



Consumer Federation of America

March 17, 2021

Representative Drew Hansen, Chair
Ranking Member Jim Walsh
House Committee on Civil Rights & Judiciary
John L. O'Brien, P.O. Box 40600
Olympia, WA 98504-0600

RE: Opposition to 2SSB 5026

VIA EMAIL TRANSMISSION

Dear Chairman Hansen and Ranking Member Walsh:

I registered to testify today on behalf of Consumer Federation of America (CFA), an association of consumer organizations across the United States. Unfortunately, there was not enough time for everyone to be heard. I urge you to schedule another hearing to give committee members more information and the opportunity to ask more questions. Please accept this in the record as testimony on the bill. I would also be happy to meet at your convenience to discuss it.

CFA opposes 2SSB 5062 because it does not change the system of commercial surveillance that allows companies to collect, use and share consumers' personal information, with little constraint, as long as they disclose the purposes in a privacy policy that few people will ever read. Earlier this month, we joined several other groups in a [letter](#) to all Washington House members detailing many concerns about this legislation. I would like to highlight some that are particularly relevant to your committee.

First, the rights the bill gives consumers to control their personal information are far more limited than they may seem. They can opt-out of sale of their data to third parties, but not out of sharing with affiliates. The opt-out of targeting advertising still allows companies like Google and Facebook to track what consumers do on their websites and in their apps, profile them, and serve them ads on behalf of other businesses, for profit. The opt-out of profiling only applies to that which is "in furtherance of decisions that produce legal effects," whatever that means; it is not a blanket right to opt-out of profiling.

Requiring opt-in to process sensitive data also offers less protection than it appears. Some types of personal information, such as race or ethnicity, are inherently sensitive, but information such as the products and services consumers purchase or search for can be used to make inferences about them that are sensitive, and these are not included in what is defined as sensitive data. This problem is not adequately addressed by prohibiting processing personal data on the basis of someone's race, etc. since while algorithms may not use *that* data, the data they *do* use may serve as proxies for characteristics such as race and lead to unfair and discriminatory treatment. The data protection assessments required by the bill might help to identify these problems, but they are secret; consumers, and the public at large, have no access to them. Therefore, what issues were flagged by these assessments and what the companies did in response to them, if anything,

would be unknown. The Attorney General would be able to obtain this information but would not be able to release it publicly.

Consumer rights are only meaningful if they are enforceable, and enforcement under this bill is weak. Only the Attorney General could bring legal action, and that agency will never have the resources to do so in every case that merits it. That is why it has strongly called for a private right of action. Furthermore, its own ability to enforce is hampered by the "right to cure." In the hearing today, someone noted that this right exists in the California privacy law but neglected to mention that it is not in the new version of the law that California voters approved last November, which has not yet taken effect. The right to cure would needlessly hamper the Attorney General's ability to protect Washingtonians. There is no definition of "cure," but just promising not to do something bad again is not enough in cases where there should be disgorgement of ill-gotten gains for violating consumers' privacy rights or damages for consumers. The right to cure would allow a company to commit serious violations involving hundreds of thousands of Washingtonians without penalty. No case law would be created, no precedent set. Since the Attorney General would be unable to take action if the problem is "cured," it is unclear if even the warning letter to the company would be publicly available.

Another problem with enforcement is the fact that there are numerous exceptions and exemptions in the bill that create giant loopholes. For instance, exempting data subject to the federal Gramm Leach Bliley Act would give consumers less privacy rights with their banks than they would have with a retailer. The bill also allows companies to avoid liability for violations by third parties with which they shared consumers' data unless they *knew* they intended to do so.

If the bill called for strict data minimization, with no personal information allowed to be collected, used or shared for anything other than to complete a transaction or fulfill a consumer's request, most of the concerns we have about it would be moot and it would be much simpler for businesses to comply. The bill should only exempt consumers' data subject to other laws to the extent that those laws provide stronger privacy protection. Enforcement should be strengthened by eliminating the right to cure and enabling consumers to bring actions to enforce their rights.

As currently written, this bill will add a lot of complexity for Washington consumers and businesses without really changing how personal information is treated and providing real privacy protection. It is hard to significantly change a complex piece of legislation after it has been enacted. It must be re-written to truly address your constituents' privacy concerns. Thank you very much for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Susan Grant". The signature is written in a cursive, flowing style.

Susan Grant
Director of Consumer Protection and Privacy
Consumer Federation of America

CC: Committee Members and Staff