



## Consumer Federation of America

1620 I Street, N.W., Suite 200 \* Washington, DC 20006

March 10, 2021

Bob Rommel, Chair  
Anthony Rodriguez, Vice Chair  
Anna V. Eskamani, Ranking Member  
Florida House of Representatives  
Regulatory Reform Subcommittee  
303 House Office Building  
402 South Monroe Street  
Tallahassee, FL 32399-1300

VIA EMAIL TRANSMISSION

RE: HB 969 Consumer Data Privacy – Oppose as Written

Dear Chairman Rommel, Vice Chair Rodriguez, and Ranking Member Eskamani:

On behalf of Consumer Federation of America (CFA), an association of nonprofit consumer organizations across the United States, including in Florida, I write to request that this letter in opposition to HB 969 as it is currently written be entered into the record as testimony for the hearing you will hold today to consider this legislation. CFA applauds state legislators' efforts to protect their constituents' privacy. While this bill has some good provisions, it should be amended to provide truly effective privacy protections for Floridians.

One of the problems with this bill and a similar bill in the Senate, SB 1734, is the outdated "notice and opt-out" framework that *places the burden on consumers* to navigate today's incredibly complex data ecosystem and take steps to prevent unwanted uses of their personal information. Making "opt-out" the default disempowers consumers and poses equity concerns; consumers with less sophistication, time, and resources to figure out how their data is being used and how to opt-out will inevitably be subject to more privacy violations. The default should be to obtain consumers' consent before collecting and using personal data that is not necessary to complete transactions or fulfill their other requests.

Another significant problem is that HB 969 allows businesses to *charge consumers more or provide them with lower-quality products or services* if they exercise the rights the legislation would provide to them – for instance, if they opt-out of their data being sold or shared with third parties. In other words, if consumers want privacy, they have to pay more, a blatantly discriminatory policy. This provision should be removed. It would be possible to provide for offering consumers discounts through loyalty and rewards programs, however, and we would be happy to suggest language in that regard.

In addition, the bill does not prohibit using consumers' personal information in ways that unfairly discriminate against them. In today's data ecosystem in which algorithms are used to profile individuals and make decisions about them, discrimination and even inadvertent disparate impacts are real concerns that should be addressed in privacy legislation.

Rights are meaningless without the ability to enforce them, and here again HB 969 fails to meet your constituents' needs. It lets the companies that disclose consumers' personal information to others escape any responsibility for how the data is handled unless they had reason to believe those parties *intended to violate the law*. (So Facebook would have no liability for what Cambridge Analytica did with users' personal information.) It *prevents* consumers from taking legal action to enforce their privacy rights except in the case of data breaches. It also creates a "right to cure" that *hampers* the ability of the attorney general to take action to stop bad practices, and it limits the relief that agency may seek.

We urge you to work with your colleagues in the Senate to take the best features of HB 969 and SB 1734 and make other changes as needed to enact meaningful privacy protections for Floridians. We will be happy to assist you in that effort.

Sincerely yours,

A handwritten signature in black ink that reads "Susan Grant". The signature is written in a cursive, flowing style.

Susan Grant  
Director of Consumer Protection and Privacy  
Consumer Federation of America

CC: Subcommittee Members and Staff