

Kia D. Floyd
Director, State Government Affairs



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July 25, 2017

The Honorable Thomas J. Donovan, Jr.
Attorney General of Vermont
109 State Street
Montpelier, VT 05609-1001

The Honorable Michael S. Pieciak, Commissioner
Vermont Department of Financial Regulation
89 Main Street
Montpelier, VT 05620-3101

RE: State of Vermont Data Broker Regulation Working Group

Dear General Donovan and Commissioner Pieciak:

On behalf of RELX Inc., part of the RELX Group family of companies, I am writing to express our thoughts on former Senate Bill 72 and its directive that your agencies conduct a study of commercial entities engaged in large volume data collections (ie, "data brokers").

As you know, Senate Bill 72 was signed into law on June 8, 2017 after a robust legislative debate in which RELX Inc. and other companies were vocal about the consequences the bill would have on a myriad of legitimate business operations and consumer protections which benefit Vermont residents. Now that your agencies are considering the issue again in the Data Broker Working Group, we would like to reiterate our position on the former legislation and any future public policy on this subject.

By way of background, the RELX Group, through its LexisNexis Risk Solutions and other businesses, is a global provider of information technology and data analytics for businesses and professional industries. We operate in four major market segments: [Scientific, Technical & Medical](#); [Risk & Business Analytics](#); [Legal](#); and [Exhibitions](#). RELX solutions support the government, law enforcement, insurance, financial services and healthcare industries. Our customers use the data we harness and the insights derived from it to accomplish a variety of consumer, business and legal transactions. We assist government in rooting out fraud, waste and abuse in public benefit programs. Law enforcement utilizes our tools for investigating crime and locating missing children. Insurance companies use our data to assess risk, issue policies and settle claims in an expedient manner, while real estate brokers and title agents rely on us to verify real property ownership and lien information. While the list of business and consumer transactions that we support is lengthy, these customers depend on the availability of data through our products.

Earlier this year, SB 72 (and its predecessor HB 467) attempted to create an unprecedented approach to regulating commercial data collections by creating unnecessary and burdensome mandates which

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disregarded and conflicted with the many laws and regulations which already govern consumer data collections. Moreover, the legislative process revealed that HB 467 lacked a clear nexus between it and the alleged problem it sought to address. For those reasons among others, lawmakers opted not to adopt the legislation as originally drafted, but rather to conduct a study of the issue to determine if any new public policy was needed. After thoughtful consideration, we do not see a need for any legislation or additional regulation of “data brokers” for the following reasons.

“Data Brokering” is a Nebulous Concept that Encompasses Numerous Business Transactions Which Benefit Vermont Residents.

“Data Broker” is a term which has no legal meaning and it is practically difficult to define because commercial entities that collect and use consumer data are not a monolithic group. Some companies collect information from a variety of public and non-public sources including courthouse records, land transfer records, motor vehicle ownership records, etc. for identity verification and fraud prevention. Other companies create profiles of individuals for marketing purposes to derive insights on consumer behavior to better target products and services to them. Yet another category of companies perform data analytics services, synthesizing records from disparate sources to develop macro and micro level perspectives of consumer behavior for risk assessment, identification and marketing.

For RELX, identity matching for consumer fraud prevention is the hallmark of our signature data analytics solutions. We use identity data to create a single, comprehensive and accurate view of consumers in banking, insurance, legal transactions and government benefits administration. Our customers often use the analytics to refine and enhance their existing data for accurate and real time risk-based decisions. Therefore, insufficient data on a consumer’s identity can compromise its overall value, making some consumer transactions higher risk for businesses. Ideally, consumer data should be both accessible and accurate to be useful in commerce. That is why RELX conducts the highest level scrutiny on the information we collect and use. We abide by government laws and regulations, industry best practices and we perform numerous data hygienics to ensure that our data is as complete and accurate as possible.

As originally drafted, this year’s legislation broadly defined a “data broker” in such manner that practically every business in Vermont could fall within it. Specifically, a “data broker” was

“...any commercial entity that collects, assembles, or maintains personal information concerning individuals residing in Vermont who are not customers or employees of that entity for the purposes of selling or offering for sale, or other consideration, the personal information of a third party.”

