



September 5, 2023

The Honorable John Galloway
Chair, House Commerce Committee
301 Irvis Office Building
PO Box 202140
Harrisburg, PA 17120-2140

The Honorable Joe Emrick
Republican Chair, House Commerce Committee
108 Ryan Office Building
PO Box 202137
Harrisburg, PA 17120-2137

Dear Chairmen Galloway and Emrick:

I write on behalf of the Pennsylvania Chamber of Business and Industry, the largest, broad-based business advocacy association in Pennsylvania. We represent nearly 10,000 employers of all sizes, from sole proprietors to Fortune 100 companies, crossing all industry sectors throughout the Commonwealth and representing around 50 percent of the private-sector workforce. Thank you for the invitation to submit comments for the House Commerce Committee hearing on consumer data privacy.

Pennsylvania has a strong tradition as home to catalysts for technological innovation and advancement. From the industrial revolution to today, Pennsylvania's citizens, employers, higher education community and other institutions have led development of new products, enhanced processes and new technologies to make practically every industry more efficient, stimulate the economy and improve our quality of life.

The PA Chamber has urged policymakers to help create a legislative and regulatory climate, at the state and local level, that encourages access to enhanced technology for all Pennsylvania residents and employers, and allows the technology sector to grow and thrive. [Our technology policy position statement](#), which was developed based on input from PA Chamber members and ultimately approved by our Board of Directors, outlines a number of themes that guide our advocacy and approach to public policy including:

- Calling for regular review and, when appropriate and possible, elimination of impediments, such as excessive taxes and regulations, to the technology industries that may hinder their ability to compete in today's global marketplace;
- Urging lawmakers to avoid actions that would create unnecessary bureaucracy or regulations to govern and administer technology infrastructure development; and
- Further discouraging state policymakers from adopting public policy more burdensome or stringent than Federal policy, which could hurt Pennsylvania's competitiveness.

We believe lawmakers can regulate the manner in which the private sector collects and uses consumer data in a way that is consistent with these principles. At the same time, we also believe a far more preferable approach would be standards established at the federal level. A national

framework would level the playing field so individual states are not put at a competitive disadvantage, and provide for uniformity so businesses operating or with customers in multiple states are not forced to comply with a patchwork of individual state or local policies and requirements.

Congress, however, has not yet advanced consumer data privacy legislation and in the meantime a number of states have enacted laws. The vast majority of the eleven states that have passed comprehensive privacy legislation have adopted laws similar to the framework first adopted by Virginia and Connecticut. Texas, Indiana, Tennessee, and Oregon all passed bills based on this framework in 2023 alone.

[According to the National Conference of State Legislatures](#)¹ at least 25 states and Puerto Rico have introduced or considered almost 140 consumer privacy bills in 2023. The country is unfortunately on a path to the patchwork scenario the business community has warned would be detrimental to employers, consumers and the economy.

The impact on employers could be significant and would most certainly extend well beyond the technology sector to include employers of different sizes from a vast array of industries. The Information Technology and Innovation Foundation released [a report](#)² in Jan. 2022 in which it estimates that, in the absence of Congress passing privacy legislation, state privacy laws could impose out-of-state costs on employers of between \$98 billion and \$112 billion annually, with between \$20-23 billion of that cost falling on small businesses.

Employers frequently report frustration attempting to simultaneously administer laws from various levels of government – federal, state and local – that are similar in purpose but deviate in details, which complicates compliance efforts. These ‘compliance trap’ scenarios are particularly challenging for smaller employers and nonprofits with limited resources and a small, or often nonexistent, regulatory compliance department. And, as previously discussed, inconsistent laws are also difficult for multi-state employers who must decipher and adhere to both federal and state standards and often multiple states laws.

We believe a national approach to regulating consumer data privacy is clearly preferable and that supportive lawmakers should work with members of U.S. House and Senate and like-minded advocates and organizations, like the U.S. Chamber of Commerce, to advance this priority in Congress.

That said, we recognize the futility with which lawmakers and advocates may view waiting for Congress to act. If the Pennsylvania legislature is committed to pursuing consumer data privacy legislation, we strongly encourage lawmakers to consider and incorporate input from the broad range of employers who would be impacted.

