



DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

MEMORANDUM

DATE: March 12, 2019

TO: Honorable Jennifer Williamson, Chair
House Committee on Judiciary

FROM: Cheryl Hiemstra, Deputy Legislative Director

SUBJECT: House Bill 2866 (Transparency for Use of Personal Information)

This testimony is presented in support of House Bill 2866.

In 2014, the Attorney General hosted a Privacy Symposium. A swath of industry – ranging from social media companies to data brokers to attorneys specializing in data security standards, policymakers, privacy and consumer protection advocates, and others came to share their thoughts. Even then, we understood that we were entering into the age of Big Data that would change the face of consumer privacy.

Since then, the dynamic of Big Data has only grown, and grown at an alarming rate.¹ With so much data collected, analyzed, and monetized, consumer privacy is an issue that has only gained more attention over the last five years. The Attorney General has been active in discussions both at the state and federal level on the effects for consumer protections. In a bipartisan letter led by Attorney General Rosenblum from 29 Attorneys General to the Federal Trade Commission, the Attorneys General expressed concerns with the current landscape:

In our experience, consumer privacy and data security is an afterthought in product and service development. Industry often does not adequately invest in privacy and security. Consumer data has inherent value and the free market alone does not adequately protect sensitive data. Consumers have voiced concerns to us about what personal information industry collects, how industry informs consumers about data collection, and how industry uses and shares consumers' data. Industry must place privacy and security front and center in its research and development of products and services.²

Protection of consumer privacy is not only a matter of good policy, the implications for how consumer information is used are wide-ranging. Even now, data brokers are able to provide

¹ <https://www.forbes.com/sites/louiscolombus/2018/05/23/10-charts-that-will-change-your-perspective-of-big-datas-growth/#1e9177452926>

² "Competition and Consumer Protection in the 21st Century Hearing Project Number P181201," To Donald S. Clark, Secretary of the Commission, August 20, 2018. See: https://www.ftc.gov/system/files/documents/public_comments/2018/08/ftc-2018-0049-d-1565-155180.pdf

health insurance companies and lending companies with personal details – race, education level, screen time habits, net worth. These are pulled from a number of different sources: social media posts, online orders, bill payment status. This information potentially enables insurers to predict how much consumers' health care could cost, or which groups of people should be able to access financing. Drawing conclusions about health risks or lending risks from big data could lead to a bias against some consumers and influence pricing.

HB2866 takes an important step in one of the fundamentals of privacy: a consumer's ability to understand the information that is collected about them. The bill first requires "opt-in" consent from a consumer before collecting some of the most sensitive personal information: geolocation and audiovisual data. Second, the bill requires that a person who collects personal information explain how they use that personal information. These provisions will provide insights for consumers in an era where the news is awash with concerns about how entities can manipulate consumers.³

Like all policymaking in a highly technical and rapidly evolving area, there is a balance to keeping laws broad enough to cover the future while being specific enough to give clear direction to those that must comply with it. While HB2866 has a noble underlying structure, the Department of Justice agrees with the proponents that the current version of the bill needs some refinement as to language, and supports efforts for further work.

Contact: Cheryl Hiemstra, Deputy Legislative Director, 971-701-0457 or cheryl.hiemstra@doj.state.or.us

DM9484823

³ <https://www.theguardian.com/technology/2018/apr/15/facebook-says-it-voter-button-is-good-for-turn-but-should-the-tech-giant-be-nudging-us-at-all>