

January 11, 2018



State Representative William Botzow II  
Chair, House Committee on Commerce and Economic Development  
115 State Street  
Montpelier, VT 05633-5301

State Representative Jean O. Sullivan  
Ranking Member, House Committee on Commerce and Economic Development  
115 State Street  
Montpelier, VT 05633-5301

RE: PROPOSED COMMITTEE DATA BROKER LEGISLATION

Dear Chair Botzow and Ranking Member Sullivan,

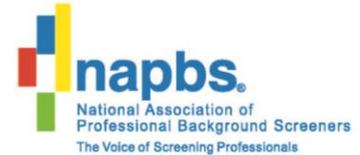
On behalf of the National Association of Professional Background Screeners (NAPBS), whose members include Vermont residents and businesses, we write to you with concerns regarding the current committee draft of Data Broker legislation. As a nonprofit organization consisting of over 900 small and large entities engaged in the background screening profession, NAPBS has been dedicated to providing the public with safe places to live and work since 2003. The NAPBS member companies conduct millions of employment-related background checks each year, helping employers, staffing agencies, and nonprofit organizations make more informed decisions regarding the suitability of potential employees, contractors and volunteers.

Given that we could not attend the hearing this week, NAPBS sincerely appreciates the opportunity to present to you, in writing, our thoughts and concerns surrounding this draft Data Broker legislation.

To start, we appreciate the intent and purpose of this proposed legislation, and applaud the efforts taken by the Legislature and Attorney General to protect the public. That said, we believe definition of "Data Broker" to include consumer reporting agencies (CRAs) as defined by the Fair Credit Reporting Act, who conduct background checks with the specific authorization of the consumer is unnecessarily overbroad and we have significant concerns with the restriction on data collection for anyone under eighteen. Therefore, we ask that the definition of a "Data Broker" be narrowed to avoid encompassing CRAs and that a change be made to the language used in Section 2433(b).

Speaking to the definition of data broker within the proposed legislation, NAPBS has concerns that the proposed legislation broadly defines "Data Broker" in such a manner that numerous businesses in Vermont could and would fall within the definition, despite not serving as true data brokers within the scope of what the Data Broker Working Group established. The proposed definition of "Data Broker" in the legislation is:

*"...a business that: (A) assembles, collects, stores, or maintains personal information concerning a consumer who is not a customer, user, or employee of the business, or who is not a donor to the business if the business is a nonprofit corporation; and (B) sells the personal information to one or more third parties."*



In evaluating this definition, a distinction between data brokers and consumer reporting agencies (CRAs) does not exist, despite the Data Broker Working Group’s acknowledgement of this important difference in its report.

The Data Broker Working Group acknowledged this fact themselves when addressing consumer reporting agencies and other entities regulated under the Federal Fair Credit Reporting Act (FCRA):

*“FCRA applies to “consumer reporting agencies” (CRAs) that provide “consumer reports” for specific purposes. A Data Broker might be a CRA for some lines of its business and not for others. Similarly, a Data Broker might trade in data that qualifies as a “consumer report” as well as data that does not.”<sup>1</sup>*

Based on the above assertion, a CRA should not be treated as a “Data Broker” under this proposed legislation. The state understands the difference between a “Data Broker” and an FCRA regulated consumer reporting agency that specializes in compiling information for purposes of supplying a “consumer report” for employment or tenancy purposes as defined in 15 U.S.C. §1681a(d). Importantly, consumer reports provided for employment or tenant screening purposes require disclosure to the applicant as well as the specific authorization of the applicant prior to the report being prepared.

Further, the FCRA places requirements on both CRAs and the end-users (employers or property managers) who request the procurement of the background report on their potential employee or tenant. The FCRA is a consumer protection based regulation that requires disclosure and authorization before a report is prepared and also provides the consumer with the right dispute the completeness or accuracy of a report. In the event of a dispute, a CRA is required to reinvestigate at no charge to the consumer. Please see the attached enclosure describing the many consumer protections provided when consumer reports are prepared for employment-related background screening.

In addition to the FCRA, background screening, when conducted by a CRA, is highly regulated by the Federal Trade Commission (FTC) and enforced by the Consumer Financial Protection Bureau (CFPB), as well as state and local consumer protection laws.

Considering the extensive regulations already in place, it seems this bill, using its current “Data Broker” definition, simply creates additional burdens on CRAs to create protections that are already in place, ultimately slowing down the important work that CRAs do to help employers fill open positions with job seekers who are eager to work. Therefore, we would ask that the definition of “Data Broker” be narrowed to avoid encompassing CRAs.

Of further concern is the language used in Section 2433(b) of the proposed legislation. The language used would prevent collection of information about anyone who is under the age of 18. While NAPBS is not suggesting additional access to juvenile justice records, we are concerned about situations where minors exist on a list such as the National Sex Offender Registry. For example: when a minor applies for work as a summer camp counselor the camp must be permitted to order a background check that would include a search which may include sex offender registries prior to employing the individual to work directly with minors. As noted earlier, the background check is completed only with disclosure to and authorization from the subject of the report (and/or his/her guardian). An amendment to the language here is a small change that would both protect the public in addition to a minor’s privacy.

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<sup>1</sup> Report to the General Assembly of the Data Broker Working Group Report, issued pursuant to Act 66 of 2017 on December 15, 2017 p. 15-16

NAPBS and its members are available and prepared to discuss any questions regarding our industry or the aforementioned concerns. Thank you for accepting our comments outside of Wednesday's hearing, we look forward to working with you to improve this draft legislation as it progresses into the next phase. Please feel free to contact me directly at 402-957-1179 or [brent.smoyer@napbs.com](mailto:brent.smoyer@napbs.com).



Sincerely,

A handwritten signature in black ink that reads "Brent Smoyer". The signature is fluid and cursive, with the first name "Brent" and last name "Smoyer" clearly legible.

Brent Smoyer, JD  
NAPBS State Government Relations &  
Grassroots Director