OREGON BANKERS ASSOCIATION

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Senate Bill 619: Data Privacy Legislation

Chair Prozanski, Vice-Chair Thatcher, and Members of the Senate Committee on Judiciary, thank you for the opportunity to provide written testimony with respect to Senate Bill 619. The Oregon Bankers Association represents the diverse FDIC-insured banks and trust companies doing business in Oregon. The banking industry employs over 20,000 Oregonians at approximately 800 locations throughout our state. Our banks are highly regulated and provide safe and trusted banking services to individuals, families, businesses, agriculture interests, and government entities. We lend billions of dollars annually, whether to a first-time homebuyer or a city infrastructure project. Our banks truly are the cornerstones of their communities.

Banks Are Currently Subject to Robust Consumer Data Protection Requirements

Senate Bill 619, as introduced, would create a statutory framework in Oregon to regulate and protect the use of consumer data. Banks are strong proponents of protecting consumer data and privacy. Unlike most other industries, federal and state-chartered banks have been subject to extensive federal privacy and data protection laws for decades. These federal laws and regulations recognize the importance of consumer privacy and constitute a framework and corresponding oversight that not only protects the privacy of consumers but ensures that the financial system can function securely and effectively, as well as provide the innovative products and services consumers and businesses demand.

The Gramm-Leach-Bliley Act ("GLBA") is a central component of this robust privacy framework for financial institutions. GLBA's mandate includes two major protections: a) comprehensive information security requirements; and b) privacy notice obligations and information sharing restrictions. GLBA requires financial institutions to establish an information security program that protects customer information through administrative, technical, and physical safeguards that are appropriate to the size and complexity of the financial institution and the nature and scope of its activities. The Act requires financial institutions to provide consumers with a privacy notice that clearly and conspicuously describes the financial institution's privacy policy and practices, including the circumstances under which it shares personal information about consumers and how it protects personal information. GLBA generally prohibits financial institutions from disclosing financial and other consumer information to nonaffiliated third parties without first providing consumers with notice and a reasonable opportunity to opt-out of such sharing. GLBA also includes carefully crafted exceptions to its restrictions on sharing information with nonaffiliated third parties to ensure financial institutions can run their businesses effectively and safely protect consumers.

GLBA is not the only federal privacy law regulating financial institutions. The federal Fair Credit Reporting Act ("FCRA") regulates the disclosure of, access to, and use of consumer reports, the sharing of information among affiliated institutions, and the use of information shared among affiliates for marketing purposes. Additionally, the federal Right to Financial Privacy Act generally prohibits a financial institution from disclosing customer information to the federal government, except in specified contexts and then only in accordance with the procedural requirements of the statute.

Unlike other sectors where statutory or regulatory violations must occur before authorities are aware of a problem and can take action, banks are subject to strict regulatory oversight and regular examinations that ensure their compliance with privacy and data protection laws. This active oversight creates an environment of

accountability and ensures that problems are dealt with expeditiously. Financial institutions are subject to data privacy oversight far beyond what applies to most other private-sector entities. In light of the above, it is critical that a strong GLBA entity-level exemption for banks and their affiliates be maintained in Senate Bill 619.

Maintain the Entity-Level Bank and Bank Affiliate Language in Senate Bill 619

As drafted, Senate Bill 619 contains a GLBA entity-level exemption in Section 2(2). We strongly urge the committee to maintain this exemption as drafted. Its inclusion is an acknowledgment of the extensive data protections already in place for banks and their affiliates.

Watering down the entity-level exemption currently in Senate Bill 619 for banks and their affiliates creates several problems. These include, but are not limited to, the following:

- Bank and affiliates would be burdened with having to constantly manage two separate data regimes (and possibly more if business is done in multiple states) to satisfy the new state law.
- There are potential regulatory conflicts regarding data collection, data retention, data accuracy, and disputes. Some of these potential conflicts include: a) Bank Secrecy Act, in terms of personal data collected, record retention, and Suspicious Activity Reports; b) FCRA, in terms of accuracy and disputing personal data; and c) Regulation C, in terms of Home Mortgage Disclosure Act reporting.
- There would be long-term costs associated with developing and implementing training programs and maintaining dedicated full-time employees to process and document reports and maintain the associated processes. These costs would be passed-on to consumers in the form of higher prices for products and services.

The entity-level exemption, as included in the Senate Bill 619, would address this lack of clarity and confusion. It would also eliminate potential preemption issues and other gray areas that may arise related to implementation of Senate Bill 619.

Currently, a diverse group of states have adopted GLBA entity-level exemptions in their data privacy laws, including Colorado, Connecticut, Utah, and Virginia. These states recognize the effectiveness of the GLBA regulatory structure for protecting consumers and acknowledge that a patchwork approach to data privacy among the states does not benefit consumers. While our preference were the entity-level exemptions found in Utah and Virginia law, the Colorado exemption was a compromise with the Department of Justice that would work for our banks and their affiliates. California, the outlier, has only a data/information exemption that has created a variety of challenges for the banking community in that state.

The Private Right of Action Should be Removed from the Bill

Senate Bill 619, as drafted includes a consumer private right of action. Inclusion of a private right of action would result in unnecessary and costly litigation, would burden our already backlogged court system, and would bring little added benefit to consumers. Enforcement of the requirements of Senate Bill 619 should rest with the Oregon Department of Justice that has a history of properly enforcing regulations in Oregon.

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The OBA continues to stand ready to work with the Legislature and the Oregon Department of Justice to find common ground on this important issue and to protect Oregon's consumers. If you have questions, please contact John Powell at (503) 510-8758 or Tim Martinez at (503) 510-9019.