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# SHANNON ZIMMERMAN

STATE REPRESENTATIVE • 30<sup>th</sup> ASSEMBLY DISTRICT

## Assembly Bill 466 Assembly Committee on Consumer Protection October 11, 2023

Thank you Chairman Callahan and committee members for hearing testimony on Assembly Bill 466 today. I have dubbed this bill the Wisconsin Data Privacy Act because it will enshrine in Wisconsin statutes rights that will help consumers protect and control their personal data.

In short, the bill will allow any consumer in Wisconsin to ask a data collector what Personally Identifiable Information (PII) they have in their possession. The Department of Homeland Security defines PII as “any information that permits the identity of an individual to be directly or indirectly inferred”. Beyond requesting a copy of the PII on file, consumers will be able to uncover how far and wide their information has been shared or sold. Finally, consumers will be able to request the deletion of their PII.

Americans have little faith that legitimate data collectors can collect and store data without that information falling into the wrong hands. A recent Pew Research poll indicated that 79% of respondents “are not too or not at all confident that companies will admit or take responsibility when they misuse or compromise data” and 81% “think the potential risks of data collection by companies outweigh the benefits”. Even more astounding was the 81% of respondents who “believe they have very little or no control over the data companies collect about them”.

Empowering consumers with the tools to control their personal data should be at the forefront of what we do in the Legislature. The adage, ‘if you are not paying for the product, you are the product’, has never been so true. Companies offer free products and services and in return, they are able to extract massive amounts of data from consumers. These companies then turn around and market that information to advertisers.

While the use of consumer personal data is ripe for abuse, technology still offers lifelines on many fronts. For example, the power of quantum computing can assist scientists and researchers in uncovering revolutionary findings. Curing cancer is legitimately on the horizon.

Thank you again for your time and attention to this proposal and I hope I can count on your support of this measure as we move forward.



**To:** Assembly Committee on Consumer Protection

**From:** Wisconsin Manufacturers & Commerce  
National Federation of Independent Business – Wisconsin  
Wisconsin Fuel & Retail Association  
Wisconsin Grocers Association  
Wisconsin Hotel & Lodging Association  
Wisconsin Restaurant Association

**Date:** October 11, 2023

**Re:** Oppose Costly, Patchwork Regulation Created by AB 466

The above group of associations encourages members of the Assembly Committee on Consumer Protection and Wisconsin State Legislature to oppose Assembly Bill 466. While well-intentioned legislation, **AB 466 will increase costs for businesses, particularly for small- and medium-sized businesses, and exacerbate the increasing patchwork of regulations across the country, creating more confusion for consumers and businesses alike.**

**Staggering Compliance Costs Will Negatively Impact Businesses Small, Medium, and Large**

The Information Technology & Innovation Foundation (ITIF) studied the cost of compliance with different state privacy laws and found that they “**could impose out-of-state costs of \$98 billion and \$112 billion annually**” and the cost to *small businesses* could be as high as \$23 billion annually.<sup>1</sup> In Wisconsin, complying with privacy laws across the country is estimated to cost

<sup>1</sup> Daniel Castro, Luke Dascoli, and Gilligan Diebold, *The Looming Cost of a Patchwork of State Privacy Laws*, Information Technology & Innovation Foundation (January 24, 2022), available at: <https://itif.org/publications/2022/01/24/looming-cost-patchwork-state-privacy-laws>.

**\$2.8 billion, \$600 million of which falls on small businesses.**<sup>2</sup> ITIF's report on estimated compliance of state privacy laws has been frequently cited since its release last year and remains the most recent, comprehensive cost analysis of state privacy regulations.

**Since publication of the ITIF report, multiple states have passed consumer data regulatory regimes and inflation not seen in decades has raised the cost of products and services across the economy, certainly raising ITIF's compliance cost estimates.** Businesses cannot afford to be shouldered with the initial and continuing costs associated with complying with a multitude of data privacy laws. Particularly for small- and medium-sized businesses that do not have the ability to comply with multiple states' regulations, compliance with AB 466 will impose particular hardship.

