



March 12, 2019

To: House Committee on Judiciary
From: Anthony K. Smith, State Director, NFIB Oregon
Re: Oppose HB 2866

Chair Williamson, Vice-Chairs Gorsek & Sprenger, and Members of the Committee,

On behalf of the thousands of small-business members of NFIB in Oregon, I would like to share with you our concerns regarding HB 2866 – and ask you to join Oregon’s small businesses in opposing this legislation.

Please keep in mind that NFIB represents small businesses in every industry of Oregon’s private sector, and although 90 percent of our members have fewer than 25 employees – and 70 percent have fewer than 10 employees, the small businesses we represent account for over 60,000 Oregon jobs.

If the proponents of HB 2866 would like us to believe this legislation seeks to regulate large corporations, social media giants, and mobile phone app companies, the actual language in the bill falls short of this goal – and would affect every business in the state, large and small, which is the primary reason NFIB opposes the bill.

First, there are problems with the definitions section of the bill. Section 1 (1)(d)(A) defines the term “person” as “a partnership, limited partnership, limited liability partnership, professional corporation, corporation, nonprofit corporation, limited liability company, cooperative, business trust or other business organization or entity, either nonprofit or for profit.”

Clearly, the usage of the word “person” is intending to capture every organization in the state (excluding government entities – see Sec. 1 (1)(d)(B) and actual human beings), not just the large social media and app companies described by the bill’s advocates.

Second, we’re troubled by the language in Section 1 (3), which requires businesses to disclose personal information to a resident individual upon written request – and that small businesses must provide an easily accessible and easily understandable form that a resident individual, a parent or legal guardian of a resident individual or another person the resident individual has authorized to make a request may use to submit a request under this subsection electronically or by mail.



Very few of the requirements in this bill are “easily understandable”, so the prospect of generating this form would be daunting for most small businesses. This process also puts businesses in the position of having to verify the identity of each requester – or verify the parentage of the requester. Businesses receiving a request would also have to verify that when another “person” requests information on behalf of a resident individual, that the requesting “person” is a business authorized to do so (since, again, the term “person” in this bill is defined as a business, not a human being.)

In Section 1 (4)(a)(B), a business receiving a request for disclosure would have to produce data as far back as two years for the resident individual requester. This means that businesses that obtain personal information from its customers for temporary purposes would have to collect and retain that information for at least two years in order to comply with this provision – even if it is not common practice for the business to keep data on its customers.

Most small businesses would prefer not to hold on to unnecessary private customer data because they would not want to be made into targets for cybercrime. Yet if HB 2866 became law, every hacker in the world would know that Oregon businesses are required to keep any customer data collect for a period of at least two years. This information could include email addresses, mailing addresses, names, financial information, and anything else defined as “personal information” in Section 1 of the bill.

A small business’s failure to comply with any or all of these complicated requirements could result in a lawsuit under the Unlawful Trade Practices Act, even for something as simple as keeping database of customer information for a monthly coupon mailing – and not having “an easily accessible and easily understandable form” on hand.

NFIB requests that the Oregon Legislature encourage the proponents of this legislation to work with industry stakeholders to address any legitimate concerns with the way large social media and app companies use data generated by human interactions with digital electronic devices – and keep our home-grown, mom & pop small businesses out of the crossfire.

Thank you for the opportunity to submit this written testimony.

Regards,

Anthony K. Smith
NFIB Oregon State Director