



February 11, 2022

The Honorable Robert Morris, Chair
Indiana House Committee on Commerce, Small Business and Economic Development
200 West Washington Street
Indianapolis, IN 46204-2785

Re: SB 358, Consumer Data Protection (Engrossed) – OPPOSE

Dear Chair Morris,

The undersigned consumer and privacy groups write in respectful opposition to SB 358. This bill seeks to provide to Indiana consumers 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. However, in its current form it would do little to protect Indiana consumers' personal information, or to rein in major tech companies like Google and Facebook. The bill needs to be substantially improved before it is enacted; otherwise, it would risk locking in industry-friendly provisions that avoid actual reform.

Last month, Consumer Reports urged amendments to strengthen SB 358, including by adding a global opt out and strengthening definitions.¹ Unfortunately, the amended version of SB 358 is even weaker, without the strong enforcement provisions and authorized agent rights of the prior bill. Strengthening the bill is particularly important because some adtech platforms and publishers, including Google and Facebook, have exploited ambiguities in the California

¹ Consumer Reports letter to the Honorable Clyde Perfect, Chairman of the Indiana Senate Commerce & Technology Committee (Jan. 19, 2022), <https://advocacy.consumerreports.org/wp-content/uploads/2022/01/CR-Letter-SB-358-1.19.21-2.pdf>.

Consumer Privacy Act to not honor consumer requests to stop the sale of their information to third parties.² And SB 358 is far weaker than even the existing CCPA.

Opt-out bills, like SB 358, are simply too burdensome for consumers to protect their privacy. Consumer Reports has found that consumers experienced significant difficulty exercising their rights under the CCPA's opt-out provision. Hundreds of volunteers tested the opt-out provision of the CCPA, by submitting DNS requests to companies listed on the data broker registry. About 14% of the time, burdensome or broken DNS processes prevented consumers from exercising their rights under the CCPA.³ Unfortunately, SB 358 lacks provisions, like a global opt-out and authorized agent rights, that will help make the CCPA more workable for consumers.

However, within the parameters of an opt-out based bill, we make the following recommendations to improve SB 358:

- *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. CCPA regulations *require* companies to honor browser privacy signals as a “Do Not Sell” signal; Proposition 24 added the global opt-out requirement to the statute. The new Colorado law requires it as well.⁴ Privacy researchers, advocates, and publishers have already created a “Do Not Sell” specification designed to work with the CCPA, the Global Privacy Control (GPC).⁵ This could help make the opt-out model more workable for consumers,⁶ but unless companies are required to comply, it is unlikely that consumers will benefit.
- *Broaden opt-out rights to include all data sharing and ensure targeted advertising is adequately covered.* SB 358's opt out should cover all data transfers to a third party for a commercial purpose (with narrowly tailored exceptions). In California, many companies have sought to avoid the CCPA's opt out by claiming that much online data sharing is not

² Maureen Mahoney, *Many Companies Are Not Taking the California Consumer Privacy Act Seriously—The Attorney General Needs to Act* (Jan. 9, 2020), <https://medium.com/cr-digital-lab/companies-are-not-taking-the-california-consumer-privacy-act-seriously-dcb1d06128bb>.

³ *California Consumer Privacy Act: Are Consumers' Digital Rights Protected?*, Consumer Reports (Oct. 1, 2020), https://advocacy.consumerreports.org/press_release/consumer-reports-study-finds-significant-obstacles-to-exercising-california-privacy-rights/.

⁴ Cal. Code Regs tit. 11 § 999.315(c); CPRA adds this existing regulatory requirement to the statute, going into effect on January 1, 2023, at Cal. Civ. Code § 1798.135(e) <https://thecpra.org/#1798.135>. For the Colorado law, see SB 21-190, 6-1-1306(1)(a)(IV)(B), https://leg.colorado.gov/sites/default/files/documents/2021A/bills/2021a_190_rer.pdf.

⁵ Global Privacy Control, <https://globalprivacycontrol.org>.

⁶ 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>.

technically a “sale”⁷ (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). While we appreciate that this version has an opt out for targeted advertising, the current definition of targeted advertising is ambiguous, and could allow internet giants like Google, Facebook, and Amazon to serve targeted ads based on their own vast data stores on other websites. This loophole would undermine privacy interests and further entrench dominant players in the online advertising ecosystem.

- *Non-discrimination.* Consumers should not 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 adopt language to help ensure that companies cannot inappropriately disclose information to third parties pursuant to those programs.
- *Strengthen enforcement:* We recommend removing the “right to cure” provision to ensure that companies are incentivized to follow the law. Already, the AG has limited ability to enforce the law effectively against tech giants with billions of dollars a year in revenue. Forcing them to waste resources building cases that could go nowhere would further weaken their efficacy. In addition, consumers should be able to hold companies accountable in some way for violating their rights—there should be some form of a private right of action.

We look forward to working with you to ensure that Indiana consumers have the strongest possible privacy protections.

Sincerely,

Access Now
Consumer Federation of America
Consumer Reports
Electronic Frontier Foundation
Electronic Privacy Information Center (EPIC)

Cc: Members, Committee on Commerce, Small Business and Economic Development
The Honorable Elizabeth Brown

⁷ Maureen Mahoney, *Many Companies Are Not Taking the California Consumer Privacy Act Seriously*, *supra* note 2.