



April 22, 2021

The Honorable Rep. Zack Fields
Co-Chair of the House Labor and
Commerce Committee
State Capitol Room 24
Juneau, AK 99801

The Honorable Rep. Ivy Spohnholz
Co-Chair of the House Labor and
Commerce Committee
State Capitol Room 406
Juneau, AK 99801

RE: Letter in Opposition to Alaska HB 159

Dear Representative Fields and Representative Spohnholz:

On behalf of the advertising industry, we oppose Alaska HB 159.¹ We and the companies we represent, many of whom do substantial business in Alaska, strongly believe consumers deserve meaningful privacy protections supported by reasonable government policies. However, HB 159 contains provisions that could hinder Alaskans' access to valuable ad-supported online resources, impede their ability to exercise choice in the marketplace, and harm businesses of all sizes that support the economy.

To help ensure Alaskan businesses can continue to thrive and Alaskan consumers can continue to reap the benefits of a robust ad-supported online ecosystem and exercise choice in the marketplace, we recommend that the legislature undertake a study of available approaches to regulating data privacy before moving forward with enacting the onerous, and in some cases, outdated provisions set forth in HB 159. As presently written, the bill falls short of creating a regulatory system that will work well for Alaskan consumers or business.

As the nation's leading advertising and marketing trade associations, we collectively represent thousands of companies across the country. These companies range from small businesses to household brands, advertising agencies, and technology providers. Our combined membership includes more than 2,500 companies, is responsible for more than 85 percent of the U.S. advertising spend and drives more than 80 percent of our nation's digital advertising expenditures. We look forward to continuing to engage with the Alaska legislature as it considers HB 159.

I. Alaska Should Not Model Its Approach to Data Privacy Off of Outdated and Confusing Privacy Standards

Though HB 159 appears to draw many of its provisions from the California Consumer Privacy Act of 2018 ("CCPA"), the bill does not take into account many clarifications to the CCPA that followed its initial passage. The CCPA was amended more than five times after its enactment in June 2018, and the California Attorney General revised the regulations implementing the law four times after initially publishing draft regulations in October 2019. Many facets of the confusing and operationally complex law are still not fully tested or fleshed out. Moreover, the CCPA is not even the most up-to-date privacy law in the state, as the California Privacy Rights Act of 2020 was recently enacted, yet again materially amending California privacy law substantially. Alaska should not adopt an outdated, confusing, and burdensome legal regime. We encourage the legislature to examine more up-to-date consumer protection standards that are available for regulating data privacy including the Virginia Consumer Data Protection Act ("VCDPA"), which was enacted in March 2021, before moving forward with HB 159.

¹ HB 159 (Alaska 2021) (hereinafter "HB 159"), located [here](#).

The proposal under HB 159 also would create some of the most onerous requirements in the nation, potentially depriving Alaskans of valuable online content and services. For instance, the bill would require businesses to include a “Do Not Collect or Sell My Personal Information” link on their homepages that would appear to prohibit a covered business following an opt out from “buying, renting, gathering, obtaining, receiving, or accessing any personal information pertaining to a consumer by any means, actively or passively receiving information from the consumer, or by observing the consumer’s behavior.”² Such a “do not collect” requirement, however, would prevent basic and vital Internet operations, including rendering a website to a visitor. This could result in many providers of online content and services to elect not to serve Alaskans, particularly given the threat of a private right of action which is included in the bill.

Efforts to emulate the CCPA in Alaska will significantly and disproportionately impact the ability of small and mid-size businesses and start-up companies to operate successfully in the state. A standardized regulatory impact assessment of the CCPA estimated *initial* compliance costs at 55 billion dollars.³ This amount did not account for ongoing compliance expenses and needed resource allotments outside of the costs to businesses to bring themselves into initial compliance. Additionally, that same report estimated that businesses with less than 20 employees would need to spend \$50,000 each to begin their CCPA compliance journey, and businesses with less than 50 employees would need to spend approximately \$100,000 each.⁴ At a time when our country is facing extremely difficult economic realities due to the COVID-19 pandemic and related impacts, adding significant regulatory burdens to small businesses could harm Alaska’s economy without appropriately protecting consumer privacy. Alaska should reconsider implementing outdated provisions of the CCPA, that now have been supplanted, as foundational aspects of its own privacy bill.

II. HB 159 Should Not Include a Private Right of Action

As presently drafted, HB 159 allows for private litigants to bring lawsuits by deeming violations of the bill to be unfair or deceptive acts or practices under the Alaska Consumer Protection Act.⁵ We strongly believe private rights of action should have no place in privacy legislation. Instead, enforcement should be vested with the Alaska Attorney General (“AG”), because such an enforcement structure would lead to strong outcomes for Alaskans while better enabling businesses to allocate funds to developing processes, procedures, and plans to facilitate compliance with new data privacy requirements. AG enforcement, instead of a private right of action, is in the best interests of consumers and businesses alike.

A private right of action in HB 159 would create a complex and flawed compliance system without tangible privacy benefits for consumers. Allowing private actions would flood Alaska’s courts with frivolous lawsuits driven by opportunistic trial lawyers searching for technical violations, rather than focusing on actual consumer harm. Private right of action provisions are completely divorced from any connection to actual consumer harm and provide consumers little by way of protection from detrimental data practices.

Additionally, including a private right of action in HB 159 would have a chilling effect on the state’s economy by creating the threat of steep penalties for companies that are good actors but inadvertently fail to conform to technical provisions of law. Private litigant enforcement provisions and related potential penalties for violations represent an overly punitive scheme that would not effectively address consumer privacy concerns or deter undesired business conduct. A private right of action would expose businesses to extraordinary and potentially enterprise-threatening costs for technical violations of

² HB 159, Sec. 45.49.290(7).

