
THIRD SUBSTITUTE HOUSE BILL 1904

State of Washington

65th Legislature

2018 Regular Session

By House Technology & Economic Development (originally sponsored by Representative Smith)

1 AN ACT Relating to the sale and taxation of Washingtonians'
2 personal information and related data; adding a new chapter to Title
3 82 RCW; and prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** (1) The legislature intends to update and
6 adapt state tax policy to the forms of commerce that have emerged
7 with new technologies. The legislature recognizes that consumers are
8 increasingly conducting their professional and personal affairs
9 online and on devices such as smartphones or tablets. These
10 activities include applying for jobs, researching symptoms and
11 communicating with health care providers, applying for permits and
12 licenses, mapping routes, communicating with friends and family, and
13 consuming news and entertainment. Through these daily activities,
14 consumers generate enormous and unprecedented quantities of data
15 about themselves, including their locations, behaviors, and
16 preferences.

17 (2) The legislature further recognizes that technological
18 advances have made it possible to more easily and quickly gather,
19 analyze, and export vast amounts of personal information, whether
20 such information is obtained through electronic or other means.

1 (3) The legislature finds that there are various companies
2 engaged in accumulating the personal data that is available to be
3 collected on Washingtonians, aggregating or compiling that
4 information, and reselling it without reciprocal benefit to the
5 people of the state. This is a new business model that has flourished
6 and is anticipated to grow as more people and more devices are
7 connected with ever increasing frequency for an ever greater number
8 of innovative applications. The legislature seeks to gather
9 information regarding those companies that are currently profiting
10 from the sale of Washingtonian's personal information in order to
11 design an appropriate tax for this industry. This will provide
12 transparency on the number of companies and volume of activity in
13 this industry, allow for a more equitable distribution of costs and
14 benefits for the Washingtonians on whose information these companies
15 profit, and enable funding for privacy and cybersecurity programs
16 necessary to balance the increased risks created by these business
17 practices.

18 NEW SECTION. **Sec. 2.** (1) Except as provided in subsection (7)
19 of this section, beginning September 1, 2018, every person engaging
20 within this state in the business of making sales of personal
21 information or exchanging personal information for consideration must
22 register with the department.

23 (2) Registration under subsection (1) of this section must be
24 completed annually, at a date set by the department, and must consist
25 of the following:

26 (a) The name, principal place of business, and character of
27 business, including:

28 (i) The specific types of personal information from
29 Washingtonians sold or exchanged for consideration;

30 (ii) The types of entities that personal information is sold to
31 or exchanged with for consideration;

32 (iii) The sources and methods by which the personal information
33 was obtained; and

34 (iv) The gross income of the business attributable to the sale,
35 or exchange for consideration, of personal information of
36 Washingtonians, to be calculated using the following:

37 (A) The ratio, expressed as a percentage, that the number of
38 Washington addresses in the personal information bears to all
39 addresses in the personal information; or

1 (B) If the ratio in (a)(iv)(A) of this subsection (2) is not
2 readily attainable, the ratio, expressed as a percentage, that the
3 population of this state bears to all the states of the United States
4 in the taxpayer's market, or by any other reasonable methods allowed
5 by the department.

6 (b) Submission of an informational return, as designed by the
7 department.

8 (3) A person who is required to register under subsection (1) of
9 this section and who fails to do so, or submits incomplete or
10 inaccurate information, is subject to a fine of up to five thousand
11 dollars.

12 (4) Chapter 82.32 RCW applies to the administration of this
13 chapter.

14 (5) By no later than December 15, 2019, the department must
15 report to the appropriate committees of the legislature, in
16 compliance with RCW 43.01.036, a summary of the information received
17 under subsection (2) of this section and provide a recommendation for
18 how to impose a tax on these businesses in order to ensure
19 appropriate compensation to the people of the state. By no later than
20 January 1, 2019, or one hundred twenty days after the application
21 date of this section if delayed under subsection (7) of this section,
22 the department must submit a preliminary report to the appropriate
23 committees of the legislature, in compliance with RCW 43.01.036,
24 regarding the information it has collected thus far under this
25 section.

26 (6) The definitions in this subsection apply throughout this
27 section unless the context clearly requires otherwise.

28 (a) "Addresses" means physical, mailing, or internet protocol
29 addresses, or similar addresses.

30 (b)(i) "Engaging within this state" has the same meaning as
31 provided in RCW 82.04.066, and also includes any person, regardless
32 of whether that person has nexus in Washington for tax purposes, who
33 generates gross income of the business from selling or exchanging for
34 consideration personal information of individuals located in this
35 state and the business has a total worldwide gross income of at least
36 one hundred thousand dollars per calendar year attributable to the
37 sale, or exchange for consideration, of personal information of
38 Washingtonians.

1 (ii) For purposes of this subsection, an individual is located in
2 this state if any of the addresses of that individual is located in
3 this state.

4 (c) "Person" has the same meaning as provided in RCW 82.04.030.

5 (d) "Personal information" means information that identifies,
6 relates to, describes, or is capable of being associated with, a
7 particular individual, including but not limited to his or her name;
8 physical address, mailing address, or other location information;
9 telephone number; email address; internet protocol address;
10 signature; physical characteristics or description; biometric data;
11 driver's license number, state identification card number, passport
12 number, social security number, or other government-issued
13 identification number; bank account number, debit card number, credit
14 card number, or any other financial information; insurance
15 information; medical information; employment information; and
16 educational information. "Personal information" also includes browser
17 habits, consumer preferences, and any other data that can be
18 attributed to an individual and can be used for marketing, or
19 determining access and costs related to insurance, credit, or health
20 care. "Personal information" does not include photographs or internet
21 access.

22 (7) The department may delay the application of this section if
23 it is unable to implement any of the provisions of this section, but
24 it may be delayed no later than November 1, 2018. If the department
25 delays the application of this section, it must post notice of the
26 new application date on its public web site by August 1, 2018.

27 NEW SECTION. **Sec. 3.** If any provision of this act or its
28 application to any person or circumstance is held invalid, the
29 remainder of the act or the application of the provision to other
30 persons or circumstances is not affected.

31 NEW SECTION. **Sec. 4.** Sections 1 and 2 of this act constitute a
32 new chapter in Title 82 RCW.

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