

Date: April 16, 2024

To: Sen. Ram Hinsdale, Sen. Clarkson, Sen. Brock, Sen. Cummings, Sen. Harrison

Cc: Rep. Durfee, Rep. James, Rep. Bongartz, Sen. Sears, Sen. Campion

From: Ethan Platt

Subject: Registering Concern Over H.121

To Members of the Senate Committee on Economic Development, Housing and General Affairs:

My name is Ethan Platt, and I am the president of American Meadows, Inc. We are a 25+ year-old ecommerce company based in Shelburne that employs between 75-125 people depending on seasons. I am writing to express my confusion and concerns regarding H.121, the existence of which was only brought to my attention within the last several days.

As it pertains to H.121 and personal data privacy, we are in support of personal rights and recognize that in today's world, data integrity is paramount. Although I am not personally versed in reading draft legislation, multiple elements of this bill (as I interpret it) create great anxiety. Specifically, the parts that are of most concern include:

1. **Private Right of Action:** This provision is overly broad and unrealistic. It will allow small businesses like American Meadows to be sued by shady lawyers (see comment below re the multiple 'trolls' we have had to settle with), costing us and other Vermont businesses legal and settlement fees we simply cannot afford.
2. **Data Minimization:** This language is so unclear that it is tough to know where to start. Our customers (and keep in mind that we are in the gardening industry) expect us to recommend products to them based on their planting zones and local climate conditions. They expect us to send them promotions relevant to their past purchases and their shopping habits on our website. Limiting collection to only data necessary to "provide the services for which the personal data was collected" is completely unclear and does not align with what our customers want. This language puts Vermont businesses at a competitive disadvantage in terms of ecommerce and marketing capabilities.
3. **Data Protection Assessment Requirements:** A requirement that any business with more than 6,500 interactions would trigger assessments is cripplingly low. Keeping track of how many customers we have in each state is unfeasible from a cost perspective. Vermont businesses will suffer and not be competitive.
4. **Requiring consent requirements** is something that creates incredible ecommerce friction. Like the above, this provision would put Vermont businesses at a disadvantage.

In reading the entirety of the amended bill, I have no idea what the State of Vermont is trying to accomplish with this legislation, who is behind these efforts (it certainly reads like outside lobbyists with a national agenda, which is a growing issue in VT) and why it is seemingly being fast-tracked through. In a state that has significant issues to solve, it is certainly frustrating to see the amount of effort going into legislation that has the real opportunity to harm critical employers such as American Meadows through ignorance of the effects, while more pressing issues for the lives of Vermonters fail to garner attention. From this person's perspective, I request significantly more time, transparency and collaboration be considered before passing such specific data privacy laws that have the potential, if not properly constructed, to have crippling economic consequences for companies such as ours.*

Best,

Ethan Platt
President | American Meadows

*For expanded context on how businesses such as ours operate as well as my perspectives informed by experience, kindly review the following additional information:

In my 15+ year journey leading this company, I have had multiple opportunities to interact with both federal and state elected officials regarding issues pertaining to our business. This includes direct conversations with Senator (then Congressman) Welch regarding online sales taxes, Attorney General Donovan regarding the overall dynamics of ecommerce and how the 'Big 3' (Amazon, Google & Meta) control the entire game as well as others. Through these multiple experiences, I have learned that those creating and enforcing laws often have a limited understanding of how those laws influence real people, companies and thus communities.

There seems to be a misconception that ecommerce is a highly lucrative endeavor. All one needs to do to dispel that notion is to examine [the SEC filings of Wayfair](#), a 22-year-old pure ecommerce company that has had [negative earnings for its history](#), with the exception of the peak of the pandemic. Imagine a company such as ours having to fund operations with profit each year having to compete against a company that can afford to lose >\$1B annually! Ecom is hard – customers are expensive to acquire and have low loyalty, talent is expensive, the costs for information technology are endless and competition is ruthless – there's always someone willing to sell it cheaper and throw in free shipping!

Added to that dynamic, three practical monopolies have been allowed to form:

- Amazon (over 60% of all ecommerce searches begin on Amazon and 60% of US Households are Prime members, meanwhile the company was built on billions of

dollars of federal, state and local tax breaks and continues to benefit from a [government-sponsored competitive advantage in the form of US Postal package rates that are <1/2 of what someone like American Meadows pays](#)),

- Google (>90% of all search engine searches) and
- Meta (Projected 2024 ad revenue = \$63B).

