



Statement of the Chamber Technology Engagement Center

ON: COVID-19 CONSUMER PROTECTION HEARING

**TO: U.S. HOUSE ENERGY AND COMMERCE COMMITTEE,
SUBCOMMITTEE ON CONSUMER PROTECTION AND
COMMERCE**

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**BEFORE THE U.S. HOUSE ENERGY AND COMMERCE COMMITTEE,
SUBCOMMITTEE ON CONSUMER PROTECTION AND COMMERCE**
Hearing on “Consumers Beware: Increased Risks During the COVID-19 Pandemic”
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July 9, 2020

Good afternoon, Chairwoman Schakowsky, Ranking Member McMorris Rodgers, and distinguished members of the House Subcommittee on Consumer Protection and Commerce. My name is Tom Quaadman and I am the Executive Vice President of the Chamber Technology Engagement Center (or C_TEC), the Chamber Global Innovation Policy Center, and Center for Capital Markets Competitiveness. C_TEC was created to promote the role of technology in our economy and to advocate for rational policies that drive economic growth, spur innovation, and create jobs. C_TEC understands that the COVID-19 Pandemic in addition to the human toll of infections has also fundamentally changed how Americans are going about their daily lives, whether it be through parents acting as part-time teachers, office employees having to telecommute, or patients making visits to the doctor online.

COVID-19 represents one of the greatest challenges to the nation in the twenty-first century and affects nearly every facet of our everyday lives. At the same time, the private sector is leading efforts to mitigate the pandemic while planning for economic recovery. The response to COVID-19 also implicates many privacy issues for consumers, and for that reason, the Chamber calls on Congress to pass national privacy legislation that protects all Americans equally. Finally, in order to spur economic recovery, Congress should grant companies targeted, timely, and temporary liability protections to ensure that companies can safely and quickly open and bring back jobs.

I. THE PRIVATE SECTOR IS LEADING THE COVID-19 RESPONSE

The private sector is leading America’s COVID-19 response by, among other things, funding pandemic mitigation, embracing technology to track and monitor the virus, reconvert legacy systems to tackle present challenges, and keep Americans connected to the Internet.¹ Technology companies in particular are acting as a force for good and were even doing so in the lead up to the COVID-19 pandemic. C_TEC launched a multistate tour in 2019, TecNation, to showcase how companies were embracing technology through a data-driven society, a smart and connected infrastructure ecosystem, and an upskilled workforce. In May 2020, C_TEC released a report detailing the tour’s findings.²

A. Data and Technology for Good

¹ See Corporate Aid Tracker: COVID-19 Business in Action (2020) available at <https://www.uschamberfoundation.org/aid-event/corporate-aid-tracker-covid-19-business-action>.

² Chamber Technology Engagement Center, “TecNation: How the American Economy is Benefiting from Innovations in Technology,” (May 2020) available at https://americaninnovators.com/wp-content/uploads/2020/05/C_TEC-TecNation-Report-2020.pdf.

Companies are leveraging data to track the spread of COVID-19, analyze social distancing, and ensure the adequate deployment of resources. For example, researchers and leaders from the Allen Institute for AI, Chan Zuckerberg Initiative (CZI), Georgetown University's Center for Security and Emerging Technology (CSET), Microsoft, and the National Library of Medicine (NLM) at the National Institutes of Health released the *COVID-19 Open Research Dataset (CORD-19)* of scholarly literature about COVID-19, SARS-CoV-2, and the coronavirus group.³

The dataset represents the most extensive machine-readable coronavirus literature collection available for data and text mining and responds to a call to action by the White House Office of Science and Technology Office. The COVID-19 Open Research Dataset (CORD-19) is a free resource of over 181,000 scholarly articles about COVID-19 and the coronavirus family of viruses for the use by the global research community. The dataset was created by the Allen Institute for AI in partnership with the Chan Zuckerberg Initiative, Georgetown University's Center for Security and Emerging Technology, Microsoft Research, IBM, and the National Library of Medicine - National Institutes of Health, in coordination with The White House Office of Science and Technology Policy. The goal of the project is to save researchers the trouble of sifting through a crush of studies, and to give them some clarity on things like how long the virus stays on different surfaces, the number of days it incubates in humans, and whether smoking is a risk factor.

