

OREGON PROGRESSIVE PARTY



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**Oregon Progressive Party
Position on Bill at 2018
Session of Oregon Legislature:**

HB 4147: Support, but Oppose -1 amendment

Dear Committee:

The Oregon Progressive Party supports HB 4147, which:

- Prohibits consumer reporting agencies from charging certain fees related to security freezes on consumer reports or protective records.
- Requires certain persons who own, license, possess or have access to personal consumer information to give notice of breach of data security to certain financial institutions and merchant services providers.
- Requires financial institutions and merchant services providers that discover or receive notice of data breach of another person to notify other person.
- Requires notice of data breach to be given within 45 days of discovery of breach, unless such notice will impede criminal investigation.
- Prohibits person providing free credit monitoring in connection with data breach from offering additional services, unless such services are free, or from conditioning free credit monitoring on acceptance of other services.
- Modifies standards for safeguarding of personal information.
- Permits person to initiate civil action on behalf of state for violations of Oregon Consumer Identity Theft Protection Act.
- Provides that person may receive award of no greater than 25 percent of monetary recovery.
- Provides that state may intervene and proceed with such action.
- Provides that when person or state prevails in such action, court shall award reasonable attorney fees and costs.

This is a quite excellent bill, particularly the Private Attorneys General provisions, which enable consumers to avoid being forced into unfair compulsory arbitration by means of the massively lengthy contracts that they

may have signed with credit reporting companies. The United States Supreme Court has held that corporations can enforce contractual terms that require disputes to be resolved, with finality and no appeal, by means of private arbitration. Those systems use arbitrators who are well known to the corporations but unknown to wronged consumers. The livelihoods of those arbitrators depends upon being selected to arbitrate more disputes. Obviously, corporations are not going to select arbitrators who rule against the corporations. Further, the arbitration decisions need not be in writing, so no case law develops. The compulsory arbitration system is a direct privatization of the justice system--to the detriment of consumers.

The Private Attorneys General provisions appear to be a thoughtful way to avoid the "compulsory arbitration" trap, particularly Section 15:

SECTION 15. Actions initiated under section 9 of this 2018 Act are prosecuted on behalf of the state and not a private party, and agreements between private parties do not apply to such actions. No contract may be deemed to waive or limit the right of a private party to initiate an action under section 9 of this 2018 Act through limits on claims, remedies or procedures, including contractual limitations periods, notice requirements, forum selection provisions, arbitration or other alternative dispute resolution provisions, limitations on liability, limitations on remedies or limitations on damages.

But we see that the proposed -1 amendment greatly weakens the protections for consumers and eliminates entirely the Private Attorneys General provisions. We urge rejection of the -1 amendment.

Oregon Progressive Party

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