

April 1, 2021

Speaker of the House Laurie Jinkins
Minority Leader J.T. Wilcox
Members of the Washington State House of Representatives
416 Snyder Ave SW
Olympia, WA 98504

VIA EMAIL TRANSMISSION

RE: 2SSB 5062 – Data Privacy

Dear Speaker Jinkins, Minority Leader Wilcox, and Members of the Washington State House of Representatives,

We want to thank the many House members who have pressed for changes to the Washington Privacy Act. Because of your actions, the [Striker](#) contains several good amendments, including modifying the definition of targeted advertising to encompass the current business models of Google and Facebook, providing consumers with the right to access the data about them that the controller is processing rather than just the categories of such data, and enabling consumers to designate someone to act on their behalf or to use a browser signal to opt-out of sale of their data or targeted advertising.

Some of the amendments made thus far only go halfway – for instance, consumers would be able to sue to try to stop a company from continuing to violate the law, but there are no provisions for such actions to result in penalties for having committed the violations in the first place or in redress for the consumers. With your help, more fundamental changes are possible – changes that would help to ensure that the legislation effectively protects your constituents’ privacy.

First and foremost is the need to discard the outdated “notice and opt-out” framework that places the burden on consumers to take steps to avoid collection, use and sharing of their personal information for purposes that are not necessary for the transactions or requests they want to make. The legislation should adopt a data minimization standard that prohibits extraneous data collection, use or sharing (with narrow exceptions for detecting fraud and other reasonable operational purposes) unless consumers affirmatively opt-in. All profiling should be opt-in, not just that which may result in “legal effects.” (We note that under the bill as now written, consumers can’t even designate an agent or use a browser signal to opt-out of profiling, and the opt-out is still limited in scope.) Changing the default would give more power to consumers and make it easier for businesses to operate with the knowledge that their data practices conform to consumers’ wishes.

Another issue that has not been adequately addressed is the inclusion of numerous exemptions and exceptions that would weaken consumers’ rights and make the law confusing. For instance, the bill:

- Gives consumers *no* rights concerning the sale of their personal data harvested from social media if they failed to adequately restrict access to that information. Consumers’ data on social media should be treated the same as other personal information.
- Gives consumers *no* control over businesses selling their personal information to affiliated companies. Affiliates should be treated as third parties.
- Limits consumers’ ability to obtain their data in a portable form to the data they *provided* to the business. Consumers should be able to take the information that has been produced from their data – for instance, a fitness or budgeting plan – and port it to another service.

- Does not apply to consumers' personal information when it is in the hands of financial services companies or other businesses that are covered by other laws, *even if the privacy protections of those laws are much weaker*. The law should only exempt data covered by other laws to the extent that those laws provide stronger privacy protection.
- Allows companies that hold and process consumers' personal information to avoid any responsibility when third parties to whom they disclose the data violate the law unless they *knew those parties intended to violate it*. Companies should be responsible for monitoring to ensure that the third parties with which they share consumers' data comply with applicable legal obligations.

Finally, enforcement is still very weak. The right to cure is an unnecessary impediment to the Attorney General's ability to deter bad practices and obtain redress for consumers and should be completely eliminated, as it will be in California once Proposition 24 takes effect. Furthermore, consumers should be able to obtain redress when companies violate their privacy rights. One way to do this would be to allow private legal actions to seek disgorgement of the profits that companies have made in connection with the violations, the proceeds of which would be distributed to affected consumers.

Washington legislators still have an opportunity to enact the best privacy legislation in the nation, a law that will effectively protect your constituents and serve as a model for other states to follow. We appreciate your efforts and will be happy to help in any way we can.

Signed,

ACLU of Washington
Consumer Action
Consumer Federation of America
Privacy Rights Clearinghouse
WashPIRG