



**Computer & Communications
Industry Association**
Tech Advocacy Since 1972

April 19, 2021

Florida House of Representatives
513 The Capitol
402 South Monroe Street
Tallahassee, FL 32399-1300

Re: CCIA Comments in Opposition to HB 969 Relating to Consumer Data Privacy

Dear Speaker Sprowls and Members of the Florida House of Representatives:

On behalf of the Computer & Communications Industry Association (CCIA), I write to provide input on HB 969 relating to consumer data privacy.

CCIA is an international, not-for-profit trade association representing small, medium, and large communications and technology firms. For almost 50 years, CCIA has promoted open markets, open systems, and open networks.¹

CCIA supports the enactment of comprehensive federal privacy legislation to promote a trustworthy information ecosystem characterized by clear and consistent consumer privacy rights and responsibilities for organizations that collect and process data. A uniform federal approach to the protection of consumer privacy throughout the economy is necessary to ensure that businesses (especially SMEs) have regulatory certainty in meeting their compliance obligations and that consumers are able to understand and exercise their rights.

Should the Florida House of Representatives proceed in considering HB 969 and the establishment of a new statewide consumer privacy framework, CCIA urges attention to the following principles in order to support meaningful privacy protections that avoid unnecessary interference with the ability of both consumers and businesses to benefit from data-enabled products, services, and innovation that support the modern economy.

1. Vest enforcement authority with the Attorney General

A new privacy framework would be best enforced by the office of the Florida Attorney General. The inclusion of a private right of action would result in the proliferation of class action suits seeking lucrative settlements for alleged bare-procedural violations, primarily benefiting plaintiffs' attorneys with little connection to the remedy of any genuine consumer injury. The drawbacks of private rights of action are readily apparent in the history of both state and federal privacy statutes.² As drafted, the scope of HB 969's private right of action is far broader than any existing US state commercial privacy law and threatens to uniquely burden Floridian

¹ For more information about CCIA please see: <https://www.ccianet.org/about>.

² See, U.S. Chamber Institute for Legal Reform, "Ill-suited: Private Rights of Action and Privacy Claims" (July, 2019), https://instituteforlegalreform.com/wp-content/uploads/2020/10/Ill-Suited_-_Private_Rights_of_Action_and_Privacy_Claims_Report.pdf.

businesses without an obvious benefit to consumers' privacy interests. Should the private right of action be removed, CCIA encourages the legislature to consider additional amendments in line with the following points in order to mitigate significant compliance challenges posed by the bill as currently drafted.

2. Clear and interoperable definitions

Existing broad-based privacy laws typically recognize a core set of rights and protections including individual control, transparency of processing activities, and limitations on third-party disclosures that are reflected in HB 969. However, even minor statutory divergences between frameworks for key definitions or the scope of privacy obligations can create onerous costs for covered organizations. Therefore, CCIA encourages the House to ensure that any consumer privacy legislation is reasonably aligned with existing definitions and rights in other jurisdictions' privacy laws so as to avoid unnecessary costs to Florida businesses, particularly as they focus on recovering from the fiscal impacts of the public health crisis.

As drafted, key definitions in HB 969 are likely to prompt significant statutory interpretation and compliance difficulties, even for businesses with existing familiarity with other US state laws. Specifically CCIA recommends attention to the recently enacted Virginia Consumer Data Protection Act and alignment of key definitions including "consumer," "personal data," "targeted advertising," "sale," and "de-identified data" to promote consistent and practically operationalizable privacy protections across state borders.

3. Mitigate operational burdens

Implementing the requirements of a new privacy regime can be a lengthy and costly process for large and small businesses alike.³ For example, covered organizations must review and potentially reconfigure IT systems and renegotiate contracts with vendors and service providers in order to comply with new rules. A successful privacy framework must ensure that businesses have sufficient opportunity and clarity to meet their compliance obligations. Recently enacted privacy laws in California, Virginia, and Europe all contain 2-year delays in enforcement and we recommend that any privacy legislation advanced in Florida include a comparable on-ramp to enable compliance.

CCIA further supports the inclusion of an opportunity-to-cure provision in order to encourage organizations acting in good faith to rapidly resolve any concerns. This has been a successful enforcement mechanism in other jurisdictions and the California Attorney General recently highlighted its use of notices to cure as an effective tool in supporting widespread business compliance with new privacy rules.⁴ As drafted, HB 969

³ For example, a study commissioned by the California Attorney General estimated that state companies faced \$55 billion in initial compliance costs for meeting new privacy requirements, with small businesses facing disproportionately higher shares of costs. Berkeley Economic Advising and Research, LLC, "Standardized Regulatory Impact Assessment: California Consumer Privacy Act of 2018 Regulations" (August, 2019), https://www.dof.ca.gov/Forecasting/Economics/Major_Regulations/Major_Regulations_Table/documents/CCPA_Regulations-SRIA-DOF.pdf.

⁴ Xavier Becerra, "Attorney General Becerra Announces Approval of Additional Regulations That Empower Data Privacy Under the California Consumer Privacy Act" (March 15, 2021), <https://oag.ca.gov/news/press-releases/attorney-general-becerra-announces-approval-additional-regulations-empower-data>.

contains an opportunity to cure that is narrower than the California law, leaving its use to the discretion of the Attorney General's office and limiting its use to once per business, regardless of the nature of a potential privacy violation. Aligning this provision with the California Privacy Protection Act would provide more confidence for businesses operating in good faith to work with regulators in order to resolve any potential concerns.

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Thank you for your attention to the important subject of advancing consumer privacy protections and your consideration of these comments. CCIA respectfully asks that you oppose HB 969 at this time and stands ready to provide additional information and perspectives as the House considers consumer privacy issues.

Sincerely,

Matt Schruers
President
Computer & Communications Industry Association

CC: The Honorable Ron DeSantis, Governor, State of Florida
The Honorable Ashley Moody, Attorney General, State of Florida