Other companies are also helping in the following ways:

- Splunk created an interactive COVID-19 Dashboard to provide a data-driven approach to track COVID-19. An individual or organization can download a Splunk app, populate it with their own data, and use it to help get a better understanding of the data behind the pandemic. The Dashboard will help leaders bring data to every potential response to best ensure public safety.⁴
- HERE used data to create an interactive mapping and tracking tool displaying the spread of COVID-19 over time. The map provides an overview of the latest situation, including the total number of confirmed cases, as well as deaths and recoveries.⁵

The company also introduced HERE WeGo Deliver, a delivery service that allows businesses to plan delivery routes and manage drivers directly, for no cost until the end of 2020.⁶

³ Semantics Scholar, "CORD-19: COVID-19 Open Research Dataset," (July 2020) available at <https://www.semanticscholar.org/cord19>

⁴ Doug Merrit, Splunk, "Bringing Data to COVID-19," (March 14, 2020) available at https://www.splunk.com/en_us/blog/leadership/bringing-data-to-covid-19.html

⁵ HERE, "Tracking Coronavirus COVID-19," (July 5, 2020) available at <https://app.developer.here.com/coronavirus/>

⁶ HERE, "WeGo Deliver," (July 6, 2020) available at <https://www.here.com/wegodeliver>

- Researchers at the Energy Department are using IBM’s supercomputer to identify drug compounds to disable the coronavirus. IBM Research has also been actively developing new cloud and AI-powered technologies to help researchers, doctors, and scientists accelerate COVID-19 drug discovery.⁷
- Oracle has set up a cloud system that would help the U.S. government find a cure for COVID-19 faster. The company also set up and donated to the U.S. government a “therapeutic learning system,” which would allow doctors and patients to record responses to promising COVID-19 drug therapies.⁸
- In India, Infosys Foundation, the philanthropic and CSR arm of Infosys, has committed Rs 100 crore (roughly \$13 million USD). The fund, a company statement said, will be utilized to expand hospital capacity and enable hospital stay for COVID-19 patients, with the focus on economically weaker sections.⁹

Infosys BPM, in association with NASSCOM, is working with the Government of Karnataka, to facilitate outreach to people in the State, returning from overseas travel, about self-quarantining practices and testing facilities. Infosys Foundation is partnering with the state government in Karnataka to help set up a medical facility to address the healthcare needs of citizens affected by the coronavirus. And, Infosys Foundation in the U.S. is opening up its learning platform for teachers so that they can continue to teach their students from home.

- Intel announced a \$50 million coronavirus relief program designed to support more research, technology for patient care, and help for lower income students’ distance-learning needs. Ten million dollars of the pledge will be set aside to help fund employee-led and community efforts.¹⁰
- RELX is opening its Elsevier database with research and health information to the public. This includes peer-reviewed research and journals for researchers, care plans and skills guides for clinicians, and video resources for patients.¹¹

⁷ Dave Turek, IBM, “US Dept of Energy Brings the World’s Most Powerful Supercomputer, the IBM POWER9-based Summit, Into the Fight Against COVID-19,” (July 2, 2020) available at <https://newsroom.ibm.com/US-Dept-of-Energy-Brings-the-Worlds-Most-Powerful-Supercomputer-the-IBM-POWER9-based-Summit-Into-the-Fight-Against-COVID-19>

⁸ Benjamin Pimentel and Rob Price, *Business Insider*, “Oracle tells employees it donated a COVID-19 ‘therapeutic learning system’ that can help speed up the development of a treatment to the US government,” (March 31, 2020) available at <https://www.businessinsider.com/oracle-cloud-therapeutic-learning-system-tools-covid-19-cure-2020-3>

⁹ PTI, “Infosys Foundation Commits Rs 100 Crore In Fight Against Covid-19 In India,” (March 31, 2020) available at <https://www.bloomberquint.com/business/infosys-foundation-commits-rs-100-crore-in-fight-against-covid-19-in-india>

¹⁰ Ina Fried, *Axios*, “Intel pledges \$50 million to coronavirus relief,” (April 7, 2020) available at <https://www.axios.com/intel-50-million-coronavirus-relief-pledge-a2a82401-e1d5-4a75-9ccf-405087a9cbfd.html>

¹¹ Elsevier, “Elsevier gives full access to its content on its COVID-19 Information Center for PubMed Central and other public health databases to accelerate fight against coronavirus,” (March 13, 2020) available at

- SAS launched an interactive coronavirus dashboard that depicts status, location, and spread of the virus, including trend and location analytics.¹² Users can analyze data at the state and country level and see the latest on case status over time (confirmed, recovered, active, deaths), mortality and recovery rates, visualizations of the spread over time, and country-to-country comparisons. The dashboard has prompted collaborations with state health departments to create custom dashboards to help state leaders make better decisions as they manage an unprecedented crisis.
- SAP is opening access to its technology in the effort to help address global challenges caused by the COVID-19 outbreak.¹³ SAP technology platforms – Ariba, TripIt, Litmos, and Qulatrics – are engaged in responding to the COVID-19 outbreak by providing free access to their services. Services include: access to business networks to help maintain supply chains; automated feedback solutions for remote workforce preparedness; travel updates on itinerary updates and flight monitoring; and video-based courses to train teams, leaders, and employees to work effectively.

