

April 3, 2024

The Honorable Senator Kesha Ram Hinsdale, Chair  
The Honorable Senator Alison Clarkson, Vice Chair  
The Honorable Senators Randy Brock, Ann Cummings, Wendy Harrison  
Senate Committee on Economic Development, Housing and General Affairs

**RE: Comments of the News/Media Alliance on H. 121 Posing Risk to Vermonters' Access to High-Quality Journalism**

Dear Senators Ram Hinsdale, Clarkson, Brock, Cummings and Harrison:

The protection of the free press is enshrined in the First Amendment to the U.S. Constitution and the Vermont Constitution,<sup>1</sup> and a vibrant and financially stable independent press has never been more essential to a healthy democracy. The News/Media Alliance is a nonprofit organization, representing the newspaper, magazine, and digital media industries, and empowering members to succeed in today's fast-moving media environment. The Alliance represents over 2,200 diverse publishers in the United States and internationally, ranging from the largest news and magazine publishers to hyperlocal newspapers, and from digital-only outlets to papers who have printed news since before the Constitutional Convention.

The citizens of Vermont rely on newspapers, magazines, and their associated websites and applications to stay up to date on the latest local, national, and international news, political developments, culture, and society. With a well-designed privacy law, the press can continue to do its job as intended in the U.S. and Vermont Constitutions, and consumers can continue to have access to quality, cost-efficient news sources while exercising control over the use and exchange of their personal information.

As currently drafted, we are concerned that H.121 would impose operational requirements and enforcement mechanisms that disproportionately penalize publishers for their good-faith compliance efforts with existing and largely consistent state privacy laws and could limit Vermont readers' access to high-quality news information and independent journalism.

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<sup>1</sup> *Constitution of the State of Vermont, Chapter 1, Article 13: "The people have a right to freedom of speech, and of writing and publishing their sentiments, concerning the transactions of government, and therefore the freedom of the press ought not to be restrained."*



Readers understand that access to high-quality journalism is sustained through advertising. Our members' trusted relationship with their readers is predicated upon publishers being transparent about their data collection practices to consumers. For example, publishers use digital advertising to provide free or low-cost journalism to their readers—a model that benefits publishers, advertisers, and readers.

### **1. H. 121, Like S.269, Should Align with Existing State Privacy Legislation. Consistency Ensures Successful Implementation by Businesses, Including News Publishers, and a Coherent Consumer Experience.**

The Alliance notes that S. 269, sponsored by Chair Ram Hinsdale and Vice Chair Clarkson, aligns much more closely with existing state frameworks. Consistency is imperative for our members, whose content is read across state lines and who must simultaneously meet requirements in multiple states. We, therefore, urge the Committee to prioritize consideration of the Senate version or otherwise ensure that H. 121 harmonizes its requirements with current U.S. state privacy laws to provide consistent and predictable guidance and save unnecessary expense and burden for publishers that have expended and are continuing to expend, significant time and effort putting compliance programs in place. This is particularly important in a small population state like Vermont, where national or regional publishers could be faced with difficult service choices if outsized costs of compliance proved cost-prohibitive.

Current U.S. state privacy laws prescribe relatively similar frameworks and concepts, but as drafted, H. 121's expansive applicability and novel definitions of consumer health data would negate the consensus-building and privacy norms established by the states that have already passed such privacy laws.

Harmonizing more closely with those U.S. state laws would help ensure widespread compliance and provide much-needed consistency and predictability to publishers of all sizes serving Vermont.

### **2. H. 121 Should Contain Exclusive Attorney General Enforcement. This Enhances Consumer Protection While Protecting News Publishers from Frivolous or Politically-Motivated Lawsuits.**

Particularly with the proscriptive technical compliance mechanisms required in H. 121, the Alliance believes that, as with S. 269, exclusive Attorney General enforcement is the best mechanism for matching consumers' well-being and the feasibility of successful business compliance. This will ensure accountability while minimizing risks for businesses – especially publishers – from frivolous suits and political recrimination.





A private right of action, particularly when coupled with statutory damages and attorneys' fees for claimants, not merely "prevailing parties," creates an open gateway for financially or politically motivated nuisance or so-called "gotcha" lawsuits that exploit alleged technical violations or instances of non-compliance that present no or little harm to consumers and do little to enhance their privacy or safety. It is important to note that none of the other fifteen states that have passed comprehensive consumer privacy bills have included a broad private right of action.

### Conclusion

It has never been clearer that the existence of a free press cannot be taken for granted, as high-quality journalism supports the U.S. economy, a healthy democracy, and local communities. The Alliance supports clear and consistent consumer privacy rules that align with other established privacy frameworks, furthering practical implementation and operationalization by news publishers of all sizes across digital and offline media, regardless of jurisdiction.

We commend the Committee's work on consumer privacy, we appreciate your consideration of our concerns, and welcome the opportunity to provide further substantive feedback on either H. 121 or S. 269.

Sincerely,

A handwritten signature in black ink that reads "Emily Emery".

Emily Emery  
Vice President – Government Affairs  
News / Media Alliance

