February 5, 2018

Washington State House Appropriations Committee
Representative Timm Ormsby, Chair;
Representative Bruce Chandler, Ranking Member,
222A John L. O'Brien Building
Olympia, WA 98504

RE: Opposing HB 1904 – 3rd Substitute

Dear Chair Ormsby, Ranking Member Chandler, and Members of the Committee,

On behalf of the National Association of Professional Background Screeners (NAPBS), whose members include Washington residents and businesses, we write to you with concerns regarding the third substitute draft of HB 1904. As a nonprofit organization consisting of over 900 small and large businesses engaged in the background screening profession, NAPBS has been dedicated to providing the public with safe places to live and work since 2003. The NAPBS member companies conduct millions of employment and tenant related background checks each year, helping employers, staffing agencies, property managers and nonprofit organizations make more informed decisions regarding the suitability of potential employees, contractors, tenants and volunteers.

NAPBS sincerely appreciates the opportunity to present to you, in writing, our thoughts and concerns surrounding this draft legislation.

It is abundantly clear from both the initial drafts of this bill, and Representative Smith's comments in hearing that this legislation is intended to address businesses commonly referred to as "Data Brokers". That said, the legislation, as written, does not define "Data Broker" and, as a result, NAPBS has concerns that this proposed legislation is overly broad and that numerous businesses in Washington could and would unintentionally and detrimentally be swept in.

In evaluating the legislation's qualifying criteria, a distinction between "Data Broker" and Consumer Reporting Agency(CRA) does not exist, despite there being a great dissimilarity between the aggregation and exchange of specific consumer data authorized by the consumer and for a limited purpose as performed by a CRA, and the general data collection and maintenance traditionally done by a "Data Broker".

NAPBS believes a CRA should not be treated as a "Data Broker" under this proposed legislation, both for tax and regulatory purposes. In practice and existing regulation, there is noted

differentiation between a "Data Broker" and a Consumer Reporting Agency regulated by the federal Fair Credit Reporting Act (FCRA) that specializes in compiling information for purposes of supplying a "consumer report" for employment or tenancy purposes as defined in 15 U.S.C. §1681a(d).

Most notably, CRA generated consumer reports provided for employment or tenant screening purposes require disclosure to the applicant as well as the specific authorization of the applicant prior to the report being prepared. Any data that is collected, exchanged, and/or aggregated to compile the consumer report is done so only with an applicant's knowledge and express permission. This stands in contrast to the business model HB 1904 seeks to monitor where data is collected, exchanged, or aggregated *without a consumer's prior knowledge.*

Further, the FCRA, a consumer protection-based regulation, addresses consumer protection by placing requirements on both CRAs and end-users (employers or property managers) who request background reports on potential employees or tenants. The regulation requires disclosure and authorization before a report is prepared and provides consumers with the right to dispute the completeness or accuracy of a report. In the event of a dispute, a CRA is also required to reinvestigate at no charge to the consumer and with strict guidelines while doing so. Please see the attached enclosure describing the many consumer protections provided within the FCRA when consumer reports are prepared for employment and tenant related background screening.

In addition to the FCRA, background screening, when conducted by a CRA, is highly regulated by the Federal Trade Commission (FTC) and enforced by the Consumer Financial Protection Bureau (CFPB), as well as through state and local consumer protection laws. To require CRAs to register and file reports with the state, as this legislation would in the interest of regulation and transparency, seems both unduly burdensome and redundant considering the extensive regulations already in place.

Thus, in its current form where "Data Broker" is not defined, this bill creates additional burdens on CRAs to provide protections that are already in place, ultimately slowing down the important work that CRAs do to help employers fill open positions with job seekers who are eager to work. Therefore, we would ask that "Data Broker" be clearly defined for the purposes of this legislation and be narrowed to avoid encompassing Consumer Reporting Agencies.

NAPBS would respectfully submit the following definition of "Data Broker" for the Committee's consideration:

"…a business that: (A) collects, stores, and maintains personal information concerning a consumer who is not a customer, user, or employee of the business, or who is not a donor to the business if the business is a nonprofit corporation; (B) sells the personal information to one or more third parties; and (C) is not a Consumer Reporting Agency as defined in 15 U.S.C. Sec. 1681a(f), regularly engaging in whole or in part in the practice of assembling, exchanging, or evaluating consumer credit information or other

information on consumers for the purpose of furnishing consumer reports as defined in 15 U.S.C. Sec. 1681a(d).”

We believe this definition fully addresses the entities this legislation is targeted at, while allowing Consumer Reporting Agencies to do their important work without additional burdens.

Of further concern to NAPBS is the understanding that this bill will later lead to a Washington state tax on the use and exchange of the very broadly defined “personal data”. To attach a further tax to businesses for the handling and use of “personal data” especially at the previously contemplated rate of 3.3% would result in an approximate 120 percent increase for CRAs, who currently pay their full share of Washington business tax as in the “service or other” category.

The initially proposed tax rate of 3.3% would be the highest gross receipts tax in the nation and, due to the extremely broad definition of “personal information”, would potentially apply to more than 20,000 existing and 5,000 new taxpayers, many of which would be CRAs. Moreover, the addition of a further business and occupation tax would, of itself, amount to double taxation. NAPBS would respectfully ask you to avoid this additional taxation that stands to place Washington businesses at a disadvantage versus their counterparts in other states.

NAPBS and its members are available and prepared to discuss any questions regarding our industry or the aforementioned concerns. Thank you for taking the time to hear our comments and requests and we look forward to working with you to improve this legislation as it progresses into the next phase. Please feel free to contact me directly at 402-957-1179 or brent.smoyer@napbs.com.

Sincerely,

Brent Smoyer, JD
NAPBS State Government Relations
& Grassroots Director