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Testimony on Data Broker Bill
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Thank you for giving me the opportunity to testify on behalf of the ACLU of Vermont regarding the committee's data broker bill. We commend the the committee, the Attorney General's office, and the Department of Financial Regulation for their work on this issue.

As you know, every day, data brokers collect, collate, analyze, package, and score information regarding Vermonters, both online and offline. This data can be used for beneficial or detrimental purposes. When it comes to the collection and aggregation of personal information, the potential for misuse is obvious.¹ For example, reports released by the Senate Commerce Committee and the Federal Trade Commission (FTC) on the data broker industry have detailed the ways in which these companies enable precision marketing of consumer products and services to financially vulnerable individuals. These reports observe that the data collected could be used for discriminatory purposes, warned that data sold by some brokers is "likely to appeal to companies that sell high-cost loans and other financially risky products," and offered examples of predatory businesses using consumer profiles compiled by brokers to target vulnerable populations. We've heard reports that some landlords in other states have used data broker lists to pre-screen tenants and refuse their applications, potentially based on discriminatory factors.² It is unfortunately not difficult to imagine similar scenarios playing out in Vermont. For instance, a credit provider could rely on data broker-provided data to advertise higher interest rates to people of color, or a company could buy a data broker list entitled 'Struggling Elders' to prey on unsuspecting seniors.

We support the provisions recommended by the Working Group and adopted into the committee's bill regarding the registration of data brokers and the prohibition of discrimination based on information received from data brokers. We believe there are ways the bill could go even further to empower consumers in understanding what companies are collecting what information on them. One

¹ See, e.g., Letter from Laura Murphy, Director, ACLU Washington Legislative Office, and Rachel Goodman, Staff Attorney, ACLU Racial Justice Program, to Edith Ramirez, Chairwoman, Federal Trade Commission (2014), https://www.aclu.org/sites/default/files/assets/141027_ftc_comment.pdf; Federal Trade Commission, *Data Brokers: A Call for Transparency and Accountability* (May 2014) [hereinafter FTC Report], <https://www.ftc.gov/system/files/documents/reports/data-brokers-call-transparency-accountability-report-federal-trade-commission-may-2014/140527databrokerreport.pdf>; Senate Commerce Report, *supra* note 1.

² Levi Sumagaysay, *Mercury News interview: Nicole Ozer, tech policy director for ACLU of Northern California*, MERCURY NEWS (May 10, 2013), <http://www.mercurynews.com/2013/05/10/mercury-news-interview-nicole-ozertech-policy-director-for-aclu-of-northern-california/>.

such way is an approach modeled on proposed legislation in California and on the federal level³ requiring data brokers that sell or offer for sale the information of any resident of Vermont to create a way for Vermonters to review and correct individually identifying information collected or maintained on that individual by the broker. This would be similar to the option Vermonters already have to access and correct information in their credit reports. Data brokers would be required to post on their public website a notice instructing individuals how to review and correct such information. Data brokers would also be required to establish an opt-out procedure allowing individuals to block the sharing of their information with third parties. Any violation of this legislation would be treated as an unfair or deceptive act or practice under 9 V.S.A. §2453.

Another approach is similar to the 'Right to Know Act' proposed a few years ago in California⁴ and would give any Vermont consumer the ability to demand from businesses that keep personal customer information or share it with third parties a copy of that consumer's information and the names and contact information of the relevant third parties. The online privacy policies of such businesses would include a description of these rights and instructions for exercising them. A business would not be required to respond to a request by the same customer more than once within a twelve-month period.

Again, we thank the committee for its leadership on this important issue, and urge the committee to pass this bill and perhaps find ways to further protect and inform Vermonters.

³ SB 1348, 2013-2014 Reg. Sess. (Ca. 2014), http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201320140SB1348; The Data Broker Accountability and Transparency Act of 2015, S.668, 114th Cong. (2015), <https://www.congress.gov/114/bills/s668/BILLS-114s668is.pdf>.

⁴ AB 1291, 2013-2014 Reg. Sess. (Ca. 2013), https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201320140AB1291.