March 11, 2020

Dear Members of the Washington State Legislature,

We, the undersigned trade associations, collectively represent thousands of companies, from small businesses to household brands. We continue to believe including a private right of action in the Washington Privacy Act will have severe and detrimental implications for Washingtonians, businesses, and the state’s economy. We therefore strongly oppose the inclusion of a private right of action in Washington’s SB 6281. However, if you decide to include the current proposed enforcement term in SB 6281, we ask you to consider making the amendments proposed in **Exhibit A**, so the bill provides more clarity for businesses and better protects consumers.

Private rights of action serve as a windfall to the plaintiff’s bar without providing any real relief for consumers. They stifle innovation by threatening businesses with staggering and potentially insurmountable legal costs. Private rights of action fail to provide robust protections for individuals, drain judicial resources, and penalize businesses for mere technical violations of the law. As a result, including such an enforcement mechanism in SB 6281 would make Washington an unfriendly state to consumers and businesses alike.

The enforcement language proposed by the conference committee is ambiguous in many respects. For example, it provides for both Attorney General enforcement as well as private litigant enforcement, but it does not clarify which cause of action should take precedence over the other. As a result, courts could be forced to adjudicate the same violation at the same time pursued by the Attorney General in one forum and a private litigant in another. This result would cause massive confusion and disruption and could create in an ill-defined legal scheme that yields differing or even contradictory legal rules, thereby failing to offer consistent protections for consumers.

The language also extends far beyond what other states, such as California, have provided by way of enforcement for privacy violations. We therefore recommend that you abandon the effort to include a private right of action in the Washington Privacy Act.

\* \* \*

Sincerely,

Dan Jaffe Alison Pepper   
Group EVP, Government Relations Senior Vice President

Association of National Advertisers American Association of Advertising Agencies

Christopher Oswald David Grimaldi  
SVP, Government Relations Executive Vice President, Public Policy

Association of National Advertisers Interactive Advertising Bureau

David LeDuc Clark Rector  
Vice President, Public Policy Executive VP-Government Affairs

Network Advertising Initiative American Advertising Federation

**Exhibit A**

Sec. 11. Enforcement

(1)(a) The attorney general may enforce this chapter by bringing an action in the name of the state, or as parens patriae on behalf of persons residing in the state.

(b) In actions brought by the attorney general to enforce this chapter, the legislature finds that the practices covered by this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. A violation of this chapter is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW.

(c) It is the intent of the legislature that the attorney general work with controllers or processors to correct a violation, particularly when there is no intentional or malicious violation under this chapter. The attorney general should give reasonable notice of alleged noncompliance and, before deciding whether to file an enforcement action, should consider, as mitigating factors, a controller’s or processor’s good faith actions to comply with the requirements of this chapter and any actions to cure or remedy the violations before an action is filed.

Nothing in this chapter shall be construed to limit or hinder any existing enforcement authority of the attorney general under chapter 19.86 RCW or any other law.

(2) Nothing in this chapter limits any causes of action enjoyed by any persons, including any constitutional, statutory, administrative, or common law right or causes of action. Specifically, nothing in this chapter precludes a private plaintiff from bringing a claim that a violation of this chapter violates chapter 19.86 RCW.

(3) In actions brought by the attorney general to enforce this chapter, ~~A~~any controller or processor that violates this chapter is subject to an injunction and liable for a civil penalty of not more than seven thousand five hundred dollars for each violation. In determining a civil penalty under this chapter, the court may consider, as mitigating factors, a controller’s or processor’s good faith actions to comply with the requirements of this chapter and any actions to cure or remedy the violations before an action is filed.