



Michigan Senate Committee on Housing and Human Services

Testimony of Cody Venzke, Senior Policy Counsel, ACLU

On SB 1082, the Reproductive Health Data Privacy Act

Chair Irwin and members of the Committee on Housing and Human Services,

Thank you for holding this hearing and inviting me to offer testimony on SB 1082, the Reproductive Health Privacy Act. I am Cody Venzke, a Senior Policy Counsel with the American Civil Liberties Union. I am testifying on behalf of the ACLU and the ACLU of Michigan. For more than 100 years, the ACLU and its 54 state affiliates have been among the nation's premier defenders of civil rights and civil liberties, including longstanding commitments to reproductive autonomy and privacy rights.

SB 1082 is essential to protect access to reproductive rights in Michigan. Following the Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, states hostile to reproductive healthcare have increased legal attacks on healthcare providers and others for providing or facilitating reproductive healthcare.¹ For example, 13 states have enacted total bans on abortion and eight have pre-viability bans.² Others have likewise attempted to curtail other professional and constitutional rights, including the ability for medical professionals to make out-of-state referrals, for individuals to travel out of state, or for educators to teach about reproductive healthcare.³

Those prosecutions rely in significant part on the wide swath of data that we generate every day, which may reveal our reproductive healthcare decisions. Most chillingly, governmental agencies have ready access to mobile location data online, allowing easy monitoring of visits to abortion clinics and other health services. For example, reporting by 404 Media detailed how one data set shows a phone beginning a day in mid-June at a residence in Alabama, crossing state lines, and visiting an abortion clinic for approximately two hours.⁴ Similarly, data collected by

¹ See Letter from Hon. Raúl Labrador, Idaho Attorney General, to Hon Brent Crane (Mar. 27, 2023), [here](#); Anna Claire Vollers, *Helping a Minor Travel for an Abortion? Some States Have Made It a Crime*, Idaho Capital Sun (Aug. 26, 2024), [here](#).

² Allison McCann & Amy Schoenfeld Walker, *Tracking Abortion Bans Across the Country*, N.Y. Times (Sept. 30, 2024), [here](#); Guttmacher, *State Policy Trends 2023* (Dec. 19, 2023), [here](#) (counting 14 total bans and seven pre-viability bans).

³ ACLU, *Planned Parenthood Great Northwest, Hawai'i, Indiana, Kentucky v. Labrador* (Apr. 6, 2023), [here](#); The Lawyering Project, *Matsumoto v. Labrador (Idaho)* (Feb. 7, 2024), [here](#); ACLU, *Idaho Federation of Teachers v. Labrador* (Aug. 7, 2023), [here](#).

⁴ Joseph Cox, *Inside the U.S. Government-Bought Tool That Can Track Phones at Abortion Clinics*, 404 Media (Oct. 23, 2024), [here](#).



period trackers, fitness apps, or even brick-and-mortar retailers may reveal or provide a means of predicting someone's pregnancy status.⁵

SB 1082 takes important, targeted steps to address the threat of data to reproductive rights in Michigan. At a high level, it requires the entities that collect reproductive health information from individuals and that provide reproductive health care, placement, or services to adhere to common sense protections. Those protections include: obtaining clear, affirmative consent; limiting data collection and usage to what is needed to provide the individual's requested product or service; and limiting the tracking of individuals' location at in-person reproductive health services.