GENYOUth and SAP have partnered to provide SAP4Kids, which are two free, easy-to-use web applications for organizations, communities, governments, and schools to connect those in need with local resources.¹⁴

- TransUnion has partnered with several US-based healthcare technology companies to build a framework for how America can safely reopen. The solution centers on the combination of a national COVID-19 database that can track valid testing results with a consumer-facing application (called TruPass) to fast-track health screening procedures in large public settings, like office building, airports, concerts, sporting events, etc.¹⁵
- Salesforce announced to its customers that it would offer free services to emergency response teams through its Health Cloud program.¹⁶ Tableau, owned by Salesforce, is also offering a ‘free data resource hub’ to help organizations understand coronavirus

<https://www.elsevier.com/about/press-releases/corporate/elsevier-gives-full-access-to-its-content-on-its-covid-19-information-center-for-pubmed-central-and-other-public-health-databases-to-accelerate-fight-against-coronavirus>

¹² SAS, “2019 Novel Coronavirus,” (July 6, 2020) available at <https://tbub.sas.com/COVID19/>

¹³ SAP Users, “SAP Solution Offerings,” (March 23, 2020) available at <https://www.sapusers.org/news/687/sap-solution-offerings-for-covid-19>

¹⁴ SAP, “SAP4Kids Ensuring Students and Families in Need Can Access Critical Resources,” (July 6, 2020) available at <https://www.sap.com/cmp/oth/crm-ps20-psl-hecsynd/index.html>

¹⁵ TransUnion Solutions, “TransUnion: HealthyAmerica,” (July 6, 2020) available at <https://solutions.transunion.com/healthy-america/?=undefined>

¹⁶ Salesforce, “Salesforce Care for Health: No Cost COVID-19 Care Response Solution,” (March 16, 2020) available at <https://www.salesforce.com/blog/2020/03/covid-19-care-response-solution-healthcare.html>

data quickly using data from Johns Hopkins University as well as the World Health Organization (WHO) and the Centers for Disease Control and Prevention (CDC).¹⁷

- Google’s DeepMind has also released predictions to help scientists better understand the protein structure of the coronavirus.¹⁸ In addition, Verily is developing a small, body-worn temperature patch that transmits data to a phone application to provide timely notification of fever and support earlier diagnosis and treatment of a viral infection like the flu or coronavirus. This could be especially useful in elderly populations, where viral infections have higher rates of morbidity and mortality.¹⁹
- Facebook has begun publishing daily maps that show where its users have reported early symptoms of the coronavirus, drawn from a new partnership with universities aimed at helping public health officials determine where the next big outbreaks may occur. The maps come from a survey conducted by researchers at Carnegie Mellon University in Pittsburgh. The researchers say the results correlate with confirmed cases of the coronavirus, and that the findings could yield earlier insights into which U.S. counties are most at risk.²⁰
- Amazon, to triage needs, is temporarily prioritizing household staples, medical supplies, and other high demand products.

To protect consumers, Amazon is working to ensure that no sellers are artificially raising prices on basic need products during the pandemic and have blocked or removed tens of thousands of items.²¹

- Blackberry, to provide the highest level of security for employee devices, is offering free for 60 days cybersecurity software solutions, including secure remote access for desktops and laptops, secure messaging and phone calls, and employee safety and advanced endpoint protection.²²

¹⁷ Tableau, “COVID-19 Data Hub,” (July 6, 2020) available at <https://www.tableau.com/covid-19-coronavirus-data-resources>

¹⁸ Deepmind, “Computation predictions of protein structures associated with COVID-19,” (April 8, 2020) available at <https://deepmind.com/research/open-source/computational-predictions-of-protein-structures-associated-with-COVID-19>

¹⁹ Google Blog, “Coronavirus: How we’re helping,” (March 6, 2020) available at <https://www.blog.google/inside-google/company-announcements/coronavirus-covid19-response/>

