TESTIMONY OF THE ASSOCIATION OF NATIONAL ADVERTISERS

BEFORE THE WASHINGTON HOUSE COMMITTEE ON INNOVATION, TECHNOLOGY & ECONOMIC DEVELOPMENT ON WASHINGTON SB 6281

FEBRUARY 21, 2020

Good morning, Mr. Chair and members of the committee. My name is Chris Oswald. I am the Senior Vice President of Government Relations for the Association of National Advertisers, the advertising industry's oldest and largest trade association.

By way of background, ANA's membership includes nearly 2,000 companies, marketing solutions providers, charities and nonprofits, with 25,000 brands that engage almost 150,000 industry professionals and collectively spend or support more than $400 billion in marketing and advertising annually. Nearly every advertisement you'll see in print, online, or on TV is connected in some way to ANA members' activities. A significant portion of our membership is either headquartered or

does substantial business in the state of Washington. We share the Committee's desire to provide all Washingtonians with consistent and meaningful data privacy protections.

We ask you today to refrain from making certain changes to SB 6281 that appeared in House companion bill 2742. ANA also requests that this Committee make limited amendments the bill's definition of "sale" to clarify the scope of the opt out right for consumers, and to help ensure that opt out right is effectuated consistently by businesses.

First, we oppose creating a private right of action because it would drive frivolous lawsuits and hurt innovation in this state without doing anything to help consumer privacy. It would expose businesses to extraordinary and potentially enterprise-threatening costs for technical violations of the law, rather than driving systemic and helpful changes to business practices. It could have a chilling effect on Washington's economy. Moreover, exposure to non-meritorious lawsuits will have a disproportionately negative impact on non-profits by diverting resources away from their charitable missions in the state;

thereby hurting Washingtonians. ANA asks the Committee to keep enforcement within the purview of the Attorney General alone.

Second, ANA opposes amending the bill's definition of the term "sale" to include data processing activities. Such a definition would be overly broad and could encompass virtually any business service using data that is offered to consumers and the market — even processing activities that involve **no transfers** of personal data to any other parties. ANA therefore asks the Committee to refrain from adding a "processing" component to the definition of "sale" so the term is limited to exchanges or transfers of personal data for consideration.

Finally, ANA asks the Committee to consider limited amendments to the definition of "sale" to clarify how it relates to the definition of the term "targeted advertising." The term "targeted advertising" includes clear exceptions for limited advertising practices such as first-party marketing and contextual advertising, and excludes vital ad operations that involve data exchanges – not for targeted advertising purposes –

but for ad delivery, reporting, and ad fraud prevention. As presently drafted, the bill does not make clear if the term “sale” subsumes these important activities. We respectfully ask the Committee to amend the definition of “sale” to clarify that it does not cover activities that are carved out from the definition of targeted advertising as well as essential ad operations.

We have submitted a letter for the record that provides additional details on these points. Mr. Chairman, thank you for the opportunity to speak today. ANA appreciates the committee’s consideration.

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