



Consumer Federation of America

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INFORMATION CENTER



February 4, 2021

The Honorable David W. Marsden
Pocahontas Building, Room No. E618
Senate of Virginia
P. O. Box 396
Richmond, VA 23218

Re: SB 1392, Consumer Data Protection Act

Dear Senator Marsden,

The undersigned groups are organizations dedicated to consumer advocacy and protecting consumer privacy. We thank you for your work to advance consumer privacy in Virginia through the Consumer Data Protection Act (CDPA), and for recognizing the need for more consumer privacy protections. Our organizations have also signed a larger coalition letter outlining our reservations about the bill, but wished to send this letter to you to underscore our top concerns.

The CDPA would take some important steps to protecting Virginia consumers, by establishing the right to know the information companies have collected about them, the right to delete that information, and the right to stop the disclosure of certain information to third parties, with additional rights for sensitive data. Yet while these are important steps, we urge you to pause voting on this measure to consider some amendments that would provide meaningful protections for the people of Virginia against companies that gather and trade on their personal information for profit.

As you have recognized with this bill, average people have little insight into the ways that companies collect and use their information, and even fewer mechanisms for control over their personal information. We have worked with legislators across the country to produce legislation that gives consumers meaningful tools to better protect their privacy. To help address these issues, we offer the following recommendations:

Strengthen enforcement. We respectfully ask that you include a private right of action in your bill; a private right of action is essential to ensure that consumer privacy laws have teeth.

We strongly support the right of ordinary people to sue companies that violate their privacy. Private rights of action provide a valuable enforcement tool for everyday people, and also make clear that companies face real consequences for privacy harms. People rightly can sue over product defects, car accidents, breach of contract, or injuries to reputation—they do not have to wait for the state attorney general to bring actions on their behalf in any of these instances. Privacy harms should be no exception.

Additionally, we ask that you remove the “right to cure” provision in the administrative enforcement section of the CDPA. Rights to cure offer companies a “get-out-of-jail-free” card, significantly undermine privacy protections and incentivize companies to be lax about providing necessary privacy protections to their customers.

No pay for privacy. No one should be charged or penalized for asking companies to respect their privacy rights. And no one should be asked to pay more in order to protect their privacy. We ask that you add non-discrimination language to this bill make that there is no premium charge for privacy in Virginia, and that consumers who ask companies to respect their privacy rights are not offered inferior services. Doing so would make clear that your bill does not separate Virginians into two classes of privacy “haves” and “have-nots.”

Strengthen data minimization. It should be easy for consumers to understand what information is collected about them, and who has that information about them. Ideally, companies should have to ask consumers before they collect information at all – an opt-in framework rather than an opt-out framework.

Even within a consent framework, however, consumer privacy laws should limit the data that companies can collect and share. Consumers should be able to use an online service or app safely without having to take any action, such as opting in or opting out—by including a strong data minimization requirement that limits data collection and sharing to what is reasonably necessary to provide the service requested by the consumer. A strong default prohibition on data sharing is preferable to an opt-out based regime which relies on users to hunt down and navigate divergent opt-out processes for potentially hundreds of different companies.

Remove the verification requirement for opting out. Consumers should not have to pass a high bar to stop companies from using their information. CDPA gives consumers the right to opt out of certain uses of the consumer’s information, but requires that they verify their identities to do so. We ask that you remove this unnecessary hurdle to prevent people from exercising their privacy rights.

We thank you again for your ongoing work, and for giving serious consideration to the important issue of consumer data privacy. Consumers have made clear that they want stronger data privacy laws—largely in reaction to the ways that companies use and abuse their information. We applaud your willingness to hear those concerns. Virginia has the opportunity to take a leadership position in the national conversation around data privacy. We urge you to seize this opportunity to enact meaningful privacy legislation that put the needs of people ahead of the demands of corporations.

Sincerely,

Susan Grant, Consumer Federation of America

Lee Tien, Electronic Frontier Foundation

Caitriona Fitzgerald, Electronic Privacy
Information Center

Ed Mierzwinski, U.S. PIRG

cc: The Honorable Members of the Virginia Senate