



# Testimony of VPIRG Communications & Technology Director Zachary Tomanelli on S.207 & the Data Broker Working Group

Testimony before the Senate Committee on Economic Development, Housing and General Affairs  
January 12, 2018

## Introduction

Good morning. My name is Zachary Tomanelli and I am the Communications & Technology Director of VPIRG, the Vermont Public Interest Research Group. For over 45 years, VPIRG has advocated for the public interest in policy debates concerning the environment, health care, consumer protection, and democracy, and so I thank you for this opportunity to share our thoughts on S.207 and the Data Broker Working Group Report.

Like most of you, and I'm sure many of your constituents, VPIRG was dismayed by the revelation that last year, Equifax, one of the nation's largest credit reporting agencies, was subject to a data breach that compromised the important and sensitive information of millions of Americans.

VPIRG has more than 50,000 members and supporters – using the estimates provided by Equifax itself, that means it is likely that tens of thousands of VPIRG members and supporters' data was compromised during last year's massive breach. I'm here today on behalf of them – but also on behalf of the entirety of our membership – and as a voice for all Vermont consumers. We greatly appreciate that this committee, others in this legislature, and other state leaders (the Attorney General's office in particular) are moving quickly to better protect consumers from future, inevitable breaches and ensuring they have the proper recourse when such breaches occur.

To that end, we fully support and urge the swift passage of S.207 – the bill prohibiting credit agencies from charging consumers to freeze and thaw their credit history.

We also support the recommendations of the Data Broker Working Group as important steps to give Vermonters better information and more tools to better control their own personal data.

I'll begin by addressing the specific bill before the committee – S.207 – along with some additional credit reporting reforms the committee may wish to consider – and then I'll discuss VPIRG's support for the other reforms recommended by the Data Broker Working Group.

## **S.207 – Free Credit Freezes**

VPIRG strongly supports the passage of S.207.

Security freezes are perhaps the most effective tool consumers have to protect themselves after a data breach, like the one at Equifax, occurs. Yet because the credit reporting agencies can charge fees for these freezes, hacks like these can actually benefit these agencies bottom lines.

Approximately 158 million consumers between 18-65 in 42 states and DC must pay a fee to get credit freezes

If all consumers in those states between 18-65 choose to freeze their reports today, that will cost them an estimated \$4.1 billion.

Four states (Indiana, Maine, North Carolina, and South Carolina) provide free credit freezes and free thaws/lifts. Four other states provide free freezes but charge for thaws.

Other states (like Vermont currently does) provide free freezes for victims of identity theft – but not only in this an extra step for consumers (who have to get a police report to demonstrate this) it also misses the point. Often a consumer won't even realize they're the victim of identity theft until a thief has secured credit in their name and then run up a debt. Security freezes are meant to prevent this.

Vermont should absolutely make these security freezes (and thaws) free for consumers.

#### **Additional credit reporting agency protection recommendations:**

While the committee is considering changes to Vermont's credit reporting agency regulations – VPIRG is also willing to offer some additional recommendations for this committee to consider that would simplify the credit freeze process and give Vermonters additional protections and tools in response to future breaches. Specifically we recommend:

- **Explicitly allowing, in law, freezes to be done online or via telephone:** Right now Vermont law specifies that security freeze requests must be made via certified mail. This is potentially time consuming and an additional cost for consumers. Now it may be the case that the major credit agencies honor freeze requests by other methods in Vermont already. Regardless, Vermont should follow other states in explicitly allowing for freezes by phone or online. (See New York's Credit Freeze Law for an example<sup>1</sup>)
- **Require freezes be lifted within 15 minutes if a consumer makes the lift request via phone or online:** Vermont's current law requires agencies to issue thaws or lifts within 3 business days of receiving the request. This make the process of lifting the freeze onerous for the consumer and could cause them difficulty in legitimately securing credit in a timely fashion – and thus dissuade consumers from taking this critical security step. Ten other states, plus D.C., require lifts to be issued within 15 minutes of the request when such requests are made online or by phone.<sup>2</sup> Vermont should follow suit.
- **Investigate the Feasibility of a Security Freeze Trigger:** We would encourage this committee to consider making security freezes act the same way fraud alerts do – allowing a consumer to request a freeze with one agency and then requiring the agency to notify the other agencies and trigger freezes there. This idea has been brought up both here and in testimony on this issue in the House Commerce Committee – VPIRG is currently doing additional research into the feasibility of this, and can report back when we have more information.

