

January 17, 2018

The Honorable William Botzow, Chair
House Commerce and Economic Development Committee
Vermont State House
115 State Street
Montpelier, VT 05633-5301

RE: Statement in Opposition of Data Broker Bill Draft No. 4.1

Dear Chairman Botzow:

On behalf of LexisNexis, I am writing to express opposition to the “data broker” and minor’s data provisions of Data Broker Bill Draft 4.1.

The LexisNexis companies are a global provider of information and analytics for government, professional and business customers across industries. LexisNexis solutions support government, law enforcement, insurance, financial services, legal and healthcare industries. Our customers use the data we harness and the insights derived from it to accomplish a variety of consumer, business and legal transactions. We assist government in rooting out fraud, waste and abuse in public benefit programs. Law enforcement utilizes our tools for investigating crime and locating missing children. While the list of government, business and consumer transactions that we support is lengthy, these customers depend on the availability of data through our products.

Draft 4.1 creates an unnecessary and burdensome layer of state regulation that ignores many laws and regulations already governing the business use of data, and without a clear nexus between it and the alleged problems it seeks to solve. For the following reasons, we urge the committee not to adopt it.

Vermont has an existing data breach law that effectively regulates ALL business

Vermont has an existing data breach law that regulates all businesses, including those that would be defined as “data brokers” under the draft bill. 9 V.S.A. Sec. 2435. To date, there has been no anecdotal incident or other evidence offered that indicates the existing law does not and has not regulated as intended, or that any business – let alone a business that would be defined as a “data broker” - has not complied with the law as required.

In the Report to the General Assembly of the Data Broker Working group, the Report acknowledges the need for responsible and secure use of consumer data. No one argues that government and business should be good stewards of safe and secure use of consumer information.

The Privacy Rights Clearinghouse - <https://www.privacyrights.org/data-breaches> - records that over 7,800 government and business data breaches have been reported since 2005. The Report to the General Assembly cites five such breaches attributed to those entities that would presumably be defined as “data brokers” under the draft bill, as support for creating a new, parallel data breach law to the existing Vermont

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data breach law. Additionally, the Report advocates for exempting out all other business industries, including:

- *Banks and other financial institutions
- *Utilities
- *Insurers
- *Retailers and Grocers
- *Restaurants and Hospitality
- *Social Media and Mobile Apps
- *Search Websites

However, the Report overlooks that these industries account for approximately 99.5% of all recorded data breaches by business. Similarly, the Report offers no evidence or argument that those entities that would be defined as “data brokers” represent an epidemic of reported data breaches. Instead, the Report mistakenly focuses on the holder of information, rather than the kind of information held, in creating an artificial, parallel regulatory scheme for entities that are defined as “data brokers.” The Report and bill draft 4.1 fail to adequately answer the question of whether a catastrophic data breach at a bank or financial institution, insurer, retailer, social media site, or internet search engine is any less important to, or concerning for, Vermont residents. Similarly, the Report and the Bill draft ignore the fact businesses that fall within the definition of data brokers are by no means the only businesses that sell data containing personal information. Reviewing the web page resulting from use of an internet search engine or a user’s “news feed” on a social media platform easily confirms that fact. Personal information is personal information wherever, and by whomever, it is held and used.

Unlike the exempted industries, “data brokers” are heavily regulated by existing laws

The draft Bill makes the policy decision to regulate a very small subset of businesses – who already have comprehensive regulatory oversight at the federal and state level. However, the draft bill goes on to exempt 99.5% of other businesses and government many of which have zero regulatory oversight whatsoever on their data collection and use.

As an example, LexisNexis is regulated by the federal Fair Credit Reporting Act; federal Gramm Leach Bliley Act, and federal Driver’s Privacy Protection Act, just to name a few. These laws are replicated in many instances across the states by companion state laws. Vermont has also enacted a state Fair Credit Reporting Act. Approximately 48 of 50 states, including Vermont, have an existing breach law. There are a litany of other state laws that regulate use of sensitive personal information. LexisNexis is regulated by the Federal Trade Commission and the Consumer Financial Protection Bureau. Finally, most if not all of those entities that would be defined as “data brokers” have oversight by the 50 states attorney general.

The draft bill has created the irony of regulating the regulated, while exempting out the 99.5% of business users of consumer information. Additionally, while “data brokers” are singled out in the Report for

allegedly not having a direct consumer relationship, many are required to, and in most cases also voluntarily do, provide consumers a copy of their data on request.

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There is no anecdotal evidence or other Public Policy consideration to create a new, duplicative law

The Report and draft bill provide no anecdotal evidential support or compelling public policy justification for ignoring existing federal and Vermont law and creating a parallel, duplicative regulatory structure on a small subset of businesses – while exempting out 99.5% of other business industries and government. While arguments have been advanced about protecting vulnerable populations and other similar hypotheticals, as well as eliminating other targeted marketing practices, there is no evidence the proposed draft bill will deter bad actors or even regulate those actors, as they will continue to operate in the shadows at the regulatory expense of legitimate businesses arbitrarily defined as “data brokers.”

The Prohibition on Collecting and/or Selling Data of Certain Minors Should be Limited to Data Used for Marketing

Proposed 9 V.S.A. sec. 2433(b) provides that a person shall not sell or offer for sale personal information collected from a Vermonter between the ages of 13 and 18 without first giving notice to and obtaining the consent of the teenager’s parent or legal guardian. Subsection (c) is similar. The requirements and prohibitions in both of these subsections should be limited to personal information that will be used for marketing purposes. If otherwise, the ability of automobile liability insurance companies to adequately underwrite the risks of insuring teenagers, the ability of law enforcement to obtain information about missing teenagers, and other beneficial activities will be greatly hindered.

Thank you for the opportunity to provide comment and insight to the draft legislation. I am happy to speak further with you or the committee about these concerns or to answer any questions.

Sincerely,

Jon Burton, Managing Director
State Government Affairs