

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

February 7, 2022

1:31 p.m.

MEMBERS PRESENT

Representative Matt Claman, Chair
Representative Liz Snyder, Vice Chair
Representative Harriet Drummond
Representative Jonathan Kreiss-Tomkins
Representative David Eastman
Representative Christopher Kurka
Representative Sarah Vance

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 159

"An Act establishing the Consumer Data Privacy Act; establishing data broker registration requirements; making a violation of the Consumer Data Privacy Act an unfair or deceptive trade practice; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 159

SHORT TITLE: CONSUMER DATA PRIVACY ACT

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

03/31/21	(H)	READ THE FIRST TIME - REFERRALS
03/31/21	(H)	L&C, JUD, FIN
04/23/21	(H)	L&C AT 8:00 AM GRUENBERG 120
04/23/21	(H)	Heard & Held
04/23/21	(H)	MINUTE(L&C)
05/05/21	(H)	L&C AT 3:15 PM BARNES 124
05/05/21	(H)	Heard & Held
05/05/21	(H)	MINUTE(L&C)
05/12/21	(H)	L&C AT 3:15 PM BARNES 124
05/12/21	(H)	Heard & Held
05/12/21	(H)	MINUTE(L&C)
12/06/21	(H)	L&C AT 1:00 PM ANCH LIO DENALI Rm

12/06/21	(H)	Heard & Held
12/06/21	(H)	MINUTE(L&C)
01/21/22	(H)	L&C AT 3:15 PM BARNES 124
01/21/22	(H)	Heard & Held
01/21/22	(H)	MINUTE(L&C)
01/26/22	(H)	L&C AT 5:15 PM BARNES 124
01/26/22	(H)	Heard & Held
01/26/22	(H)	MINUTE(L&C)
01/28/22	(H)	L&C AT 9:00 AM BARNES 124
01/28/22	(H)	Scheduled but Not Heard
01/31/22	(H)	L&C AT 4:30 PM BARNES 124
01/31/22	(H)	-- MEETING CANCELED --
02/02/22	(H)	JUD AT 1:30 PM GRUENBERG 120
02/02/22	(H)	-- MEETING CANCELED --
02/04/22	(H)	L&C AT 9:00 AM DAVIS 106
02/04/22	(H)	Moved CSHB 159(L&C) Out of Committee
02/04/22	(H)	MINUTE(L&C)
02/04/22	(H)	JUD AT 1:30 PM GRUENBERG 120
02/04/22	(H)	-- MEETING CANCELED --
02/07/22	(H)	JUD AT 1:30 PM GRUENBERG 120

WITNESS REGISTER

REPRESENTATIVE ZACK FIELDS

Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: On behalf of the sponsor, the House Rules Standing Committee, by request of the governor, introduced HB 159 and provided a PowerPoint presentation.

MAUREEN MAHONEY, Senior Policy Analyst
Consumer Reports
Oakland, California

POSITION STATEMENT: Provided invited testimony during the hearing on HB 159.

MICHAEL WARENECKE, Chief Counsel
Entertainment Software Association
Washington, D.C.

POSITION STATEMENT: Provided public testimony during the hearing on HB 159.

DAVID EDMONSON, Vice President of State Policy
TechNet
Austin, Texas

POSITION STATEMENT: Provided public testimony in opposition to HB 159.

THERESA BANNISTER, Legislative Counsel
Legislative Legal Services
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 159.

TRISTAN WALSH, Staff
Representative Zack Fields
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 159.

ACTION NARRATIVE

[1:31:13 PM](#)

CHAIR MATT CLAMAN called the House Judiciary Standing Committee meeting to order at 1:31 p.m. Representatives Drummond, Snyder, Kreiss-Tomkins, Eastman, and Claman were present at the call to order. Representatives Kurka and Vance arrived as the meeting was in progress.

