

April 5, 2021

The Honorable Blaise Ingoglia, Chair
The Honorable Brad Drake, Vice Chair
Commerce Committee
Florida House of Representatives
303 House Office Building
402 South Monroe Street
Tallahassee, FL 32399-1300

Dear Chair Ingoglia and Vice Chair Drake:

The undersigned consumer and privacy groups write to you regarding crucial private right of action provisions in HB 969.

Robust enforcement is critical to effective privacy protection. While government enforcement is essential, the scope of data collection online is simply too vast for one entity to regulate. Individuals and groups of individuals who use these online services are in a good position to identify privacy issues and bring actions to vindicate their interests. These cases preserve the state's resources, and statutory damages ensure that companies will face real consequences if they violate the law.

The inclusion of a private right of action in HB 969 is the most important tool the Legislature can give to Floridians to protect their privacy. The bill would impose enforceable legal obligations on companies that choose to collect and store individuals' data. As Professor Woody Hartzog recently wrote with regard to a similar private right of action in the Illinois biometric privacy law:

So far, only private causes of action seem capable of meaningfully deterring companies from engaging in practices with biometrics based on business models that inevitably lead to unacceptable abuses. Regulators are more predictable than plaintiffs and are vulnerable to political pressure. Facebook's share price actually rose 2 percent after the FTC announced its historic \$5 billion fine for the social media company's privacy lapses in the Cambridge Analytica debacle. Meanwhile, Clearview AI specifically cited BIPA as the reason it is no longer pursuing non-government contracts. On top of that, Clearview AI is being sued by the ACLU for violating BIPA by creating faceprints of people without their consent. [...] In general, businesses have opposed private causes of action more than other proposed privacy rules, short of an outright ban.¹

Many privacy laws include a private right of action, and these provisions have historically made it possible to hold companies accountable for their privacy violations. In crafting liability provisions in privacy statutes, legislatures have frequently included a liquidated damages provision

¹ Woodrow Hartzog, *BIPA: The Most Important Biometric Privacy Law in the US?*, AI Now Institute (2020), <https://ainowinstitute.org/regulatingbiometrics-hartzog.pdf>

to avoid protracted disputes over quantifying privacy damages. This is necessary because it is often difficult to assign a specific economic value to the harm caused by a privacy violation.

For example, when federal legislators passed the Cable Communications Policy Act in 1984, they established privacy rights for cable subscribers and created a private right of action for recovery of actual damages not less than liquidated damages of \$100 per for violation or \$1,000, whichever is higher.² The Video Privacy Protection Act specifies liquidated damages of \$2,500.³ The Fair Credit Reporting Act affords individuals a private right of action that can be pursued in federal or state court against credit reporting agencies, users of credit reports, and furnishers.⁴ In certain circumstances, individuals can also recover attorney's fees, court costs, and punitive damages. The Drivers Privacy Protection Act similarly includes a private right of action.⁵ The Telephone Consumer Protection Act allows individuals who receive unsolicited telemarketing calls to recover actual monetary loss or up to \$500 in damages per violation.⁶

The statutory damages set in privacy laws are not large in an individual case, but they can provide a powerful incentive in large cases and are necessary to ensure that privacy rights will be taken seriously and violations not tolerated. In the absence of a private right of action, there is a very real risk that companies will not comply with the law because they think it is unlikely that they would get caught or fined. Private enforcement ensures that data collectors have strong financial incentives to meet their data protection obligations. We urge you to preserve the private right of action provisions in HB 969.

Signed,

Campaign for a Commercial-Free Childhood

Center for Digital Democracy

Consumer Action

Consumer Federation of America

Electronic Frontier Foundation (EFF)

Electronic Privacy Information Center (EPIC)

Fight for the Future

Parent Coalition for Student Privacy

Privacy Rights Clearinghouse

U.S. PIRG

² 47 USC § 551(f).

³ 18 USC § 2710(c)(2).

⁴ 15 U.S.C. §§ 1681n-1681o.

⁵ 18 U.S.C. § 2724.

⁶ 47 USC § 227(c)(5).