



May 16, 2023

Joint Committee on Revenue
Attn: Ryan Sterling
24 Beacon Street
Boston, MA 02133

Re: S. 1896 - An Act to increase accountability in the sale of personal data. (Oppose)

Co-Chair Cusak, Co-Chair Moran and Members of the Joint Committee on Revenue:

On behalf of the Computer & Communications Industry Association (CCIA), I write to respectfully oppose S. 1896.

CCIA is an international, not-for-profit trade association representing a broad cross-section of communications and technology firms¹. While recognizing that policymakers are appropriately interested in the digital services that make a growing contribution to the U.S. economy, considering proposals such as S. 1896 require caution, as they may raise constitutional concerns and risk having broad economic impacts.

Taxing the collection of consumer data raises serious concerns regarding administrative feasibility.

Although S. 1896 itself does not establish a tax on the collection and sale of consumer data, it lays the groundwork for the establishment of such a tax by requiring the registration of all entities who sell the data of Massachusetts residents and additional details about their practices and mandating the Department of Revenue recommend ways to tax such entities. Determining how to count the number of consumers applicable under this type of tax would pose significant technical difficulties and confusion.

The bill specifies that an individual shall be considered to be located in Massachusetts if any addresses of that individual are located in the state or if an individual's information on record with a business entity indicates a Massachusetts home or mailing address, or an IP address associated with a Massachusetts location. This definition differs significantly from how other parts of the Massachusetts' General Law defines a "Resident"². Additionally, consumers traveling through or to Massachusetts for work or to enjoy Massachusetts' numerous historical sites and other tourist attractions would generate an IP address in Massachusetts from their phone or other devices connected to the internet. Therefore it would be very difficult for a business to discern between true Massachusetts residents and out-of-state visitors.

Being able to accurately confirm whether data is collected from a Massachusetts resident would require

¹ For 50 years, CCIA has promoted open markets, open systems, and open networks. CCIA members employ more than 1.6 million workers, invest more than \$100 billion in research and development, and contribute trillions of dollars in productivity to the global economy. A list of CCIA members is available at <https://www.ccianet.org/members>.

²<https://www.mass.gov/technical-information-release/tir-95-7-change-in-the-definition-of-resident-for-massachusetts-income-tax-purposes>



additional data collection, which has data privacy implications, and may conflict with data minimization principles. Many businesses may collect data from consumers that does not include their home or mailing address. However, businesses would be required to start collecting this data to determine whether that consumer is in fact a Massachusetts resident.

The creation of a data tax may unintentionally negatively impact consumers.

While S. 1896 is framed to increase accountability by requiring all entities who sell Massachusetts residents’ data to register with the state, the eventual goal of creating a data tax would likely end up negatively impacting consumers, as the additional costs imposed on businesses would likely be passed down. For example, many businesses in the tourism and hospitality sectors collect information about their customers for billing purposes and to provide customers with communications about deals and promotions, and provide them with the benefits of their reward programs. Providing such a service to consumers requires the collection of certain data and therefore would subject much of these key industries to this tax. It is foreseeable that businesses would then pass on the costs associated with the implementation of this tax to consumers via higher rates or more-limited services.

Similar proposals to tax electronic commerce in other states have raised serious constitutional questions.

S. 1896 would lead to the creation of a tax that would target online services, which is important as that raises constitutional concerns related to the Commerce Clause. Court rulings on similar previously enacted laws have found that similar laws violated the Commerce Clause as these types of taxes on electronic commerce impose a great tax liability on businesses that participate in interstate commerce and maintain an out-of-state presence³.

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We appreciate the Committee’s consideration of these comments and stand ready to provide additional information as the legislature considers proposals related to technology policy.

Sincerely,

Alex Spyropoulos
Regional Policy Manager, Northeast
Computer and Communications Industry Association

³ Comcast v. Comptroller of Maryland, No. C-02-CV-21-000509 (Md. Cir. Ct. 2022)