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The Honorable Laurie Jinkins
Speaker of the House
Washington House of Representatives
Olympia, WA  98504

The Honorable Andy Billig
Majority Leader
Washington Senate
Olympia, WA  98504

Dear Speaker Jinkins and Senate Majority Leader Billig:

The U.S. Chamber of Commerce ("the Chamber") and the U.S. Chamber Institute for Legal Reform ("ILR"), believe that consumers deserve to know that their privacy is respected and protected. It is for this reason that the Chamber supports passage of a national privacy standard that protects all Americans equally. At the same time, the Chamber commends Senator Reuven Carlyle for his leadership in recognizing the importance of protecting consumer privacy. The Chamber supports many of the consumer rights included in the Senate version of SB 6281, the Washington Privacy Act ("WPA").

Many of the provisions of the WPA related to consumer rights are the correct approach, but at the same time, the Chamber opposes any privacy legislation that would give rise to a new private right of action ("PRA"). Unfortunately, the House-passed version of this legislation creates such a right. It is important to recognize that the WPA is likely to significantly influence legislation in states across the country, as well as federal legislation.  Since what happens in Olympia will have a profound effect nationally, the U.S. Chamber urges the Washington Legislature to achieve correct data policies.

The U.S. Chamber and ILR opposes a new PRA because PRAs as a method of enforcing privacy laws are particularly inefficient and ineffective in this policy area.

A PRA is an invitation to lawsuits to remedy technical violations that have little or no impact on consumers, and that are often difficult or impossible to trace an alleged harm to a particular entity or defendant, or to a specific act or omission. This can result in significant financial damage to a business with little impact on consumers. Moreover, even when a consumer has suffered a concrete injury, they are unlikely to receive meaningful compensatory or injunctive relief through private litigation, especially when that litigation takes the form of a class action lawsuit.

Given these characteristics, attempting to enforce privacy laws through PRAs engenders a series of troubling consequences:

- PRAs, combined with the class action mechanism, often lead to grossly expensive litigation and extreme pressure to settle as companies are faced with the alternative of significant reputational damage and the risk of an outsized (or "nuclear") verdict. This dynamic primarily benefits the plaintiffs' bar and offers little relief to consumers whose privacy interests they claim to represent.
- PRAs allow individual plaintiffs' lawyers to set national policy. Rather, expert enforcement agencies such as the offices of the state attorneys general should shape statewide policy with a more holistic approach. Agencies can be expected to understand the complexities of the law and to balance the various factors of encouraging compliance, supporting innovation, and preventing and remediating harm.
- PRAs lead to inconsistent and, potentially, to dramatically varied rulings across jurisdictions. On the other hand, agency enforcement provides consistent decisions that shape privacy protections for consumers statewide, while also offering clarity to entities on how to align their practices with existing law.

The Chamber urges the House and Senate to continue to work to promote consumer privacy without imposing enforcement regimes that create confusion. It is crucial that stakeholders arrive at privacy policy solutions that protect consumers equally and instill certainty.

Sincerely,

Tom Quaadman
Executive Vice President
Chamber Technology Engagement Center

Harold Kim
President
U.S. Chamber Institute for Legal Reform

cc: The Honorable Reuven Carlyle, The Honorable Mark Schoesler