



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

My name is Rob Bean, and I am the Chief Financial Officer for the Orvis Company in Sunderland, Vermont. For over 165 years Orvis has been a values-driven, family-owned Vermont company and trusted retailer and outfitter for adventure and inspiration in the outdoors. We are an omni-channel company with a robust catalog marketing arm, digital and ecommerce arm, and brick-and-mortar stores around the country, including our Flagship in the village of Manchester.

I am submitting written testimony on behalf of Orvis today because like many of our peers, we are extremely concerned about House Bill H.121 and the very consequential impact it would have on Vermont businesses, particularly those small to mid-sized.

We take data privacy very seriously and would like to advocate for changes to this bill to help strike the balance between smart data privacy protection, business sustainability, and Vermont economic sustainability.

Particular provisions in this bill that are exceptionally concerning to us are the following:

Data Minimization

Portions of this bill having to do with data minimization will stop small businesses from knowing and communicating with their customers, because the bill limits collection to only data “necessary...to provide the services for which the personal data was collected.” This overrides other provisions in the bill that permit data collection, in particular relating to advertising and communication that is not only critical to small businesses but foundational to the health of any company that does business online. The limitation specifically:

- Prevents business from contacting existing customers about upcoming sales, new products, or other marketing updates;
- Prevents businesses from using customer location data to advertise to people likely to visit a brick-and-mortar store;
- Prevents businesses and their marketing partners from collecting traffic data needed to measure and improve website performance; and
- Prevents businesses and their advertising partners from collecting data necessary to measure and improve advertising.

These limitations would put Vermont businesses at a significant if not crippling disadvantage.

Requiring Data Protection Assessments

Data protection assessments are a new concept requiring expensive lawyers and consultants. The requirement that all businesses with more than 6,500 consumer interactions produce “data protection assessments” for every data processing activity “that creates a heightened risk of harm” would sink small businesses. “Heightened risk” processing includes all data related to targeted advertising.

Private Right of Action

H.121 includes a broad private right of action for any violation of the law. A private right of action allows an individual to bring a lawsuit against any organization covered by the bill. Just as has happened with patent infringement and still happens with ADA lawsuits, small businesses can be sued for over-collecting or over-processing consumer data. In the course of that litigation, those small businesses will be offered the “opportunity” to settle for payments that are unfairly costly but less than the exorbitant initial demand. The risk of abuse is exacerbated by the bill’s imposition of minimum statutory damages of \$1,000 per consumer without having to prove injury.

We believe that without essential revisions, H.121 will put Orvis and many other Vermont businesses at significant risk. As Vermonters, we know that this is not the intent of the bill and would be glad to offer any assistance that we can for a solution that benefits both consumers and Vermont businesses.

Sincerely,

A handwritten signature in black ink, appearing to read 'Rob Bean', written in a cursive style.

Rob Bean
CFO
The Orvis Company