

March 05, 2024

Senator Charles S. Trump IV
Chair
Senate Judiciary Committee
West Virginia Senate
1900 Kanawha Blvd E,
Charleston, WV 25305

Senator Ryan W. Weld
Vice Chair
Senate Judiciary Committee
West Virginia Senate
1900 Kanawha Blvd E,
Charleston, WV 25305

Re: HB 4381 – West Virginia Consumer Privacy Act

Dear Chair Trump and Vice Chair Weld:

On behalf of the American Financial Services Association (“AFSA”),¹ I write in opposition to House Bill 4381, which would establish the West Virginia Consumer Privacy Act of 2024. AFSA shares the goal of protecting consumers from practices that would undermine their ability to make informed decisions and has long been committed to ensuring consumer access to accurate information about financial service products.

Our members have significant concerns about HB 4381, which has the potential to restrict the sharing of specific consumer financial information allowed by federal law while enabling attorneys to pursue unjust claims against compliant consumer reporting agencies (CRAs). HB 4381 would hinder competition, restrict creditors’ ability to identify and prevent fraudulent activity, and impede consumers’ access to better rates, thus limiting potential cost savings and disrupting access to safe and affordable credit in West Virginia.

Under this bill, CRAs would be restricted from disclosing whether a consumer's credit report was accessed by entities such as financial institutions, brokers, mortgage lenders, or creditors unless the consumer provides written consent for each disclosure. Moreover, the bill requires consumers to opt in for each disclosure or sale of their "personal financial information" by a CRA, though the term is not defined.

Subject to rigorous oversight through the Fair Credit Reporting Act (FCRA), the CRAs subject to this legislation offer consumers substantial protections and privacy rights, with well-established opt-out procedures for the prescreened offers outlined in HB 4381, including:

- choosing to opt out by dialing 1-888-5-OPT-OUT, which provides consumers with the flexibility to opt out of receiving credit solicitations that they did not initiate, such as prescreened credit offers, for either five years or permanently;

¹ Founded in 1916, the American Financial Services Association (AFSA), based in Washington, D.C., is the primary trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including traditional installment loans, direct and indirect vehicle financing, mortgages, and payment cards. AFSA members include national banks and non-bank state licensed financial institutions. AFSA does not represent payday lenders, title lenders, or credit unions.

- halting written solicitations by visiting www.optoutprescreen.com; and
- joining the Federal Do Not Call registry, administered by the Federal Trade Commission (FTC), to put an end to phone solicitations.

Prescreened credit offers derived from trigger services are considered lawful under the FCRA, and any restrictions on their use are preempted by the FCRA at 15 USC §1681t(b)(1)(A). Similarly, any proposed state legislation, including HB 4381, that seeks to prevent a CRA from issuing credit reports in accordance with the FCRA and thereby undermining the FCRA's intent, is preempted by 15 USC §1681t(a). Upon receiving unsolicited offers for credit transactions, the accompanying documentation should openly communicate the consumer's right to decline. In adherence to FCRA guidelines, this notification is expected to be presented in a straightforward manner. To ensure legal compliance, the FTC mandates placing the opt-out information conspicuously in two locations for consumer clarity.

Additionally, HB 4381's requirement that consumers opt into each disclosure or sale by a credit reporting agency of their personally identifiable financial information directly contradicts the enshrined permissible purposes within the FCRA. For example, HB 4381 will limit creditors' ability to obtain consumer reports for fraud purposes and any other permissible purpose in the FCRA where consumer consent is not explicitly required and is therefore inconsistent with the FCRA.

HB 4381 would reduce access to comprehensive credit information and create legal risks that would disrupt the consumer lending industry, leading to a decline in credit availability for consumers. This would particularly impact individuals with less established credit histories or those seeking to access credit quickly.

In conclusion, HB 4381 would not only face preemption challenges under federal law but would be detrimental to consumers and counterproductive to fostering healthy competition among financial institutions. By imposing artificial constraints on competition, these proposals may restrict consumer choices, potentially leading to West Virginia residents receiving less competitive interest rates and missing out on alternative financial products better suited to their needs. This could result in disproportionate adverse effects, particularly on individuals from economically disadvantaged backgrounds already grappling with the current increased interest rate environment.

We urge you to consider the effects this legislation will have on West Virginia's credit market and to reject HB 4381. Thank you for your consideration of our comments. If you have questions or would like to discuss this further, please do not hesitate to contact me at 805-501-8873 or erayhan@afsamail.org.

Sincerely,



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