



The Honorable Rep. Bryce Bennett
P.O. Box 200500
Helena, MT 59620-0500

The Honorable Rep. Barry Usher
Chair of the House Judiciary Committee
6900 S. Frontage Road
Billings, MT 59101

The Honorable Rep. Amy Regier
Vice Chair of the House Judiciary Committee
P.O. Box 10466
Kalispell, MT 59904-3466

The Honorable Rep. Kathy Kelker
Vice Chair of the House Judiciary Committee
2438 Rimrock Road
Billings, MT 59102

March 23, 2021

RE: Letter in Opposition to Montana SB 242

Dear Rep. Bennett, Chair Usher, Vice Chair Regier, and Vice Chair Kelker:

On behalf of the advertising industry, we oppose Montana SB 242,¹ and we offer the following comments summarizing our concerns with the proposed legislation. SB 242 would cause significant confusion and frustration for Montana consumers and businesses and would hinder vital uses of location data that serve important public interests to the benefit of Montanans. **We therefore ask the Montana House Judiciary Committee (“Committee”) to decline to move forward with this legislation as currently written.**

As the nation’s leading advertising and marketing trade associations, we collectively represent thousands of companies across the country, including many in Montana. 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 and the companies we represent, many of whom are headquartered or do substantial business in Montana, strongly believe consumers deserve meaningful privacy protections supported by reasonable government policies. We oppose SB 242 for the following reasons.

I. SB 242’s Provisions Are Significantly Unclear and Would Cause Confusion for Montana Consumers and Businesses Alike

SB 242 would enact unclear and ambiguous provisions into law that would harm consumers and local businesses. The bill would prohibit the sale, sharing, or transfer of location data recorded or collected by personal communications devices absent the primary user of the device’s explicit consent. However, the bill does not define key terms in this restriction, such as “location data,” “share,” “transfer,” “sale,” “or ”explicit consent.” Moreover, the bill proposes an unworkable standard of requiring the operative consent from the primary user of the device without providing any clarity as to how to ascertain a given device’s “primary user.” The bill is thus significantly unclear,

¹ Montana SB 242 (Reg. Sess. 2021), located [here](#) (hereinafter “SB 242”).

would cause confusion and frustration for consumers, and would have detrimental effects on businesses in Montana.

II. SB 242 Would Prohibit Critical Uses of Location Data That Benefit Consumers

Location data is used for many legitimate purposes that benefit consumers. For example, location data has been used by researchers and scientists to better understand and stop the spread of COVID-19. In addition, location data can be used to send relevant advertisements to consumers for the right products and services, in the right place, at the right time. Digital advertising that uses location data supports and subsidizes the modern Internet ecosystem, allowing consumers to access myriad online products, services, and information for free or at a very low cost. A recent survey of American consumers states that this subsidy is worth more than \$1,400 per individual, annually.² SB 242, as presently drafted, stands to inadvertently harm Montana consumers by depriving them of subsidized access to these valuable online products and services, which could force many businesses to instead require Montanans to pay subscription fees to access critical online content. In addition, small and mid-size businesses in the state that depend on advertising to reach consumers will be severely impacted by SB 242's restrictions, thereby harming the Montana business community during a time when many businesses are already struggling due to the impacts of COVID-19.

III. SB 242 Duplicates Location Data Protections That Already Exist in the Marketplace

We strongly support tools that give consumers the opportunity to provide permission for location data collection, use, and sharing for advertising. For example, the major mobile platforms already require consumer consent for the collection, use, and transfer of location data, effectively enabling consumers to control this on their own. The platforms have also made significant updates to these controls over the years, adding granular controls for apps to access this data either continuously, or while they are operating, and to do this at the device or application level. Therefore, in the marketplace today, consumers are able to exercise a choice to enable uses of location data that will benefit them and can be controlled by them.

Additionally, industry-level codes of conduct, backed by strong accountability mechanisms, already exist and have been adding to existing requirements, including recently introduced requirements for apps to provide more detailed disclosures about the uses of consumer data.³ Our organizations have been leaders in self-regulation for years, promoting the same requirements that would be established by SB 242. We are proud of our role to establish critical privacy protections for consumers around the use of location data, and we have been relied on many times to bring companies into compliance with industry-wide location data standards.⁴ By acknowledging existing

² Digital Advertising Alliance, *Americans Value Free Ad-Supported Online Services at \$1,400/Year; Annual Value Jumps More Than \$200 Since 2016* (Sept. 28, 2020), located at <https://digitaladvertisingalliance.org/press-release/americans-value-free-ad-supported-online-services-1400year-annual-value-jumps-more-200>.

³ See NAI, *Guidance for NAI Members: Opt-In Consent* (Nov. 2019), located at https://www.networkadvertising.org/sites/default/files/final_nai_optinconsent-guidance19_final.pdf.

⁴ See Digital Advertising Alliance, *Self-Regulatory Principles for Online Behavioral Advertising: Application of Self-Regulatory Principles to the Mobile Environment*, located at https://digitaladvertisingalliance.org/sites/aboutads/files/DAA_files/DAA_Mobile_Guidance.pdf; see also Better Business Bureau, *DAAP Decisions and Guidance*, located at <https://bbbprograms.org/programs/all-programs/daap/DecisionsAndGuidance>.

privacy systems in place, the Committee and the Montana legislature as a whole can focus their efforts and resources elsewhere on other important areas not already covered by existing frameworks.

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We would welcome the opportunity to discuss these issues with you in greater detail. At this time, we encourage the Committee to reconsider SB 242 and to decline to proceed with this legislation. SB 242's provisions are unclear and would have negative effects on Montana consumers and businesses, and it would hinder beneficial uses of location data that benefit Montanans. We look forward to continuing to engage with Committee as it considers SB 242.

Thank you in advance for consideration of this letter.

Sincerely,

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