Whether it is conducting data protection assessments, hiring staff to manage compliance requirements, paying fines for violations, or potentially being dragged into litigation in another state, **the time, effort, and money that could be used to hire employees, offer new and innovative products, or provide better customer service will be diverted towards complying with yet more government regulation.**

#### **A State-By-State Patchwork Is Unworkable and Confusing For Consumers and Businesses**

Since AB 466's predecessor in the 2021-2022 session was heard in this committee, an additional nine states have passed data privacy legislation, bringing the total to 12 states with regulations in this space.<sup>3</sup> So far this year, an additional six states (including Wisconsin) have legislation pending.<sup>4</sup> Minor differences in jurisdictions' approaches to consumer privacy can have a compounding impact on effort required for compliance. Even when other states' models are used as a basis for proposed privacy legislation, "each proposal remains unique," with its own nuances and exceptions.<sup>5</sup> Wisconsin should not be adding to the business compliance headache growing across the country and adding to the challenges already confronting business owners and operators.

Knowing which states do and do not have data privacy laws, and the specific requirements for compliance (for businesses) and rights (for consumers), will cause confusion. Does a consumer need to opt-in or opt-out? To what extent, and how, can a consumer limit, or delete, data? Can a

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<sup>2</sup> *Id.*

<sup>3</sup> *2023 State Privacy Law Tracker*, Husch Blackwell LLP, available at: <https://www.huschblackwell.com/2022-state-privacy-law-tracker>, last updated September 12, 2023.

<sup>4</sup> *Id.*

<sup>5</sup> Jennifer Huddleston and Gent Salihu, "The Patchwork Strikes Back: State Data Privacy Laws after the 2022-2023 Legislative Session," Cato Institute (July 6, 2023), available at: <https://www.cato.org/blog/patchwork-strikes-back-state-data-privacy-laws-after-2022-2023-legislative-session-0>. See also Brenna Goth, "Onslaught of State Privacy Laws Complicates Business Compliance," Bloomberg Law (May 19, 2023), available at: <https://news.bloomberglaw.com/us-law-week/consumer-data-privacy-laws-pose-new-mandates-in-spate-of-state> ("They have commonalities, but they are different," said Odia Kagan, partner and chair of the EU General Data Protection Regulation compliance and international privacy at Fox Rothschild LLP.")

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consumer sue, or is enforcement a simple fine on the business for violations? All these questions, and more, will be asked by consumers and compliance staff alike for state after state. This does not include any pre-existing Federal consumer privacy regulations.

In particular, AB 466 exempts certain entities and includes exceptions from the requirements of the bill. *See* AB 466 beginning at page 22. The inclusion of these **exceptions and exemptions show that a unified, comprehensive, Federal approach to consumer data privacy is the most prudent choice for any legislative action**, whether a blanket approach or addressing the unique situations of different industries. A Federal, comprehensive framework will ensure that all businesses are on equal, competitive footing and not disadvantaged by the patchwork of mounting compliance costs. Even larger businesses that may be able to shoulder the burden of patchwork legislation know that the impact of compliance on businesses of all sizes, “will cut into other business priorities, from increasing marketing budgets to expanding into new product lines to offering new services,” and not necessarily leave consumers with a better privacy outcome.<sup>6</sup> **A Federal framework for an inherently interstate issue must be the solution if workable, comprehensive data privacy protections are to be enacted.**

**Many companies and consumer-interfaces already require privacy policies as the private sector responds to market-driven consumer demands and preferences.** The appearance of “Privacy Policy” or “Terms & Conditions” are nearly universal on every website, and increasingly, “Cookie Notice” pop-up windows and banners that allow consumers to review or choose your privacy settings. If a business has an application for a mobile device, both major application marketplace platforms *require* a privacy policy. In 2018, Apple’s App Store started requiring a privacy policy for *all* applications.<sup>7</sup> Similarly, the Google Play also began requiring apps have and publicize their privacy policy as of July 20, 2022, subject developers to the Google Play Developer Distribution Agreement, requiring privacy protection of users, and has user data transparency requirements.<sup>8</sup>

Technological innovation has revolutionized how we buy groceries, bank and pay bills, discover and view entertainment, find a ride across town or to and from the airport, order food and other goods, and much more, by providing unprecedented convenience and opportunities. **While well intentioned, state-by-state consumer privacy regulations will be cost-prohibitive for businesses and confusing for both businesses and consumers. As such, please oppose AB 466.**

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<sup>6</sup> Chris Kelly, “The \$1T question: Can brands navigate a state-led privacy landscape?,” Marketing Dive (April 4, 2023), available at: <https://www.marketingdive.com/news/brands-state-data-privacy-legislation-landscape-iab/646761/>.