HB 159-CONSUMER DATA PRIVACY ACT

[1:31:55 PM](#)

CHAIR CLAMAN announced that the only order of business would be CS FOR HOUSE BILL NO. 159(L&C), "An Act establishing the Consumer Data Privacy Act; establishing data broker registration requirements; making a violation of the Consumer Data Privacy Act an unfair or deceptive trade practice; and providing for an effective date."

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REPRESENTATIVE ZACK FIELDS, Alaska State Legislature, introduced HB 159, on behalf of the sponsor, the House Rules Standing Committee, by request of the governor. He noted that the House Labor and Commerce Standing Committee had spent considerable time refining the language in the bill. To address the buying and selling of personal data, he said that data privacy and enforcement policies were reviewed. He stated that the administration has no further comment on the current version of the bill before the committee.

REPRESENTATIVE FIELDS drew attention to slide 2 of the PowerPoint presentation, titled "HB 159 PowerPoint Presentation 2.7.2022.pdf" [hard copy included in the committee packet] and summarized the information presented, which read as follows [original punctuation provided]:

- Duty of data brokers and businesses to inform consumers they will be collecting their data, and requiring their consent.
- CSHB 159 creates four consumer rights governing the collection and use of their personal data:
 - The right to request what information was collected.
 - The right to request a list of who that data was shared with.
 - The right to request that certain information not be shared, sold or disclosed.
 - The right to request for their information to be deleted.
- It adds protections for the data of minors: those 13 and younger must have a parent or guardian opt-in for them or give explicit consent to their information being collected.
- Provisions included for enforcement and enactment of those rights.
- Protections for bona fide businesses not engaged in sale, disclosure of information.
- Allows for consumers to use a global privacy signal or control

REPRESENTATIVE FIELDS noted that the House Labor and Commerce Standing Committee had received testimony from bankers, insurance companies, and logistics companies. These entities expressed concern that the proposed legislation would appropriately target companies that buy and sell data. Also, these stakeholders suggested that unnecessary regulations be avoided, as this could result in lawsuits against those not engaged in the buying and selling of data.

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REPRESENTATIVE FIELDS cited Article I, Section 22 of the Alaska State Constitution, which read "The right of the people to privacy is recognized and shall not be infringed. The legislature shall implement this section." He pointed out that technological changes and the exchange of data have changed considerably since the drafting of the constitution. He

explained that some of the world's largest technology companies are engaged in egregious buying and selling of data. He added that data brokers' practices have been documented and described as "parasitic" by whistleblowers.

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REPRESENTATIVE FIELDS explained that data brokers claim that data collection is anonymous; however, journalists have revealed that aggregation of data could de-anonymize the collected data and risk individual safety. He provided a hypothetical example of how an individual may be tracked. He pointed out that a correlation exists between teen anxiety, suicide, and the use of social media products. He shared an animation in the presentation which depicted how journalists at the New York Times had tracked a Department of Defense official by using publicly available information. He pointed out the risks that individuals face [if their data is sold], such as restraining orders, stalking, domestic violence, and sexual assault, as these instances have been documented. He expressed the opinion that consumers should be permitted to decide whether to disclose personal data to technology companies. He noted that other states have legislation regarding data privacy, and the original bill was modeled on California's legislation. This included the private right of action for enforcement, consumer rights, and employment protections. He stated that the proposed legislation's economic threshold differs for companies [per the law in California]. For the proposed legislation, data brokers would be limited to receiving only 50 percent of their revenue from data collection. This would be in relation to the data of more than 100,000 people. He added that all other companies would not be subject to the proposed law.

REPRESENTATIVE FIELDS explained that the private right of action [for consumers] is included in the language. He expressed the opinion that no attorney in Alaska has the expertise to litigate against a company, such as Facebook; however, aggrieved parties would be eligible to file a class-action lawsuit. He expressed the need for expertise in this area of law within Alaska.

REPRESENTATIVE FIELDS stated that enforcement of the proposed legislation would include the establishment of a user fee which would be based on a consumer-privacy account within the general fund. This would be used to build expertise within the Department of Law for enforcement.

