March 11, 2024

Representative Ginny Klevorn, Chair
House State and Local Government
Finance and Policy Committee
581 State Office Building
St. Paul, MN 55155

Representative John Huot, Vice Chair
House State and Local Government
Finance and Policy Committee
591 State Office Building
St. Paul, MN 55155

Representative Steve Elkins
517 State Office Building
St. Paul, MN 55155

RE: Minnesota HF 2309 – Oppose

Dear Chair Klevorn, Vice Chair Huot, and Representative Elkins:

On behalf of the advertising industry, we oppose Minnesota HF 2309,[1] and we request that the Minnesota State and Local Government Finance and Policy Committee ("Committee") recommend amendments to align it with the approach taken in the majority of states that have enacted consumer data privacy legislation. Taking a divergent approach would make HF 2309 out of step with privacy laws passed in other states and would have far-reaching, unfavorable consequences for Minnesota businesses and consumers alike. We ask the Committee to update the bill in ways that harmonize it with the majority of privacy laws that have been enacted in other states.

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 that power the commercial Internet, which accounted for 12 percent of total U.S. gross domestic product ("GDP") in 2020.[2] 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.

I. Minnesota should harmonize HF 2309 with the privacy approach taken in other states.

Uniform privacy law standards benefit consumers and businesses by helping to ensure consumers are subject to similar privacy protections no matter where they reside and that businesses may take a more holistic approach to privacy law compliance. HF 2309 would create terms that would contrast significantly with other state privacy laws. Seemingly small changes to the meaning of terms or requirements can have a significant impact on businesses' compliance responsibilities and consumers' ability to understand and fully effectuate rights under law.

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[1] Minnesota HF 2309 (Gen. Sess. 2024), located here.
[2] John Deighton and Leora Kornfeld, *The Economic Impact of the Market-Making Internet*, INTERACTIVE ADVERTISING BUREAU, 15 (Oct. 18, 2021), located here (hereinafter, "Deighton and Kornfeld").

For example, HF 2309 should not adopt a materially different definition of "specific geolocation data" than every other state that has passed privacy legislation. Instead of tying the definition to the ability to identify a "street address" or "an accuracy of more than three decimal degrees," the bill should adopt the approach taken in the majority of states. Additionally, the bill's approach to "data privacy and protection assessments" and data governance should not stand in stark contrast to other state privacy laws, which generally harmonize their assessment requirements so an assessment conducted to comply with one state law can also comply with another state's law. HF 2309's assessment requirements would mandate that all controllers must: 1) increase headcount by designating a Chief Privacy Officer; 2) describe data inventory practices; 3) maintain a written data retention policy; 4) and maintain a data minimization policy, in addition to other requirements. Each of these specific steps is overly prescriptive and would require the expenditure of significant resources across all sectors of the business. Moreover, adopting these requirements—which are out-of-step with other state privacy laws—could threaten the interoperability of assessments, which allow assessments under one state's law to meet the requirements of another state's law if they are substantially similar. Instead of adopting this non-standard approach to specific geolocation data and assessments, Minnesota should update these terms and others in HF 2309 so they reflect the definitions and approaches in other states.

In the absence of a preemptive federal data privacy law, it is crucial for legislators to seriously consider the heavy costs imposed upon both businesses and consumers by a patchwork of state privacy standards. Compliance costs associated with divergent privacy laws are significant. To make the point: a regulatory impact assessment of the California Consumer Privacy Act of 2018 ("CCPA") concluded that the initial compliance costs to California firms for the CCPA *alone* would be $55 billion.[3] Additionally, a study on proposed privacy bill in another state found that the proposal would have generated a direct initial compliance cost of between $6.2 billion to $21 billion, and an ongoing annual compliance cost of between $4.6 billion to $12.7 billion for companies.[4] Minnesota should not add to this compliance bill for businesses and should instead opt for an approach to data privacy that is in harmony with already existing state privacy laws.

II. Including a requirement to disclose names of specific third-party partners would interfere with legitimate business and create competition concerns.

We understand the Committee may consider an amended version of HF 2309 that would require controllers to disclose "a list of the specific third parties to which the controller has disclosed the consumer's personal data" upon a consumer's request. The vast majority of other states that have enacted privacy laws do not include this impractical and duplicative requirement. Instead, most other state privacy laws require companies to disclose the *categories* of third parties to whom they transfer personal data rather than the specific names of such third parties themselves.[5]

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[3] *See* State of California Department of Justice Office of the Attorney General, *Standardized Regulatory Impact Assessment: California Consumer Privacy Act of 2018 Regulations* at 11 (Aug. 2019), located at https://www.oag.ca.gov/sites/all/files/agweb/pdfs/privacy/ccpa-isor-appendices.pdf.

[4] *See* Florida Tax Watch, *Who Knows What? An Independent Analysis of the Potential Effects of Consumer Data Privacy Legislation in Florida* at 2 (Oct. 2021), located at https://floridataxwatch.org/DesktopModules/EasyDNNNews/DocumentDownload.ashx?portalid=210&moduleid=34407&articleid=19090&documentid=986.

[5] *See, e.g.,* Cal. Civ. Code § 1798.110; Va. Code Ann. § 59.1-578(C); Colo. Rev. Stat. § 6-1-1308(1)(a); Conn. Gen. Stat. § 42-520(c)(5); Utah Rev. Stat § 16-61-302(1)(a).

Requiring documentation or disclosure of the names of entities would be operationally burdensome, as controllers change business partners frequently, and companies regularly merge with others and change names. For instance, a controller may engage in a data exchange with a new business-customer on the same day it responds to a consumer disclosure request. This requirement would either force the controller to refrain from engaging in commerce with the new business-customer until its consumer disclosures are updated or risk violating the law. This is an unreasonable restraint.

From an operational standpoint, constantly updating a list of all third-party partners a controller works with would take significant resources and time away from their efforts to comply with other new privacy directives in HF 2309. And any additional language giving controllers an option to provide a list of names of third-party partners that receive data about a requesting consumer or a list of third-party recipients of any personal data would do little to ease this operational burden. Even with this option, controllers may be forced to jeopardize new business opportunities and relationships just to compile, maintain, update, and distribute these ephemeral lists.

International privacy standards like the European Union's General Data Protection Regulation ("GDPR") also do not require burdensome disclosures of specific third parties in response to data subject access requests, according to the text of the law. Mandating that companies disclose the names of their third-party partners could obligate companies to abridge confidentiality clauses they maintain in their contracts with partners and expose proprietary business information to their competitors. Finally, the consumer benefit that would accrue from their receipt of a list of third-party partners to whom a controller discloses data would be minimal at best. The benefit would be especially insignificant given HF 2309 already requires controllers to disclose *categories* of third-party partners in privacy notices for consumers.[6] For these reasons, we encourage the Committee to reconsider this onerous language, which severely diverges from the approach to disclosures taken in almost all existing state privacy laws. To align HF 2309 with other state privacy laws, the bill should require disclosure of the categories of third parties rather than the names of such third parties themselves.

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[6] HF 2309 at Sec. 8, Subdiv. 1(a)(5).

We and our members strongly believe consumers deserve meaningful privacy protections supported by reasonable and responsible industry policies. However, we believe HF 2309's out-of-step provisions will unnecessarily impede Minnesotans' ability to access helpful services and information online. We therefore respectfully ask you to harmonize HF 2309 with the approach taken in the majority of states that have enacted consumer data privacy legislation. HF 2309 should not diverge from this approach.

Thank you for your consideration of this request.

Sincerely,

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