²⁰ Data for Good, Facebook, “COVID-19 Interactive Map & Dashboard,” (July 6, 2020) available at https://covid-survey.dataforgood.fb.com/?date=2020-07-03&dates=2020-04-24_2020-07-03®ion=WORLD

²¹ Day One, Amazon, “Amazon’s COVID-19 blog: daily updates on how we’re responding to the crisis,” (July 1, 2020) available at <https://blog.aboutamazon.com/company-news/amazons-actions-to-help-employees-communities-and-customers-affected-by-covid-19>

²² Blackberry, “BlackBerry to Help Enable Remote Working Initiatives, Announces Free Availability of Secure Communication Solutions,” (March 23, 2020) available at <https://www.blackberry.com/us/en/company/newsroom/press-releases/2020/blackberry-enables-remote-working-announces-free-availability-of-secure-communication-solutions>

B. Keeping Americans Connected

American broadband providers have been able to meet shifting connectivity demands while also voluntarily keeping households connected during the pandemic. Fortunately, due in part to the current administration's internet governance policies, U.S. broadband carriers have been able to meet the shifting demand²³ while voluntarily keeping households²⁴ that are unable to make payments connected. Despite its global leadership in quality of connectivity, the COVID-19 pandemic and its associated shutdown of businesses and schools have exacerbated the Digital Divide. In particular, rural connectivity lags and many lower income families lack the necessary digital tools to connect. Additionally, as people are unable to visit their doctors, they need to use new tools to stay healthy. The U.S. Chamber of Commerce recently released principles to achieve the goal of providing digital opportunity to all calling for smart and targeted funding and permitting reform.²⁵

It is important to note how America's broadband providers are meeting the challenges of COVID-19 for their consumers:

- Along with other connectivity companies, including Comcast and Charter, AT&T is removing barriers like data caps and fees, to provide relief for those caught up in the pandemic. These come as part of a pledge led by FCC Chairman Ajit Pai that also asks companies to open public Wi-Fi hotspots and waive late fees.²⁶

AT&T also announced that it will support nurses and physicians with three months of free service.²⁷

AT&T is also creating a \$10 Million Distance Learning and Family Connections Fund to give parents, students, and teachers tools they need for at-home learning.²⁸

²³ Bret Swanson, AEI, "The internet vs. COVID-19," (April 9, 2020) available at <https://www.aei.org/technology-and-innovation/the-internet-vs-covid-19/>

²⁴ Federal Communications Commission, "Companies Have Gone Above and Beyond the Call to Keep Americans Connected During Pandemic," (July 6, 2020) available at <https://www.fcc.gov/companies-have-gone-above-and-beyond-call-keep-americans-connected-during-pandemic>

²⁵ See Jordan Crenshaw "COVID-19 Illustrates Why Congress Must Act Now on Broadband," (June 23, 2020) available at <https://www.uschamber.com/series/above-the-fold/covid-19-illustrates-why-congress-must-act-now-broadband>.

²⁶ AT&T, "COVID-19: Our Response," (July 2, 2020) available at <https://about.att.com/pages/COVID-19.html>

²⁷ AT&T, "AT&T Delivers "Some Good News" to Nurses and Physicians," (April 12, 2020) available at https://about.att.com/story/2020/fn_free_service.html

²⁸ AT&T, "AT&T Supports Families & Educators During COVID-19 School Closures," (March 20, 2020) available at https://about.att.com/story/2020/distance_learning_family_connections.html

- Comcast Business launched a webinar series to help businesses of all sizes navigate the current environment, including strategies on how to rethink their short- and long-term goals and leverage technology to remain productive and nimble with their operations.²⁹

Comcast has also announced several new policies the company will be implementing. They will be offering Xfinity WiFi for everyone, including non-Xfinity internet subscribers.³⁰ Xfinity Wifi hotspots will be available across the country for free. When at a hotspot, people can connect to the internet by selecting “xfinitywifi” as the network name in the list of available hotspots and launch a browser.

As many people will be working from home, Comcast has also announced it will be pausing its data plans. Customers will receive unlimited data for no extra charge.

- In addition to signing on to the Keep Americans Connected Pledge, Charter is offering free Spectrum broadband and Wi-Fi access for 60 days to households with K-12 and/or college students who do not already have a Spectrum broadband subscription and at any service level up to 100 Mbps.³¹ To help some exceptional students who want to pursue their dreams but have limited financial means, Charter recently launched Spectrum Scholars—a two-year educational program for eligible rising juniors with financial need.³²

Charter will also partner with school districts to ensure local communities are aware of these tools to help students learn remotely. Charter will continue to offer Spectrum Internet Assist, high-speed broadband program to eligible low-income households delivering speeds of 30 Mbps.