³ California Attorney General, *Standardized Regulatory Impact Assessment: California Consumer Privacy Act Regulations* at 11 (August 2019), located at https://www.tellusventure.com/downloads/privacy/calif_doj_regulatory_impact_assessment_ccpa_14aug2019.pdf.

⁴ *Id.*

⁵ HB 159, Sec. 45.49.130; Alaska Stat. §§ 45.50.471 – 45.50.561.

law rather than drive systemic and helpful changes to business practices. It would also encumber businesses' attempts to innovate by threatening companies with expensive litigation costs, especially if those companies are visionaries striving to develop transformative new technologies. The threat of an expensive lawsuit may force smaller companies to agree to settle claims against them, even if they are convinced they are without merit.

Beyond the staggering cost to Alaska businesses, the resulting snarl of litigation could create a chaotic and inconsistent enforcement framework with conflicting requirements based on differing court outcomes. Overall, a private right of action would serve as a windfall to the plaintiff's bar without focusing on the business practices that actually harm consumers. We therefore encourage legislators to remove the private right of action from the bill and replace it with a framework that makes enforcement responsibility the purview of the AG alone.

III. The Data-Driven and Ad-Supported Online Ecosystem Benefits Alaskans and Fuels Economic Growth

Throughout the past three decades, the U.S. economy has been fueled by the free flow of data through the Internet. Alaskans, like all consumers across the country, have benefitted greatly from this Internet ecosystem. One driving force in this ecosystem has been data-driven advertising. Advertising has helped power the growth of the Internet for years by delivering innovative tools and services for consumers and businesses to connect and communicate. Data-driven advertising supports and subsidizes the content and services Alaskans expect and rely on, including video, news, music, and more. Data-driven advertising allows Alaskans to access these resources at little or no cost to them, and it has created an environment where small publishers and start-up companies in the state and elsewhere can enter the marketplace to compete against the Internet's largest players.

Transfers of data over the Internet enable modern digital advertising, which subsidizes and supports the broader economy and helps to expose Alaskans to products, services, and offerings they want to receive. Digital advertising enables online publishers to offer content, news, services and more to Alaskans for free or at a low cost. In a September 2020 survey conducted by the Digital Advertising Alliance, 93 percent of consumers stated that free content was important to the overall value of the Internet and more than 80 percent surveyed stated they prefer the existing ad-supported model, where most content is free, rather than a non-ad supported Internet where consumers must pay for most content.⁶ The survey also found that consumers value ad-supported content and services at \$1,403.88 a year, representing an increase of over \$200 in value since 2016.⁷ HB 159, if enacted, would disrupt this crucially important ad-subsidized Internet model, which consumers have expressed that they value and would not want to see replaced.

As a result of this advertising-based model, U.S. businesses of all sizes have been able to grow online and deliver widespread consumer and economic benefits. According to a March 2017 study entitled *Economic Value of the Advertising-Supported Internet Ecosystem*, which was conducted for the IAB by Harvard Business School Professor John Deighton, in 2016 the U.S. ad-supported Internet created 10.4 million jobs.⁸ Calculating against those figures, the interactive marketing industry contributed \$1.121 trillion to the U.S. economy in 2016, doubling the 2012 figure and accounting for 6% of U.S. gross domestic product.⁹

⁶ Digital Advertising Alliance, *SurveyMonkey Survey: Consumer Value of Ad Supported Services – 2020 Update* (Sept. 28, 2020), located at https://digitaladvertisingalliance.org/sites/aboutads/files/DAA_files/Consumer-Value-Ad-Supported-Services-2020Update.pdf.

⁷ *Id.*

⁸ John Deighton, *Economic Value of the Advertising-Supported Internet Ecosystem* (2017), located at <https://www.iab.com/wp-content/uploads/2017/03/Economic-Value-Study-2017-FINAL2.pdf>.

⁹ *Id.*

Consumers, across income levels and geography, embrace the ad-supported Internet and use it to create value in all areas of life, whether through e-commerce, education, free access to valuable content, or the ability to create their own platforms to reach millions of other Internet users. Consumers are increasingly aware that the data collected about their interactions on the web, in mobile applications, and in-store are used to create an enhanced and tailored experience. Importantly, research demonstrates that consumers are generally not reluctant to participate online due to data-driven advertising and marketing practices. Indeed, as the Federal Trade Commission noted in its comments to the National Telecommunications and Information Administration, if a subscription-based model replaced the ad-based model, many consumers likely would not be able to afford access to, or would be reluctant to utilize, all of the information, products, and services they rely on today and that will become available in the future.¹⁰ It is in this spirit—preserving the ad supported digital and offline media marketplace while helping to design appropriate privacy safeguards—that we provide these comments.

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We and our members support protecting consumer privacy. We believe HB 159 would impose new and particularly onerous requirements on entities doing business in the state and would unnecessarily impede Alaska residents from receiving helpful services and accessing useful information online. We therefore respectfully ask you to reconsider the bill and instead convert it to a study so Alaskans can benefit from the legislature’s careful consideration of approaches to data regulation that benefit consumers and businesses alike.

Thank you in advance for consideration of this letter.

Sincerely,

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¹⁰ Federal Trade Commission, *In re Developing the Administration’s Approach to Consumer Privacy*, 15 (Nov. 13, 2018), located at https://www.ftc.gov/system/files/documents/advocacy_documents/ftc-staff-comment-ntia-developing-administrations-approach-consumer-privacy/p195400_ftc_comment_to_ntia_112018.pdf.