



April 3, 2018

Honorable Kevin Meyer
Senate State Affairs Committee, Chair
State Capitol Room 103
Juneau, AK 99801

Dear Chair Meyer:

The undersigned organizations write to respectfully **oppose SB 118**, which impedes the responsible collection and use of information that is vital to large and small businesses and is a crucial component of the Alaska economy. If enacted, SB 118 would turn Alaska into an outlier among the states, making Alaska a more difficult place to innovate on the Internet. Such a move would hurt the information economy that has become an important part of the Alaska economy.

The undersigned organizations oppose state legislation that needlessly places restrictions on the flow of data, or otherwise harms the information economy. SB 118 is such a bill. We oppose for the following reasons.

SB 118 is Unnecessary. The current protections in place for consumers on the Internet, via disclosure and choice, have worked. These practices have developed along with the Internet. They are flexible depending upon the type of consumer data, and have enabled innovation on the Internet to occur. The Internet is flourishing, and that is because people want to use it and are comfortable using it. SB 118 is a solution searching for a problem. It would add additional, needless steps that companies on the Internet will have to take, which will not help consumers.

SB 118 is Unworkable. SB 118 would place extraordinary reporting and tracking requirements on businesses operating on the Internet. The bill would require businesses to create a system that enables the business to provide a consumer with a report about nearly every piece of information that the consumer has provided to the business. Such a system would be very costly and would likely provide little benefit to consumers.

While SB 118 envisions exceptions to the reporting requirement and thus acknowledges that this information must be collected, used, and shared for the Internet to function, such exceptions will not protect businesses from having to take extraordinary measures to ensure they comply with the law. The resources for tracking and reporting will be expended whether or not a reporting requirement exists.

As discussed further below, the private right of action in SB 118 will force businesses to contend with frivolous lawsuits, even when they are in compliance. As these cases are brought, millions of dollars in litigation will be spent before a judge ever considers whether a company was in compliance because of an exception to the reporting requirement.

SB 118 conflicts with other laws. SB 118 creates compliance requirements that diverge from current law in other states. Inconsistent state laws make it more difficult for businesses to offer services on the Internet to consumers across the country. Such a “patchwork” of state laws can be incredibly damaging, and can slow down the growth of the Internet, along with the innovative services that are being developed. SB 118 will have the opposite result of its desired effect. SB 118 and bills like it harm consumers more than they help because they do not provide protections to consumers that are needed, and they make it more difficult for consumers to receive the services that they clearly want.

The Proposed Definition of “Personal Information” is Overly Broad. The proposed definition of “personal information” would impose requirements on data beyond that which is used to identify an individual. This proposed definition is well outside the bounds of what other states and the federal government have designated as “personal information” under the law. The bill defines “personal information” as anything that “identifies, relates to, describes, or ***is capable of being associated with***, a particular individual, including, but not limited to, his or her name, signature, physical characteristics or description, address, telephone number, passport number, driver’s license or state identification number...” These data elements alone do not identify an individual.

Federal Trade Commission Staff has rejected a similar standard, stating that “the proposal to include any data that is ‘linkable’ [within the definition of personal information] could unnecessarily limit the use of data that does not pose a risk to consumers. While almost any piece of data could be linked to a consumer, it is appropriate to consider whether such a link is practical or likely in light of current technology.”¹ The phrase “capable of being associated with” within SB 118 faces similar complications.

SB 118 would lead to frivolous lawsuits. SB 118 would provide plaintiffs’ lawyers a means to bring frivolous lawsuits against companies operating on the Internet. Because consumers already have adequate protections in place, if enacted, SB 118 would merely increase the cost of doing business in Alaska, without providing actual benefits to consumers. Alaska is attempting to position itself as a center for innovation and growth in the data economy. The private right of action provision in SB 118 would do the opposite.

Self-Regulation has been effective. Further, enacting SB 118 to protect consumers is unnecessary because data-driven marketing is already effectively governed by strong and enforceable self-regulatory codes. Industry self-regulation can adapt rapidly to new technologies and marketing practices, as opposed to legislative solutions that often prove to be too inflexible to quickly respond to the rapidly-developing technological environment.

¹ Federal Trade Commission Bureau of Consumer Protection Staff, Comments on Notice of Proposed Rulemaking, FCC WC Docket No. 16-106, at 9 (May 27, 2016).

One example of these industry self-regulatory practices is the establishment of individual company privacy policies. These privacy policies typically provide consumers with information regarding what types of data are collected, how it is used and the options that may be available to consumers to opt out of such data collection activities. Current industry standards also require that providers must, when requested by a consumer, discontinue the use of and suppress that consumer's data in marketing databases. Legislative action is unnecessary as existing industry standards already provide consumers with transparency about how their personal information is being collected and how it is used.

Because it unduly burdens Alaska's small businesses and nonprofits, negatively impacts Alaska's data-driven economy and jobs, and is unnecessary, the undersigned organizations respectfully **oppose SB 118**.

Sincerely,

Data & Marketing Association
ANA – Association of National Advertisers
CompTIA – Computing Technology Industry Association
Internet Association
Internet Coalition
MPA – The Association of Magazine Media
NetChoice
Network Advertising Initiative
TechNet

cc: Members of the Senate State Affairs Committee