

# THE ADVISER ANA

A weekly roundup from ANA's Government Relations team

July 26, 2019



Highlights this week include a threat to the tax deduction for DTC ads that has been defused for now, and new legislation on privacy at both the federal and state levels.

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## News of Interest

- [Your business hit by a data breach? Expect a bill of \\$3.92 million](#), *Zero Day*, July 23, 2019
- [Yahoo strikes \\$117.5 million data breach settlement after earlier accord rejected](#), *Reuters*, April 9, 2019
- [Facebook agrees to pay record \\$5 billion in privacy settlement with FTC](#), *The Hill*, July 24, 2019
- [Third Of European Businesses Not GDPR Compliant](#), *Silicon*, July 22, 2019
- [Equifax To Pay Up To \\$700 Million In Data Breach Settlement](#), *NPR*, July 22, 2019

## Word on the Street

From Politico: [\\$12,075 on paella and 32 other wacky things the candidates bought](#)

- [Democratic] campaigns spent big on advertising and staffing — along with sometimes-bizarre odds and ends that fueled the startups.

## Upcoming ANA Events

- [Government Relations Committee Meeting & Capitol Hill Day](#) – September 11, 2019, Washington, D.C.
- [Legal Affairs Committee Meeting](#) – October 16, 2019, New York, N.Y.
- [ANA/BAA Marketing Law Conference](#) – November 4 – 6, 2019, San Diego, Ca.

## Federal Affairs

### DOJ Launches Antitrust Investigation Into Big Tech

On Tuesday, the Department of Justice (DOJ) issued a [press release](#) announcing that its Antitrust Division will conduct a broad review on leading tech companies including the likes of Facebook, Amazon, Inc., Google, Apple Inc., and more. The press release noted that the review will focus on whether the platforms participated in anti-competitive behaviors which have stifled innovation in the tech sector or participated in any otherwise harmful behaviors that negatively impact consumers. If any harmful behaviors violate the law, the DOJ promised to act appropriately. The press release also stated that the DOJ's Antitrust Division is seeking information from the public, including members of the industry.

### Senate Finance Passes Bill Aimed at Lowering Prescription Drug Costs

On Tuesday, Senate Finance Chair Chuck Grassley (R-IA) and Ranking Member Ron Wyden (D-OR) released a bill aimed at lowering the cost of prescription drugs. While the bill did not contain any provisions that would have affected advertising, the possibility of that changing arose during the markup of the bill on Thursday. Senator Sherrod Brown (D-OH), along with three other Democrats, introduced an amendment that would end the business expense deduction for DTC advertising. The amendment was not voted on at the markup (the final bill approved by the committee can be viewed [here](#)), but that does not mean the amendment is completely dead.

This follows concerted efforts by both the legislative and executive branches aimed at lowering drug costs. Last year, Chairman Grassley attempted to attach an amendment to an appropriations package that would have mandated that pharmaceutical companies disclose drug prices in DTC television advertisements and provided the Department of Health and Human Services \$1 million in funding for enforcement. ANA helped defeat this amendment. Senator Jeanne Shaheen (D-NH) also introduced

legislation that would have removed that taxpayer subsidy for pharmaceutical advertising, but the legislation was never voted on.

Earlier this year, the Department of Health and Human Services promulgated a rule requiring the mandatory disclosure of list prices in ads for prescription drugs that cost \$35 or more. ANA and three major pharmaceutical companies challenged this rule and were successful in stopping its implementation.

### **Senate Judiciary Reschedules Antitrust Oversight Hearing**

The Senate Judiciary Committee has posted a [notice](#) for the rescheduled hearing entitled "Oversight of the Enforcement of the Antitrust Laws," which will now occur on September 17th. Slated to serve as witnesses for the hearing are Joseph Simons (Chairman, Federal Trade Commission) and Makan Delrahim (Assistant Attorney General, Antitrust Division, DOJ).

We will monitor this hearing for any developments.

### **Two New Important Bills Introduced This Week**

Rep. Bobby Rush (D-IL) introduced [H.R. 3900](#), legislation aimed at amending COPPA to strengthen protections relating to online collection, use, and disclosure of personal information of children. In the Senate, Sen. Brian Schatz (D-HI) introduced [S. 2233](#) which would nullify the Executive Order issued by President Trump ordering federal agencies to share citizenship data.

## **State Affairs**

### **New York City Council Introduces Location Data Privacy Bill**

On July 23, the New York City Council introduced a bill to prohibit telecommunications carriers and mobile applications from sharing a user's location data with another person. The bill, NYC [File 1632-2019](#), would also prohibit anyone who receives such location data from sharing it with another person. The penalty for violating this prohibition would be \$1,000 per violation, with a maximum penalty of \$10,000 per day per person whose location data was unlawfully shared. The Department of Information Technology and Telecommunications would enforce this prohibition. This bill would also create a private right of action against telecommunications carriers and mobile application developers who violate this prohibition. The bill has been referred to the council's Technology committee and its prime sponsor is Justin L. Brannan.

### **Industry Meets with New Jersey Privacy Bill Author**

Last Friday, a group of industry representatives met with NJ Senator Troy Singleton to discuss his privacy legislation, [NJ SB 2834](#). During the meeting Senator Singleton told the group he is working closely with the administration, and he expressed his strong desire to have consumers feel confident that their data isn't being monetized or exposed.

The Senator indicated to the group he is unwilling to amend the present definition of "consumer" in the bill.

Senator Singleton also took a hard line on the issue of "de-identified data" and stated that he will not accept a definition that does not include an objective third party making a determination of risk. He expressed an openness to having another entity than the Division of Consumer Affairs making this determination but will not accept leaving it to companies to determine risk.

Finally, the Senator, when asked by the group to reconsider the private right of action currently in the legislation, said he would be inclined to allow enforcement by the state's attorney general, so long as New Jersey's consumer protection statute provides that authority.

ANA will continue to report on developments in New Jersey.

### **State Legislative Weekly Tracker**

Click [here](#) for a summary report of this week's legislative activity in the states.

## Contact Us

If you have questions on any of the issues mentioned in the ADviser, please feel free to contact ANA's Government Relations team in Washington, D.C.:

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