

March 10, 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 strongly support legislators' efforts to protect Washingtonians' privacy. Unfortunately, we must oppose 2SSB 5062, as written. This bill, supported by major tech companies such as Microsoft, Amazon, and Google, is based on the outdated "notice and opt-out" framework that underpins the current system of commercial surveillance and fails to provide consumers with meaningful privacy rights. It is not that this bill simply isn't "good enough" – it is a fundamentally unsound foundation for protecting people's privacy rights in the state of Washington. This bill, as written, gives companies the cover to say they respect privacy while allowing businesses to continue tracking and profiling consumers, and using their information in ways they have not approved.

Its structure also places too much of the responsibility of stopping companies' bad behavior on the very people it should seek to protect. Instead of requiring companies to get consumers' permission before using their data, 2SSB 5062 places the burden on people to navigate today's incredibly complex data ecosystem and take steps to opt-out of unwanted uses of their personal information (to the limited extent they are allowed to do so). Making "opt-out" the default disempowers people and poses equity concerns; people with less time and resources to figure out how their data is being used and how to opt-out will inevitably be subject to more privacy violations. Where the default is matters, as marketers well know. That's why the default should be "opt-in."

There are other serious problems with the Washington Privacy Act:

- It does *not* apply to advertising based on tracking consumer's activities over time on the company's own website or app and profiling them. This is the business model of Google and Facebook, which profit from profiling and targeting consumers on behalf of other businesses.
- It lets the companies that hold and process consumers' personal data avoid any responsibility when third parties to whom they disclose the data violate the law unless they *knew those parties intended to violate the law*. (Under the Washington Privacy Act, Facebook would have no liability for what Cambridge Analytica did with users' personal information).
- It gives consumers *no* rights concerning the personal data that may be gleaned from social media and other "channels of mass media" if they didn't adequately restrict access to that information.
- It gives consumers *no* control over businesses selling their personal information to affiliated companies.
- It requires opt-in for processing consumers' "sensitive data" but not for *uses* of their personal information that may be sensitive. For instance, consumers' economic conditions

are not considered “sensitive data,” but their online searches for personal loans, credit counseling or other types of financial assistance could indicate that they are in economic distress, which *is* sensitive. There is no requirement that they opt-in to that data being collected and no protection from being targeted for work-at-home opportunities, pay-day loans, risky high-yield investments or other services on the basis of that information.

- It allows consumers to opt-out of *seeing* targeted advertising based on tracking their activities over time on multiple websites and apps and profiling them, but that opt-out does not *stop* the tracking and profiling from occurring.
- It *only* gives consumers the right to opt-out of profiling when it is used “in furtherance to decisions that produce legal effects concerning a consumer or similarly significant effects concerning a consumer.” There is no overall right to *stop* being tracked and profiled.
- It 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*.
- It limits consumers’ rights to see the data that has been collected about them to the personal information they *provided* to the business; they have no right to see the information the business has obtained about them from other sources or gleaned through tracking them.
- It allows parents and legal guardians to exercise consumer’s rights but does *not* enable consumers to designate others to act on their behalf, as California’s privacy law does.
- It lacks meaningful enforcement. It creates a “right to cure” that *hampers* the attorney general’s ability to take action to stop bad practices and obtain remedies for consumers. California eliminated this from its privacy law last year.
- It *prevents* consumers from taking legal action to enforce their rights. The additional staff added to the Attorney General’s office will not be sufficient to handle the increased workload necessary to meaningfully protect Washingtonians’ rights.

The Washington Privacy Act should be amended to address these concerns. While it provides the illusion of privacy, if it is enacted as it is currently written, consumers – and legislators – will soon realize that it really didn’t change the way people’s personal information is treated.

Washington can do better and lead the nation in providing real privacy protection. We ask you to work with us to improve this legislation or oppose it if that is not possible.

Signed,

American Civil Liberties Union of Washington
Advocacy for Principled Action in Government
Campaign for a Commercial-Free Childhood
Constitutional Alliance
Consumer Action
Consumer Federation of America
Electronic Frontier Foundation
National Workrights Institute
Privacy Rights Clearinghouse
WashPIRG