



April 1, 2021

The Honorable Kathleen Passidomo, Chair
The Honorable Ileana Garcia, Vice Chair
Rules Committee
402 Senate Building
404 South Monroe Street
Tallahassee, FL 32301

Re: SB 1734, Florida Privacy Protection Act (3/23 Committee Substitute)

Dear Chair Passidomo and Vice Chair Garcia,

The undersigned consumer and privacy groups thank you for your leadership in considering the Florida Privacy Protection Act (FPPA), which outlines a strong framework to protect consumer privacy. FPPA would extend to Florida consumers the right to access, delete, correct, and stop the sale of their personal information.

These protections are long overdue: consumers are constantly tracked, and information about their online and offline activities are combined to provide detailed insights into a consumers' most personal characteristics, including health conditions, political affiliations, and sexual preferences. This information is sold as a matter of course, is used to deliver targeted advertising, facilitates differential pricing, and enables opaque algorithmic scoring—all of which can lead to disparate outcomes along racial and ethnic lines.

We particularly appreciate that the measure takes steps to ensure that the opt-out is workable for consumers. Measures based on an opt-out model, like FPPA, could require consumers to contact hundreds, if not thousands, of different companies in order to fully protect their privacy. Making

matters worse, Consumer Reports has documented that some California Consumer Privacy Act (CCPA) opt-out processes are so onerous that they have the effect of preventing consumers from stopping the sale of their information.¹ We appreciate that the FPPA requires companies to honor browser privacy signals as a “Do Not Sell” signal. Privacy researchers, advocates, and publishers have already created a “Do Not Sell” specification, the Global Privacy Control (GPC),² which could help make the opt-out model more workable for consumers.³

Ideally, consumers would 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* (in contrast, the bill limits data processing to that which is necessary to carry out the purposes for which it was collected or processed—which could incentivize companies to collect data for additional, unnecessary purposes). But in the absence of strong data minimization requirements, at the very least, consumers need tools to ensure that they can better exercise their opt-out rights, such as a global opt out, which is provided by the FPPA.

The bill includes several other important provisions that we recommend maintaining:

- *Comprehensive definition of sale.* Importantly, the bill’s definition of “sale” covers all data transfers to a third party for a commercial purpose. Many companies have sought to avoid the CCPA’s opt out by claiming that much online data sharing is not technically a “sale”⁴ (appropriately, Prop. 24 expands the scope of California’s opt-out to include all data sharing and clarifies that targeted ads are clearly covered by this opt out).⁵ SB 1734 closes this potential loophole by simply covering all commercial data transfers.
- *Strong enforcement:* We applaud you for including a private right of action. Given the AG’s limited resources, a private right of action is key to incentivizing companies to comply. Further, it’s appropriate that consumers are able to hold companies accountable in some way for violating their rights. We also appreciate that there is no “right to cure”

¹ Maureen Mahoney, *California Consumer Privacy Act: Are Consumers’ Rights Protected*, CONSUMER REPORTS (Oct. 1, 2020), https://advocacy.consumerreports.org/wp-content/uploads/2020/09/CR_CCPA-Are-Consumers-Digital-Rights-Protected_092020_vf.pdf.

² Global Privacy Control, <https://globalprivacycontrol.org>.

³ Press release, Announcing Global Privacy Control: Making it Easy for Consumers to Exercise Their Privacy Rights, Global Privacy Control (Oct. 7, 2020), <https://globalprivacycontrol.org/press-release/20201007.html>.

⁴ Maureen Mahoney, *Many Companies Are Not Taking the California Consumer Privacy Act Seriously—The Attorney General Needs To Act*, DIGITAL LAB AT CONSUMER REPORTS (Jan. 9, 2020), <https://medium.com/cr-digital-lab/companies-are-not-taking-the-california-consumer-privacy-act-seriously-dcb1d06128bb>; *The State of Authorized Agent Opt Outs*, *supra* note 7, at 16.

⁵ Maureen Mahoney, *Consumer Reports Urges Californians to Vote Yes on Proposition 24*, DIGITAL LAB AT CONSUMER REPORTS (Oct. 23, 2020), <https://medium.com/cr-digital-lab/consumer-reports-urges-californians-to-vote-yes-on-proposition-24-693c26c8b4bd>.

provision in administrative enforcement: this “get-out-of-jail-free” card ties the AG’s hands and signals that a company won’t be punished for breaking the law.