<sup>7</sup> Benjamin Mayo, *New App Store rules will require all apps to have a privacy policy*, 9to5Mac, August 31, 2018, available at: <https://9to5mac.com/2018/08/31/new-app-store-rules-will-require-all-apps-to-have-a-privacy-policy/>.

<sup>8</sup> “Prepare your app for review,” Play Console Help, accessed October 10, 2023, available at: <https://support.google.com/googleplay/android-developer/answer/9859455?hl=en>; *see also* Google Play Developer Distribution Agreement, Section 4.8, Google LLC, available at: <https://play.google.com/about/developer-distribution-agreement.html>; “User Data,” Play Console Help Policy Center, accessed October 10, 2023, available at: <https://support.google.com/googleplay/android-developer/answer/10144311?hl=en#1&2&3&4&5&6&7&8&9>.

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October 10, 2023

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PO Box 8952  
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**RE: Assembly Bill 466**

Dear Chair Callahan:

On behalf of Microsoft, I am writing to support Assembly Bill 466 and applaud you for taking up the issue of data privacy. We would also like to thank Representative Shannon Zimmerman for his leadership and commitment to advancing comprehensive privacy legislation. While the past several decades have brought dramatic changes in technology, U.S. law has fallen behind much of the world by failing to address growing challenges to privacy. There is widespread skepticism today that consumers can enjoy the benefits of technology while retaining control of their personal data and protecting themselves from harm. For those reasons, we need new privacy laws.

At Microsoft, we have long taken the privacy of our customers seriously, and we have a long track record of supporting responsible, thoughtful reform. Indeed, we have been calling for comprehensive privacy laws in the United States since 2005.

For those reasons, we support efforts to enact strong privacy protections in Wisconsin and believe that, in many respects, AB 466 would represent an important step forward. It would provide consumers with important rights to control their personal data, such as the rights of transparency, access, correction, deletion, and portability. It would provide consumers with the right to opt out of the processing of their personal data for targeted advertising, data sales, and profiling in furtherance of significant decisions such as the provision or denial of financial and lending services, housing, insurance, education enrollment, criminal justice, employment opportunities, health care services, or access to basic necessities. It would prohibit companies from processing consumers' sensitive data without consent. Finally, the bill would impose affirmative duties on companies to steward the personal data they collect responsibly.

In short, we support your efforts to pass AB 466, and we look forward to working with you as the bill advances through the process. Thank you for allowing us to comment on this important issue.



Respectfully submitted,

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RE: Assembly Bill 488

Dear Chair Callahan:

On behalf of Microsoft, I am writing to support Assembly Bill 488 and applaud you for taking up the issue of data privacy. We would also like to thank Representative Shannon Zimmerman for his leadership and commitment to advancing comprehensive privacy legislation. While the past several decades have brought dramatic changes in technology, U.S. law has fallen behind much of the world by failing to address growing challenges to privacy. There is widespread skepticism today that consumers can enjoy the benefits of technology while retaining control of their personal data and protecting themselves from harm. For those reasons, we need new privacy laws.

At Microsoft, we have long taken the privacy of our customers seriously, and we have a long track record of supporting responsible, thoughtful reform. Indeed, we have been calling for comprehensive privacy laws in the United States since 2002.

For those reasons, we support efforts to enact strong privacy protections in Wisconsin and believe that, to many respects, AB 488 would represent an important step forward. It would provide consumers with important rights to control their personal data, such as the rights of transparency, access, correction, deletion, and portability. It would provide consumers with the right to opt out of the processing of their personal data for targeted advertising, data sales, and profiling in furtherance of significant decisions such as the provision or denial of financial and lending services, housing insurance, education enrollment, criminal justice, employment opportunities, health care services, or access to basic necessities. It would prohibit companies from processing consumer sensitive data without consent. Finally, the bill would impose affirmative duties on companies to steward the personal data they collect responsibly.

In short, we support your efforts to pass AB 488 and we look forward to working with you as the bill advances through the process. Thank you for allowing us to comment on this important issue.