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August 31, 2023

The Honorable John Galloway
Chairman, House Commerce Committee
301 Irvis Office Building

RE: HB 1201 (Neilson) -Data Privacy

On behalf of the 13,000 members of the National Federation of Independent Business (NFIB) in Pennsylvania, I am writing to express our opinions on House Bill 1201 (Neilson) in anticipation of the upcoming informational hearing.

Data privacy is not a new topic in the United States, thus, there are many other states to look at and compare HB 1201. The following is a brief overview of how NFIB views the proposed legislation and amendments that we would like to see offered and adopted.

NFIB will oppose any attempt to create or expand private right of action provisions.

Some data privacy proposals have provisions that would allow consumers to pursue a private right of action if a business knowingly or unknowingly fails to comply with the terms of the measure. Some proposals include provisions that would allow third-party liability. Small business owners should not be held liable for any damages if a company the business utilizes fails to comply with established data privacy regulations. NFIB has significant feedback that demonstrates our members are overwhelmingly opposed to the creation or expansion of private rights of action. HB 1201 does NOT include a private right of action, and we recommend this language remain untouched.

NFIB supports delayed enforcement provisions.

Small business owners do not have the ability to easily absorb compliance costs up front like larger companies. Small businesses need additional time to take measures to ensure they comply with a law of this nature. HB 1201 is confusing and lengthy, and NFIB would request a delayed enforcement provision to allow time for compliance.

NFIB should support provisions that provide a longer cure period.

Even after the roll out of new data privacy regulations, interpretation, and implementation present additional challenges for small business owners. NFIB would support longer cure a longer period to

ensure small businesses have the opportunity to remedy any infractions. HB 1201 offers a 60-day cure period, and NFIB would recommend extending this to 90 days.

NFIB supports provisions increasing the revenue and consumer thresholds.

NFIB supports a small business exemption to this proposal, as well as increasing the revenue and customer thresholds. As viewed below, this proposal is amongst the strictest in the nation.

Current Thresholds in HB 1201:

Jurisdiction: Doing business in the Commonwealth

Revenue Threshold: \$10 million

Customer Threshold: 50k

Sale Threshold: 50% of revenue derived from sales (with no customer count)

State	California (CCPA)	Colorado	Virginia	Connecticut	Utah	Iowa	Indiana
Jurisdiction	Doing business in the state	Doing business in the state	Doing business in the state	Doing business in the state	Doing business in the state and earns \$25 million in revenue annually	Doing business in the state	Doing business in the state
And one of the following:							
Revenue Threshold	More than \$25 million						
Consumer Threshold	50k+	100k+	100k+	100k + (excludes payment data)	100k+	100k+	100k+
Sale Threshold	50% of revenue from selling data	Any revenue or discount from selling data & data of 25K consumers	50% from selling data and 25k consumers	50% from selling data and 25k consumers	50% revenue from selling data and 25k consumers	50% revenue from selling data and 25k consumers	50% revenue from selling data and 25k consumers

It is NFIB's recommendation that HB 1201 be amended to increase the revenue threshold to at least \$25 million, to exempt payment data from the customer threshold, and to add 25k customers to the sales threshold provision. It is also recommended that this proposal exempt small businesses with less than 20 employees.

NFIB supports provisions reducing regulatory requirements.

NFIB has historically supported legislation reducing regulatory burden on small businesses. Current data privacy laws include various requirements that would increase the cost of doing business for small businesses. Examples of such requirements include conducting data protection impact assessments to examine data privacy risks and requiring businesses to maintain records of consumer requests to access, delete or correct their data and how businesses responded to such requests for least 24 months.

As an organization, we are constantly working to support small businesses and create opportunities for them to grow and thrive in Pennsylvania. We appreciate the opportunity to weigh in and hope our comments are consistent with the goals of the committee.

Sincerely,

A handwritten signature in black ink, appearing to read 'G. Moreland', with a stylized flourish at the end.

Gregory B. Moreland
NFIB PA State Director
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