H-2329.3

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**HOUSE BILL 2107**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**State of Washington 67th Legislature 2022 Regular Session**

**By** Representatives Kloba, Donaghy, Pollet, Chase, and Ramel

AN ACT Relating to creating an excise tax on the collection of consumer data by commercial data collectors; adding a new chapter to Title 82 RCW; and providing an effective date.

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

NEW SECTION. **Sec.**  The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Commercial data collector" means a for-profit entity that:

(a) Collects, maintains, uses, processes, sells, or shares consumer data in support of its business activities; and

(b) Collects consumer data, other than consumer contact information, on more than 500,000 individual Washington consumers in a month within the calendar year.

(2) "Consumer" means an individual who purchases goods or services from a commercial data collector, whether the individual is charged for those services or not.

(3) "Consumer contact information" means:

(a) A consumer's email address, telephone number, telefax number, home address, or mailing address; and

(b) Credit card information necessary to engage in a sales transaction.

(4) "Consumer data" means any information that identifies, relates to, describes, is capable of being associated with, or could reasonably be linked with a consumer, whether directly submitted to the commercial data collector by the consumer or derived from other sources.

(5) "Washington consumer" means a consumer whose primary residence is in Washington state.

NEW SECTION. **Sec.**  (1) There is hereby imposed a monthly excise tax on the collection of the consumer data of individual Washington consumers by commercial data collectors. The tax applies regardless of the format, electronic or otherwise, in which the consumer data is collected by the commercial data collector.

(2) The tax under this chapter is imposed on commercial data collectors based on the number of Washington consumers a commercial data collector collects data on within the month. The amount of the tax is the amount provided in the following table:

|  |  |  |  |
| --- | --- | --- | --- |
| If the number of Washington consumers is over: | But not more than: | The amount of the tax equals the initial tax amount of: | Plus the per consumer tax rate of: |
| 0 | 500,000 | $0 | $0 |
| 500,000 | 1,000,000 | $0 | 5 cents per month on the number of Washington consumers over 500,000 but not more than 1,000,000 |
| 1,000,000  | 1,500,000 | $20,000 per month | 10 cents per month on the number of Washington consumers over 1,000,000 but not more than 1,500,000 |
| 1,500,000 | 2,000,000 | $60,000 per month | 15 cents per month on the number of Washington consumers over 1,500,000 but not more than 2,000,000 |
| 2,000,000 | 2,500,000 | $120,000 per month | 20 cents per month on the number of Washington consumers over 2,000,000 but not more than 2,500,000 |
| 2,500,000 | 3,000,000 | $200,000 per month | 25 cents per month on the number of Washington consumers over 2,500,000 but not more than 3,000,000 |
| 3,000,000 | 3,500,000 | $280,000 per month | 30 cents per month on the number of Washington consumers over 3,000,000 but not more than 3,500,000 |
| 3,500,000 | 4,000,000 | $420,000 per month | 35 cents per month on the number of Washington consumers over 3,500,000 but not more than 4,000,000 |
| 4,000,000 | 4,500,000 | $560,000 per month | 40 cents per month on the number of Washington consumers over 4,000,000 but not more than 4,500,000 |
| 4,500,000 | 5,000,000 | $720,000 per month | 45 cents per month on the number of Washington consumers over 4,500,000 but not more than 5,000,000 |
| 5,000,000 |  | $800,000 per month | 50 cents per month on the number of Washington consumers over 5,000,000 |

NEW SECTION. **Sec.**  (1) There is a rebuttal presumption that a consumer whose information on record with or available to a commercial data collector indicates a Washington home address, a Washington mailing address, or an internet protocol address connected with a Washington location is a Washington consumer for purposes of this chapter. The presumption may be rebutted by evidence that a consumer's primary residence is outside Washington in a form or manner determined by the department.

(2) A Washington consumer must be counted only once in the calculation of the monthly excise tax imposed on a commercial data collector.

(3) Business entities having common ownership as defined in 26 U.S.C. Sec. 1563(a) of the internal revenue code, as amended, are a single taxpayer for purposes of meeting the definition of commercial data collector under this chapter. The entities constituting the single taxpayer are jointly and severally liable for any tax due.

(4) The single member of a single member limited liability company shall be treated as a consumer under this chapter.

(5)(a) A commercial data collector and the department may agree on a methodology for determining the number of Washington consumers for the purpose of calculating the tax.

(b) If an agreement is not reached as provided in (a) of this subsection, the department shall determine an acceptable estimation methodology for determining the number of Washington consumers for the purpose of calculating the tax.

NEW SECTION. **Sec.**  A commercial data collector that has paid tax under this section may claim a credit against the tax paid with respect to a Washington consumer when another state imposes an excise tax identical to the tax imposed under this section with respect to the same consumer.

NEW SECTION. **Sec.**  (1) A commercial data collector shall maintain records as required by the department.

(2)(a) A commercial data collector shall file a monthly return as required by the department.

(b) A commercial data collector that pays the tax imposed under section 2 of this act in a given month must file a return in subsequent months until it reports no tax liability for 12 consecutive months.

(3) The department may prescribe rules as may be necessary to carry out this chapter.

NEW SECTION. **Sec.**  Chapter 82.32 RCW applies to the administration of this act.

NEW SECTION. **Sec.**  Sections 1 through 6 and 8 of this act constitute a new chapter in Title 82 RCW.

NEW SECTION. **Sec.**  This act takes effect January 1, 2023.

**--- END ---**