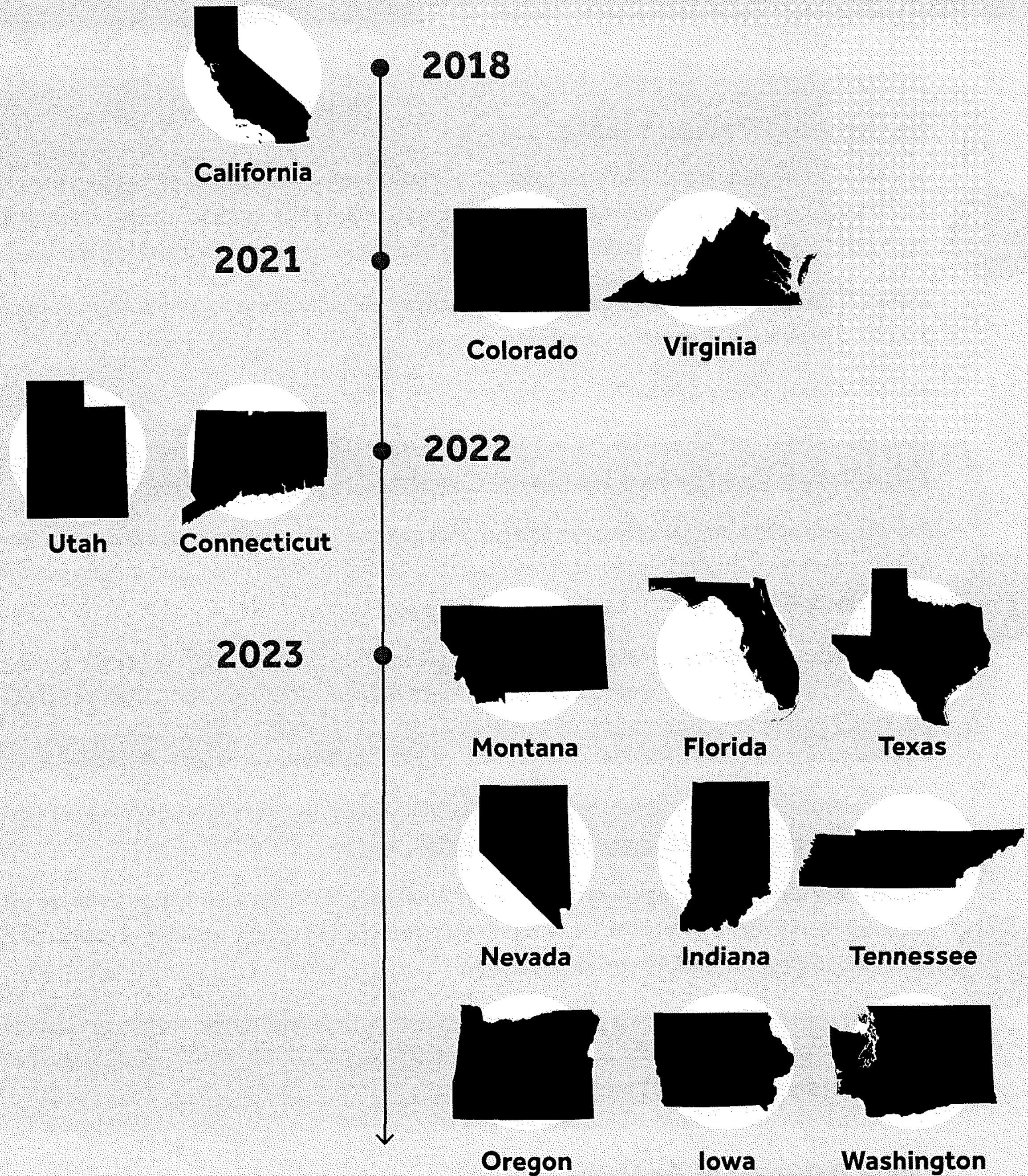
Data Privacy in Action

A patient experiencing a heart attack may interact with a dozen different technologies to properly diagnose and treat the condition — e.g., diagnostics in the ambulance, vitals, electronic medical records, electrocardiogram, echocardiogram, pulse oximetry, fluoroscopy, anesthesia machine, implanted device, and many more.

