Testimony of VPIRG Communications & Technology Director Zachary Tomanelli concerning the draft Data Broker Legislation

Testimony before the House Committee on Commerce and Economic Development
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Introduction

Good morning. My name is Zachary Tomanelli and I am the Communications & Technology Director of VPIRG, the Vermont Public Interest Research Group. For over 45 years, VPIRG has advocated for the public interest in policy debates concerning the environment, health care, consumer protection, and democracy, and so I thank you for this opportunity to share our thoughts on the draft legislation pertaining to data brokers.

Like many here today, across this state and across the country – we at VPIRG were dismayed by the revelation that Equifax, one of the nation's largest credit reporting agencies, was subject to a data breach that compromised the important and sensitive information of millions of Americans.

VPIRG comprises more than 50,000 members and supporters – using the estimates provided by Equifax itself, that means it is likely that tens of thousands of VPIRG members and supporters' data was compromised during last year's massive breach. I'm here today on behalf of them – but also on behalf of the entirety of our membership – and as a voice for all Vermont consumers. Because it's not really a matter of if another large data breach will occur, but when. This means that all of us are at risk of having our personal information exposed and used for nefarious purposes. Vermonters need better information and stronger protections when it comes to third party companies controlling and distributing their sensitive personal data.

It's important to remember that – as concerning as the Equifax breach (and Equifax's subsequent response) was – we only know that such a breach occurred and consumers only have some methods of recourse because regulations governing credit reporting agencies exist. No such regulations exist for data brokers – which means similar breaches could already be happening right now, and we might never know.

Therefore, VPIRG supports the recommendations of the Data Broker Working Group and the specific proposals contained in this draft legislation. We will note that we would certainly be open to even stronger protections – such as requiring credentialing by data brokers for the customers they service and/or requiring brokers to provide consumers opt-out rights. However, we understand that concerns around these options have been raised by others (constitutional or otherwise). VPIRG has not conducted a legal analysis of these issues at this time – and therefore appreciate the Working Group and committee's decision to pursue a "light touch" framework at the moment.

It's worth noting that even these "light touch" protections would be a major step forward for consumers because the status quo is essentially a "no touch" framework.

VPIRG will not attempt to dive into the finer details of the draft legislation - Legislative Counsel and the representatives of the Working Group have already done a terrific job breaking down those aspects of the bill. I would however like to take just a few moments to review the major components contained in the draft legislation – and offer VPIRG's rationale, as the state's largest consumer advocacy organization, for supporting these proposals.

Free Credit Security Freezes: This section of the legislation would prohibit credit agencies from charging fees when consumers elect to freeze their credit history or thaw that history. We strongly support this. There is similar legislation in the Senate right now (S.207) that would do exactly this. This just makes sense.

Security freezes are perhaps the most effective tool consumers have to protect themselves after a data breach, like the one at Equifax, occurs. Yet because the credit reporting agencies can charge fees for these freezes, hacks like these can actually benefit these agencies' bottom lines.

Four states (Indiana, Maine, North Carolina, and South Carolina) provide free credit freezes and free thaws/lifts. Four other states provide free freezes but charge for thaws.

Other states (like Vermont currently does) provide free freezes for victims of identity theft – but not only in this an extra step for consumers (who have to get a police report to demonstrate this) it also misses the point. Often a consumer won't even realize they're the victim of identity theft until a thief has secured credit in their name and then run up a debt. Security freezes are meant to prevent this.

Suggestions have been made as to whether this committee should explore a security freeze trigger – allowing a consumer to request a freeze with one agency and then requiring the agency to notify the other agencies and trigger freezes there. On its face, this makes a lot of sense and would simplify the process for consumers. VPIRG is doing more research into the feasibility of this.

