

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2148

FISCAL
NOTE

BY DELEGATE THOMPSON

[Introduced February 10, 2021; 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; definitions; establishing a valuation method;
 5 establishing the tax and the rate of tax; requiring the proceeds be deposited into the Public
 6 Employees Insurance Agency Financial Stability Fund; and requiring rule-making.

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. Its foundation comprises three intertwined scientific
 5 disciplines: statistics, which is the numeric study of data relationships, artificial intelligence, which
 6 is human-like intelligence displayed by software or machines, and machine learning, which refers
 7 to 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 have a noticeable effect on those
45 companies' bottom lines. The more data collected, deciphered, and leveraged the greater the
46 revenue; and

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 As used in this article:

2 "Commercial data operator" means a person acting in the capacity as a consumer online
3 services provider or data broker that:

4 (A) Generates a material amount of revenue from the use, collection, processing, sale, or
5 sharing of the user data; and

6 (B) Has more than 10,000 unique monthly visitors or users in West Virginia for a majority
7 of months during the previous one-year period.

8 "User" means an individual consumer who uses an online service designed for consumer
9 use by a commercial data operator.

10 "User data" means any information that identifies, relates to, describes, is capable of
11 being associated with, or could reasonably be linked with an individual user, whether directly
12 submitted to the commercial data operator by the user or derived from the observed activity of
13 the user by the commercial data operator.

§11-29-4. Commercial data operators.

1 A commercial data operator shall, on a routine basis, and not less frequently than once

2 every 90 days:

3 (a) 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 (b) Identify to the commissioner:

6 (1) The types of data collected from users of the commercial data operator, whether by
7 the commercial data operator or another person pursuant to an agreement with the commercial
8 data operator; and

9 (2) 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 persons, 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. Imposition of tax on revenue generated by commercial data operators; 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, there is
3 hereby levied and shall be collected a general data mining service tax from commercial data
4 operators generating such revenue on revenue so generated. The tax shall be paid to and
5 collected by the commissioner in accordance with the provisions of this chapter.

6 (b) The general data mining service tax imposed in subsection (a) of this section shall be

7 at the rate of 1 cent per the dollar of value of user data obtained in this state.

§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 the
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.