



March 12, 2024

Representative Todd Jones
Chair of the House Technology & Infrastructure Innovation Committee
416-B State Capitol
Atlanta, GA 30334

Representative Brad Thomas
Vice Chair of the House Technology & Infrastructure Innovation Committee
401-F Coverdell Legislative Office Bldg.
Atlanta, GA 30334

RE: Ad Trade Letter in Opposition to Georgia SB 473

Dear Chair Jones, Vice Chair Thomas, and Sponsors of SB 473:

On behalf of the advertising industry, we respectfully oppose Georgia SB 473,¹ and we offer this letter to express our non-exhaustive list of concerns about this legislation. We and the companies we represent, many of whom do substantial business in Georgia, strongly believe consumers deserve meaningful privacy protections supported by reasonable government policies. We understand that legislators have taken steps to align the bill with other state privacy laws by, for example, considering a version of the bill that clarifies it provides for exclusive Attorney General enforcement. We support this approach to privacy law enforcement.² However, as described in more detail below, SB 473 still contains provisions that are out-of-step with privacy laws in other states. We ask you to harmonize SB 473 with other state privacy laws by reinserting standard exemptions for certain entities and data covered by federal sectoral privacy laws.

We and our members support a national standard for data privacy at the federal level. In the absence of such a national standard, it is critical for state legislators to seriously consider the costs and confusion to both consumers and businesses that will accrue from a patchwork of differing privacy standards and exemptions across the states. Harmonization with existing privacy laws is essential for creating an environment where consumers in Georgia have a consistent set of

¹ Georgia SB 473, (Gen. Sess. 2024), located [here](#) (hereinafter, “SB 473”).

² Allowing private actions would flood Georgia’s courts with frivolous lawsuits driven by opportunistic trial lawyers searching for technical violations, rather than focusing on actual consumer harm. A select few attorneys benefit disproportionately from private right of action enforcement mechanisms in a way that dwarfs the benefits that accrue to the consumers who are the basis for the claims. For example, a study of 3,121 private actions under the Telephone Consumer Protection Act (“TCPA”) showed that approximately 60 percent of TCPA lawsuits were brought by just forty-four law firms. Amounts paid out to consumers under such lawsuits proved to be insignificant, as only 4 to 8 percent of eligible claim members made themselves available for compensation from the settlement funds. U.S. Chamber Institute for Legal Reform, *TCPA Litigation Sprawl* at 2, 4, 11-15 (Aug. 2017), located [here](#). Additionally, a private right of action 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. 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. For instance, in the early 2000s, private actions under California’s Unfair Competition Law (“UCL”) “launched an unending attack on businesses all over the state.” American Tort Reform Foundation, *State Consumer Protection Laws Unhinged: It’s Time to Restore Sanity to the Litigation* at 8 (2003), located [here](#). These lawsuits disproportionately impacted small businesses. *Id.*



expectations and the same rights as individuals in other states, while minimizing compliance costs for businesses operating in the state.

One critical way that SB 473 diverges from other state privacy laws is that it does not include standard exemptions for entities and data regulated by bedrock sectoral privacy laws such as the Gramm-Leach-Bliley Act, the Fair Credit Reporting Act, the Health Insurance Portability and Accountability Act, the Driver's Privacy Protection Act, the Family Educational Rights and Privacy Act, and other federal statutes that provide privacy protections for all Americans. Virtually every other state that has passed privacy legislation to date has included this now standard set of exemptions related to federal sectoral privacy laws.³ By declining to include these common-sense exemptions, Georgia's privacy law would bring into scope entities and data in ways that could detrimentally interfere with Georgians' ability to engage in commerce.

We request that the Committee reinsert exemptions related to federal sectoral laws into SB 473 without qualifiers that would make the exemptions effective only if (1) the sectoral laws prohibit sales of personal information or (2) controllers that fall within the ambit of the exemptions permit individuals to remove personal information upon request. The Committee should align its approach with other states that have enacted omnibus privacy legislation by not including these qualifiers to the standard sectoral law exemptions because they would have the effect of rendering the exemptions illusory. Georgia's privacy law should include essential federal sectoral privacy law exemptions that the business community, legislators, and stakeholders have crafted over years of honing and negotiating workable privacy legislation in the states without unnecessary qualifiers that unreasonably narrow those exemptions' scope.

In addition to the confusion, frustration, and unintended results that would accrue to Georgia consumers if the General Assembly enacts a divergent privacy law, businesses' compliance costs associated with divergent—and oftentimes conflicting—privacy laws are significant. To make the point: one report found that differing privacy laws could impose costs of between \$98 billion and \$112 billion annually, with costs exceeding \$1 trillion dollars over a 10-year period and small businesses shouldering a significant portion of the compliance cost burden.⁴ We acknowledge that it is popular to think that these costs will impact only the biggest of companies, but in truth these costs (and any reduction in competition) will detrimentally impact Georgia consumers and flow down to local retailers, recipe publishers, farm stands, restaurants, and myriad other small Georgia businesses who see digital advertising as the lifeblood of attracting customers. To avoid these negative impacts, we encourage the Committee to take steps to align SB 473's substantive terms—and its exemptions—with the majority of other state privacy laws that have been enacted to date.

As the nation's leading advertising and marketing trade associations, we collectively represent thousands of companies across the country, including companies in Georgia. These companies range from small businesses to household brands, advertising agencies, and technology

³ See, e.g., Cal. Civ. Code §§ 1798.145 - 148; Va. Code Ann. § 57.1-576; Colo. Rev. Stat 6-1-1304; Conn. Gen. Stat. § 42-517; Utah Rev. Stat § 16-61-102.

⁴ Daniel Castro, Luke Dascoli, and Gillian Diebold, *The Looming Cost of a Patchwork of State Privacy Laws* (Jan. 24, 2022), located at <https://itif.org/publications/2022/01/24/looming-cost-patchwork-state-privacy-laws> (finding that small businesses would bear approximately \$20-23 billion of the out-of-state cost burden associated with state privacy law compliance annually).



providers. Our combined membership includes more than 2,500 companies that power the commercial Internet, which accounted for 12 percent of total U.S. gross domestic product (“GDP”) in 2020.⁵ Our group has more than a decade’s worth of hands-on experience it can bring to bear on matters related to consumer privacy and controls. We would welcome the opportunity to engage with the Committee further on the points we discuss in this letter.

* * *

Thank you in advance for your consideration of this letter.

Sincerely,

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CC: Members of the Georgia House Technology & Infrastructure Innovation Committee

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⁵ John Deighton and Leora Kornfeld, *The Economic Impact of the Market-Making Internet*, INTERACTIVE ADVERTISING BUREAU, 15 (Oct. 18, 2021), located at https://www.iab.com/wp-content/uploads/2021/10/IAB_Economic_Impact_of_the_Market-Making_Internet_Study_2021-10.pdf.