To help small businesses navigate the economic challenges, Charter has rolled out new online tools and resources on the Spectrum Business website, including links to the federal Small Business Administration’s (SBA) various pandemic-related financial assistance programs.³³

²⁹ Comcast Business, “Comcast Business Launches Webinar Series to Support Businesses of All Sizes,” (April 13, 2020) available at <https://business.comcast.com/about-us/press-releases/2020/comcast-business-launches-webinar-series-to-support-business-of-all-sizes>

³⁰ Xfinity, “Xfinity WiFi Hotspot Access Opens Nationwide in Response to Coronavirus,” (July 2020) available at <https://www.xfinity.com/support/articles/open-xfinity-wifi-hotspots>

³¹ Charter Communications, “Charter to Offer Free Access to Spectrum Broadband and Wi-Fi For 60 Days For New K-12 and College Student Households and More,” (March 13, 2020) available at <https://corporate.charter.com/newsroom/charter-to-offer-free-access-to-spectrum-broadband-and-wifi-for-60-days-for-new-K12-and-college-student-households-and-more>

³² Charter Communications, “Charter Launches Spectrum Scholars, Awarding \$400,000 In Scholarships to Eligible College Students,” (May 5, 2020) available at <https://corporate.charter.com/newsroom/charter-launches-spectrum-scholars-awarding-400000-in-scholarships-to-eligible-college-students>

³³ Charter Communications, “Charter Helps Small Businesses Navigate Economic Challenges,” (April 28, 2020)

- Verizon has also signed on to the Keep Americans Connected pledge, waiving overage charges and late fees for customers. The company is adding 15GB of data for no charge to the plans of wireless and small business customers.³⁴

To help ensure consumers have access to trusted and reliable news and content, Verizon has also created a coronavirus hub page across the Yahoo ecosystem.³⁵

Over the weekend of March 28-29, Verizon worked with the U.S. Navy to deliver connectivity for the Navy hospital ship USNS Comfort, a Navy medical treatment facility that includes 1,000 hospital beds, 12 operating rooms, radiology capabilities, and a pharmacy.³⁶

C. Delivery and Gig Economy

Businesses in the gig and delivery economy are playing a fundamental role in meeting consumer needs, as Americans enact social distancing. In some locations, restaurants, bars, and cafes are now restricted to takeout and delivery orders only. Delivery-based businesses are taking steps to protect consumers and support restaurants and workers.

- Uber is giving away over 300,000 free meals to health workers and first responders who are helping combat the coronavirus. The company is providing financial assistance of up to 14 days for drivers and delivery people who have been diagnosed with the virus or asked to self-isolate.³⁷

UberEats is waiving delivery fees for more than 100,000 independent restaurants across the U.S. and Canada. To protect customers and drivers, it is urging customers to use the “delivery notes” feature to have drivers leave orders at the doorstep to limit contact.

The platform is coordinating with the Federal Motor Carrier Safety Administration to prioritize moving loads of relief goods, including cleaning supplies, food, and toilet paper.

- To support and protect drivers, Lyft is providing funds should they be diagnosed with the coronavirus or put under individual quarantine by a public health agency, and has

available at <https://corporate.charter.com/newsroom/charter-helps-small-businesses-navigate-economic-challenges>

³⁴ Verizon, “We’re here. And we’re ready,” (July 6, 2020) available at <https://www.verizon.com/about/news/our-response-coronavirus>

³⁵ Yahoo! News, “Coronavirus: Latest news on the global spread and response,” (July 6, 2020) available at <https://news.yahoo.com/coronavirus/>

³⁶ Verizon, “4/16 Update: Verizon teams on the frontlines with COVID-19 first responders,” (April 16, 2020) available at <https://www.verizon.com/about/news/325-update-verizon-teams-frontlines-covid-19-first-responders>

³⁷ Uber Newsroom, “Supporting the restaurant industry through an uncertain season,” (March 16, 2020) available at <https://www.uber.com/newsroom/food-not-finances/>

partnered with EO Products to distribute more than 200,000 bottles of hand sanitizer and other cleaning supplies to drivers, at no cost to them.³⁸