Experiences from other states have shown that early and regular employer participation in developing legislation can help facilitate a constructive process and lead to a more successful

¹ “2023 Consumer Privacy Legislation,” National Conference of State Legislatures, February 15, 2023, <https://www.ncsl.org/technology-and-communication/2023-consumer-data-privacy-legislation>

² Daniel Castro, Luke Dascoli and Gillian Diebold, “The Looming Cost of a Patchwork of State Privacy Laws,” Information Technology and Innovation Foundation, Jan. 2022, Pg. 8.

outcome. For example, Virginia’s law, introduced by State Senator David Marsden (D) and signed by former Governor Ralph Northam (D), was developed in coordination with the employer community and ultimately reflected input from a range of stakeholders.

At the same time, [Senator Marsden in a statement said](#)³ “This is a huge step forward. By creating this omnibus bill, we take the lead in data privacy in the United States. This omnibus bill is clear, concise, and holds companies accountable for protecting consumer data in providing protections for consumers.”

On the other hand, the employer community appeared to be generally viewed with hostility in California as that state developed and implemented its data privacy law. We strongly encourage Pennsylvania lawmakers to pursue both a process and final product that more closely resembles Virginia and rejects a California-style hostility to employers. HB 1201, as introduced, resembles the Colorado model (which is closer to the Virginia model) in many ways, but does have some differences. In particular, the legislation uses the California definition of personal information. We would encourage the committee to align the definition with the Virginia model, or with the definition that was recently adopted in Connecticut:

"Personal data" means any information that is linked or reasonably linkable to an identified or identifiable individual. "Personal data" does not include de-identified data or publicly available information.

We believe effective and functional data privacy legislation can enhance transparency and direct employers to clearly and proactively communicate to consumers how personal consumer information is used. It can empower consumers, for example, to request additional information regarding data collection and sharing with third parties. Consumers who would prefer their information not be shared with third parties, or who would like previously collected data to be deleted, should have the right to submit these requests with the confidence that the employer will comply.

Consumer data privacy legislation can achieve these objectives and its intended purpose in general, while still addressing legitimate concerns and suggestions from employers, including, but not limited to:

- Aligning the scope of obligations on employers with those already imposed in the majority of other states to ensure consistent application of the law to Pennsylvania consumers.
- Recognizing that well-meaning, honest employers may struggle to interpret the law and regulations, especially as it’s being implemented and providing an opportunity for missteps to be corrected;
- Delegating exclusive enforcement authority to the appropriate state agency and prohibiting private rights of action, which will certainly encourage unfair and opportunistic lawsuits, and sow confusion as various decisions create different or contradictory standards;

³ Rebecca Klar, “Virginia governor signs comprehensive data privacy law,” The Hill, <https://thehill.com/policy/technology/541290-virginia-governor-signs-comprehensive-data-privacy-law/>

- Exempting entities whose collection and use of consumer information is already regulated;
- Ensuring employers may continue to offer popular customer rewards and loyalty programs, even if the law generally prohibits discrimination against customers who exercise their right to stop data collection;
- Carefully crafting provisions around data collection opt-out so consumer data is not necessarily removed from all collections in the event a single opt-out is requested;
- Making a distinction between “consumer” data and standard personal information that employers often collect from employees, independent contractors, shareholders, etc.
- Recognizing when and the extent to which personal data collection is often integral to important work on behalf of society and individual communities – from public safety, to advancing financial inclusion, to improving medicine and health outcomes. Any law should take particular care to avoid stifling these types of important missions;
- Focusing this area of public policy at the state level (if the prospect of fifty state laws is daunting, the prospect of thousands of municipal laws is simply untenable) and preparing to defer to a national standard if one is ultimately adopted.

We appreciate that many of these principles are already included in HB 1201 and look forward to a productive process that includes input from a large range of stakeholders. We thank the Committee for its attention to this important matter and for the invitation to submit comments.

Again, thank you for inviting us to submit comments on this important topic.

Sincerely,

A handwritten signature in black ink that reads "Alex J. Halper". The signature is written in a cursive, slightly slanted style.

Alex Halper
Vice President, Government Affairs

cc: Members of the House Commerce Committee