



April 9, 2018

Sen. Michael Sirotkin
Chair, Senate Committee on Economic Development, Housing and General Affairs
Vermont State House
115 State Street
Montpelier, VT 05633-5301

[Sent Electronically for Distribution]

Dear Chair Sirotkin:

The undersigned companies and associations write to **oppose HB 764**. Collectively, we represent industries driven by data that take very seriously the responsibility to protect consumer data and provide transparency regarding data collection activities. This bill, if passed, would create serious unintended consequences and negatively impact consumers, business, and the Internet. HB 764 would make Vermont a far more difficult place to innovate on the Internet, ultimately hurting consumers and the information economy that has become an important part of the state's economy.

The undersigned companies and associations oppose this legislation because it is unnecessary and unworkable. Businesses that collect information from consumers online are already regulated by state and federal law, which is complemented by enforceable self-regulation.

- I. **The bill's annual registration requirements for data broker security breaches as well as the definition of "personal information" are unnecessary and unworkable.**

The bill's annual registration requirements for data broker security breaches as well as the definition of "personal information" are unnecessary and unworkable. All companies that own, license, maintain, or possess personally identifiable information are already covered by Vermont's breach notification law.¹ The Report to the General Assembly of the Data Broker Working Group ("Report") stated that the basis for regulating "data brokers" differently from other businesses is that the purpose for which "data brokers" maintain data means that such companies can "reasonably be held to a higher standard."² The undersigned companies and associations do not believe that the purpose for which a business maintains data has any relation to, or effect on, the sensitivity of such data or the risk posed to consumers if breached. Thus, the additional annual registration requirement for data broker security breaches is unnecessary and provides no additional consumer protection benefits beyond those provided under existing law.

We understand the intent behind these efforts to protect vulnerable populations and to address concerns regarding data breaches. To be clear, there is nothing in the bill that protects vulnerable populations, nor would the bill prevent the type of harms that could result from a data breach. In fact, requiring data brokers to report the number of data broker security breaches that the data broker has experienced during the prior year does not provide actionable information to consumers, can create unwarranted alarm in the marketplace, and simply encourages unneeded and unwanted regulation by the state without the corresponding benefit of consumer protection.

The definition of "personal information" includes innocuous, lone data elements, such as: name, names of relatives, phone number, and place of birth. Much of this information is already publicly available and would not pose a risk of harm to consumers if breached. For example, under this broad definition of personal information, a breach involving unauthorized acquisition of a list of consumer places of birth along with the name of a relative of the consumer would require reporting to the Secretary of State. Place of birth and names of relatives do not pose a risk to consumers. There is no consumer benefit to reporting this information to the Secretary of State. Further, notification to the Secretary of State based on place of birth and the names of relatives is impossible, which means that companies would be unable to comply.

The bill's definition of "personal information" also includes "information that, alone or in combination, is linked or linkable to the consumer that would allow a reasonable person to identify the consumer with reasonable certainty." Federal Trade Commission ("FTC") staff has rejected a similar standard, stating that "the proposal to include any data that is 'linkable' [within the definition of personal information] could unnecessarily limit the use of data that does not pose a risk to consumers. While almost any piece of data could be linked to a consumer, it is appropriate to consider whether such a link is practical or likely in light of

¹ 9 V.S.A. § 2435.

² Vermont Office of the Attorney General and Vermont Department of Financial Regulation, Report to the General Assembly of the Data Broker Working Group (December 15, 2017).

current technology.”³ The Report makes a wholly unsupported claim that individual data elements “can easily be re-connected with a name.” Report at 28. The undersigned companies and organizations refute this claim, but even if it were true, not all the elements listed under the bill pose a risk if combined with a consumer’s name. Broadening the definition of personal information to include data elements that do not pose a material risk of harm to consumers would lead only to companies over-reporting to the Secretary of State.

II. The bill’s annual registration requirements do not increase transparency.

Companies already include the type of information that would have to be reported to the Secretary of State in their privacy policies. This includes notices regarding data collection activities related to minors. The Children’s Online Privacy Protection Act and related regulations require operators of websites and other online services to provide notice regarding their practices surrounding the collection, use, and disclosure of information from children under 13.⁴ Minors 13-17 are subject to the information practices set forth in a company’s privacy policy, unless otherwise specified in a privacy policy.

Additionally, requiring “data brokers” to provide the Department with certain information on an annual basis could lead to confusing and outdated information regarding each company’s practices. To require that data brokers separately report on these practices would not improve transparency and would place unnecessary and unjustified burdens on a certain type of company.

III. Prescriptive data security requirements would hinder companies’ ability to implement the most effective security practices.

Data security practices should not be regulated with prescriptive legislation. Overly specific security requirements hinder companies’ ability to implement new security solutions to adapt to the ever-changing technological landscape. Requirements for reasonable data security practices appropriate to the nature and size of a business provide adequate consumer protections while maintaining necessary flexibility to account for evolving best practices.

Current industry self-regulatory standards already impose data security requirements on member companies, including companies that would likely constitute “data brokers” under the bill’s definition.⁵ These requirements include: implementation of written policies and procedures, security of data during transfer, contractual safeguards, and employee training. The Report does not support a finding that any different regime is necessary or would be helpful.

³ Federal Trade Commission Bureau of Consumer Protection Staff, Comments on Notice of Proposed Rulemaking, WC Docket No. 16-106, at 9 (May 27, 2016).

⁴ 15 U.S.C. § 6501; 16 C.F.R. § 312.

⁵ See Data & Marketing Association, DMA Guidelines for Ethical Business Practice, 26-27 (2016).

Because it is unnecessary for consumers as they already receive significant protections under federal and state rules, unduly burdensome for Vermont's businesses, and negatively impacts Vermont's tech and data-driven economy, the undersigned companies and associations respectfully oppose HB 764.

Sincerely,

DMA – Data & Marketing Association

Acxiom

ANA – Association of National Advertisers

CDIA – Consumer Data Industry Association

CompTIA

CSPRA – Coalition for Sensible Public Records Access

Epsilon

Experian

IHS Markit

Internet Association

Internet Coalition

NAPBS – National Association of Professional Background Screeners

RELX Group

TechNet

cc: Senate Committee on Economic Development, Housing and General Affairs