- *No verification requirement for opt outs:* Opt-out legislation in Virginia and Nevada sets an unacceptably high bar for these requests by subjecting them to verification by the company. Thus, companies could require that consumers set up accounts in order to exercise their rights under the law—and hand over even more personal information. Consumers shouldn’t have to verify their identity, for example by providing a driver’s license, in order to opt-out of targeted advertising. Further, much of that data collected online (including for targeted advertising) is tied to a device and not an individual identity; in such cases, verification may be impossible, rendering opt-out rights illusory. Appropriately, this bill does not tether opt out rights to identity verification.
- *Authorized agent provisions.* We also appreciate that the FPPA allows consumers to delegate to third parties the ability to submit opt-out and deletion requests on their behalf—allowing for a practical option for consumers to exercise their privacy rights in an opt-out framework. Consumer Reports has already begun to experiment with submitting opt-out requests on consumers’ behalf, with their permission, through the CCPA’s authorized agent provisions. We found that consumers are enthusiastic about this option.⁶ Authorized agent services can be an important supplement to platform-level global opt outs. For example, an authorized agent could process offline opt-outs that are beyond the reach of a browser signal. An authorized agent could also perform deletion requests on behalf of consumers, for which there is not an analogous tool similar to the GPC.
- *Key restrictions on service providers.* Appropriately, if the consumer has opted out, service providers are prohibited from combining data collected on behalf of different clients. Without these restrictions, entities such as Facebook or Salesforce would be able to create huge, cross-site data sets, allowing them to glean even more sensitive insights into consumers’ activity online—without any consumer control.
- *Data security requirements.* This bill would create new categories of personal information, and the bill appropriately requires companies to use reasonable security protocols to safeguard the confidentiality, integrity, and availability of covered information.

⁶ Ginny Fahs, *Putting the CCPA into Practice: Piloting a CR Authorized Agent*, DIGITAL LAB AT CONSUMER REPORTS (Oct. 19, 2020), <https://medium.com/cr-digital-lab/putting-the-ccpa-into-practice-piloting-a-cr-authorized-agent-7301a72ca9f8>; Maureen Mahoney et al., *The State of Authorized Agent Opt Outs Under the California Consumer Privacy Act*, Consumer Reports (Feb. 2021), https://advocacy.consumerreports.org/wp-content/uploads/2021/02/CR_AuthorizedAgentCCPA_022021_VF_.pdf.

While we acknowledge the key privacy protections listed above, we also recommend several adjustments to ensure that Floridians can fully exercise their privacy rights under the law.

- *Clarify that consumers can't be charged for exercising privacy rights.* In 501.175(1)(b), SB 1734 specifically allows companies to charge consumers a different price in order to protect their privacy. We urge the adoption of consensus language from the current Washington Privacy Act, Sec. 107(7), that supports legitimate loyalty programs that reward consumers for repeated patronage, but prohibits disclosure of information to third parties pursuant to those programs. Privacy protections should be for everyone, not just for those who can afford them.
- *Clearly cover retargeting.* We appreciate that the bill specifically extends opt-out rights to targeted advertising, but we recommend adjustments to the definition of targeted advertising to more clearly cover retargeting (targeting ads based on a consumer's interaction with another, single site).
- *Limit the exemption for financial institutions:* The bill should exempt financial institutions only to the extent that it conflicts with federal law. The federal Gramm-Leach-Bliley Act (GLBA) is far weaker than this measure—it would be inappropriate for such sensitive information to be covered by a lesser standard. GLBA explicitly authorizes states to pass stronger financial privacy laws.⁷ And there is precedent for stronger state financial privacy laws: the California Financial Information Privacy Act, which requires opt-in consent for the disclosure of such information.⁸

Thank you again for your consideration. We look forward to working with you to ensure that Floridians have the privacy protections that they deserve.

Sincerely,

Common Sense
Consumer Federation of America
Consumer Reports
Electronic Frontier Foundation
Electronic Privacy Information Center
Privacy Rights Clearinghouse

cc: Members, Florida Senate Rules Committee
The Honorable Jennifer Bradley

⁷ P.L. 106-102, Sec. 507, <https://www.govinfo.gov/content/pkg/PLAW-106publ102/pdf/PLAW-106publ102.pdf>.

⁸ Cal. Fin. Code Sec. 4051, https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?division=1.4.&lawCode=FIN.