

April 12, 2018

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

VIA ELECTRONIC TRANSMISSION

RE: H.764, An act Relating to Data Brokers and Consumer Protection

Dear Senator Sirotkin:

These comments are being submitted by Consumer Federation of America, the National Consumers League, Consumer Watchdog, Consumer Action, and Privacy Rights Clearinghouse.¹ As nonprofit consumer organizations, we have long worked on issues related to the privacy and security of individuals' personal information.

The data broker business raises important privacy and security issues which have not been addressed by Congress. As the Federal Trade Commission (FTC) stated in its 2014 report on data brokers:

“For decades, policymakers have expressed concerns about the lack of transparency of companies that buy and sell consumer data without direct consumer interaction.”²

Consumers do not know who data brokers are or what personal information they may have about them because they do not have direct relationships with data brokers. The fact that data brokers collect information about consumers largely without their knowledge is not the only concern, however. As the FTC report outlines, this data is used to make inferences about consumers, including potentially sensitive inferences; such inferences could affect consumers' abilities to make certain transactions or to receive certain offers; storing massive amounts of

¹ Consumer Federation of America is an association of more than 250 nonprofit consumer organizations across the United States. Its mission is to advance consumers' interests through research, advocacy and education. The National Consumers League, founded in 1899, is America's pioneering consumer and worker advocacy organization. Consumer Watchdog is a nonprofit organization dedicated to providing an effective voice for taxpayers and consumers in an era when special interests dominate public discourse, government and politics. Through multilingual financial education materials, community outreach and grassroots "make your voice heard" advocacy, Consumer Action empowers underrepresented consumers nationwide to assert their rights in the marketplace and financially prosper. The Privacy Rights Clearinghouse is a nonprofit consumer education and advocacy organization that educates and empowers individuals to protect their privacy.

² *Data Brokers, A Call for Transparency and Accountability* (May 2014), <https://www.ftc.gov/system/files/documents/reports/data-brokers-call-transparency-accountability-report-federal-trade-commission-may-2014/140527databrokerreport.pdf>, at i.

consumers' personal information could pose security risks; and consumers do not have adequate choices with regard to data brokers' collection and use of this information.

While these concerns are not new, a study³ by the World Privacy Forum highlighted how new types of predictive consumer scoring, enabled by new streams of data, are used in secret, are not covered by existing consumer protections, and can result in new forms of redlining in the marketplace, unjust or incorrect eligibility decisions, and identity theft.

Though Congress has studied data brokers⁴ and the FTC has recommended legislation,⁵ there has been no progress on this issue at the federal level. As with data breach notification and other needed consumer protections, we believe that the states are in the best position to take the lead. We applaud Vermont's initiative and strongly support this bill.

H.764 takes a common-sense approach to ensure appropriate oversight and transparency for data brokers that collect and sell the personal information of Vermont residents. The bill requires data brokers to register annually with the state and provide information about their data collection activities, their opt-out policies, and the credentials that they require for purchasers of data to prevent fraudulent or inappropriate use.

It is important to note that this type of registration requirement is not unprecedented; for instance, many states, including Vermont, require telemarketers to be registered, which facilitates identifying them and ensuring that they follow proper practices in order to protect consumers from fraud, deception, or other abuses.

The bill also requires data brokers to adopt an information security program with appropriate technical, physical, and administrative safeguards, addressing a key concern about the safety of Vermonters' personal data.

In addition, the bill prohibits anyone from acquiring such data with the intent to commit wrongful acts such as stalking, harassment, fraud, id theft, or discrimination. Furthermore, to help Vermonters protect themselves from identity fraud, the bill entitles them to ask credit reporting agencies to freeze and unfreeze their credit files at no charge. The bill also sets data breach notice requirements for entities that collect Vermonters' personal information, including data brokers.

We applaud Vermont for carefully studying the data broker industry and taking this initiative. Other states will surely follow its lead.

³ Pam Dixon and Robert Gellman, *The Scoring of America: How Secret Consumer Scores Threaten Your Privacy and Your Future*, World Privacy Forum (April 2, 2014), http://www.worldprivacyforum.org/wp-content/uploads/2014/04/WPF_Scoring_of_America_April2014_fs.pdf.

⁴ See Senate Committee on Science, Commerce and Transportation, Office of Oversight and Investigations majority staff report (December 18, 2003) at http://educationnewyork.com/files/rockefeller_databroker.pdf.

⁵ *Supra* <https://www.ftc.gov/system/files/documents/reports/data-brokers-call-transparency-accountability-report-federal-trade-commission-may-2014/140527databrokerreport.pdf> at 69.

Questions concerning these comments may be directed to Susan Grant, Director of Consumer Protection and Privacy at Consumer Federation of America, sgrant@consumerfed.org. Thank you very much for your consideration.

Respectfully submitted by:

Susan Grant
Director of Consumer Protection and Privacy
Consumer Federation of America

John Breyault, Vice President
Public Policy, Telecommunications, and
Fraud
National Consumers League

John Simpson, Privacy Project Director
Consumer Watchdog

Linda Sherry, Director, National Priorities
Consumer Action

Beth Givens, Executive Director
Privacy Rights Clearinghouse

Copy: Senator Alison Clarkson

Senator Philip Baruth
Senator Becca Balint
Senator David Soucy