



December 14, 2020

The Honorable C.E. Hayes, Jr.  
P.O. Box 5142  
Chesapeake, VA 23324

**Re: Privacy Legislation – 2021 Session**

Dear Chairman Hayes,

The State Privacy and Security Coalition, a group comprised of the leading retail, technology, telecommunications, payment services, online security, and automobile companies, as well as the undersigned coalitions representing a broad range of industries and sectors, appreciate your interest in addressing the complex issue of privacy in the Commonwealth of Virginia. We wanted to take this opportunity to express some of our concerns about the prospects of trying to pursue privacy legislation during the upcoming 2021 session, as well as outlining some substantive issues with the draft recently circulated.

We have reviewed your discussion draft of legislation and appreciate that it is based on the Washington Privacy Act (WPA) instead of the confusingly drafted California Consumer Privacy Act. At the same time, we also think it is important to convey that the WPA was crafted due to dynamics that existed in that particular state. Outside of the context in which it has previously been considered, there are provisions that we find operationally difficult or unnecessary, but that were included in that WPA as a response to Washington stakeholders. We believe that a more deliberate process will help us achieve a balance that satisfies Virginia's privacy needs, not Washington's.

This topic has major operational implications and it is important to get it right. The JCOTS study committee, which never had an opportunity to engage in deliberative study due to the COVID-19 pandemic, could help work through a number of important and technical issues that have been difficult to work through over the past three years in Washington, including:

- The definition of "deidentified data";
- The definition of "publicly available information";
- The definition of "sale";
- How an appeals process can work without overburdening either the controller or the Attorney General's Office;
- Processor requirements;
- The intersection of Virginia's UDAP statute with a Data Protection Assessment requirement; and
- An effective date that coincides with other state privacy statutes.



We also appreciate that the discussion draft does not contain a private right of action as a method of enforcement. Two of the most important concepts that must be embedded in these types of bills are clarity and certainty; businesses and consumers must be able to understand the rights and the rules set forth, and must be able to rely on these being sustainable as devices and technology change. A private right of action undermines these foundational elements by using drawn-out and expensive litigation to define the corners of the law. This is both highly inefficient and counterproductive; a private right of action is the single element of privacy legislation that the business community cannot support under any circumstances.

We are concerned that trying to agree on a set of principles, and subsequently negotiate and review the legislation with the attention to detail that is necessary for this level of complexity may well be too aggressive a goal to accomplish in a 30-day session. There is an additional risk in attempting to move forward with a bill in the heat of session; doing so may have the effect of causing all stakeholders to harden their positions, rather than be able to discuss and negotiate without the threat of a looming deadline. This would hurt future negotiations in the 2022 session.

Finally, there is still the fact that, in a landscape irrevocably altered by the COVID-19 pandemic, there will be limited opportunities to negotiate, consider amendments, and engage in the type of rapid communication that is necessary for a short session. And businesses in Virginia are in the midst of attempting to stay open, not furloughing or firing workers, and getting back on their feet. Notably, the California Attorney General’s office estimated that *initial* compliance costs for their privacy law would cost \$55 billion, much of which can be attributed to unintended consequences and poor drafting that could have been more carefully vetted with more deliberate consideration by the legislature.

We hope to continue our discussions with you on this bill and would greatly appreciate the opportunity to schedule a follow-up conversation to address any questions or concerns you may have. In the interim, please do not hesitate to reach out at any time.

Respectfully submitted,

Andrew Kingman  
 General Counsel  
 State Privacy & Security Coalition

(additional signatures below)



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Cc: House Speaker Eileen Filler-Corn (via email)  
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