Computer & Communications Industry Association
Tech Advocacy Since 1972

January 26, 2022

Alaska House Labor and Commerce Committee
Alaska State Capitol
120 4th St
Juneau, AK 99801

Re: CCIA Comments on HB 159, the Consumer Data Privacy Act

Dear Chair Spohnholz, Chair Fields, and Members of the Committee:

On behalf of the Computer & Communications Industry Association (CCIA), I write to respectfully oppose HB 159, the Consumer Data Privacy Act.

CCIA is an international, not-for-profit trade association representing small, medium, and large communications and technology firms. For fifty years, CCIA has promoted open markets, open systems, and open networks.[1]

CCIA supports the enactment of comprehensive federal privacy legislation to promote a trustworthy information ecosystem characterized by clear and consistent consumer privacy rights and responsibilities for organizations that collect and process data. A uniform federal approach to the protection of consumer privacy throughout the economy is necessary to ensure that businesses (especially SMEs) have regulatory certainty in meeting their compliance obligations and that consumers are able to understand and exercise their rights.

While we appreciate the bill sponsor's efforts to protect the privacy rights of Alaskans and the tremendous work that has gone into drafting this legislation, we have concerns over the adoption of jurisdiction-specific legislation that would add to the existing patchwork of state privacy laws and respectfully ask that you oppose HB 159.

However, should the Committee proceed in considering the establishment of a new statewide consumer privacy framework, CCIA urges attention to the following principles in order to support meaningful privacy protections that avoid unnecessary interference with the ability of both consumers and businesses to benefit from data-enabled products, services, and innovations that support the modern economy.

1. **Clear and interoperable definitions**

Existing broad-based privacy laws typically recognize a core set of rights and protections including individual control, transparency of processing activities, and limitations on third-party disclosures that are reflected in HB 159. However, even minor statutory divergences between frameworks for key definitions or the scope of privacy obligations can create onerous costs for covered organizations. Therefore, CCIA encourages the legislature to

[1] For more information about CCIA please see: https://www.ccianet.org/about.

ensure that any consumer privacy law enacted is reasonably aligned with definitions and rights in existing privacy laws so as to avoid unnecessary costs to Alaska businesses, particularly as they focus on recovering from the fiscal impacts of the public health crisis.

As drafted, key definitions in HB 159 are likely to prompt significant statutory interpretation and compliance difficulties, even for businesses with existing familiarity with other US state laws. For example, both US and global privacy frameworks increasingly recognize the distinction between data "controllers" that determine how information is collected and used and data "processors" that perform operations on data on behalf of another entity, but this language is absent from HB 159. We encourage the Committee to consider the distinction between these differently situated entities and to ensure that any new privacy obligations are suited to the role that a covered organization plays with respect to personal data. CCIA further recommends attention to the recently enacted Virginia Consumer Data Protection Act and alignment of key definitions including "personal data," "sale," and "de-identified data" to promote consistent and practically operationalizable privacy protections across state borders.

2. **Vest enforcement authority with the Attorney General**

A new privacy framework would be best enforced by the office of the Alaska Attorney General. The inclusion of a private right of action could result in the proliferation of class action suits seeking lucrative settlements for alleged bare-procedural violations, primarily benefiting plaintiffs' attorneys with little connection to the remedy of any genuine consumer injury. The drawbacks of private rights of action are apparent in the history of both state and federal privacy statutes.[2] As drafted, the scope of HB 159's private right of action is far broader than any other US state commercial privacy law and threatens to uniquely burden Alaskan businesses without an obvious benefit to consumers' privacy interests.

3. **Mitigate operational burdens**

Implementing the requirements of a new privacy regime can be a lengthy and costly process for large and small businesses alike.[3] For example, covered organizations must review and potentially reconfigure IT systems and renegotiate contracts with vendors and service providers in order to comply with new rules. A successful privacy framework must ensure that businesses have sufficient opportunity and clarity to meet their compliance obligations. Recently enacted privacy laws in California, Colorado, Virginia, and Europe all contain 2-year delays in enforcement and we recommend that any privacy legislation advanced in Alaska include a comparable on-ramp to enable compliance.

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[2] *See*, U.S. Chamber Institute for Legal Reform, "Ill-suited: Private Rights of Action and Privacy Claims" (July, 2019), https://instituteforlegalreform.com/wp-content/uploads/2020/10/Ill-Suited_-_Private_RIghts_of_Action_and_Privacy_Claims_Report.pdf.

[3] For example, a study commissioned by the California Attorney General estimated that state companies faced $55 billion in initial compliance costs for meeting new privacy requirements, with small businesses facing disproportionately higher shares of costs. Berkeley Economic Advising and Research, LLC, "Standardized Regulatory Impact Assessment: California Consumer Privacy Act of 2018 Regulations'' (August, 2019), https://www.dof.ca.gov/Forecasting/Economics/Major_Regulations/Major_Regulations_Table/documents/CCPA_Regulations-SRIA-DOF.pdf.

CCIA further supports the inclusion of an opportunity-to-cure provision in order to encourage organizations acting in good faith to rapidly resolve any concerns. This has been a successful enforcement mechanism in other jurisdictions and the California Attorney General recently highlighted the use of notices to cure as an effective tool in supporting widespread business compliance with new privacy rules.[4] Aligning this provision with the California Privacy Protection Act would provide more confidence for businesses operating in good faith to work with regulators in order to resolve any potential concerns.

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Thank you for your attention to the important subject of advancing consumer privacy protections and your consideration of these comments. CCIA respectfully asks that you oppose HB 159 at this time and stands ready to provide additional information and perspectives as the Committee considers consumer privacy issues.

Sincerely,

Alyssa Doom
State Policy Director
Computer & Communications Industry Association

[4] Xavier Becerra, "Attorney General Becerra Announces Approval of Additional Regulations That Empower Data Privacy Under the California Consumer Privacy Act" (March 15, 2021), https://oag.ca.gov/news/press-releases/attorney-general-becerra-announces-approval-additional-regulations-empower-data.