

JOINT TRADE ASSOCIATION LETTER OPPOSING SECTION 11 OF WA SB 6281

March 11, 2020

Dear Conferees:

The undersigned trade associations collectively represent the nation's financial institutions and payment networks. Our members' products help millions of Washingtonians achieve their financial goals through a wide array of products and services, such as payment cards, savings accounts, consumer financing, and investment advice.

While we recognize that the legislature has been working diligently to craft a comprehensive privacy bill, we oppose Section 11, which allows a private right of action for noncompliance with any section of the bill. This windfall to the plaintiff's bar opens companies to needless litigation without adding any additional protection to Washington residents.

As with any new law, our member companies will work diligently to comply with a data privacy law in Washington, but additional interpretation and clarification will almost certainly be necessary. For example, in the wake of the California Consumer Privacy Act's (CCPA) June 2018 passage, the legislature found it necessary to pass additional clarifying legislation three months later, and work on draft implementing regulations is still incomplete nearly two years after enactment.

Given the ambiguity that a new data privacy law will likely create, a private right of action would expose companies serving Washington consumers to significant and ultimately unnecessary risk.

As initially drafted, the Attorney General would receive ample enforcement power to bring an action against non-compliant entities as an unfair or deceptive business practice under the Washington Consumer Protection Act.

We note that the bill's \$7,500 penalty is the highest amount of statutory monetary penalties in U.S. data privacy legislation that includes a private right of action. For example, the CCPA caps consumer damages at \$750 per incident and a bill proposed in 2019 in Massachusetts limited damages to \$750 per incident or actual damages, whichever is greater.

This disproportionate penalty gives the AG robust enforcement powers. There is no need to invite unnecessary litigation by the plaintiffs' bar.

We urge you to strike this provision.

Sincerely,

American Bankers Association
American Financial Services Association
Bank Policy Institute
Card Coalition
Consumer Bankers Association

Electronic Transactions Association
Mortgage Bankers Association
Securities Industry and Financial Markets Association
Washington Bankers Association
Washington State Financial Services Association