



January 22, 2025

Senate General Laws and Technology Committee
Attn: Eric Bingham, Committee Clerk
Room 306, General Assembly Building
201 North Ninth Street
Richmond, VA 23219

RE: SB 769 – Controller Privacy notice; Cookies; Consumer Consent (Oppose)

Dear Chair Ebbin and Members of the Senate General Laws and Technology Committee:

On behalf of the Computer & Communications Industry Association (CCIA), I write to raise several concerns regarding SB 769. CCIA is an international, not-for-profit trade association representing a broad cross section of communications and technology firms. For over 50 years, CCIA has promoted open markets, open systems, and open networks. CCIA supports comprehensive privacy legislation promoting clear, consistent consumer privacy rights and responsibilities for data processors. CCIA applauds Virginia lawmakers for combining strong privacy protections with fair compliance requirements for businesses in the Virginia Consumer Data Protection Act. However, SB 769 risks imposing significant compliance costs on small and medium-sized businesses without meaningfully improving consumer privacy.

CCIA appreciates the chance to share the following concerns, as noted below:

SB 769 may hinder small businesses' ability to improve their services and reach customers

SB 769 imposes a regulation that would be costly and burdensome for small businesses to implement. Small businesses rely heavily on cookies for analytics purposes such as counting unique site visitors. Cookies also allow these businesses to maintain personalized experience settings such as the number of items users want displayed on a page. They also help small businesses remain competitive by providing them with new sources of revenue that enable them to improve upon, or expand, their existing offerings. Requiring consumer opt-outs for cookies forecloses one of the most cost-effective ways to personalize user experiences, incentivizing businesses to switch to subscription models to pass the costs of personalization onto the consumer. Some businesses may find that such burdens remove their incentives to offer their product or service in Virginia.

Furthermore, the bill risks interfering with business's ability to reach new and existing customers. Personalized advertising helps consumers discover products and services that may be of interest to them; without personalization, consumers will still see ads, but they will be less relevant and generate more backlash. Personalized advertising also enables businesses to spend their marketing dollars more effectively: restricting personalized ads will have the most impact on small businesses, who tend to offer more specialized products and have lower



marketing budgets than global corporations. Reducing personalized ads also reduces the availability of free online content, as personalized advertising is a key revenue source for newspapers, magazines, blogs, and various other popular websites and apps. SB 769 incentivizes large publishers to put up paywalls and may force smaller publishers to shut down, thus reducing the availability of free and open internet for all.

SB 769 risks causing consent fatigue

Privacy protections should be directed at data practices that pose high risks to consumers or are unexpected in the context of a service. Consent mechanisms can be a powerful tool for facilitating transparency and consumer control. However, many online and offline services require collecting and processing certain user information. Requiring specific opt-outs for user consent to use cookies that are not “strictly necessary” induces “consent fatigue,” wherein a website is required to provide so many opt-outs that users simply click the “accept” option without reading the notices. For these reasons, broad cookie consent banner requirements are now seen as a failure in the EU.¹ Requiring opt-outs in more limited circumstances, such as when consumers are asked to provide sensitive data, preserves user attention for the most significant decisions involving their data.

SB 769 is inconsistent with other state approaches

No other state has a similar piece of legislation in effect. SB 769 thus imposes compliance costs on businesses who operate in Virginia that out-of-state businesses need not observe, thus putting Virginia at a competitive disadvantage. Furthermore, this bill would cause websites to appear and work differently in Virginia than in other states, increasing consumer confusion without meaningfully adding additional consumer protection beyond the already gold standard comprehensive privacy law in Virginia.

* * * * *

We appreciate the Committee’s consideration of these comments and stand ready to provide additional information as the General Assembly considers proposals related to technology policy.

Sincerely,

Jesse Lieberfeld
Policy Counsel– Privacy, Security, and Emerging Technologies
Computer & Communications Industry Association

¹ See Article 29 Data Protection Working Party, WP 259, Guidelines on Consent Under Regulation 2016/679, 17 (Apr. 10, 2018), (“In the digital context, many services need personal data to function, hence, data subjects receive multiple consent requests that need answers through clicks and swipes every day. This may result in a certain degree of click fatigue: when encountered too many times, the actual warning effect of consent mechanisms is diminishing.”), <https://ec.europa.eu/newsroom/article29/items/623051>.