



January 23, 2023

The Honorable Drew Hansen, Chair  
House Civil Rights & Judicial Committee  
Washington State Capitol  
416 Sid Snyder Avenue SW  
Olympia, WA 98504

**RE: Support if amended: HB 1155 (Slatter) (Prefiled 1/5/23)**

Dear Representative Hansen:

Chamber of Progress, a tech industry coalition promoting technology's progressive future, writes to support, if amended, HB 1155 (Slatter), which would provide heightened protections for Washingtonians' health data. While Chamber of Progress supports the intent of HB 1155 as it protects consumers, several provisions are unclear and could create unintended consequences.

Chamber of Progress supports public policies at the federal and state level that seek to build a fairer, more inclusive country in which all Americans benefit from technological leaps. One of Chamber of Progress's top priorities is protecting online privacy. We support robust protections for consumers such as reasonable data security, data minimization, and purpose limitation.

In the wake of the *Dobbs v. Jackson* decision, it is crucial that Washingtonians be able to access health services and information without fear of surveillance.

We commend Rep. Slatter for advancing this legislation to protect people from harm by safeguarding health data. This legislation can further prevent bad actors from exploiting private health data and causing consumers' harm.

However, we believe it is necessary to amend the bill's language to improve clarity for both regulated entities and consumers; align legislation with other state privacy regulations; and reduce some unnecessary or counterproductive administrative burdens on entities.

We respectfully propose the following amendments to the bill:

### **Shield consumers from misuse of geolocation data**

Geolocation technology establishes positions that can determine a meaningful location. Location data may also be expressed as a distance or range from a known landmark.

The bill refers to a “virtual boundary.” The boundary is real and requires an actual distance to be specified, such as 500, 1000 or 1500 feet from a health care landmark. Without reasonably defining the scope of such a boundary, a “virtual” geofence around a city or state could arguably be implicated by this definition, as written. Generally, comprehensive state privacy laws have used a specific radius. We propose an amendment that would specify the precise distance around a specific location rather than a “virtual boundary.”

### **Align deletion request timelines for compliance with state privacy laws**

The timeline for deletion requests in the bill is shorter than those under existing comprehensive state privacy laws, which allow 45 days to act on deletion requests, and does not allow for an extension if needed. Additionally, the deletion right does not include exceptions that might conflict with other obligations or consumer expectations.

For example, consumers may expect data not to be deleted if it is needed to provide a product or service they specifically requested. Additionally, the deletion request could conflict with requirements to retain data for legal compliance (e.g., due to a preservation order). We propose an amendment that aligns language with state comprehensive privacy laws.

### **Solve customer problems with a cure period**

This bill would expand protections of health data by empowering consumers with the right to have their health data deleted. To support the timely deletion of data, and safeguard consumer’s health data, we propose an amendment to provide a regulated entity an opportunity to fix errors or “cure” an issue where a company has implemented strong processes to detect and mitigate harms.

This would incentivize regulated entities to address any harms before legal action can be taken. This amendment can facilitate a more timely process for data to be deleted and eliminate lengthy court battles for consumers seeking to exercise their rights. Further, the lack of a cure period or pre-suit notice penalizes good actors that may have made an unknowing or technical violation.

### **Clarify discrimination terminology**

The provision in Section 5 (4) regarding discrimination is not limited to unlawful discrimination (e.g., based on race or sex), as written, and thus may have unintended consequences. Honoring a deletion request, for example, may impact the quality of a product or service offered, but this may still be treated as discrimination. Comprehensive state privacy laws typically include exceptions to address such situations.

We propose an amendment to the language to specify that nothing in this subsection shall be construed 1) to require a regulated entity to provide a product or service that requires the consumer's health data that the regulated entity does not collect or maintain, or 2) to prohibit a regulated entity from offering a different price, level, quality, or selection of goods or services to a consumer, including offering goods or services for no fee, if the offer is related to a consumer's participation in a bona fide loyalty, rewards, premium features, discount, or club card program.

### **Clarify definitions**

We believe it is necessary to amend the language to provide clarity for both regulated entities and consumers. Specific redline amendments provided in the appendix section starting on page 5.

#### **1. "Consumer health data"**

This definition of health data should specifically refer to physical or health data, condition or diagnosis generated by the consumer so that it is not overly broad to include socio-economic data and not too narrow to not include consumer reported menstruation data. We propose amending the language to include any information a consumer offers regarding health history (including menstrual cycles), lifestyle choices, or treatment history.

#### **2. "Share" and "sharing"**

The exception to the definition for third parties with whom a consumer has a direct relationship is a term that is undefined and may be overly narrow because it requires regulated entities to maintain control and ownership of the data.

#### **3. "Biometric data"**

The definition of biometric data used in the bill does not fully align with

other state privacy proposals. For example, the inclusion of keystroke patterns could implicate the use of the data on entirely non-health-related sites such as those for home remodeling ideas or online video game blogs.

**4. “Genetic data”**

The definition appears to mirror the one used in recent genetic privacy laws in UT, KY, and WY. However, the definition may be overly broad given the breadth of any data that “concerns” genetic characteristics is a term that is undefined.

**5. “Consent”**

Changing the requirement to “signify” consent rather than “openly communicate” consent could make implementation more feasible and align language in this bill with other states’ privacy protection acts or proposals

**6. “Third party affiliates”**

The requirement to list individual third parties and affiliates with whom consumer health data is shared and include contact information will likely be unreasonable and infeasible as businesses establish and discontinue relationships with third parties. This additionally creates a risk of unintentionally misrepresenting an entity’s sharing practices. Generally, comprehensive state privacy laws require businesses to only list categories of third parties to whom they disclose personal information. A similar requirement is included when obtaining user consent. Further, the requirement to list the specific data that is shared in a privacy policy raises granularity issues.

