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## Finance Committee

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### HB 1303

**Brief Description:** Concerning the regulation and taxation of the sale of Washingtonian's personal information and related data.

**Sponsors:** Representatives Kloba, Entenman, Ramel, Bateman, Santos, Frame, Gregerson, Ormsby, Pollet and Slatter.

#### Brief Summary of Bill

- Imposes a 1.8 percent business and occupation tax on sales of personal data, beginning January 1, 2022.
- Requires any person making sales of personal data in the state to annually register with the Department of Revenue, beginning September 1, 2022.
- Removes credit bureau services from the definition of a retail sale.

**Hearing Date:** 3/23/21

**Staff:** Nick Tucker (786-7383).

#### **Background:**

##### Data Brokers.

According to the Federal Trade Commission, companies known as "data brokers" collect personal information from consumers and sell or share it with others. Data brokers collect this information from a wide variety of publicly available sources, and use both raw and inferred data about those individuals to develop and market products, verify identities, and detect fraud.

##### Business & Occupation Tax.

Washington's major business tax is the business and occupation (B&O) tax. The B&O tax is

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imposed on the gross receipts of business activities conducted within the state, without any deduction for the costs of doing business. Businesses must pay the B&O tax even though they may not have any profits or may be operating at a loss.

A taxpayer may have more than one B&O tax rate, depending on the types of activities conducted. Major B&O tax rates are 0.471 percent for retailing; 0.484 percent for manufacturing, wholesaling, and extracting; and 1.5 percent (businesses with taxable income of less than \$1 million) or 1.75 percent (businesses with taxable income of \$1 million or more) for services and for activities not classified elsewhere. Several preferential rates also apply to specific business activities.

For purposes of calculating B&O taxes, "apportionable income" is the gross income of a business engaging in activities that can be allocated to the state. This income can come from activities performed outside the state if it would be taxable if received from activities in the state. This income is allocated to Washington by multiplying the apportionable amount by a receipts factor, expressed as a fraction.

#### Retail Sales and Use Tax.

Retail sales taxes are imposed on retail sales of most articles of tangible personal property, digital products, and some services. A retail sale is a sale to the final consumer or end user of the property, digital product, or service. If retail sales taxes were not collected when the user acquired the property, digital products, or services, then use tax applies to the value of property, digital product, or service when used in this state. The state, all counties, and all cities levy retail sales and use taxes. The state sales and use tax rate is 6.5 percent; local sales and use tax rates vary from 0.5 percent to 3.9 percent, depending on the location.

#### Tax Treatment of Personal Information and Credit Bureau Services.

Depending on the particular circumstances of a given transaction, the sale or provision of personal information may be subject to the B&O tax. Certain sales of personal information, such as sales of database and application services, are considered sales at retail and such transaction are subject to the retail sales tax and the retailing B&O tax. The sale or provision of credit bureau services is considered a sale at retail and such transactions are subject to the retail sales tax and the retailing B&O tax.

#### **Summary of Bill:**

Beginning January 1, 2022, businesses making sales of personal data are subject to a new B&O tax rate of 1.8 percent. In addition to those businesses generally subject to the B&O tax, any person that generates income from the sale of personal data of individuals located in the state is subject to the tax. An individual is considered to be located in the state if any of the addresses included in the data and used by an individual is located in the state. An address may include a physical, mailing, internet protocol address, or similar address.

Personal data means any information that is linked or reasonably linked to an identified or

identifiable natural person. Personal data does not include deidentified or publicly available data and personal data sold by a state agency for purposes of increasing public safety or positive health outcomes if secondary sales of such data is contractually prohibited. The sale or provision of personal data is excluded from the definitions of digital automated services, digital goods, and gross income from royalties.

Credit bureau services are removed from the definition of a retail sale.

The sale of personal information is an apportionable activity for computing B&O tax liability. The receipts factor for calculating the apportionment is the ratio that the number of Washington addresses in the personal information bears to all addresses in the personal information. If the taxpayer is not able to calculate this ratio, the receipts factor is the ratio of that the population of Washington bears to all the states in the taxpayer's market. Any other reasonable methods allowed by the Department of Revenue (DOR) may also be used.

Beginning September 1, 2022, any person making sales of personal data in the state must annually register with the DOR. The DOR may delay the first registration deadline until November 1, 2022, if it is unable to implement the program by September 1, 2022.

The annual registration must include the following information:

- the name, principal place of business, and character of business;
- the specific types of personal information from Washingtonians sold or exchanged for consideration;
- the types of entities that personal information is sold or exchanged for consideration;
- the sources and methods by which the personal information was obtained;
- the gross income of the business attributable to the sale, or exchange for consideration, of personal information of Washingtonians; and
- additional information as required by the DOR.

Annually, beginning no later than December 15, 2022, the DOR must report to the appropriate committees of the legislature a summary of the information received from the annual registrations. A person who fails to submit an annual registration or who fail to submit an accurate and complete registration is subject to a fine of \$100 per day of delinquency plus any costs associated with an Attorney General investigation or prosecution.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect on January 1, 2022.