



555 12<sup>th</sup> Street NW, Suite 1001  
Washington, D.C. 20004

1-800-552-5342  
NFIB.com

July 20, 2022

The Honorable Frank Pallone, Jr.  
Chairman  
House Committee on Energy and Commerce  
U.S. House of Representatives  
2125 Rayburn House Office Building  
Washington, D.C. 20515

The Honorable Cathy McMorris Rodgers  
Ranking Member  
House Committee on Energy and Commerce  
U.S. House of Representatives  
2322 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairman Pallone and Ranking Member McMorris Rodgers:

On behalf of NFIB, the nation's leading small business advocacy organization, I write in opposition to H.R. 8152, the *American Data Privacy and Protection Act* in its current form. NFIB is concerned that the small employer exemption in H.R. 8152 is inadequate in its current form and will result in significant new regulatory burdens for small businesses. NFIB supports the Walberg amendment to expand the small employer exemption and help to alleviate many of the concerns described in this letter.

The *American Data Privacy and Protection Act* contains a limited exemption for businesses with average annual revenues over the last three years of \$41 million that did not annually collect or process the covered data of more than 200,000 individuals during the period and did not derive more than 50% of its revenue from transferring covered data during any year in that period. While most NFIB members would qualify for this exemption, the exemption only applies to sections 203(a)(4), 208(b)(1)-(3), 208(b)(5)-(7), and 301(c). NFIB is concerned that small businesses are not exempted from sections 103, 202, and 208, all of which will be difficult to comply with and burdensome.

Unlike large businesses, small business owners do not have a compliance department or a team of attorneys to help them deal with complicated new regulations. Most owners handle new paperwork and compliance burdens themselves. This legislation will require all small business owners to establish complicated new privacy safeguards and protocols, tasks they are ill-equipped to perform.<sup>1</sup>

H.R. 8152 would require small businesses to display publicly a lengthy privacy policy containing numerous pieces of information including a description of companies' data security practices, the length of time data is retained, and the processing purposes of the data. In addition, businesses must notify all

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<sup>1</sup> Section 103. *Privacy By Design* and Section 208(a). *Data Security and Protection of Covered Data*.


customers if there is a change in the privacy policy or practices at the company. This standard will prove onerous and burdensome to very small businesses.<sup>2</sup>

This information also must be made available in a manner that is readily accessible and usable by individuals with disabilities. NFIB is concerned that businesses continue to face ambiguity in how the Americans with Disabilities Act (ADA) applies to the websites of businesses.<sup>3</sup> Regulations have yet to be proposed on what a “readily accessible website” looks like. This bill fails to define “readily accessible” and will likely pose the same challenges to small businesses that they have seen with ADA website compliance.<sup>4</sup>

NFIB is also concerned that the limited small business exemption appears to require a business to apply for the exemption and be granted approval by the Federal Trade Commission (FTC).<sup>5</sup> Such a process would be burdensome and potentially costly. NFIB urges the committee to explicitly state that small businesses have no requirement to apply for and seek an exemption.

Small business owners care deeply about the privacy of their customers as well as their own personal privacy as consumers. However, complying with this legislation would be a significant and costly challenge for small business owners. NFIB urges the committee to make appropriate changes to ensure that small businesses do not bear an unreasonable regulatory burden. Without amendments responding to the issues described in this letter, NFIB will continue to oppose H.R. 8152, the *American Data Privacy and Protection Act*.

Sincerely,



Kevin Kuhlman  
Vice President, Federal Government Relations  
NFIB

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<sup>2</sup> Section 202. *Transparency*.

<sup>3</sup> Rob Smith, *The ADA and Small Businesses: Website Compliance Amid a Plethora of Uncertainty*, NFIB Legal Center (July 21, 2021), <https://assets.nfib.com/nfibcom/ADA-Handout-07-22-2021-FINAL.pdf>.

<sup>4</sup> Section 202(d). *Accessibility*.

<sup>5</sup> Section 209. *Small Business Protections*. “Any covered entity or service provider that can establish that it met the requirements described in paragraph (2).”