



Internet Association



STATE PRIVACY AND SECURITY COALITION



January 30, 2018

The Honorable Timm Ormsby
Chair, House Appropriations Committee
Washington State House of Representatives
315 John L. O'Brien Building
PO Box 40600
Olympia, WA 98504

RE: 3SHB 1904 (SMITH): Sale and taxation of Washingtonians' personal information and related data
OPPOSE

Dear Chairman Ormsby,

On behalf of the organizations listed above, which collectively represent the breadth of the technology sector, and those impacted both nationally and internationally, including high-tech manufacturing, computer networking and information technology, clean energy, life sciences, internet media, ecommerce, education, banks, retail and other data using businesses, we write in **OPPOSITION to House Bill 1904 (Smith)** and ask that you not move the bill forward.

During the House Technology and Economic Development Committee hearing the issue of data breaches was raised as a prime example when discussing the need for this legislation. However, the measure does nothing to prevent or respond to data breaches that may occur. As you may recall, we worked with the Legislature to pass a comprehensive update to the state's previously existing data breach law which requires all companies to notify the Attorney General and any Washington resident who is at risk of harm because of the unauthorized acquisition of data that compromises the security, confidentiality, or integrity of that resident's personal information. Further, we are currently reviewing numerous pieces of legislation that are directly working to address the issues related to breaches including security freezes and credit monitoring services.

It was also noted, that the intent behind this legislation is to address data security. However, we believe this bill does nothing to address or improve data security standards. In fact, this legislation would potentially put sensitive information about Washingtonians at risk by creating a public list of companies that may retain sensitive personal information for insurance or banking purposes, essentially creating a perfect target list for hackers. As you may know, data breaches are most often the work of sophisticated cyber attackers who are willing to engage in illegal behavior to obtain this information.

Simply put, the aggregation of information with any one entity, by definition, increases the risk for that entity. Currently, no single company has a database of details about all the personal information the entire industry maintains. The requirement in this bill that all entities provide details (i.e. schema) on the personal information they host so the state can create this dataset means that thousands of companies will be contributing information that will then be stored in a single state-maintained database. By definition, the risk to consumers and all companies increases if the information in that database is exposed, as attackers will now have a blueprint of which companies to attack.

Further, private companies often have many more resources than the state to invest in sophisticated cyber security tools that protect this information, where the state may not have the funds to continually update their systems. For example, the Washington State Administrative Office of the Courts and the Washington Department of Fish and Wildlife are two recent victims of hacking where personal information was obtained.

Additionally, it has been noted that the substitute no longer imposes a tax on Washington businesses and takes a different approach. However, the amended bill clearly states that the bill's purpose is "to gather information to design an appropriate tax for this industry" which includes simply "exchanging personal information for consideration." The bill also requires the Department to prepare a recommendation on how to tax the businesses that self-identify. The bill goes on to state that the justification for such a tax is due to the fact that Washingtonians are not being fairly compensated for digital business activity in the state, when there is no evidence to support this claim. The truth is, the bill would capture literally thousands of businesses in Washington who are already subject to Washington's B&O tax that provide millions in revenue to the state and are driving Seattle's innovation economy.

Take for example, a company that provides an online searchable database which may provide the company's customers with some of the information identified in the proposed legislation. The gross receipts related to online searchable database is categorized within the Retailing category for B&O tax purposes and subject to a 0.471% rate. These types of digital businesses assist Washingtonians receive lower insurance rates, apply for credit, help healthcare providers keep medical costs down, assist government agencies in preventing and identifying identity theft in government programs, and assist law enforcement with anti-money laundering and terrorist threat assessment activities to name just a few of the important public benefits digital businesses provide.

It was also stated that businesses that fall under the definitions of the bill are carrying out these activities without anyone knowing who they are or what they do and therefore more information is necessary, but the truth of the matter is that digital businesses operating in the state that possess sensitive consumer information are highly regulated entities subject to the Federal Fair Credit Reporting Act, the Federal Gramm Leach Bliley Act, and Driver's Privacy Protection Act to name a few. These companies are also regulated by the Federal Trade Commission and the Consumer Financial Protection Bureau, in addition to oversight by the State Attorney General.

While we share the sponsor's commitment to protect consumer information, we must respectfully oppose the approach taken by this legislation which contains no clear nexus with the alleged problems it seeks to solve. We are open to discussing this legislation in more detail but ask that this bill not move forward. Thank you!

Sincerely,

Association of Washington Business
CompTIA – Computing Technology Industry Association
CDIA - Consumer Data Industry Association
Data and Marketing Association
Internet Association
Northwest Grocery Association
Software and Information Industry Association
State Privacy and Security Coalition

TechNet

Washington Bankers Association

Washington Food Industry Association

Washington Retailers Association

Washington Technology Industry Association

Cc: Members, House Appropriations Committee
Sponsor, Representative Norma Smith