

February 28, 2022

The Honorable Majority Leader Andy Billig
Washington State Senate
307 Legislative Building
PO Box 40403
Olympia, WA 98504

The Honorable Speaker of the House Laurie Jinkins
Washington State House of Representatives
339C Legislative Building
PO Box 40600
Olympia, WA 98504

The Honorable Republican Leader John Braun
Washington State Senate
314 Legislative Building
PO Box 40420
Olympia, WA 98504

The Honorable Minority Leader J.T. Wilcox
Washington State House of Representatives
335C Legislative Building
PO Box 40600
Olympia, WA 98504

RE: Data Privacy – SB 5062 and 2SHB 1850

Dear Majority Leader Billig, Republican Leader Braun, Speaker Jinkins, Minority House Leader Wilcox, and Members of the Washington State Legislature:

The American Civil Liberties Union of Washington, representing over 120,000 members across Washington State, urges the Washington State Legislature to ensure that any data privacy bill that passes meaningfully protects people's privacy and ensures that these individuals, your constituents, have the power to control *if and how* their personal information is collected, used, and shared.

The latest draft of House Bill 1850 (2SHB 1850) establishes a commission charged with enforcing SB 5062. We are very concerned that 2SHB 1850 references a version of SB 5062 (S-..../22, Page 1, Line 11) that has not yet been made available to the public. We are also concerned that 2SHB 1850 would allow the privacy commission to reject privacy complaints without any public oversight (Sec. 3(3)(c)).

For four years in a row, industry interests have been pushing for the adoption of SB 5062 (Sen. Carlyle), while individuals¹ and organizations² defending civil rights and liberties,³ racial justice, worker's rights,⁴ privacy,⁵ and consumer rights⁶ have opposed and continue to strongly oppose this bill.⁷ Even our Attorney General has provided a letter to the Legislature indicating that SB 5062's provisions would undermine the rights of Washington residents and erode existing privacy protections.⁸

¹ [Comment: We need a data privacy law; but Senate bill isn't it | HeraldNet.com](#)

² [Tech Equity Coalition Letter to WA House on 2SSB 5062 | ACLU of Washington \(aclu-wa.org\)](#)

³ [Con: The People's Privacy Act, not the Washington Privacy Act, is the better bill to protect consumers' civil rights and civil liberties | The Seattle Times](#)

⁴ [OPINION: Tech Companies Want to Write Their Own Rules on Data Privacy. Don't Let Them. | South Seattle Emerald](#)

⁵ [Letter from National Organizations Expressing Concerns about 2SSB 5062 | ACLU of Washington \(aclu-wa.org\)](#)

⁶ [We Need Real Privacy Protection in the States, not the Washington Privacy Act's Illusion of Privacy: Consumer Federation of America](#)

⁷ [Washington needs a privacy law that protects people, not corporations | The Seattle Times](#)

⁸ Attached

It is well known that industry interests⁹ across the country have been hard at work lobbying¹⁰ to pass bills like SB 5062 that, by intentional design, do not extend meaningful privacy rights to people, and maintain an exploitative status quo.¹¹ SB 5062's opt-out framework places enormous burden on people to understand how their data is being collected, used, shared or sold, and disproportionately harms those who do not have sufficient time or knowledge — namely, the elderly, the disabled, and those for whom English is not their first language.

Prior versions of 2SHB 1850 (Rep. Slatter) made some improvements over SB 5062. However, because HB 1850 was largely based on SB 5062, it inherited many of that bill's problems.¹² With the current version of 2SHB 1850, we are concerned that the decision to modify it to be a commission-only bill with the intent to accompany and enforce SB 5062, a bill that has not been made public, erodes trust in the public policy making process and denigrates the integrity of our public institutions.

We do not support 2SHB 1850 or SB 5062 separately or together.

As written, neither the public version of SB 5062 nor 2SHB 1850 meet the minimum standards to be considered a strong data privacy bill.¹³ Below are some recommendations we have provided to strengthen these bills:

- Require opt-in consent for entities to collect, use, and share all data;
- Prohibit entities from tracking and profiling people without their opt-in consent;
- Prohibit entities from sharing people's data with affiliated companies without their opt-in consent;
- Allow people to protect their social media data;
- Prohibit warrantless data sharing with law enforcement;
- Allow local jurisdictions to pass stronger privacy protections;
- Ensure that children's privacy is adequately protected;
- Do not include an anti-consumer right to cure;
- Ensure there is a private right of action with minimum statutory damages and attorney's fees;
- Require opt-in consent to use people's data for research;
- Ensure that nonprofits, institutions of higher education, employment data, and personal data covered by weaker federal laws are covered;
- Ensure that the language is clear and free of loopholes and overbroad exemptions that enable tech vendors and data brokers to evade regulation.

In contrast to the latest public version of SB 5062 and 2SHB 1850, HB 1433, the People's Privacy Act (Rep. Kloba), meets minimum requirements to be considered a strong data privacy bill. We encourage lawmakers to use HB 1433 and other similarly strong bills that have been introduced across the country, such as proposals introduced in Massachusetts¹⁴ and New York,¹⁵ as a roadmap to address the critical issue of data privacy.

⁹ [Big Tech Is Pushing States to Pass Privacy Laws, and Yes, You Should Be Suspicious – The Markup](#)

¹⁰ [The Amazon lobbyists who kill U.S. consumer privacy protections \(reuters.com\)](#)

¹¹ [Silence is Not Consent | ACLU of Washington \(aclu-wa.org\)](#)

¹² [ACLU-WA Feedback on HB 1850 | ACLU of Washington](#)

¹³ [Data Privacy Guiding Principles and Bill Comparison Chart | ACLU of Washington \(aclu-wa.org\)](#)

¹⁴ [Bill S.46 \(malegislature.gov\)](#)

¹⁵ [NY State Assembly Bill A6042 \(nysenate.gov\)](#)

As our world becomes increasingly dependent on technology, we — and especially already marginalized communities — are all more vulnerable to data abuse.¹⁶ We need legislation that will meaningfully protect our ability to control our data, and as written, neither the latest public version of SB 5062 nor 2SHB 1850 will do that.

We urge you to pass strong data privacy legislation and make Washington a leader in championing meaningful data privacy protections.

Signed,

ACLU of Washington

¹⁶ [The Harms of Data Abuse | ACLU of Washington \(aclu-wa.org\)](https://www.aclu-wa.org/)