

January 24, 2022

The Honorable Speaker of the House Laurie Jinkins
The Honorable Minority Leader J.T. Wilcox
Washington State House of Representatives
416 Snyder Ave SW
Olympia, WA 98504

RE: Data Privacy

Dear Speaker Jinkins, Minority Leader Wilcox, Members of the House of Representatives:

We, the Tech Equity Coalition, alongside organizations representing diverse communities throughout Washington State, urge the Washington State Legislature to ensure that any data privacy bill that advances through the Civil Rights and Judiciary Committee meaningfully protects people's privacy and ensures that people have the power to control *if and how* their personal information is collected, used, and shared.

Today, people face increasing threats to privacy as new technologies are making it easier for companies to learn about the most intimate aspects of both our online and offline activities — from where we live and work, to what religion we practice, to what we read, and with whom we associate. Non-transparent, non-consensual, and unaccountable collection and use of our personal information has harmful consequences¹ for everyone, but particularly for the most marginalized communities. Washington must protect its residents and the Washington State Legislature should take meaningful action.

It is well known that industry interests across the country have been pushing for the adoption of bills like SB 5062² that, by intentional design³, do not give people meaningful privacy rights. Even our Attorney General has provided a letter to the Legislature indicating that SB 5062's provisions would undermine the rights of Washington residents and erode existing privacy protections.⁴

Should the Civil Rights and Judiciary Committee and the Washington State Legislature

¹ <https://www.aclu-wa.org/docs/harms-data-abuse>

² <https://www.seattletimes.com/opinion/washington-needs-a-privacy-law-that-protects-people-not-corporations/>

³ <https://themarkup.org/privacy/2021/04/15/big-tech-is-pushing-states-to-pass-privacy-laws-and-yes-you-should-be-suspicious>

⁴ Attached

attempt to pass a data privacy law, at a minimum, the following provisions must be included for such a law to truly protect Washingtonians.

1. **Opt-in Consent:** People's information should remain private unless they give specific, informed, affirmative, and unambiguous opt-in consent *before* an entity is allowed to collect, use, and share it.
2. **Protection of People, Not Just Consumers:** All people should have privacy protections, not just when they are acting as consumers.
3. **Coverage of All Personal Information:** Protections should cover all personal information, not just information called "sensitive." Given aggregation and data mining, any information can be used to reveal sensitive information about an individual.
4. **Strong Non-Waivable Privacy Rights:** Strong privacy legislation must guarantee certain minimum rights to individuals, including a right to know and access personal information collected; right to know and access to personal information shared with a third party; right to correction; right to deletion; right to stop the processing of personal information; and the right to data portability.
5. **Limitations on Use and Data Minimization:** Entities must be restricted to collecting, processing, and managing the minimum amount of personal information needed to carry out a clear and limited purpose.
6. **Limited Exemptions:** All types of entities should be required to protect people's privacy and there should not be exemptions for coverage of data when federal laws do not prevent states from providing stronger protections.
7. **Prohibition of Dark Patterns:** Entities must be prohibited from using dark patterns, which are interfaces designed to confuse and mislead individuals into consenting to things they would otherwise not consent to.
8. **No Economic Coercion:** Entities must be prohibited from charging preferential prices, or providing better service, to individuals that permit their personal information to be collected and used, or from discriminating against those who exercise their privacy rights. Pay-for-privacy provisions worsen the digital divide, which is also a privacy divide and raise racial equity issues. Strong regulations ensure that privacy rights are available to all and not just to those who can afford to pay to keep our privacy.
9. **Civil Rights Protections:** Entities must be prohibited from using personal information in a manner that discriminates against people on the basis of race, gender, sexual orientation, gender identity, religion, immigration status, and other protected characteristics, ensuring our civil rights are protected online and everywhere.
10. **Restriction on Sharing, Selling, and Disclosing Information:** Entities must be required to disclose to whom and under what conditions are they sharing personal information. Moreover, entities must be restricted from sharing

information with government agencies without a valid warrant.

11. **No Preemption of Stronger Privacy Laws:** Local governments should be free to provide additional privacy protections to their residents. State and federal laws should be floors, not ceilings, for our privacy rights.
12. **Strong Private Right of Action:** People should have the right to take companies that violate our privacy rights to court. Without a private right of action that provides for monetary damages with statutory minimums and recovery of attorney's fees, people have little practical ability to exercise their rights or enforce protections. Injunctive relief is important, but monetary damages must also be available and meaningful enough that companies will not treat violations as a cost of doing business.

HB 1433, the People's Privacy Act (Rep. Kloba), meets these minimum requirements⁵ and we believe this bill can serve as a roadmap for Washington lawmakers in their attempt to address this critical issue. For this reason, we urge the Committee to give the People's Privacy Act a hearing and to advance the bill.

In contrast, HB 1850 (Reps. Slatter and Berg) does not meet these minimum requirements. Although HB 1850 is an improvement from SB 5062 in that it creates a funded privacy commission and includes a private right of action (albeit without statutory minimums or recovery of attorney's fees), the bill is largely similar to SB 5062. Below is a summary of an analysis of HB 1850 with detailed recommendations for improvements.⁶

- a) Does not require opt-in consent to collect, use, and share all data;
- b) Allows companies to track and profile consumers without their consent;
- c) Allows companies to sell consumers' personal information to affiliated companies without a consumer's knowledge or consent;
- d) Denies consumers any right to protect their social media data if they did not restrict that data to a specific audience;
- e) Undermines consumers' ability to access and obtain their data;
- f) Restricts consumers' rights to correct inaccurate data;
- g) Allows for warrantless data sharing with law enforcement;
- h) Preempts local jurisdictions from passing stronger privacy protections;
- i) Gives data controllers power to move data into different categories with different protections;
- j) Limits the attorney general's ability to enforce privacy violations with a "right to cure" provision;
- k) Does not adequately protect children's privacy;

⁵ <https://www.aclu-wa.org/docs/data-privacy-guiding-principles-and-bill-comparison-chart>

⁶ <https://www.aclu-wa.org/docs/aclu-wa-feedback-hb-1850>

- l) Does not require consent to use people's data for research;
- m) Allows companies to avoid responsibility for sharing data with third parties;
- n) Exempts nonprofits, institutions of higher ed, employment data, and personal data covered by some federal laws, even where not necessary; and,
- o) Contains a number of other significant loopholes in its definitions, qualifying language, and overbroad exemptions.

We encourage the policy committee, and the legislature more broadly, to make changes to HB 1850 to meet the minimum provisions for a strong data privacy bill. If these minimum provisions cannot be included, we urge you to oppose HB 1850.

As our world becomes increasingly dependent on technology, we — and especially already marginalized communities — are all more vulnerable to data abuse. We need legislation that will meaningfully protect our ability to control our data, and as written, neither HB 1850 nor SB 5062 will do that.

We urge you to pass strong data privacy legislation and make Washington a leader in championing meaningful data privacy protections.

Signed,

ACLU of Washington
CAIR Washington
Coalition for Rights & Safety for People in the Sex Trade
Coalition of Seattle Indian Americans
Densho
Imagine No Kages
Indivisible Plus Washington
Japanese American Citizens League (JACL), Seattle Chapter
La Resistencia
MAPS-AMEN (American Muslim Empowerment Network)
People First Bellingham
Tacoma Urban League
Urban League of Metropolitan Seattle
Washington Association of Criminal Defense Lawyers
Washington Civil & Disability Advocate
Washington Defender Association
Washington State Poor People's Campaign
Whatcom Human Rights Task Force