

A Private Right of Action in SB 6281 Would Help Promote Frivolous Lawsuits and Hurt Innovation Without Helping Privacy

The Association of National Advertisers (ANA) represents almost 2,000 companies, many of which are either headquartered or do substantial business in Washington State. We support the development of meaningful privacy protection for the public, but we strongly oppose including a private right of action in SB 6281. A private right of action could dramatically raise costs for Washington businesses, while creating inconsistent or contradictory regulatory requirements and failing to provide any meaningful privacy protections for consumers.

Including a private right of action in SB 6281 with potential penalties that would punish companies that are good actors but inadvertently failed to conform to technical provisions of the law could have a chilling effect on Washington's economy without providing any significant benefits for consumer privacy. Private litigant enforcement provisions and related potential penalties for violations represent an overly punitive scheme that would not effectively address consumer privacy concerns or deter undesired business conduct.

A private right of action would create a complex and flawed compliance system without tangible privacy benefits for consumers. Allowing private actions would flood the courts with frivolous lawsuits driven by opportunistic trial lawyers searching for technical violations, rather than focusing on actual consumer harm. Private right of action provisions are completely divorced from any connection to actual consumer harm and provide consumers little by way of protection from detrimental data practices.

A private right of action would also expose businesses to extraordinary and potentially enterprise-threatening costs for technical violations of the bill rather than driving systemic and helpful changes to business practices. It would also encumber businesses' attempts to innovate by threatening companies with expensive litigation costs, especially if those companies are visionaries striving to develop transformative new technologies.

Beyond the staggering cost to Washington businesses, the resulting snarl of litigation could create a chaotic and inconsistent enforcement framework with conflicting requirements based on differing court outcomes. Overall, a private right of action would serve as a windfall to the plaintiff's bar without focusing on the business practices that actually harm consumers.

As an alternative and more reasonable approach, we ask the legislature to take steps to ensure consumer data privacy enforcement responsibilities remain within the purview of the state Attorney General's office. This framework would lead to better outcomes for consumers while enabling businesses to allocate funds to developing processes, procedures, and plans to respond to true consumer needs.

Sincerely,



Dan Jaffe
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