- Postmates is offering reduced delivery fees, making on-demand delivery more accessible. To protect and support customers and drivers, Postmates launched non-contact deliveries and established the Postmates Fleet Relief Fund, which aids in covering the cost of co-pays, medical expenses, and sick leave related to COVID-19. The company is also working with Congress to expand a paid sick leave tax credit to all eligible contractors who are on the Postmates platform.³⁹

Postmates is also expanding an aid program for its delivery workers affected by COVID-19 to include relief for some parents and caregivers left without childcare or who are caring for sick family members.⁴⁰

- Instacart brought on an additional 300,000 full-service shoppers – more than doubling its shopper community – across North America to meet the increasing customer demand for online grocery delivery and pickup in the U.S. and Canada.⁴¹

After meeting this goal, the company is now planning to bring on an additional 250,000 full-service shoppers in an effort to get back to same-day delivery.⁴²

- Cruise repurposed a small portion of its fleet to help during the crisis, providing over 1,200 contactless deliveries to low-income, senior citizens in partnership with the SF-Marin Food Bank.⁴³ The company is also supporting the SF New Deal,⁴⁴ and has already delivered over 2,500 meals connecting local small businesses to communities impacted by COVID-19.

³⁸ Lyft, “Lyft’s latest on COVID-19,” (July 6, 2020) available at <https://www.lyft.com/safety/coronavirus>

³⁹ Postmates, “Postmates Coronavirus (COVID-19) Response,” (March 13, 2020) available at <https://blog.postmates.com/postmates-coronavirus-covid-19-response-94eef5b1bbc2>

⁴⁰ Candy Cheng, *Bloomberg*, “Postmates Adds Childcare Stipend for Struggling Delivery Workers,” (April 20, 2020) available at <https://www.bloomberg.com/news/articles/2020-04-20/postmates-adds-childcare-stipend-for-struggling-delivery-workers>

⁴¹ Instacart, “Expanding Our Community of Household Heroes: A Thank You from Apoorva Mehta, Instacart Founder & CEO,” (March 23, 2020) available at <https://news.instacart.com/expanding-our-community-of-household-heroes-a-thank-you-from-apoorva-mehta-instacart-ceo-3e596b5d05a9>

⁴² Instacart, “Continued Support for the Shopper Community,” (April 23, 2020) available at <https://medium.com/shopper-news/continued-support-for-the-shopper-community-22249eb59ce>

⁴³ Andrew J. Hawkins, *The Verge*, “Cruise redploys some of its self-driving cars to make food deliveries in San Francisco,” (April 29, 2020) available at <https://www.theverge.com/2020/4/29/21241122/cruise-self-driving-car-deliveries-food-banks-sf>

⁴⁴ SF New Deal, “Partnering with small businesses and community organization to provide income for workers and meals for neighbors in need,” (July 6, 2020) available at <https://sfnewdeal.org/>

II. AMERICA NEEDS A NATIONAL DATA PRIVACY LAW

As referenced above, data will be critical to combatting the coronavirus and the nation's economic recovery. Congress should enact a national privacy law that protects all Americans equally. Fundamental to any data protection regime is the question of which entities have jurisdiction to make rules. The Chamber strongly asserts that data privacy is inherently a national and interstate commerce issue that requires a single, unified national privacy law, which protects all Americans equally. The European Union adopted the General Data Protection Regulation ("GDPR") with a goal of creating a unified regulatory regime. The California Consumer Privacy Act ("CCPA"), the law that contributed significantly to the call for national privacy legislation, recognizes the importance of a unified privacy framework. The California Assembly specifically stated that the CCPA "is a matter of statewide concern and supersedes and preempts all rules, regulations, codes, ordinances, and other laws adopted by a city, county municipality, or local agency regarding the collection and sale of consumers' personal information by a business."⁴⁵ If Congress wants to follow California's lead, it should do so in recognizing the need for a unified, national privacy standard.

A national privacy standard is good for both consumers and businesses, because it eliminates confusion over which privacy rights consumers have and how they can exercise them. A national privacy standard is also necessary for small businesses to compete in the marketplace. For example, according to estimates commissioned by the Attorney General of California in its Regulatory Impact Analysis ("RIA"), CCPA is expected to impose up to \$55 billion in compliance costs on up to approximately 570,066 California businesses.⁴⁶ The RIA also estimates that small businesses with fewer than 25 employees will bear up to \$50,000 in compliance costs, which instead could have been used to hire new employees or provide benefits.

