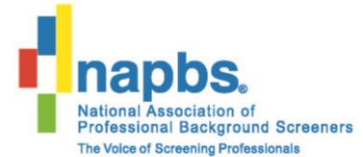


April 10, 2018



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

RE: OPPOSITION TO HOUSE BILL 764

Dear Chair Sirotkin and Members of the Committee,

On behalf of the National Association of Professional Background Screeners (NAPBS), whose members include Vermont residents and businesses, we write to you with concerns regarding the current committee draft of Data Broker legislation. As a nonprofit organization consisting of almost 800 small and large entities engaged in the background screening profession, NAPBS has been dedicated to providing the public with safe places to live and work since 2003. The NAPBS member companies conduct millions of employment-related background checks each year, helping employers, staffing agencies, and nonprofit organizations make more informed decisions regarding the suitability of potential employees, contractors and volunteers.

Given that we could not attend the hearing in person, and were informed that opportunities to testify were limited due to time constraints, NAPBS sincerely appreciates the opportunity to present to you, in writing, our thoughts and concerns surrounding House Bill 764. You will have already received a letter of opposition from a coalition of likeminded associations and businesses, including NAPBS, concerned with the unworkable and unnecessary requirements contained in this bill, and the unintended adverse effects it would have on consumers and businesses in Vermont (see attached). We wish to provide further commentary specific to our industry to help further illustrate how this bill “misses the mark” that it is aiming for.

To start, we do appreciate the underlying intent and purpose of this proposed legislation, and applaud the efforts taken by the Legislature and Attorney General to try and protect the public. That said, we believe definition of “Data Broker” to include consumer reporting agencies (CRAs) as defined by the Fair Credit Reporting Act, who conduct background checks with the specific authorization of the consumer is unnecessarily overbroad.

Speaking to the definition of data broker within the legislation, NAPBS has concerns HB 764 broadly defines “Data Broker” in such a manner that numerous businesses in Vermont could and would fall within the definition, despite not serving as true data brokers within the scope of what the Vermont Data Broker Working Group established a year ago.

Currently, a distinction between data brokers and consumer reporting agencies (CRAs) does not exist, despite the Data Broker Working Group’s acknowledgement of this important difference in its report. The Data Broker Working Group acknowledged this fact themselves when addressing consumer reporting agencies and other entities regulated under the Federal Fair Credit Reporting Act (FCRA):

“FCRA applies to “consumer reporting agencies” (CRAs) that provide “consumer reports” for specific purposes. A Data Broker might be a CRA for some lines of its business and not for others. Similarly, a Data Broker might trade in data that qualifies as a “consumer report” as well as data that does not.”¹

Based on the above assertion, a CRA should not be treated as a “Data Broker” under this proposed legislation. The state understands the difference between a “Data Broker” and an FCRA regulated consumer reporting agency that specializes in compiling information for purposes of supplying a “consumer report” for employment or tenancy purposes as defined in 15 U.S.C. §1681a(d). Importantly, consumer reports provided for employment or tenant screening purposes require disclosure to the applicant as well as the *specific authorization of the applicant* prior to the report being prepared. While it could be argued this specific authorization constitutes an exempted “direct relationship” under HB 764, the fact that CRA’s contract with the employer, not the applicant, prevents the CRA from claiming that exemption under the current “direct relationship” language.

Further, the FCRA places requirements on both CRAs and the end-users (employers or property managers) who request the procurement of the background report on their potential employee or tenant. The FCRA is a consumer protection based regulation that requires disclosure and authorization before a report is prepared and also provides the consumer with the right dispute the completeness or accuracy of a report. In the event of a dispute, a CRA is required to reinvestigate at no charge to the consumer. In addition to the FCRA, background screening, when conducted by a CRA, is highly regulated by the Federal Trade Commission (FTC) and enforced by the Consumer Financial Protection Bureau (CFPB), as well as state and local consumer protection laws.

Considering the extensive regulations already in place, it seems this bill, using its current “Data Broker” definition, simply creates additional burdens on CRAs to create protections that are already in place, and reduces access to relevant data, ultimately slowing down the important work that CRAs do to help employers fill open positions with job seekers who are eager to work.

NAPBS and its members are available and prepared to discuss any questions regarding our industry or the aforementioned concerns. Thank you for accepting our comments and we would very much appreciate a chance to testify before the committee if and when time is allocated, we look forward to working with you to improve this legislation for the good of all Vermonters. Please feel free to contact me directly at 402-957-1179 or brent.smoyer@napbs.com.

Sincerely,



Brent Smoyer, JD
NAPBS State Government Relations &
Grassroots Director

¹ Report to the General Assembly of the Data Broker Working Group Report, issued pursuant to Act 66 of 2017 on December 15, 2017 p. 15-16