REPRESENTATIVE FIELDS read from slide 12, which listed the stakeholders who had been consulted in the drafting of the bill. This included privacy advocates and members of the business community to ensure a regulatory burden would be avoided.

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MAUREEN MAHONEY, Senior Policy Analyst, Consumer Reports, provided invited testimony in support of HB 159. She stated that no federal law exists to protect the privacy and security of personal data. She stated that irresponsible data practices exist, and laws should be required. She argued that HB 159 would provide strong consumer protections, while limiting the information companies can collect to only what is reasonably necessary to provide services to consumers. This contrasts with the current practice of companies that offer disclosures with incomprehensible privacy practices. She expressed the opinion that the proposed bill is better than those in other states, which are based on opt-out models. This results in consumers being required to opt out with hundreds or thousands of individual companies. She expressed approval of the definitions in the proposed legislation, as laws exist in other states with definitions which allow companies to disregard the opt-out provision. She characterized the enforcement provisions as "strong."

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REPRESENTATIVE DRUMMOND questioned the consumer data privacy policies in other states which are considered "strong," and she asked Representative Fields whether a small population in a state would impact the market.

REPRESENTATIVE FIELDS responded that California passed data privacy laws several years ago and has made changes each year since. He offered to follow up to the committee with the exact year in which California enacted its law. He pointed out that the presentation illustrates the laws in California, Colorado, Florida, and Virginia. He added that there is no pending federal legislation for data privacy protections; therefore, it is the prerogative of the states to enact policies. He suggested that small states would be able to establish strong polices with positive impacts.

REPRESENTATIVE FIELDS, in response to a question from Representative Eastman, stated that the bill is sponsored by the

House Rules Standing Committee, on behalf of the governor. In response to a follow-up question, he answered that the House Labor and Commerce Standing Committee adopted a committee substitute during its hearing of the bill, and this is the reason for the current bill title.

REPRESENTATIVE EASTMAN asked how the protections proposed in the bill compare to those in other states.

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The committee took a brief at-ease.

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MS. MAHONEY answered that, in her view, HB 159 would be the strongest commercial privacy bill in the United States. She pointed out that the provision in the bill which limits data collection to what is necessary for companies to provide services is stronger than the law in California. She also characterized the enforcement provisions as "strong." She stated that Virginia and Colorado have passed an opt-out policy which is "weaker" than the provision proposed in HB 159.

REPRESENTATIVE EASTMAN asked whether companies would be disincentivized from doing business in Alaska because of the small population size of Alaska coupled with the strongest data-privacy legislation.

REPRESENTATIVE FIELDS answered that no concerns had been raised by members of the industry, and he described the provisions as "common sense." He suggested that increased consumer confidence would benefit the marketplace.

REPRESENTATIVE KURKA acknowledged that a need for the bill exists and expressed his concern that the bill may be "over the top" due to its length.

REPRESENTATIVE FIELDS stated that technology has advanced faster than the laws governing data. He suggested that the number of companies involved in data collection has grown.

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CHAIR CLAMAN opened public testimony on HB 159.

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MICHAEL WARENECKE, Chief Counsel, Entertainment Software Association, stated that the Entertainment Software Association is a trade group for the video game industry. He stated that the industry has long prioritized privacy for children by complying with the federal Children's Online Privacy Protection Act (COPPA). He stated that COPPA regulates the collection of data for children under the age of 13. He suggested that HB 159 should be changed to make it clear businesses should not process data from a consumer under the age of 15, unless it is in conformity with COPPA. Also, he suggested changing the "constructive knowledge" standard to one of "actual knowledge." He recommended parental consent provisions should align more with COPPA.

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DAVID EDMONSON, Vice President of State Policy, TechNet, testified in opposition to HB 159. He acknowledged that his testimony had been prepared in response to the original draft of the bill, and he has not taken into consideration the committee substitute before the committee. He requested that the bill be amended to align with and maintain interoperability with federal regulations because of the borderless nature of the internet. He recommended the same consistency in the laws in Virginia and Colorado. He noted that the regulations enacted in California have been subject to rule making by the state's attorney general, which would be further supplanted by the California Privacy Protection Agency. He expressed concern with the "private right of action" provision. He suggested that it may lead to large settlements for unintentional behavior, rather than those based on actual harm.

