



**TO: Members of the House of Representatives Commerce Committee
Hon. John T. Galloway, Chair
Hon. Joe Emrick, Republican Chair**

FROM: John Holub, Executive Director

DATE: September 5, 2023

RE: HB 1201 (Neilson) – Establishes the Consumer Data Privacy Act

On behalf of the Pennsylvania Retailers Association (PRA), I would like to express our appreciation for the opportunity to submit comments on HB 1201, which establishes the Consumer Data Privacy Act.

Retailers across the Commonwealth have always made it a priority to protect the personal information of their customers that has been entrusted to them, and they have made enormous capital investments over the years to do just that. It should come as no surprise, the absolute last thing any retailer wants to happen is to lose the trust of their customers.

As you are also aware, the retail industry is experiencing a transformative and innovative period like no other it has seen before. Thanks to exciting technological advances, our members are able to meet customer expectations for personalization and a seamless experience between mobile, online and in-store shopping. It is imperative that policy makers do not restrict the benefits and services customers currently enjoy in their relationships with retailers, nor those that will be developed in the future.

To begin with, we are very encouraged HB 1201 protects (Sec. 5 (b) Construction.) a retailer's ability to provide discounts, free shipping or other benefits associated with their popular loyalty programs. **This protection is a top priority for retailers.** Without it, consumers could find themselves asked to grant permission to use information every time they visit a store or click on a new web page, and asked to provide the same information repeatedly that has already been provided to join a loyalty program.

We are likewise encouraged that HB 1201 does not provide for private rights of action. Retailers strongly support enforcement by the attorney general so that the interpretation and enforcement of any law you choose to pass can be consistently applied across the Commonwealth based on cases of actual harm. The attorney general has prosecutorial discretion and, unlike trial attorneys, is not motivated by personal remuneration in the decision to bring litigation.

Additionally, we support the provision that provides a reasonable opportunity for businesses to cure defects in their compliance before facing any enforcement by the attorney general.

One major concern retailers do have with HB 1201 is the effective date. While the overall legislation takes effective immediately, there are some provisions that go into effect on January 1, 2026. Any effective dates must fall outside of a holiday shopping season, especially the busiest holiday shopping season of the year. Retailers simply cannot be expected to implement significant system changes around any New Year. Preferably, any effective dates should be moved to July 1. This is especially important to our local and independent retailers, who do not have a national presence and have not dealt with complying with any privacy laws in other states.

Lastly, retailers are also concerned with a threshold establishing a small business exemption. Currently the legislation exempts (Section 2. "Controller" iv (B)) a business that processes under 50,000 transactions. That number is simply too low, especially when you consider the same customer can account for multiple transactions. California privacy legislation even sets that threshold at 100,000 transactions, and we respectfully request this legislation at least meets, or even exceeds that threshold.

On behalf of the Pennsylvania Retailers Association, we sincerely thank you for the opportunity to comment on this important issue. We hope you will balance any legislative initiative that protects personal information with the legitimate interests of businesses who use information to better serve their customers. If we can be of further assistance, please do not hesitate to contact me at john@paretailers.org or (609) 213-6866.