

Virginia SB 769

OPPOSITION LETTER

January 27,, 2025

Dear Chairman Ebbin and Members of the General Laws Committee:

On behalf of NetChoice, I am writing to express our opposition to Senate Bill 769, which would require explicit consumer consent for the use of cookies on websites operating in Virginia. While we strongly support consumer privacy protections, this legislation would create significant problems for both consumers and businesses while failing to meaningfully enhance privacy protection beyond Virginia's existing comprehensive privacy law.

The European Union's experience with mandatory cookie consent banners serves as a cautionary tale. Rather than empowering consumers, these requirements have led to widespread "consent fatigue" where users reflexively click "accept" on endless pop-up banners simply to access desired content. This phenomenon actually undermines meaningful privacy protection by making it harder for consumers to distinguish between truly important consent decisions involving sensitive data and routine website functionality. The resulting degradation of the user experience has been widely documented and criticized by privacy advocates and consumers alike.

SB 769 would make Virginia an outlier among states, creating an inconsistent patchwork of privacy regulations that will confuse consumers and burden businesses. Virginia already has robust privacy protections in place through its comprehensive privacy law. This additional layer of regulation would not meaningfully enhance consumer privacy while creating significant operational challenges. The divergence from other states' approaches would force businesses to maintain different systems and processes specifically for Virginia users, increasing complexity and costs while potentially leading to consumer confusion when interacting with the same businesses across state lines.

The compliance costs would fall particularly heavily on small and medium-sized businesses, many of which lack the technical resources to implement complex consent management systems. These businesses would need to invest in new software solutions, update their websites and applications, train staff on new compliance requirements, and potentially seek legal counsel to ensure proper implementation. Some businesses may determine that serving Virginia customers is no longer economically viable, reducing choice and competition in the marketplace. This is particularly concerning for Virginia-based businesses that would be disproportionately affected by these requirements.

Furthermore, this legislation would severely impact small businesses' ability to reach customers through targeted advertising. While large corporations can afford broad marketing campaigns, small businesses rely on efficient, interest-based advertising to connect with potential customers. Without personalization capabilities, consumers will still see advertisements, but they will be less relevant and potentially more intrusive. This disadvantages both consumers and small businesses. Our research indicates that small businesses can experience up to a 60% reduction in marketing effectiveness when unable to utilize personalized advertising tools, potentially threatening their very survival in an increasingly competitive digital marketplace.

The bill would also threaten the sustainability of online content providers, particularly smaller publishers who rely on advertising revenue. Reduced advertising effectiveness will likely result in more paywalls from large publishers and may force smaller publishers to cease operations entirely, diminishing the diversity of voices online and restricting access to free content. This could particularly impact local news organizations and specialized content creators who serve important but niche audiences. The resulting consolidation of online content into fewer, larger platforms would reduce consumer choice and access to diverse perspectives.

Additionally, the technical implementation requirements of this legislation could create security vulnerabilities. By forcing websites to modify their core functionality to accommodate Virginia-specific consent requirements, the bill may inadvertently create new attack vectors for malicious actors. This could ultimately harm the very consumers the legislation aims to protect.

For these reasons, we strongly urge you to oppose SB 769. Instead, we recommend focusing on enforcement and optimization of Virginia's existing privacy framework, which already provides strong consumer protections while maintaining a balanced approach to business operations. We welcome the opportunity to work with the General Assembly to advance practical privacy protections that don't unduly burden Virginia's businesses or degrade consumer experience.

Sincerely,

Amy Bos

Director of State and Federal Affairs

NetChoice is a trade association that works to protect free expression and promote free enterprise online.