



February 3, 2023

The Honorable Whitney Westerfield
702 Capital Ave
Annex Room 228
Frankfort, KY 40601

Re: SB 15, An Act Relating to Consumer Data Privacy — SUPPORT

Dear Senator Westerfield,

Consumer Reports and Consumer Federation of America write in support of SB 15, which outlines a strong framework to protect consumer privacy. SB 15 would extend to Kentucky consumers important rights, including the right to know the information companies have collected about them, the right to access and delete that information, as well as the ability to require businesses to honor authorized agents' requests to opt out of data sales, targeted advertising, and tracking.

Consumers currently possess very limited power to protect their personal information in the digital economy, while online businesses operate with virtually no limitations as to how they process that information (so long as they note their behavior somewhere in their privacy policy). As a result, consumers' every move is constantly tracked and often combined with offline activities to provide detailed insights into their 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.

As such, 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, as outlined in Consumer Reports' model bill.¹ Measures largely based on an opt-out model with no universal opt-out, like the original interpretation of the California Consumer Privacy Act (CCPA), would 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 CCPA opt-out processes are so onerous that they have the effect of preventing consumers from stopping the sale of their information.²

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 this bill and applies to requests to opt out of sales. Privacy researchers, advocates, and publishers have already created a global, browser-based "Do Not Sell" specification, the Global Privacy Control (GPC), which could help make the opt out model more workable for consumers.³

In addition, we support several other key provisions in the bill:

- *Controls over targeted advertising.* We appreciate that SB 15 has an opt out of sharing, of tracking, and a strong definition of targeted advertising—providing key consumer controls over ad tracking. In California, 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, the California Privacy Rights Act [CPRA] expanded 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 This bill closes loopholes to better ensure that consumers have a choice over whether internet giants like Google, Facebook, and Amazon serve targeted ads based on their own vast data stores on other websites. We also appreciate that the definition of targeted advertising clearly covers retargeting (targeting ads based on a consumer's interaction with another, single site).
- *Non-discrimination.* SB 15 has strong non-discrimination language. The nondiscrimination language in SB 15 clarifies that consumers cannot be charged for

¹ Model State Privacy Act, Consumer Reports (Feb. 23, 2021),

<https://advocacy.consumerreports.org/research/consumer-reports-model-state-data-privacy-act/>

² 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-ConsumersDigital-Rights-Protected_092020_vf.pdf.

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-onproposition-24-693c26c8b4bd>.

exercising their rights under the law. We appreciate the work that has been done to ensure that privacy protections aren't just for those who can afford them.

- *Authorized agent rights.* We also appreciate that SB 15 allows consumers to delegate to third parties the ability to submit opt-out 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
- *Private right of action.* 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.

At the same time, we note there is room for improvement on a few aspects of the bill:

- *Entity level carveouts.* The draft bill currently exempts from coverage any financial institution or an affiliate of a financial institution, as defined in the Gramm-Leach-Bliley Act, as well as covered entities and business associates under the Health Insurance Portability and Accountability Act. These carveouts arguably make it so that large tech companies (Apple, Amazon, Google, Facebook, and Microsoft) would be exempted from the entire bill if one arm of their business receives enough financial information from banks or crosses the threshold into providing traditional healthcare services, a line many of them are already currently skirting.⁷ The draft already carves out from coverage *information* that is collected pursuant to those laws, so the need to exempt entire entities is unnecessary.
- *Authentication.* Section 3(6) provides that a “controller shall not be required to comply with a request to exercise any of the rights under this section if the controller is unable to authenticate the request using commercially reasonable efforts.” In Consumer Reports's investigation into the usability of new privacy rights in California, we found examples of companies requiring consumers to fax in copies of their drivers' license in order to verify residency and applicability of CCPA rights.⁸ If every website in Kentucky responded to an

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/wpcontent/uploads/2021/02/CR_AuthorizedAgentCCPA_022021_VF.pdf.

⁷ See e.g., The Economist, “Big Tech Pushes Further into Finance,” (Dec. 15, 2022), <https://www.economist.com/business/2022/12/15/big-tech-pushes-further-into-finance>; Richard Waters, “Big Tech searches for a way back into healthcare,” Financial Times, (May 17, 2020), <https://www.ft.com/content/74be707e-6848-11ea-a6ac-9122541af204>

⁸ Ibid.

opt-out signal or authorized agent with such a request, in practice these tools would be practically unusable and ineffective. Today, companies generally comply with state and national privacy laws by approximating geolocation based on IP address.⁹ The legislation should be revised to clearly state that estimating residency based on IP address is generally sufficient for determining residency and legitimacy, unless the company has a good faith basis to determine that a particular device is not associated with an Kentucky resident or is otherwise illegitimate.

- *Right to Correct.* This bill currently does not include a right to correct, which is an important mechanism by which consumers can assert some semblance of control over the vast stores of personal data that companies hold on them. Personal information is often used to make important decisions about consumers, such as with respect to employment and housing — and data brokers' files often include incorrect information.¹⁰ Correction rights are a core element of privacy laws globally, and recently enacted state statutes in California, Virginia, Colorado, and Connecticut all include them. Only the weak Nevada and Utah laws currently exclude them. Section 120 of Consumer Reports' model state privacy bill provides strong correction language that the drafters should consider including.¹¹

Thank you again for advancing this key legislation. We look forward to working with you to ensure that Kentucky consumers have the strongest possible privacy protections.

Sincerely,

Consumer Reports
Consumer Federation of America

⁹ E.g., Press Release, OneTrust Cookie Consent Upgraded with Recent ICO, CNIL and Country- and State-Specific Guidance Built-in, (Aug. 15, 2019), OneTrust, <https://www.onetrust.com/news/onetrust-updates-cookie-consent-ico-cnil/>.

¹⁰ Persis Yu, Big Data: A Big Disappointment for Scoring Consumer Credit Risk, NAT'L CONSUMER LAW CTR. at 15, (Mar. 2014), <https://www.nclc.org/images/pdf/pr-reports/report-big-data.pdf>.

¹¹ Model State Privacy Act, Consumer Reports (Feb. 23, 2021), <https://advocacy.consumerreports.org/research/consumer-reports-model-state-data-privacy-act/> (“120. Right to correct inaccurate personal information.

(a) A consumer shall have the right to require a business that maintains inaccurate personal information about the consumer to correct such inaccurate personal information.

(b) A business that collects personal information about consumers shall disclose, pursuant to subsection 130, the consumer's right to request correction of inaccurate personal Information.

(c) A business that receives a verifiable consumer request to correct inaccurate information shall use commercially reasonable efforts to correct the inaccurate personal information, as directed by the consumer, pursuant to subsection 130.”)