

April 14, 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 Electronic Privacy Information Center (EPIC) writes to you regarding HB 969: Consumer Data Privacy. EPIC is a public interest research center established in 1994 to focus public attention on emerging privacy and civil liberties issues.<sup>1</sup> For over 25 years, the EPIC has been a leading advocate for consumer data protection.

The United States faces a data protection crisis. Large and powerful technology companies invade our private lives, spy on our families, and gather our most intimate facts for profit. These companies have more economic and political power than many countries and states. Through a vast, opaque system of databases and algorithms, we are profiled and sorted into winners and losers based on data about our health, finances, location, gender, race, and other personal information. The impacts of these commercial surveillance systems are especially harmful for marginalized and multi-marginalized communities, fostering discrimination and inequities in employment, government services, health and healthcare, education, and other life necessities.

And the enormity of the challenge we face is only going to grow. Federal lawmakers have failed time and time again to take the actions necessary to address this crisis. But now the Florida Legislature has an opportunity to stand up and provide real privacy protections for Floridians. HB969 is a step in the right direction.

HB969 would give Floridians the right to know what information companies have collected about them, the right to delete and correct that information, the right to opt-out of the sale or sharing of their personal information, strong limits on the retention of their data, and additional protections for their children's privacy. Critically, the bill would create robust enforcement mechanisms, including a private right of action, to ensure companies do not flout the law.

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<sup>1</sup> EPIC, *About EPIC*, <https://epic.org/epic/about.html>.

These are crucial protections, and EPIC urges your support for them, even as we provide the following recommendations for strengthening the bill even further:

- **Prohibit discriminatory uses of data:** Privacy laws should directly address and prohibit discriminatory uses of data. The bill should extend civil rights protections online and require robust review of potential bias in data and algorithmic systems. The bill should prohibit predatory data collection practices and uses. The bill should also prohibit data processing that leads to disparate treatment or adverse disparate impacts.
- **Remove “right to cure” provision that hampers enforcement:** Companies should not have a free “bite of the apple” to violate individuals’ privacy rights without being held accountable. The “right to cure” provision should be removed from the bill.
- **Require data minimization:** Data collection and use should be limited to what is reasonably necessary to provide a good or service requested by an individual in an intentional interaction. This type of model would grant privacy protections to Floridians without the need to opt-in or opt-out, as consent can be manipulated or compelled.<sup>2</sup>
- **Require companies to honor global opt-out mechanisms:** Global opt-out mechanisms<sup>3</sup> are settings that can be configured in browsers or other devices to send a signal to all websites that an individual wants to opt-out of their information being sold. These mechanisms would make it easier for Floridians to exercise their rights under HB969 and make it clear to companies when users are opting out. It is unrealistic<sup>4</sup> to expect that internet users are going to take multiple steps to separately opt-out of data disclosure on every website they visit. Indeed, decades of experience with website “cookie” policies has shown that users quickly suffer “consent fatigue”<sup>5</sup> and ignore these settings. Many opt-out procedures are intentionally designed to be difficult to follow or even intentionally designed to confuse users (referred to as a “dark pattern”).<sup>6</sup> Global opt-out mechanisms will simplify the opt-out process, but are only effective if enforceable.
- **Ban pay-for-privacy schemes:** Individuals should not be forced to trade basic privacy rights to access websites or obtain internet services. Such arrangements are antithetical to the purposes of privacy law: to establish enforceable rights to individuals and impose responsibilities on data collectors. The provisions allowing controllers to offer financial incentives as “compensation” for their personal data should be removed. These provisions are unfair and discriminate against individuals who are economically disadvantaged.

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<sup>2</sup> Dissenting Statement of Comm’r Rohit Chopra, *Regarding Dark Patterns in the Matter of Age of Learning, Inc.* (Sept. 2, 2020),

[https://www.ftc.gov/system/files/documents/public\\_statements/1579927/172\\_3086\\_abcmouse\\_-\\_rchopra\\_statement.pdf](https://www.ftc.gov/system/files/documents/public_statements/1579927/172_3086_abcmouse_-_rchopra_statement.pdf).

<sup>3</sup> See e.g. Global Privacy Control, <https://globalprivacycontrol.org>.

<sup>4</sup> Waddell, Kaveh, *California's New Privacy Rights Are Tough to Use, Consumer Reports Study Finds*, Consumer Reports (Mar. 16, 2021), <https://www.consumerreports.org/privacy/californias-new-privacy-rights-are-tough-to-use/>.

<sup>5</sup> Utz, Christine et al., *(Un)informed Consent: Studying GDPR Consent Notices in the Field* (2019), <https://dl.acm.org/doi/10.1145/3319535.3354212>.

<sup>6</sup> Whittaker, Zack, *California’s new privacy law is off to a rocky start*, TechCrunch (Feb. 8, 2020), <https://techcrunch.com/2020/02/08/ccpa-privacy-law-rocky-start/>.

- **Provide enhanced safeguards against sensitive uses of personal data:** Certain sensitive categories of data, and certain high-risk uses of data, demand stricter regulation. For instance, biometric and genetic data are simultaneously immutable, deeply revealing, and incredibly dangerous if put in the wrong hands. And even information about the products people buy and the services they search for can be used to make inferences about their health, religious beliefs, economic situations, and other characteristics that are sensitive in nature. In these situations, requiring express, affirmative opt-in consent or prohibiting certain data collection and use may be necessary. Data should be deleted after it is used for the disclosed purpose.

Thank you for your consideration, and for your work on this critical issue. While EPIC offers these suggestions for improvement, we recognize that HB969 would be an important step in the right direction towards providing Floridians with crucial privacy protections, and we urge you to support the bill.