I want to highlight three provisions in SB 1082 that provide robust protections:

- First, it enshrines data minimization as its core protection. Data minimization means limiting the collection and use of our data to what is needed to provide the services we request. If you permit a mapping application access to your geolocation to provide directions, it will be prohibited from using that data to secretly identify what health clinics you have visited. If you provide bodily statistics to a fitness tracker, it will not sell those to a data broker. Under this bill, Michiganders can be confident that the data they provide for important services is used only for those services.
- Second, the consent the bill requires must be clear and affirmative. Consent must be specific and unambiguous. Consent under this bill cannot be buried in broad terms of use, obtained through closing a banner pop-up, or acquired through deceptive design. SB 1082 will end the legal fiction that you have meaningfully consented to terms buried in lengthy privacy policies by simply using a product. Separate consent must be obtained for the sale of reproductive health data.
- Third, the bill limits one of the greatest threats posed by the sea of data we are swimming in: abuse of our geolocation. The Federal Trade Commission recently brought enforcement actions against two data brokers that collected location data through code quietly slipped into other companies' apps. Those brokers then marked that location data as identifying individuals who visited internal medicine facilities, pharmacies, and infusion centers.⁶ SB 1082

⁵ Jiaxun Cao et al., *"I Deleted It After the Overturn of Roe v. Wade": Understanding Women's Privacy Concerns Toward Period-Tracking Apps in the Post Roe v. Wade Era*, Proceedings of the CHI Conference on Human Factors in Computing Systems (2024), [here](#); Cynthia Conti-Cook, *Surveilling the Digital Abortion Diary*, 50 Univ. Baltimore L. Rev. 1 (2020), [here](#).

⁶ *FTC Cracks Down on Mass Data Collectors: A Closer Look at Avast, X-Mode, and InMarket*, Federal Trade Commission (Mar. 4, 2024), [here](#); *FTC Order Prohibits Data Broker X-Mode Social and Outlogic from Selling Sensitive Location Data*, Federal Trade Commission (Jan. 9, 2024), [here](#).



would prohibit this sort of targeting with respect to reproductive health data and reproductive health services.

I want to close by underscoring the bill’s targeted scope, with particular emphasis on three provisions:

- First, the key definition of “reproductive health data” is targeted to the harms we are seeing from abuses of our health data. “Reproductive health data” does *not* extend to data that describes, could describe, or merely relates to reproductive health status— but instead, it must *identify* that status, paralleling verbiage that is used in HIPAA and well familiar to entities in the health care space.
- Second, the bill would not reach retailers’ tracking of most of our ordinary purchases. As noted above, the bill covers only the information that “identifies” our reproductive health status. Our purchases of ordinary, everyday toiletries such as deodorant and toilet paper do not “identify” in any way our reproductive health status.⁷ Further, profiles of our purchases and shopping activities created by retailers and others would be covered *only if* the covered entity uses the profile to derive or extrapolate our reproductive health status from those other activities. Thus, purchases of lotions and supplements would not be covered until a retailer uses the information to infer your reproductive health status.⁸
- And third, the bill accommodates other important uses of health information. It includes exceptions for protected health information already covered by the federal Health Insurance Portability and Accountability Act. Crucially, this exception applies only to the *data* already covered by HIPAA and does not exempt the entire entity. This is crucial. Many conglomerates have multiple lines of business, only a small number of which may be covered by HIPAA. For example, a well-known and massive online retailer recently launched a pharmacy service; exempting the entire entity based on that one line of business would doubtlessly eviscerate protections for hoards of data collected by the retailer’s *other* lines of business.

⁷ Office of the Attorney General, *Protecting Washingtonians’ Personal Health Data and Privacy*, Washington State, [here](#) (last visited Nov. 11, 2024). SB 1082 uses language paralleling Washington’s “My Health, My Data” Act.

⁸ Charles Duhigg, *How Companies Learn Your Secrets*, N.Y. Times (Feb. 16, 2012), [here](#); cf. Colin Fraser, *Target Didn’t Figure Out a Teenager Was Pregnant Before Her Father Did, and that One Article That Said They Did Was Silly and Bad*, Medium (Jan. 3, 2020), [here](#) (describing the importance of discussing and analyzing the accuracy of algorithmic predictions).



In an age when reproductive rights are under attack and when data can be — and is — used to facilitate those attacks, SB 1082 provides crucial, timely protections. I encourage Michigan to pass this bill.

Thank you for your time, and I look forward to your questions.