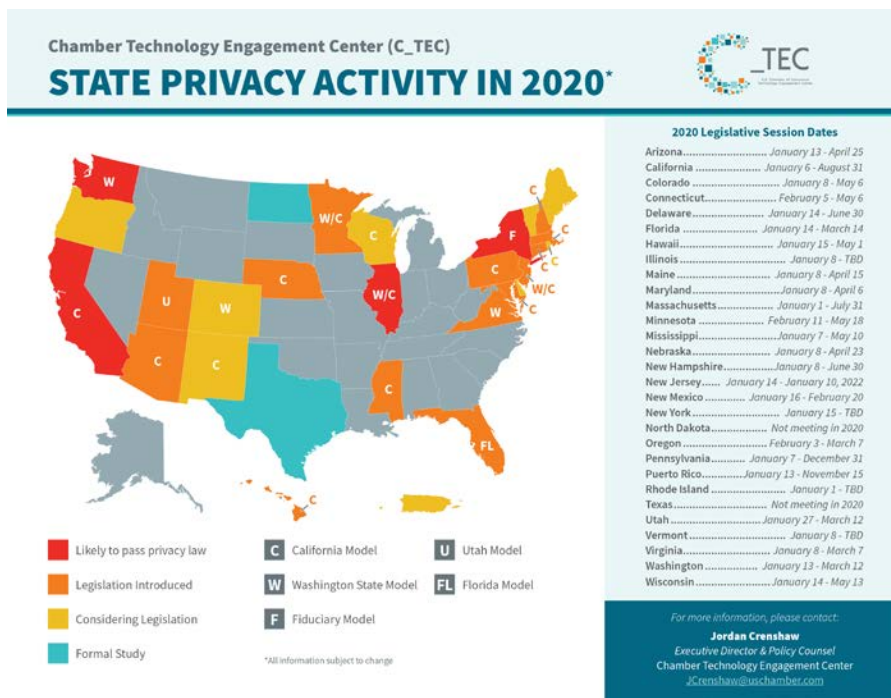
Unfortunately, the California RIA's estimates do not take into consideration lost revenue or increased compliance costs associated with potentially conflicting privacy laws in other states. The California RIA also fails to account for the costs to businesses located outside California that do business in California and are still required to comply with CCPA's regulations. Under CCPA, the new law considers companies doing business in California that share, for a business purpose, the personal information of 50,000 or more California consumers, households, or devices to be a covered business, which could easily subject a small business to CCPA

⁴⁵ CAL. CIV. CODE § 1798.180.

⁴⁶ See Standardized Regulatory Impact Assessment: California Consumer Privacy Act of 2019 at 11, 22 (August 2019) available at http://www.dof.ca.gov/Forecasting/Economics/Major_Regulations/Major_Regulations_Table/documents/CCPA_Regulations-SRIA-DOF.pdf.

requirements.⁴⁷ The New York model imposes a fiduciary duty upon data controllers and requires opt-in consent for data processing.⁴⁸

The Chamber has identified approximately 25 states that are considering some version of privacy legislation. These proposals vary in form from models based on CCPA to GDPR-like models in states like Washington and Virginia to fiduciary duty concepts in New York.⁴⁹ The California model of privacy bills grants consumers the right to opt out of data sales, have data deleted, and access personal information. The Washington model would grant consumers correction rights and has a different threshold for protecting small businesses.⁵⁰ Small business would be covered in some states but not others and companies operating in good faith following the strict letter of the law in states like California and Washington could still be penalized in states like New York if they are found liable under a very “best interests of the consumer” standard. Congress should follow the lead of proposals like those coming out of Arizona calling for a national privacy standard.



At the same time, the California Attorney General just finalized regulations for CCPA and a new ballot initiative is proposed that could fundamentally change California’s privacy law,

⁴⁷ CAL. CIV. CODE §1798.140(C)(1).

⁴⁸ See S 5642 (NY 2019) available at <https://legislation.nysenate.gov/pdf/bills/2019/S5642>.

⁴⁹ See U.S. Chamber State Data Privacy Heat Map available at <https://americaninnovators.com/data-privacy/>.

⁵⁰ See SB 6281 (WA 2020) available at <https://app.leg.wa.gov/committeeschedules/Home/Documents/26273?//ENET/////year>.

by adding new substantive requirements. Small businesses will have great difficulty competing in such an environment. For example, even independent florists and wineries in California are finding it difficult to comply with just the CCPA.⁵¹ Requiring small businesses to comply with a regime of potentially conflicting state laws would harm the ability of start-ups and independent businesses to compete, especially when they are coping disproportionately with shutdowns as a result of COVID-19.

