April 6, 2026

Senator Alison Clarkson
Chair, Senate Committee on Economic Development, Housing, and General Affairs
115 State St.
Montpelier, VT 05633

Senator Randy Brock
Vice Chair, Senate Committee on Economic Development, Housing, and General Affairs
115 State St.
Montpelier, VT 05633

RE: Letter in Opposition to Vermont H. 211

Dear Chair Clarkson and Vice Chair Brock:

On behalf of the advertising industry, we write to oppose Vermont H. 211.[1] We provide this letter to offer our non-exhaustive list of concerns about this bill. H. 211 would create a private right of action and establish rulemaking authority for the Attorney General. Accordingly, we ask you to decline to advance the bill as drafted out of the Senate Committee on Economic Development, Housing, and General Affairs ("Committee").

As the nation's leading advertising and marketing trade associations, we collectively represent thousands of companies across the country. These companies range from small businesses to household brands, advertising agencies, and technology providers. Our combined membership includes more than 2,000 companies that power the commercial Internet, which accounted for nearly 20 percent of total U.S. gross domestic product ("GDP") in 2024.[2] By one estimate, approximately 18.2% of Vermont jobs in 2024 were related to the ad-subsidized Internet, a share projected to increase to 20% by 2029.[3] Our group has more than a decade's worth of hands-on experience it can bring to bear on matters related to consumer privacy and controls. We would welcome the opportunity to engage with the Committee further on the points we discuss in this letter.

I. H. 211 would establish a private right of action, which is an inappropriate form of enforcement.

As presently drafted, H. 211 would create a private right of action.[4] H. 211 should be updated to clarify that it does not create a private right of action under any law. Instead, enforcement should be vested with the Attorney General ("AG") alone, because such an enforcement structure would lead to stronger outcomes for Vermont residents while better enabling businesses to allocate resources to developing processes, procedures, and plans to facilitate compliance with the bill's new requirements. AG enforcement, instead of a private right of action, is in the best interests of consumers and businesses alike.

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[1] Vermont H. 211 (2026 Session), located here (hereinafter, "H. 211"), as amended here.
[2] S&P Global, THE ECONOMIC IMPACT OF ADVERTISING ON THE US ECONOMY, 2024-2029 at 4 (Aug. 2025), located at https://theadcoalition.com/wp-content/uploads/2025/08/TAC_SP-Global-Final-Report_August-2025.pdf.
[3] *Id.* at 15-16.
[4] H. 211 § 2446(e)(1).

The possibility of a private right of action in H. 211 would create a complex and flawed compliance system without tangible benefits for consumers. In addition, allowing private actions will flood Vermont's courts with frivolous lawsuits driven by opportunistic trial lawyers searching for technical violations, rather than focusing on actual consumer harm.[5] For instance, as drafted, the private right of action is so broad that even an inadvertent or technical failure by a data broker to timely register or a data broker that erroneously has a broken link in their registered information would trigger liability, effectively creating open season for the trial bar to file lawsuits. 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.

Additionally, a private right of action would have a chilling effect on Vermont's economy by creating the threat of steep and unforeseeable costs for companies that are good actors but inadvertently fail to conform to technical provisions of law. Private litigant enforcement provisions do not effectively address consumer protection concerns or deter undesired business conduct. They expose businesses to extraordinary and potentially enterprise-threatening costs for technical violations of law rather than drive systemic and helpful changes to business practices. A private right of action 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. The threat of an expensive lawsuit may force smaller companies to agree to settle claims against them, even if they are convinced they are without merit.[6]

Beyond the staggering cost to Vermont businesses, the resulting snarl of litigation could create a chaotic and inconsistent enforcement framework with conflicting requirements based on differing court outcomes. Overall, the possibility of 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. We therefore encourage the Committee to clarify that H. 211 does not create a private right of action under any law and vests enforcement authority with the AG alone.

II. H. 211 would establish new rulemaking, which is unnecessary and risks further fragmentation.

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[5] A select few attorneys benefit disproportionately from private right of action enforcement mechanisms in a way that dwarfs the benefits that accrue to the consumers who are the basis for the claims. For example, a study of 3,121 private actions under the Telephone Consumer Protection Act ("TCPA") showed that approximately 60 percent of TCPA lawsuits were brought by just forty-four law firms. Amounts paid out to consumers under such lawsuits proved to be insignificant, as only 4 to 8 percent of eligible claim members made themselves available for compensation from the settlement funds. U.S. Chamber Institute for Legal Reform, *TCPA Litigation Sprawl* at 2, 4, 11-15 (Aug. 2017), located here.

[6] For instance, in the early 2000s, private actions under California's Unfair Competition Law ("UCL") "launched an unending attack on businesses all over the state." American Tort Reform Foundation, *State Consumer Protection Laws Unhinged: It's Time to Restore Sanity to the Litigation* at 8 (2003), located here. Consumers brought suits against homebuilders for abbreviating "APR" instead of spelling out "Annual Percentage Rate" in advertisements and sued travel agents for not posting their phone numbers on websites, in addition to initiating myriad other frivolous lawsuits. These lawsuits disproportionately impacted small businesses, ultimately resulting in citizens voting to pass Proposition 64 in 2004 to stem the abuse of the state's broad private right of action under the UCL. *Id.*

H. 211 authorizes the Attorney General to adopt rules to implement the provisions of the data broker section of the bill.[7] H. 211 already outlines detailed registration disclosures, including specific information (e.g., collection practices, opt-out mechanisms) that must be reported annually, so the value of additional agency rulemaking authority is unclear. Allowing broad rulemaking could lead to new definitions, registry requirements, or compliance mandates not vetted by the Vermont General Assembly, creating uncertainty for businesses and consumers, and potentially conflicting with other state privacy frameworks. We encourage the Committee to remove this rulemaking authority and ensure the legislative language aligns with the majority of states that have enacted data broker registry laws.

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We and our members strongly support meaningful privacy protections for consumers. We believe, however, that H. 211 will not further meaningful consumer protections in Vermont. We therefore respectfully ask the Committee to decline to advance H. 211 as proposed. We would welcome the opportunity to engage further and work with you to craft amendments to the existing Vermont data broker law that benefits Vermont consumers and businesses alike.

Thank you in advance for your consideration of this letter.

Sincerely,

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

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[7] H. 211 § 2446(e)(2).