In addition to defining data brokering to include an array of common, everyday data collection and sharing practices, the legislation also required data brokers to:

- register and divulge their sources, collection practices and trade secrets;

- implement a customer identification program;
- explain their procedures for vetting data purchasers and prevent illegal use of the information; and
- it granted the state discretion to pursue data brokers that do not register.

The above requirements cover an extremely broad range of information that is in many cases publicly available, not sensitive and poses no risk of harm to Vermont residents. Under these mandates, businesses both large and small will be affected. For example, if a local charity seeks to expand its network of support by acquiring new lists of potential donors it is a “data broker.” When a small town merchant collects data on potential customers to advertise their products, it would have to register with the state and divulge the nature of its data collection practices. As originally drafted, the bill captured a huge range of businesses that are not typically deemed “data brokers” and subjected them to cumbersome and expensive regulation simply for engaging in interstate commerce. Clearly, not all data collections are the same, so they should not be treated under legislation.

Data Collection is Already Highly Regulated by Federal Law and Industry Best Practices.

The legislation considered this year was unprecedented and it disregarded the many laws already governing commercial data collection and sharing. RELX is a global leading provider of business and professional information. We must comply with a myriad of laws including the Fair Credit Reporting Act (FCRA) which regulates how consumer reporting agencies use consumer information; the Driver’s Privacy Protection Act (DPPA) governs the use and disclosure of motor vehicle records; the Gramm-Leach-Bliley Act (GLBA) requires financial institutions to provide their customers with notice of their information sharing practices; and a host of laws governing internet privacy and electronic communications. Accordingly, we take consumer privacy very seriously and we have adopted high standards possible to ensure the accuracy and integrity of our data. Regarding privacy safeguards, we expend significant time and fiscal resources to ensure that our data collection practices comply with all applicable laws and industry best practices. In failing to acknowledge the existing legal framework already governing the data collection industry, past legislative proposals would essentially treat all data collectors as unregulated and potential bad actors. We are not aware of any news, specific incident, or legal violation in Vermont warranting this additional layer of state regulation, so we believe that legislation is unnecessary.

A Registry Creates Negative Exposure for Businesses and Does Not Deter Bad Actors

The purported intent of the recent legislation was to shine a light on bad actors by forcing businesses to self-identify as “data brokers,” register with the state and provide an annual report on their activities. Once registered, the report will be subject to the Freedom of Information Act so registrants risk exposing trade secrets and proprietary information, leading to negative public attention and unfair competition. Presumably, state regulators will then review company practices in search of potential wrongdoing. This standard creates a rebuttable presumption of impropriety in an already well-regulated industry without justification or due process. Additionally, the registry and customer

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identification mandates will not deter bad actors, as they are unlikely to report and will remain in the shadows. A more effective approach would be to utilize existing statutory and law enforcement resources to target those already alleged to be engaged in illicit practices rather than undertake a fishing expedition with law-abiding companies.

Businesses Today must be Data-Driven and Technology Savvy

In today's digital age, data and data analytics are no longer luxuries- they are essential for business and commercial viability. As commerce continues to move from brick and mortar operations into the digital realm, businesses require more data-driven solutions to reach their customers and HB 467 may impede that objective by penalizing data collection and sharing.

Though well-intentioned, there does not appear to be a compelling public policy justification to support it the need for additional regulation of "data brokers." The legislation considered this year ignored the state's existing resources for targeting industry bad actors and it exposed legitimate business practices to unnecessary government intrusion. In short, to propose additional legislation in this space is tantamount to crafting a solution without a problem at a time when Vermont companies and the state economy can least afford it. These impacts must be fully understood and avoided before any legislation is drafted and proposed. Our goal is always to allow legitimate businesses to operate without undue government intrusion, so we stand ready to work with you to achieve your legislative goals without hampering the valuable services that we provide to our customers.

Sincerely,



Kia D. Floyd