We are committed to working on this issue to advance our shared goals and support legislation that increases health data privacy protections and have provided specific language to address our concerns.

Respectfully,



**Tepring Piquado, PhD**

Senior Director of Government Relations, Western US  
Chamber of Progress

## **Definition Redlines**

We believe it is necessary to amend the language to provide clarity for both regulated entities and consumers. Specific redline amendments provided:

### **1. “Consumer health data”**

This definition of health data should specifically refer to physical or health data, condition or diagnosis generated by the consumer so that it is not overly broad to include socio-economic data and not too narrow to not include consumer reported menstruation data. We propose amending the language so it includes any information a patient offers regarding health history (including things like menstrual cycles), lifestyle choices, treatment history.

We recommend amending the definition of “share” and “sharing” in Section 3 (7)(a). Specifically,

"Consumer health data" means personal information **that reveals a consumer's relating to the** past, present, or future **consumer-generated physical or mental health data, condition or diagnosis of a consumer** including, but not limited to, any personal information relating to: [...]

### **2. “Share” and “sharing”**

The exception to the definition for third parties with whom a consumer has a direct relationship is a term that is undefined and may be overly narrow because it requires regulated entities to maintain control and ownership of the data.

We recommend amending the definition of “share” and “sharing” in Sec. 3 (24)(a) and the related provisions throughout the bill to reduce confusion for both consumers and regulated entities. Specifically,

"Share" or "sharing" means to release, disclose, disseminate, divulge, make available, provide access to, license, or otherwise communicate orally, in writing, or by electronic or other means, consumer health data by a regulated entity to a third party **or affiliate when the disclosure is for: purposes**

**~~(b) The term "share" or "sharing" does not include:~~**

**~~(i) The disclosure of consumer health data by a regulated entity to a service~~**

~~provider when such sharing is~~ inconsistent with the purpose for which the consumer health data was collected and disclosed to the consumer.

(b) The term "share" or "sharing" does not include:

(ii) The disclosure of consumer health data to a third party ~~as directed by a consumer or with whom the consumer has a direct relationship~~ when: (A) The disclosure is for purposes of providing a product or service requested by the consumer; (B) the regulated entity maintains control and ownership of the data; and (C) the third party uses the consumer health data only at direction from the regulated entity and consistent with the purpose for which it was collected and disclosed to the consumer; or

### 3. "Biometric data"

The definition of biometric data used in the bill does not fully align with other state privacy proposals. For example, the inclusion of keystroke patterns would implicate the use of the data on entirely non-health-related sites such as those for vacation rentals or online blogs. Additionally, the current definition includes such data even when it is not used to identify an individual.

We recommend amending the definition of "biometric data" in Sec. 3 (3). Specifically,

"Biometric data" means data generated from the ~~automatic~~ measurement or technological processing of an individual's ~~physiological, biological, or behavioral~~ characteristics such as a fingerprint, voiceprint, eye retinas, irises, or other unique biological patterns or characteristics that ~~is~~ ~~can be~~ used ~~individually or in combination with other data~~ to identify a specific consumer. Biometric data includes, but is not limited to:

~~(a) Imagery of the iris, retina, fingerprint, face, hand, palm, vein patterns, and voice recordings, from which an identifier template can be extracted; or~~

~~(b) Keystroke patterns or rhythms, gait patterns or rhythms, and sleep, health, or exercise data that contain identifying information.~~

"Biometric data" does not include a physical or digital photograph, a video or audio recording or data generated therefrom.

#### 4. **Clarify the definition of “genetic data”**

The definition appears to mirror the one used in recent genetic privacy laws in UT, KY, and WY. However, the definition may be overly broad given the breadth of any data that “concerns” genetic characteristics is a term that is undefined.

We recommend amending the definition of “genetic data” in Sec. 3 (12) to reduce confusion for consumers and regulated entities. Specifically,

"Genetic data" means ~~any data, regardless of its format,~~ that ~~reveals concerns~~ a consumer's genetic characteristics.

#### 5. **“Consent”**

Changing the requirement to “signify” consent rather than “openly communicate” consent could make implementation more feasible and align language in this bill with other states’ privacy protection acts or proposals.

We recommend amending the definition of “consent” in Sec. 3 (5)(a). Specifically,

"Consent" means a clear affirmative act by a consumer ~~signifying that openly communicates~~ a consumer's freely given, informed, ~~opt-in, voluntary,~~ specific, and unambiguous ~~agreement to process Consumer Health Data relating to the consumer. Consent may include a written statement, including a statement written by electronic means, or any other unambiguous affirmative act~~ ~~consent, which may include written consent provided by electronic means.~~

#### 6. **“Third party affiliates”**

The requirement to list individual third parties and affiliates with whom consumer health data is shared and include contact information will likely be unreasonable and infeasible as businesses establish and discontinue relationships with third parties. This additionally creates a risk of unintentionally misrepresenting an entity’s sharing practices. Generally, comprehensive state privacy laws require businesses to only list categories of third parties to whom they disclose personal information. A similar requirement is included when obtaining user consent.

Further, the requirement to list the specific data that is shared in a privacy

policy raises granularity issues.

We recommend amending the definition of “consent” in Sec. 4 (1).  
Specifically,

A regulated entity shall maintain a consumer health data privacy policy that clearly and conspicuously discloses:

[...]

(c) The ~~categories of specific~~ consumer health data that ~~are is~~ shared;

(d) ~~The categories of A list of~~ third parties ~~and affiliates~~ with whom the regulated entity shares the consumer health data, ~~including an active email address or other online mechanism that the consumer may use to contact these third parties and affiliates;~~