Collectively, they are the toll collectors that all others must submit to. On the other end, Amazon Marketplace, Etsy, Ebay and low-cost ecom platforms such as Shopify have given rise to individual sellers and provided paths to commerce for any individual who wants to sell from their basement. [Yet nearly half of the US Economy](#) is generated by those of us in the precarious middle – too small to have market power, but large enough to carry burdens that independent sellers do not. (For example, at our company we offer 100% healthcare coverage, 401k match, family leave, educational benefits and more, while also exceeding the thresholds for nexus in every state with sales tax and facing employment nexus in a dozen states.)

We also know that more so than ever, [customers expect and demand retailers such as us to cater to their specific needs, wants and interests](#). As a gardening company, a visitor to our website who lives in Texas does not want to see photos of gardens or be presented products that only grow in Vermont. Furthermore, once they've given us 'signals' of their interests, the expectation is that we will provide them with the content, the products and even the promotions that will resonate with them. Failure to do so leads to inefficiencies that are not sustainable. Every time someone clicks on a paid link in Google (for example), it costs our company an average of anywhere from \$.25 to \$2.00, depending on the circumstances, and in the last 12 months alone, we've seen the average cost of those bids increase by >12%. If we are not able to harness data and effectively convert (in ecommerce, conversion rates are typically 1-2% meaning you must drive 50-100 visitors to your site to get one order), the economics do not work. And remember those 'Big 3'? Their algorithms know exactly how much we are willing to bid for traffic and are constantly playing us off our competition to get optimized revenue – It's not a coincidence that Google's 2023 revenues were >\$300B.

Many costs that small and midsized businesses such as ours incur are due to the nature of state-by-state regulations. For example, we estimate that meeting the sales tax requirements of the Wayfair Supreme Court decision costs our company more than \$100k to implement and we continue to pay tens of thousands of dollars per year out of profits to administer sales tax software and submissions. I often say, imagine if you walked into a shop on Church Street and they were required to ask you for your home zip code and submit sales tax to each jurisdiction that customers came from. It would be impractically burdensome and costly and yet that is what is required for online sellers. Next, think about a post-pandemic hybrid work world where we now have access to remote talent – critical in a state such as ours where the relevant talent pool is limited and it is hard to recruit transplants. Yet our 2 ½ person HR department and subsequent policies are now required to comply with each state's various and unique

requirements, lest we run the risk of fines or litigation. Now try and imagine the costs of both preparing and filing taxes for a 2 ½ person accounting team under those described conditions – our tax package this year for our ‘small business’ was 880 pages.

When you then layer on the fact that websites such as ours are constantly under attack by bad actors trying to steal credit card data, [Patent Trolls](#) and [ADA Trolls](#) are circling looking to shake down companies in order to make a quick buck (we’ve had to settle several) and all costs, from labor to costs of goods to shipping are rising faster than consumers are willing or able to pay, you have a merciless operating environment with no signs of getting better. The amount of energy that companies such as ours must put into non-value generating activities has multiplied exponentially in my 15 years of experience and it simply isn’t sustainable. Yet there persists a perception that we are a ready source of tax revenue (cloud computing tax, childcare tax – which we supported, etc) and that additional regulations do not significantly impact our bottom lines. Entrepreneurial companies such as ours are critical to our economy, yet [we are the frogs in the boiling water](#).

I sincerely hope that by reading this far, you have some measure of improved understanding regarding the challenges companies such as American Meadows face. Mid-sized companies in this country are in an ever-tightening vice. Founding or buying small businesses takes many factors, including a high tolerance for risk, a merciless work ethic, some luck and ultimately an unwavering belief that the world will benefit from your product or service. At American Meadows, our purpose is Doing Good Through Gardening, and we seek to achieve that every day. In addition, this game also takes a belief that the good days will outnumber the bad. In our current economic and social environment, being a leader of any sort is harder than ever. At a certain point, the tipping point is reached when the hurdles placed in front of companies such as ours and leaders such as me overshadow the benefits. I know many business owners/leaders who are currently debating that equation. In my opinion, people who seek to create the laws and regulations at all levels in our country could stand to better understand how the realities of these requirements manifest for those of us who are trying our best to be a part of the overall solution.

Thank you for serving the people of Vermont and I would be happy to further engage in any relevant follow-up conversations regarding this matter.

ERP