

Robert F. Adler  
Written Testimony Regarding House Bill 764  
April 10, 2018

Thank you senators for taking the time today to hear from me. I come in front of the committee as the Co-founder and President of Faraday. Faraday is a five-year-old start-up headquartered in Burlington VT. We currently employ twenty people, 17 of them VT residents, with plans to hire up to half dozen additional employees this year in VT. We provide an AI software platform that helps consumer facing companies find and reach new customers and engage with existing customer more effectively. We do this using machine learning, a class of technology popularized by the likes of Netflix and Amazon's recommendation engines. We've received funding from a variety of sources including FreshTracks Capital, the Vermont Center for Emerging Technologies, and the Department of Energy and we were recently identified as the best funded startup in the state. We serve over sixty clients and our technology has been used in a variety of ways such as driving the broader adoption of solar, increasing membership in credit unions, and supporting realtors and their clients in the sale of homes.

I want to start by expressing my support on behalf of Faraday for the intent of this legislation. We strongly support the idea of protecting Vermont consumers, particularly vulnerable populations, from the malicious use of personal data and breaches of highly sensitive personal data. We believe in the need for greater transparency into how consumer data is being used. We do however, have specific concerns about house bill 764 that I want to share. I have shared these concerns directly with Attorney General TJ Donovan, his deputy Joshua Diamond, and Chris Curtis, the head of the Consumer Protection Division.

The concerns I share today are grounded both in the direct impact I believe this legislation will have on Faraday and the broader technology and business community in Vermont.

1. Our foremost concern is the bill's requirement that organizations that have personal information ("PI") and distribute it be required to register as a data broker. PI, as defined in H 764, includes data elements such as a person's name or address that are matters of public record and readily available via the internet. The bill defines "data brokers" as certain companies that have a database of any of the data elements within the definition of PI. In fact, under this definition tax assessor offices themselves would be acting as the equivalent of data brokers, as they have name and address and actively distribute it to 3rd parties. By including this definition of PI within the bill, not only do you ensnare Faraday, but I'm certain you will ensnare other VT small businesses such as South Burlington based Paw Print. Our ask is to remove the PI definition from this bill. In so doing, it would immediately mitigate the bill's impact on Faraday and I suspect the vast majority of local businesses, while doing little to weaken protections for consumers, because again, this type of PI information is already available in the public realm. I want to be clear, this stands in stark contrast to personally identifiable information ("PII") data such as social security numbers, account passwords, credit card numbers, which are highly sensitive, and if accessed by bad actors could/would have significant ramifications on consumers, as we saw with the Equifax breach. We support a bill that labels companies that hold and distribute this type of PII data as "data brokers."

2. The bill exempts businesses such as Twitter, Facebook, internet service providers (ISPs), and credit card companies that actively sell data they collect from consumer to 3rd parties for advertising and other purposes both on and off their platforms. For examples of this please look into the "Twitter firehose" or a recent story by NPR covering the collection and dissemination of data by ISPs (<http://nprillinois.org/post/what-your-internet-service-provider-knows-about-you#stream/0>) like Comcast. It has been explained to us that these companies are excluded because they have a direct relationship with consumers. This is despite the fact that as we've seen recently with Facebook and the Cambridge Analytica scandal, many of these companies are collecting far more data on consumers than consumers are aware and often collect highly sensitive PII such as emails, passwords, location, and credit card numbers. To us, it seems somewhat antiquated that a company holding name and address data would be labeled a data broker and yet these entities would not, despite many of these companies having recently incurred security breaches with major impacts on consumers. Our view at Faraday is having to register as a data broker will, at least in the eyes of the public, be a scarlet letter and will be made all the worse if major players in the world of data are not included. Complying with this bill will have cost in terms of time and resources and will place us at a competitive disadvantage, which even if small, is a hindrance in a hyper-competitive environment.

3. Our last concern is more generalized in nature and speaks to the type of economic opportunities that Vermont is trying to foster in the state. The world of "AI/big data" is emerging as a major industry with billions of dollars of venture and R&D funding flowing into this sector. Vermont has the talent and workforce to participate in and benefit from this industry's growth, as shown by not only Faraday, but MyWebGrocer, Dealer.com, Social Sentinel, and many others. With any emerging technology, it is important that the proper regulatory regime is put in place to help guide the industry's growth and protect citizens. I'm proud of the state for looking to take a light touch regulatory lead with this industry, but believe it is critical that the final bill be constructed in such a way that it does not discourage us or other companies working in this sector from starting here and growing here. I believe there is legitimate reputational risk for the state if this bill is seen as being overly aggressive in regulating the use of data. The inclusion of PI would absolutely be seen as a major departure from current regulations and be seen by companies and investors in the sector as regulatory overreach.

Thank you for hearing my concerns.

*Robert F. Adler*

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Robert F. Adler  
Co-founder & President  
Faraday, Inc.