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CHAIR CLAMAN ascertained that there was no one else who wished to testify, and he closed public testimony on HB 159.

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REPRESENTATIVE EASTMAN referred to page 10 and asked how parental consent for a minor would be achieved.

REPRESENTATIVE FIELDS responded that the protection of minors is an important provision in the bill. He drew attention to subsection (b), which specifies that a business recklessly disregarding the reasonable likelihood that a consumer is under

18 years of age, is considered to have the actual knowledge of the consumer's age, and this would necessitate parental consent.

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REPRESENTATIVE EASTMAN questioned whether, once parental consent has been obtained by a company, would the "reckless" criteria be disregarded. He referred to page 10, line 20 and asked whether the subsection would apply to tracking the child or to tracking the child's device.

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THERESA BANNISTER, Legislative Counsel, Legislative Legal Services, Alaska State Legislature, answered that the language in the subsection might not address the tracking of a minor's device; however, she expressed belief that it would. She stated that the language could be updated to reflect this intent more clearly.

REPRESENTATIVE SNYDER referred to the concern which was expressed by public testimony regarding the "patchwork" of regulations at the state level. She asked Representative Fields to offer his perspective on the testimony.

REPRESENTATIVE FIELDS answered that technology companies operate in hundreds of countries, and he expressed disregard of the concern, as state-level regulations would present challenges.

REPRESENTATIVE EASTMAN suggested that a "patchwork" of state-by-state regulations would benefit larger technology companies, as smaller startups would be discouraged by the burdensome regulatory requirements and the necessary resources to navigate them.

REPRESENTATIVE FIELDS expressed the belief that the opposite is true: large technology companies had "squashed" competition in the absence of regulations. He opined that robust regulations are necessary to promote competition.

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CHAIR CLAMAN noted that cell phone companies offer family plans with the billing assigned to one of the parents. He asked how the proposed privacy regulations related to minors would affect several phones in the name of one individual.

REPRESENTATIVE FIELDS answered that technology companies have knowledge of who is using a particular device based on data collected.

CHAIR CLAMAN asked whether the phone companies would have knowledge of who is using a particular phone.

REPRESENTATIVE FIELDS offered a hypothetical situation in which a minor using a smartphone would be identified by the technology companies based on the social media application profile. In response to a follow-up question, he expressed agreement that the name on the phone account would be irrelevant.

REPRESENTATIVE EASTMAN asked whether an entity, which did not have a business relationship with large technology companies, such as Facebook, would have access to the identifying data for a minor.

REPRESENTATIVE FIELDS responded that there exist nuances in technologies which could make this information available to companies.

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TRISTAN WALSH, Staff, Representative Zack Fields, Alaska State Legislature, answered that, despite a company lacking a first-hand relationship with Facebook, it has been estimated that 60 percent of applications have plugins with Facebook; thus, they have access to the information in this universe. He expressed that second- and third-hand markets are a cause for the need for protection of data.

REPRESENTATIVE DRUMMOND asked how permission of a parent would be obtained prior to a minor accessing a website that the minor should be prohibited from accessing.

REPRESENTATIVE FIELDS allowed that technology precision would evolve and become more practical, but the bill would not prescribe such a provision.

REPRESENTATIVE DRUMMOND noted the state constitution's privacy protection provision and asked whether a constitutional convention should make changes to the privacy provision, and if this happens, she questioned the effect on the proposed bill.

REPRESENTATIVE FIELDS expressed the belief that, unless the constitution is changed to remove the legislature's authority to

regulate privacy, the legislature would still regulate privacy in the absence of a mandate to do so.

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CHAIR CLAMAN announced that HB 159 was held over.

2:23:00 PM

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:23 p.m.