The Chamber calls for the Committee to incorporate language into a privacy bill that provides clarity that privacy rules should only be promulgated on a national level—and not through a state patchwork—in order to encourage certainty and eliminate consumer confusion. Additionally, any coronavirus-specific privacy legislation should be examined in light of the ability of companies, particularly small businesses, to safely reopen.

III. TEMPORARY, TARGETED, AND TIMELY LIABILITY PROTECTIONS

Businesses of all types and sizes are working around the clock to get our nation through the COVID-19 pandemic, and employers are trying hard to protect their employees and customers in an environment filled with incomplete and inconsistent information. The growing risk of opportunistic lawsuits against businesses poses a significant barrier in their ability to bounce back from the COVID-related economic crisis.

As the economy starts to restart, employers reopening their operations (as well as businesses who remained open due to being deemed “essential) need to know that if they have taken reasonable steps to follow public health guidelines, they will be protected against inappropriate litigation. Without temporary and targeted liability protections, many companies face a daunting choice: stay closed and risk bankruptcy or reopen and risk a business-crippling lawsuit. We must be laser-focused getting the American economy back on track safely and sustainably and absent a targeted safe harbor for those that work to follow applicable guidelines, the fear and uncertainty from boundless liability will work to impede our country’s social and economic recovery. In the wake of prior crises, Congress came together to pass timely and targeted liability protections with strong bipartisan support because lawmakers understood the acute economic threat of lawsuits at moments of maximum economic vulnerability. And while Congress has acted to provide some limited COVID-19-related liability protections for volunteer healthcare providers and some manufacturers of PPE in the CARES Act, the business, non-profit, and educational communities believe that much more must be done.⁵²

⁵¹ Jim Relles, *Sacramento Business Journal*, “Another Voice: The new California privacy law will hurt Sacramento small businesses,” (February 28, 2020), available at <https://www.bizjournals.com/sacramento/news/2019/02/28/another-voice-the-new-california-privacy-law-will.html>; John Kautz, *The Modesto Bee*, “New privacy law puts California wineries at a competitive disadvantage,” (June 4, 2020) available at <https://www.modbee.com/opinion/opn-columns-blogs/community-columns/article231186233.html>.

⁵² Alex Gangitano, *the Hill*, “Restaurant, travel, retail industries call for liability shield for businesses,” (May 11, 2020) available at <https://thehill.com/business-a-lobbying/business-a-lobbying/497161-restaurant-travel-and-retail-industry-call-for>; U.S. Chamber of Commerce, “Coalition Letter on Liability Relief Legislation,” (May 20, 2020)

We ask that Congress enact temporary liability protections that are limited in scope and preserve recourse for those harmed by truly bad actors who engage in egregious misconduct. These protections should focus on:

- Businesses, non-profit organizations, and educational institutions that work to follow applicable public health guidelines against COVID-19 exposure claims;
- Healthcare workers and facilities providing critical COVID-19-related care and services;
- Manufacturers, donors, distributors, and users of vaccines, therapeutics, medical devices, as well as PPE and other supplies (such as hand sanitizer and cleaning supplies) that are critical to the COVID-19 response; and
- Public companies targeted by unfair and opportunistic COVID-19-related securities lawsuits.

While the focus of the American public has rightly been on mitigating the health consequences of the COVID-19 pandemic, some plaintiffs' lawyers have made clear that they have different plans: burdening American businesses with meritless and abusive civil litigation. Unless Congress enacts appropriate protections, the impact of the approaching litigation storm could very easily swamp our nation's economic recovery.

IV. Conclusion

The Chamber stands ready to work with Congress and the Subcommittee to enact policies that help mitigate the detrimental effects of the COVID-19 pandemic to public health and the economy. Consumers should feel comfortable that they are protected against scams, companies are doing their best to provide solutions, and industry is protecting their privacy. A national privacy law coupled with timely, targeted, and temporary liability protections would help America quickly and safely return to work.

available at <https://www.uschamber.com/letters-congress/coalition-letter-liability-relief-legislation>; U.S. Chamber of Commerce, "Coalition Letter on Liability Relief Legislation In Response to the Pandemic," (May 27, 2020) available at <https://www.uschamber.com/letters-congress/coalition-letter-liability-relief-legislation-response-the-pandemic>; American Council on Education, "Re: COVID-19 Limited Liability Protections," (May 28, 2020) available at <https://www.acenet.edu/Documents/Letter-Congress-pandemic-liability-052820.pdf>.