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**THIRD SUBSTITUTE HOUSE BILL 1904**

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**State of Washington 65th Legislature 2018 Regular Session**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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