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<sup>1</sup> New York Consolidated Laws, General Business Law - GBS § 380-t. Security freeze

<sup>2</sup> New York Consolidated Laws, General Business Law - GBS § 380-t. Security freeze

## **Data Broker Working Group**

It's important to remember that – as concerning as the Equifax breach (and Equifax's subsequent response) was – we only know that such a breach occurred and consumers only have some methods of recourse because regulations governing credit reporting agencies exist. No such regulations exist for data brokers – which means similar breaches could already be happening right now, and we might never know.

Therefore, VPIRG supports the recommendations of the Data Broker Working Group. We will note that we would certainly be open to even stronger protections – such as requiring credentialing by data brokers for the customers they service and/or requiring brokers to provide consumers opt-out rights. However, we understand that concerns around these options have been raised by others (constitutional or otherwise). VPIRG has not conducted a legal analysis of these issues at this time – and therefore appreciate the Working Group's decision to pursue a "light touch" framework at the moment.

It's worth noting that even these "light touch" protections would be a major step forward for consumers because the status quo is essentially a "no touch" framework.

At this point, I'll just take a few moments to outline VPIRG's rationale, as the state's largest consumer advocacy organization, for supporting these proposals.

**Free Credit Security Freezes:** This has already been covered in our stated support for S.207, but to repeat -- making security freezes free for consumers is a necessity.

**Definition of Data Brokers:** VPIRG has advocated that Vermont adopt a narrow and specific definition of data broker so as to not "boil the ocean." We believe the definition proposed by the Working Group does that. It's VPIRG opinion that any claim that this might sweep up every business, non-profit and organization in the state is simply inaccurate.

**Prohibition on the acquisition of personal data for illegal purposes (e.g. stalking, harassing, etc.):** VPIRG supports this proposal. In fact, it would seem alarming that such a law does not already exist. Recent so-called swatting and doxing incidents (sometimes with fatal consequences) demonstrate exactly how important this is. This sends a clear message that using personal data for nefarious purposes is wrong.

**Prohibiting the sale of data for minors (ages 13 to 18) without parental consent:** VPIRG believes that protecting children is of the utmost importance. As younger generations increasingly find themselves in an almost entirely digital world – increasing and clarifying protections for our youngest and most vulnerable is paramount.

**Data Broker Security Breach Notices:** VPIRG strongly supports this requirement. The current trigger for security breach notices in Vermont is currently fairly narrow – and only involves the breach of Personally Identifiable Information (e.g. name plus social security number). However – data brokers have chosen to enter into the data business. Consumers don't even know who these data brokers are, or what information they have. So requiring data brokers to notify individuals and the appropriate authorities when their data, beyond simply Personally Identifiable Information, has been compromised is good consumer protection. It's not difficult to imagine a scenario where incredibly damaging or sensitive information is ending up in the wrong hands because of data broker breaches (a list of phone numbers

or emails of financially insecure individuals, a list of home addresses of police officers) – without these protections, data brokers remain under no obligation to notify individuals if their information is compromised – unless it falls under Vermont’s current specific breach notification law.

**Minimum Reasonable Security Requirements for Data Brokers:** Again – consumers never asked to be added to data brokers’ databases. They never asked to have records about them created. Data brokers have chosen to enter this business – asking them to adhere to minimum security standards seems entirely reasonable. We support this proposal. These standards are already in place in Massachusetts, for a category of businesses and organizations far broader than what’s being proposed here. So in theory, data brokers are already adhering to these standards and would be under no increased burden.

**The creation of a data broker clearinghouse:** We see this as key to the reforms proposed by the working group. This clearinghouse would be a critical first step toward getting a better understanding of what the data broker industry looks like (i.e. who has our data?) and giving consumers the information they need to actually control their own data. This clearinghouse would be a tremendous resource to VPIRG as a public interest organization. With an email list of 45,000+ Vermonters and a summer canvass that knocks on 100,000 doors in every town in Vermont annually – VPIRG would be able to point our membership and Vermonters as a whole toward this resource. We’d be able to help them understand who has their data and what their opt-out options are, should they choose to do so.

## **Conclusion**

In summary, VPIRG appreciates the Committee’s time and attention to this matter, and we support the passage of S.207. Thank you for the opportunity to present this testimony.