

May 15, 2020

Cheryl Heimstra
Oregon Department of Justice
1162 Court Street Ne
Salem, OR 97301

Dear Ms. Heimstra:

On behalf of the below signed, thank you for your thoughtful and inclusive approach to the development of privacy legislation for 2021. We have appreciated the diverse representation at the central table as well as the opportunity for the larger stakeholders to participate in this robust debate. As Oregon seeks to become only the second State in the Country to adopt sweeping privacy legislation, this format and intentional process is incredibly important.

Consumer data privacy and security is of the utmost importance to our businesses and organizations. We support transparency in today's digital age and want to ensure consumers and businesses are well protected. Our members work every day to earn the trust of their customers. Protecting the privacy and security of those customers is paramount to earning that trust and the success of our businesses depends on it.

In this unprecedented COVID-19 era, our member companies continue to strive to achieve these goals, and now have additional challenges taking center stage. Our approach to any new regulatory scheme at this time demands different questions asked and decisions to be made. We have significant concerns about what Oregon-specific sweeping privacy legislation means for our businesses and our economy. We are working every day to respond to the challenges COVID-19 presents for consumers and businesses and believe that we need to be thoughtful about how we move forward.

According to an economic impact assessment prepared for the California state attorney general's office last year, the California Consumer Privacy Act (CCPA) was projected to cost companies as much as \$55 billion in initial compliance costs. These are businesses of all sizes, including many of them small businesses that are struggling just to keep their doors open.

The CCPA, while law, has faced numerous amendments and has left companies with uncertainty. As companies, including those represented by the below signed, have made great efforts to comply with the CCPA, the California Attorney General has yet to release final regulations for the law. Moreover, the CCPA originator himself acknowledged that it currently does not operate in the way he intended and has initiated *another* ballot initiative to pass a law that will supersede this complex legislation. That will result in yearlong regulatory rulemaking and even more legislation that will continue to amend, clean-up or replace portions of the CCPA. Such uncertainty and costs are more than Oregon consumers and businesses can afford right now.

In addition, we heard a concerning new "bright line" from some stakeholders at the Task Force meeting on April 21st that has caused us significant pause. They indicate that if the draft doesn't include a Private Right of Action (PRA), we shouldn't even pursue the legislation. They cite, in part the State's financial situation and COVID-19 response for the State's inability to adequately enforce a sweeping policy change as proposed in any new privacy law. These ultimatums have not been a part of the central table to date and are not reflective of the intentional and thoughtful Oregon-specific approach to which we have all strived. We have significant concerns this new "bright line" will halt meaningful discussions going forward.

As you know, Oregon's Unfair Trade Practices Act and Attorney General Enforcement mechanism is unique to Oregon. Simply put, it works. It is effective and this Attorney General has utilized it as a strong hammer to protect Oregon's consumers. To think that inadequate state funding would weaken this mechanism is incredibly concerning. If it's a budget issue hopefully we can hear from you soon on what those estimated fiscal needs are.

We've made it clear that industry can't support a Private Right of Action. We also believe the Attorney General's Office has sufficient resources, the appropriate tools, and experienced talent to enforce any new State law. We agree privacy is a priority, but it must be considered in light of many other competing priorities that have

emerged during this crisis. In particular, we must be wary of further burdening private businesses with unnecessary lawsuits in courtrooms across the State when many are simultaneously fighting to stay open for business.

To date there have been several gives and takes in our discussions, and there will likely be much more negotiation required over the coming months. However, a PRA seems to put us at an impasse. If we can't support legislation with a PRA, and others don't think we should even try without it, coupled with the unprecedented times we find ourselves in, perhaps we need to reassess whether now is the right time to proceed.

Again, thank you and the Attorney General for your leadership. We want to be productive partners and look forward to figuring out together how we move this conversation forward.



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