Situations like these are already stressful enough for patients and families; repeating the consent process for every medical encounter creates additional burdens without any added benefit. For this reason, HIPAA and other federal regulations rely on notice rather than consent for certain uses and disclosures of health information.

AdvaMed
Advanced Medical Technology Association

States with Enacted Data Privacy Laws



*Note: All enacted legislation includes AdvaMed model exemptions

Bottom Line

HIPAA has been on the books for almost 30 years, and while it is critical for protecting some patient data, it doesn't encompass the full breadth of recent advancements, innovation, and research within the medical technology industry. To keep pace with an ever-emerging field and the rapidly developing technologies that save lives and improve patient outcomes, critical exemptions for federally regulated data are necessary in state data privacy laws.

STATE PRIVACY & SECURITY COALITION

December 19, 2023

Chair Daniel Knodl
Vice Chair Dan Feyen
Committee on Shared Revenue,
Elections and Consumer Protection
Wisconsin State Capitol
2 East Main Street
Madison, WI 53703

Re: <u>SB 642 (Comprehensive Privacy)</u>

Dear Chair Knodl, Vice Chair Feyen, and Members of the Committee,

The State Privacy & Security Coalition, a coalition of over 30 companies and six trade associations in the telecom, technology, retail, payment card, and automobile sectors, writes with suggested amendments to Senate Bill 642. We appreciate that Wisconsin is taking a comprehensive approach to privacy legislation and respectfully request consideration of important amendments that more effectively balance consumer protections in Wisconsin with implementation and compliance by the business community.

Broadly speaking, we believe that the best approach for state privacy legislation is that which works within the bounds of the Virginia/Connecticut framework, which has been adopted by eleven states on a bipartisan basis, and now covers nearly 30% of the US population. Any further changes should remain within this framework, both because we believe it provides the best approach and also because it is interoperable with the numerous other states that have adopted the framework. We would also encourage an effective date of July 1, 2025, in order to give companies additional time to comply.

We do have some suggestions for how to make this bill clearer, which will also have the effect of aligning it more closely with the Virginia/Connecticut framework and other states implementing similar laws:

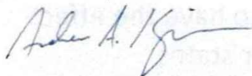
- The definition of "identifiable or identifiable individual" should be amended to remove "indirectly" for clarity and interoperability. Additionally, the amendment language submitted on December 12th would expand the definition of "identifiable or identifiable individual" by inserting the phrase "in particular by reference to an identifier such as a name, an identification number, specific geolocation data, or an online identifier." We would recommend striking this phrase from the definition because it is confusing. The definition of "personal data" sets forth the appropriate criteria – when data is "linked or reasonably linkable" to an identified or identifiable person. If the elements listed in the amended language fit that criteria, then they are appropriately personal data. If they do not, they should not be considered personal data. Adding these elements into a different definition is confusing and not necessary.

- The data protection assessment language should be modified to remove the word "regularly" from the provision. Data protection assessments (DPAs) are time-intensive endeavors that require businesses to expend a significant amount of resources across all business units. Accordingly, DPAs should not be repeated *unless* a processing requirement changes that triggers a provision within the DPA, which preserves both consumer privacy and operational workability.
- This bill includes redundant children's data provisions in §5(a)(6). Children's data is included in the definition of "sensitive data." Businesses that process sensitive data are already required to conduct data protection assessments. We would recommend removing §5(a)(6) for clarity's sake.
- The civil forfeiture provision of "not less than $100 and not more than $10,000 per violation," if adopted, would be the highest fee per violation among the states that have adopted comprehensive privacy laws. Any business, regardless of size, that relies on a consumer base would be at risk of financial ruin for any technical violation of the law – no matter how *di minimis*. We would recommend removing the civil forfeiture provision to eliminate the potential of unintended consequences on Wisconsin businesses.
- We respectfully request that the rulemaking process be removed. In California, we have seen that rulemaking can often turn into a lengthy process that frustrates compliance efforts.

We would welcome discussions with the Chair and other stakeholders on this bill as it moves forward, as it represents a more effective, more sustainable approach for both Wisconsin consumers and Wisconsin businesses alike.

Respectfully submitted,

Andrew A. Kingman
Counsel, State Privacy & Security Coalition



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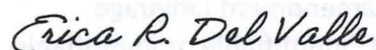

Counsel, State Privacy & Security Coalition