

New Hampshire House Commerce and
Consumer Affairs Committee
107 North Main Street
Concord, New Hampshire 03301

New Hampshire Digital Choice Act: Unintendedly Undermining Consumer Data Privacy

Chair Hunt, Vice Chair Potucek, Clerk Post, and members of the Committee, thank you for the opportunity to submit written testimony regarding House Bill 1589 and the unintended consequences of data interoperability mandates in data governance legislation.

My name is Logan Kolas. I am the Director of Technology Policy at the American Consumer Institute, an independent research and educational institution dedicated to promoting consumer welfare by improving public understanding of how policies and regulations affect consumers in a free market. I have spent many years examining, evaluating, and explaining the many anticipated and unintended consequences of state-level data privacy rules and regulations.

Despite a bipartisan appetite for data privacy protection, federal policymakers have been unable to pass a federal data privacy standard, leaving states to fill the void.¹ Unfortunately, state-level data privacy regimes vary by type and by rule, with California designing policy frameworks that emulate the failed Euro-style approach to data regulation, while states like Utah and Tennessee have taken more measured steps to balance the privacy and innovation tradeoff these regulations present.

Utah should be commended for its light-touch approach to data privacy, but its legislature erred last session when it passed privacy-invasive "Data Sharing Amendments," which created ham-fisted data "interoperability" rules.² It is this flawed policy framework that New Hampshire risks importing via House Bill 1589.

¹ Christiano Lima-Strong, "Congress is Reviving the Data Privacy Debate. Don't Hold Your Breath for a Law," Washington Post, September 24, 2021, <https://www.washingtonpost.com/politics/2021/09/24/congress-is-reviving-data-privacy-debate-dont-hold-your-breath-law/>.

² H.B. 418, "Data Sharing Amendments," Enrolled, Last visited January 13, 2025, <https://le.utah.gov/~2025/bills/static/HB0418.html>.

Interoperability has different meanings in different contexts, but the Institute of Electrical and Electronics Engineers (IEEE)—the world’s largest professional organization for engineers, scientists, and technologists—describes it broadly as “the ability of two or more systems or components to exchange information and to use the information that has been exchanged.”³ Data and systems interoperability arise organically in market economies, often when different companies and industries voluntarily adopt a common set of standards. Amazon, Apple, Google, and Meta, for example, have led industry initiatives and formalized corporate best-practices through projects like the “Data Transfer Initiative.”⁴

While certain market-oriented collaborations can yield large consumer benefits, not all interoperability rules are created equal. Unlike how many state data privacy laws mandate requirements on data portability—a consumer’s ability to download personal data and take it with them—House Bill 1589 follows Utah’s lead by defining interoperability and portability to include a consumer’s right to access the personal data of others.⁵ That is because HB 1589 broadly defines “social graph data” to include “connections and interactions” within the social media service. The bill wisely exempts messages and interactions that are explicitly made “private,” but no such accommodations are made for data downloads of other user comments, likes, and other responses. Even the European Union, widely known for its strict and overwhelmingly precautionary approach to consumer data privacy regulation, exempts the ability for consumers to download the data of others.⁶ By going even beyond the rules of Europe, HB 1589 implicates the privacy of nonconsenting users and is likely to cause significant consumer harm. New Hampshire should avoid these privacy-invasive interoperability requirements.

Thank you for your time and attention. I am thankful for the opportunity to submit written testimony to the committee.

Respectfully submitted,

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³ Zach Graves, “The Promise and Perils of Interoperability,” Foundation for American Innovation, March 4, 2021, <https://www.thefai.org/posts/the-promise-and-perils-of-interoperability>; and 610-1990 – IEEE Standard Computer Dictionary: A Compilation of IEEE Standard Computer Glossaries, Last visited January 13, 2025, <https://ieeexplore.ieee.org/document/182763>.

⁴ Josh Withrow, “Ham-Handed Interoperability Mandates for Big Tech Will Harm Consumers,” National Taxpayers Union Foundation, February 10, 2022, <https://www.ntu.org/foundation/detail/ham-handed-interoperability-mandates-for-big-tech-will-harm-consumers>; and Data Transfer Initiative, Last visited January 13, 2026, <https://dtinit.org/about>.

⁵ Will Rinehart, “Why Utah’s ‘Simple’ Social Media Reform Could Set a Dangerous Privacy Precedent,” Deseret News, February 24, 2025, <https://www.aei.org/op-eds/why-utahs-simple-social-media-reform-could-set-a-dangerous-privacy-precedent/>.

⁶ Ben Thompson, “Portability and Interoperability,” Stratechery, December 3, 2019, <https://stratechery.com/2019/portability-and-interoperability/>.

