

March 11, 2020

Senator Reuven Carlyle
233 John A. Cherberg Building
Olympia, WA 98504-0436

RE: Senate Bill 6281 – ETA Comments – Opposing Private Right of Action

Dear Senator Carlyle:

On behalf of the Electronic Transactions Association (“ETA”), we appreciate the opportunity to provide comments on Senate Bill 6281. ETA appreciates the recognition and support in SB 6281 for the payments industry’s dedicated efforts to use innovation to fight fraud and ensure that consumers have access to safe, convenient, and affordable payment services. ETA is the leading trade association for the payments industry, representing over 500 payments and financial technology (“FinTech”) companies that offer electronic transaction processing products and services and commercial loans, primarily to small businesses. During 2019 in North America alone, ETA members processed over \$7 trillion in consumer purchases. ETA members include financial institutions, payment processors, FinTech companies, and all other parts of the payments ecosystem.

ETA and its members strongly support a privacy framework that allows companies to implement innovative tools to protect consumer privacy and data while fighting fraud. ETA supports the bill’s explicit exemption for permissible use of data for purposes of detecting and protecting against fraud and for data collected pursuant to the federal Gramm-Leach-Bliley Act and implementing regulations. However, ETA is opposed to an amendment that would abridge the enforcement authority of the Attorney General and create an expansive private right of action, making more costly, complicated, and burdensome an already complex compliance regime – placing the focus on third party profit rather than true consumer protection.

The proposed amendments say that the Attorney General *may* enforce this chapter, and further state that “A violation of this chapter is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act 19.86 RCW.” By considering any violation of the chapter an unfair or deceptive act under 19.86 RCW, the language as written would create a broad private right of action.

A private right of action that allows any violation to be considered a per se unfair or deceptive practice does little to protect consumers and could very well result in the opposite. When enforcement authority is taken out of the hands of the Attorney General and left instead to litigation, it alters many facets consumer protection landscape – placing the focus on self-preservation rather than on protecting consumers.

ETA and its members support U.S. and international efforts to strengthen privacy laws to not only help industry combat fraud but also disclose to consumers how their data is being used. As lawmakers and regulators explore additional ways to protect consumers, it is critical that government coordinate with the payments industry so that companies can continue to combat fraud and cybercrime and ensure consumers have access to safe, convenient, and affordable payment options and other financial services.

The payments industry never rests. We work tirelessly to fight fraud and protect consumers, including by developing new tools and solutions to prevent, identify and fight fraud by analyzing data. Privacy laws should recognize these goals and the important role the payments industry plays in combatting fraud. By working together, lawmakers, regulators, and industry can protect consumers while providing them with access to the safest and most convenient payments system in the world.

Thank you for the opportunity to participate in the discussion on this important issue. If you have any additional questions, you can contact me or ETA Senior Vice President, Scott Talbott at stalbott@electran.org.

Sincerely,

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