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Sen. Keith Regier, Chair
Judiciary Committee
Montana Senate
Helena, MT

February 18, 2021

RE: Opposition to SB 242.

We ask that you not advance SB 242 as it:

- Lacks clear definitions and explicit intent; and
- Will lead to a host of unintended consequences for Montana and its citizens.

Montana is considering legislation that would greatly limit the ability of businesses to collect and sell location data. However, this legislation should not be advanced as it lack clear definitions and will lead to a number of unintended consequences that will fall heaviest on Montana's own citizens.

The legislation lacks clear definitions that would help define its scope and provide effected parties with the information they need to understand the intent of the bill and comply with the statute. In fact, the bill lacks any definition section whatsoever. Without such definitions, the legislation is near impossible to interpret in a way that provides any level of certainty. For example, by not defining the word "sale" to specify whether the bill only applies to entities that actually transfer location data to third parties, it could be interpreted to apply to entities that provide a paid service which also collects geolocation information. Even if these services never transfer the location data to another entity, they could be found in violation of this statute due to its lack of precision. As such, services like the Weather app could fall within this legislation, as they make a profit by collecting and providing location-based information to consumers.

Further, by requiring that a parent or guardian "provide consent for primary users under 18 years of age," the bill could force platforms into a violation without their knowledge. For example, if a 17-year-old turns on a "find my friend" type feature, there is no way for a platform to know that users is not above the age of consent. Nevertheless, they could very well be found liable under the current language of the statute.

More fundamentally, any legislation on this issue should be a part of a larger, omnibus privacy discussion that take a holistic approach to the issue. Enacting piecemeal legislation like this is not the right path forward, as it makes compliance far more difficult and often fails to address the real concerns that consumers have when it comes to privacy. Privacy is a highly complex issue and will

need to be address thoughtfully and thoroughly, not through one-off bills that deal with minute sub-issues.

By enacting a broad prohibition with imprecise language, the bill also raises a host of potential unintended consequences that will negatively impact businesses, emergency response, and commerce in the state of Montana. By greatly limiting the ability of businesses to collect user location data without fear of incurring liability, innovation will be greatly chilled and Montana will be less able to respond and adapt in the face of emerging circumstances. For example, during the COVID-19 pandemic, contract tracing and geolocation information became an essential part of our response. However, the ability of both public and private actors to collect and use of this information would have been greatly curbed if this type of amorphous legislation were in effect.

Privacy is an important issue and concerns surrounding the collection and use of geolocation information should be addressed seriously, but it should be done thoughtfully and with great care as to the potential ramification and unintended consequences. By creating a broad prohibition build on vague and undefines language, this bill as it currently stands fails to adequality account for the impact it will have on Montana and its citizens.

As such, we ask that you not prohibit the transfer or sale of consumer GPS data and not advance SB 242.

Thank you for considering our views and please let us know if we can provide further information.

Sincerely,

Carl Szabo
Vice President & General Counsel
NetChoice¹

¹ The views of NetChoice do not necessarily represent the views of each of its members.