Definition of Data Brokers: This has been the subject of intense scrutiny – and rightfully so. VPIRG has advocated that Vermont adopt a narrow and specific definition of data broker so as to not "boil the ocean." We believe the definition proposed by the Working Group and incorporated into this draft legislation does that. Data brokers are third party entities who have no direct interaction with individuals they are collecting data on for the purpose of reselling that data. The definition laid out in the legislation is abundantly clear – and it's VPIRG's opinion that any claims that this might sweep up every business, non-profit and organization in the state is simply inaccurate.

Prohibition on the acquisition of personal data for illegal purposes (e.g. stalking, harassing, etc.): VPIRG supports this proposal. In fact, it would seem alarming that such a law does not already exists. Recent so-called swatting and doxing incidents (sometimes with fatal consequences) demonstrate exactly how important this is. This sends a clear message that using personal data for nefarious purposes is wrong. And it's worth noting that this places no requirement on the data brokers themselves.

Prohibiting the sale of data for minors (ages 13 to 18) without parental consent: This committee has shared its particular concern for protecting children and VPIRG shares that concern. We support this proposal as well. There has been a question as to whether leaving out protections for children under 13 (to avoid pre-emption under the federal Child Online Privacy Protection Act) creates a hole in the protections for our youngest children. VPIRG shares this concern and encourages the committee to work with Legislative Counsel and representatives from the Attorney General's office on how best to address

this. We will, however, point out that failure to enact this particular proposal would do nothing to address that hole. That is to say that hole would still exist whether this committee elected to move forward with this particular (age 13 to 18) prohibition or not, so those concerns should not prevent the committee from moving this language forward.

Data Broker Security Breach Notices: VPIRG strongly supports this requirement. As has been already mentioned – the trigger for security breach notices in Vermont is currently fairly narrow – and only involves the breach of Personally Identifiable Information (e.g. name plus social security number). However – data brokers have chosen to enter into the data business. Consumers don't even know who these data brokers are, or what information they have. So requiring data brokers to notify individuals and the appropriate authorities when their data has been compromised is good consumer protection. It's not difficult to imagine a scenario where incredibly damaging or sensitive information is ending up in the wrong hands because of data broker breaches (a list of emails of dementia patients, a list of home addresses of police officers) – without these protections, data brokers remain under no obligation to notify individuals if their information is compromised. It's also worth pointing out that many of these troubling lists could easily be gotten legitimately from data brokers – hence our recommendation to consider credentialing – but at the very least, data brokers (with whom consumers have no relationship) should be required to notify those consumers when their security has been breached. The committee has questioned whether the 45-day notice window is appropriate. VPIRG has not conducted any research to suggest an appropriate time frame, but would encourage the committee to hear from data security experts to determine what is the shortest reasonable window and move forward with that time frame. Every day that goes by without a notice, is a day that consumers are left in the dark and susceptible to possible identity theft.

Minimum Reasonable Security Requirements for Data Brokers: Again – consumers never asked to be added to data brokers' databases. They never asked to have records about them created. Data brokers have chosen to enter this business – asking them to adhere to minimum reasonable security standards seems entirely reasonable. We support this proposal. As has already been pointed out – these standards are already in place in Massachusetts, for a category of businesses and organizations far broader than what's being proposed here. So in theory, data brokers are already adhering to these standards and would be under no increased burden.

The creation of a data broker clearinghouse: We see this as key to the reforms proposed in this legislation. This clearinghouse would be a tremendous first step toward getting a better understanding of what the data broker industry looks like (i.e. who has our data?) and giving consumers the information they need to actually control their own data. This clearinghouse would be a very useful resource to VPIRG as a public interest organization. With an email list of 45,000+ Vermonters and a summer canvass that knocks on 100,000 doors in every town in Vermont annually – VPIRG would be able to point our membership and Vermonters as a whole toward this resource. We'd be able to help them understand who has their data and what their opt-out options are, should they choose to do so.

Conclusion

In summary, VPIRG appreciates the Committee's time and attention to this matter, and we support the passage of this legislation. Thank you for the opportunity to present this testimony.