



S. 71 Draft 2.3 TESTIMONY

Ski Vermont/Vermont Ski Areas Association

Molly Mahar, President

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Thank you Chair Marcotte, and to the Committee for the opportunity to testify on S. 71 Draft 2.3 this morning.

Ski Vermont is a non-profit trade association representing 22 alpine and 26 cross-country ski areas across Vermont. Our members range in size from volunteer-run community ski areas to the state's largest resorts. The ski industry is an important economic driver for Vermont, particularly in the rural parts of the state where most ski areas are located. The visits generated by ski areas help other businesses in their communities to remain open and provide jobs year-round.

Enacting data privacy policy is very important for Vermonters and Vermont businesses, so we appreciate the Committee's work on this issue.

We support strong consumer protection around data privacy, but Vermont's approach must be balanced with practical and consistent definitions and provisions so that Vermont businesses remain competitive and have a clear path to compliance. We support the version of S. 71 as passed unanimously by the Senate last year.

Today, I want to focus on one section in particular that would negatively impact our ski area members, but this is not our only concern with this version of the bill.

Data Minimization. S. 71 2.3 Section 2415e (page 33)

Draft 2.3 includes data minimization requirements that are confusing, overly restrictive, and it uses new language that is not used in any other jurisdiction. The bill limits collection of data by a business to what is "reasonably necessary and proportionate" to maintain "a specific product or service requested by the consumer to whom the data pertains"; and "a communication, that is not an advertisement, by the controller to the consumer that is reasonably anticipated within the context of the relationship between the controller and the consumer." Nevertheless, a ski area may use data obtained within the parameters above to facilitate first party or targeted advertising.

This form of data minimization has not been used in other jurisdictions with respect to data collection and it may not be clear to a business what this really means. What's more, it introduces a subjective grey area that could be the subject of a dispute between a business and a consumer. For example, is merely browsing a web site a requested product or service? These limitations take consumer choice and control out of the equation about how their data can be utilized.

Further, the bill's language says that collection and processing of data must be limited to: "a specific product or service requested by the consumer to whom the data pertains" and "a communication that is not an advertisement, by the controller to the consumer that is reasonably

anticipated within the context of the relationship between the controller and the consumer.” This has the effect of significantly limiting targeted advertising and a business’ competitiveness.

For example, In the case of a multi-ski area season pass product where not all the participating ski areas share the same ownership or branding, this could have the effect of severely limiting a partner ski area’s ability to utilize targeted advertising.

By contrast, S. 71 as passed by the Senate (Section § 2420 (a) (1) (page 22)) includes data minimization requirements as well, but the limitations are linked to their disclosure to the consumer. It allows a controller to collect and process data that is “adequate, relevant, and reasonably necessary in relation to the purposes for which the data is processed, as disclosed to the consumer...”. So, with proper disclosure, this version of the bill does permit data to be utilized for targeted advertising. And it allows consumers to opt out, if they choose. Further, this language appears in other jurisdictions so it would allow Vermont businesses to follow a regional approach to compliance, rather than having to comply with a unique standard -- which will have a dual effect of limiting their competitiveness, relative to businesses in other jurisdictions, and driving up their cost of compliance.

Many consumers appreciate targeted advertising to inform them of products, services, benefits, or savings that may be available and interesting to them. And if they don’t want this type of advertising, the Senate’s version of the bill allows them to opt out of receiving it. So, this approach gives consumers the choice and control to receive the information they want to receive from businesses, rather than having the choice made for them by prohibiting businesses from providing it altogether.

We believe that passing a data privacy bill is important for Vermonters and Vermont businesses. We support the version of S.71 that passed the Senate last year because it gives consumers rights and options about how their data is used rather than just leaving it up to businesses. It also allows businesses to responsibly use data so that they can effectively promote their businesses in a competitive market.

I also want to mention that I’m the chair of the Vermont Travel Recreation Council and a board member of the Vermont Tourism Alliance -- a new organization launched yesterday at the Vermont Tourism Summit. I’m including this because while I represent the ski industry specifically, I have also been involved with tourism in Vermont for several decades and care about the success and sustainability of the entire tourism industry in this state.

Tourism, like the ski industry, is a highly competitive space. There are many destinations competing for the same visitors we want to attract to visit Vermont. By its nature, tourism sector businesses compete with similar businesses in other jurisdictions. Our Vermont tourism businesses must have the same advantages as businesses elsewhere, or as much so as possible, and not be hamstrung by policies that will leave them, not only at a competitive disadvantage, but with higher compliance costs than similar businesses in other states.

You have heard from a number of organizations in favor of draft 2.3 with the purpose of advancing data privacy policy in general, but many of them are not from Vermont and not representing the Vermont businesses that will be directly impacted by the policy they are promoting. I urge you to please listen to Vermont businesses.

The importance of a healthy and competitive tourism industry in Vermont cannot be overstated. We over index when it comes to the percentage of GDP that tourism contributes. 9% compared to

the average state that derives 3% of GDP from tourism. \$4.2B in direct visitor spending. \$294M in direct tax revenue and \$6.95B in total economic impact when we consider direct, indirect and induced inputs of tourism. Can we afford to put any of this at risk?

We think the answer is no. Again, we support data privacy policy that protects consumers, but it does not seem prudent to create policy that will render our Vermont businesses less competitive while at the same time forcing them to pay more to comply with a unique-to-Vermont regulatory regime.

Thank you for your time this morning.