WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

House Bill 4898

FISCAL
NOTE

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[Introduced February 11, 2020; Referred to the Committee

on the Judiciary then Finance]

1   A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,

2   designated §11-29-1, §11-29-2, §11-29-3, §11-29-4, §11-29-5, §11-29-6, §11-29-7 and

3   §11-29-8, all relating to imposing a general data mining service tax on commercial data

4   operators; making legislative findings; establishing a valuation method; establishing the

5   rate of tax; requiring the proceeds be deposited into the Public Employees Insurance

6   Agency Financial Stability Fund; requiring rule-making; and defining terms.

Be it enacted by the Legislature of West Virginia:

ARTICLE 29. DATA MINING SERVICE TAX.

§11-29-1. General data mining service tax imposed.

1   The purpose of this article is to impose a general data mining service tax.

§11-29-2. Legislative findings.

1   The Legislature hereby finds and declares that:

2   (1) The process of digging through data to discover hidden connections and predict future

3   trends has a long history. Sometimes referred to as "knowledge discovery in databases," the term

4   "data mining" wasn't coined until the 1990s. But its foundation comprises three intertwined

5   scientific disciplines: statistics (the numeric study of data relationships), artificial intelligence

6   (human-like intelligence displayed by software and/or machines), and machine learning

7   (algorithms that can learn from data to make predictions). Data mining technology keeps evolving

8   to keep pace with the potential of big data and computing power.

9   (2) Over the last decade, advances in processing power and speed have enabled data

10   miners to move beyond manual, tedious, and time-consuming practices to quick, easy, and

11   automated data analysis. The more complex the data sets collected, the more potential there is

12   to uncover relevant insights. Retailers, banks, manufacturers, telecommunications providers, and

13   insurers, among others, are using data mining to discover relationships among everything from

14   price optimization, promotions, and demographics to how the economy, risk, competition, and

15   social media are affecting their business models, revenues, operations, and customer

16   relationships.

17   (3) Data mining allows organizations to continually analyze data and automate both

18   routine and critical decisions without the delay of human judgment. Banks can instantly detect

19   fraudulent transactions, request verification, and even secure personal information to protect

20   customers against identity theft. Deployed within a firm's operational algorithms, these models

21   can collect, analyze, and act on data independently to streamline decision-making and enhance

22   the daily processes of an organization.

23   (4) Planning is a critical process within every organization. Data mining facilitates planning

24   and provides managers with reliable forecasts based on past trends and current conditions. For

25   example, Macy's implements demand forecasting models to predict the demand for each clothing

26   category at each store and route the appropriate inventory to efficiently meet the market's needs.

27   (5) Data mining allows for more efficient use and allocation of resources. Organizations

28   can plan and make automated decisions with accurate forecasts that will result in maximum cost

29   reduction. Delta imbedded RFID chips in passengers' checked baggage and deployed data

30   mining models to identify holes in their process and reduce the number of bags mishandled. This

31   process improvement increases passenger satisfaction and decreases the cost of searching for

32   and re-routing lost baggage.

33   (6) Firms deploy data mining models from customer data to uncover key characteristics

34   and differences among their customers. Data mining can be used to create personas and

35   personalize each touchpoint to increase its revenue. In 2017, Disney invested over $1 billion to

36   create and implement "Magic Bands." These bands have a symbiotic relationship with consumers,

37   working to increase revenue streams at the resort while simultaneously collecting data on their

38   activities for Disney to analyze to further enhance its bottom line.

39   (7) Data mining essentially extracts information database users were not aware of and

40   presents it in actionable format. It predicts customer behavior and, applied properly through

41   campaign management software using advanced statistical, numerical and multivariate

42   techniques, can directly target consumers on an individual basis.

43   (8) Companies are already sitting on a diamond mine of data waiting to be turned into

44   revenue. Employing the use of professional data mining will has a noticeable effect on those

45   companies' bottom lines. The more data collected, deciphered, and leveraged the greater the

46   revenue.

47   (9) The data being collected and mined belongs to the public, the consumers, the citizens

48   and taxpayers from whom it is gleaned. The data's intrinsic value is substantially increased when

49   it is mined and thereafter used to further the economic interests of the data miners who then either

50   use it themselves or sell to others. Thus, the citizens of West Virginia are providing something of

51   substantial value for which they are not being compensated.

§11-29-3. Definitions.

1   "Commercial data operator" means an entity acting in its capacity as a consumer online

2   services provider or data broker that:

3   (A) Generates a material amount of revenue from the use, collection, processing, sale, or

4   sharing of the user data; and

5   (B) Has more than 10,000 unique monthly visitors or users in West Virginia for a majority

6   of months during the previous one-year period.

7   "User" means an individual consumer who uses an online service designed for consumer

8   use by a commercial data operator.

9   "User data" means any information that identifies, relates to, describes, is capable of

10   being associated with, or could reasonably be linked with an individual user, whether directly

11   submitted to the commercial data operator by the user or derived from the observed activity of

12   the user by the commercial data operator.

§11-29-4. Commercial data operators.

1   A commercial data operator shall:

2   (A) On a routine basis, and not less frequently than once every 90 days:

3 (i) Provide the commissioner with an assessment of the economic value that the

4 commercial data operator places on the data of its users; and

5 (ii) Identify to the commissioner:

6 (I) The types of data collected from users of the commercial data operator, whether by the

7 commercial data operator or another person pursuant to an agreement with the commercial data

8 operator; and

9 (II) The ways that the data of a user of the commercial data operator is used if the use is

10 not directly or exclusively related to the online service that the commercial data operator provides

11 to the user.

§11-29-5. Valuation methodology.

1 The commissioner, in consultation with appropriate standards settings organizations, the

2 Broadband Enhancement Council created by §31G-1-1 *et seq.* of this code, and other state or

3 private entities, shall develop a method or methods for calculating the value of user data. In

4 developing this method the commissioner shall promote comparability in calculating the value of

5 data across commercial data operators that utilize user data in a similar manner while taking into

6 account the potential need to develop distinct methods for calculating the value of data for different

7 uses, sectors, and business models.

§11-29-6. Amount of tax.

1 (a) For the privilege of commercial data operators generating revenue from the use,

2 collection, processing, sale, or sharing of the user data from the citizens of West Virginia those

3 operators shall pay the amount of tax to the commissioner in accordance with the provisions of

4 this code.

5 (b) The general data mining service tax imposed by this article shall be at the rate of 1¢

6 per the dollar of value of user data.

§11-29-7. Allocation of tax.

1 The tax imposed by this article shall be deposited into the Public Employees Insurance

2   Agency Financial Stability Fund to stabilize and preserve the future solvency of PEIA, and such

3   amount may not be included in the calculation of any plan year aggregate premium cost-sharing

4   percentages between employers and employees.

§11-29-8. Rule-making.

1   The commissioner shall propose rules for legislative approval in accordance with §29A-3-

2   1 *et seq.* of this code to implement this article.

NOTE: The purpose of this bill is to impose a general data mining service tax on commercial data operators. The bill makes legislative findings. The bill establishes a valuation method. The bill establishes the rate of tax. The bill requires the proceeds be deposited into the Public Employees Insurance Agency Financial Stability Fund. The bill requires rule-making. The bill defines terms.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.