



April 1, 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

Re: HB 969 c2, Consumer Data Privacy (3/24)

Dear Chair Ingoglia and Vice Chair Drake,

The undersigned consumer and privacy groups sincerely thank you for considering HB 969 to protect consumer privacy. HB 969 would extend to Florida consumers the right to know the information companies have collected about them, the right to delete and correct that information, and the right to stop the disclosure of certain information to third parties, with additional rights for minors.

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 applaud your leadership in considering this legislation, and offer several suggestions to strengthen it. Privacy laws should set strong limits on the data that companies can collect and share so that consumers can use online services or apps safely without having to take any action, such as opting in or opting out. We recommend 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. 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

However, within the parameters of an opt-out based bill, we make the following recommendations to improve HB 969:

- *Require companies to honor browser privacy signals as opt outs:* In the absence of strong data minimization requirements, at the very least, consumers need tools to ensure that they can better exercise their rights, such as a global opt out. Privacy researchers, advocates, and publishers have already created a “Do Not Sell” specification designed to work with the CCPA, the Global Privacy Control (GPC).² This could help make the opt-out model more workable for consumers,³ but unless the Florida bill requires companies to comply, it is unlikely that Floridians will benefit.
- *Strengthen enforcement:* We applaud you for including a private right of action for certain data breaches and violations of the consumers’ rights to delete, correct, and stop the sale or sharing of their information. However, the “right to cure” provision in the administrative enforcement section of HB 969 should be removed. 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.
- *Non-discrimination.* Consumers shouldn’t be charged for exercising their privacy rights—otherwise, those rights are only extended to those who can afford to pay for them. Unfortunately, language in this bill could allow companies to charge consumers a different price if they opt out of the sale of their information. We urge you to replace this provision with consensus language from the Washington Privacy Act that limits the disclosure of information to third parties pursuant to loyalty programs.

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>.

- *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.⁴ 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.⁵

While we offer these suggestions to improve the bill, we also readily acknowledge that there is a lot to like about it. It would grant important new rights to Floridians that the residents of most states do not currently enjoy. Below, we highlight several key provisions, in addition to the private right of action, that we urge you to maintain:

- *Comprehensive definition of sharing.* Importantly, the bill’s definition of “sharing” covers all data transfers for advertising. Many companies have sought to avoid the CCPA’s opt out by claiming that much online data sharing is not technically a “sale”⁶ (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).⁷ HB 969 closes this potential loophole by simply covering all data disclosure for advertising.
- *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.

⁴ P.L. 106-102, Sec. 507, <https://www.govinfo.gov/content/pkg/PLAW-106publ102/pdf/PLAW-106publ102.pdf>.

⁵ Cal. Fin. Code Sec. 4051, https://leginfo.ca.gov/faces/codes_displayText.xhtml?division=1.4.&lawCode=FIN.

⁶ 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.

⁷ 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>.

- *Authorized agent provisions:* We applaud you for including “authorized agent” provisions that allow a consumer to designate a third party to perform requests on their behalf—providing 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.⁸ Authorized agent services will 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 access and 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.

Thank you again for your consideration, and for your work on this legislation. We look forward to working with you to ensure that Floridians have the strongest possible privacy protections.

Sincerely,

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

cc: Members, Commerce Committee
The Honorable Fiona McFarland

⁸ 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/wpcontent/uploads/2021/02/CR_AuthorizedAgentCCPA_022021_VF_.pdf.