



Computer & Communications
Industry Association
Tech Advocacy Since 1972



February 22, 2022

Chair Grall
House Judiciary Committee
400 South Monroe Street
Tallahassee, FL 32399-1300

Re: CCIA Comments on HB 9 – OPPOSE

Dear Chair Grall, Vice Chair Cord, and Members of the House Judiciary Committee:

On behalf of the Computer & Communications Industry Association (CCIA), I write to provide input on HB 9.

CCIA is an international, not-for-profit trade association representing small, medium, and large communications and technology firms. For 50 years, CCIA has promoted open markets, open systems, and open networks.¹ The Association 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 Committee proceed in considering HB 9 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 could 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 9's private right of action is far broader than any existing U.S. state commercial privacy law and threatens to uniquely burden Floridian businesses without any obvious benefit to consumers' privacy interests.

¹ For more information about CCIA please see: <https://www.cciagnet.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/III-Suited_-_Private_Rights_of_Action_and_Privacy_Claims_Report.pdf.



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 9. 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 Committee 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.

As drafted, key definitions in HB 9 are likely to prompt significant statutory interpretation and compliance difficulties, even for businesses with existing familiarity with other U.S. state laws. Specifically CCIA recommends attention to the recently enacted Virginia Consumer Data Protection Act and alignment of key definitions including “controller,” “personal data,” “targeted advertising,” and “sell,” or “sale,” 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, Colorado, and Virginia all contain 2-year delays in enforcement. 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 9 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.

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>.



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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 9 at this time and stands ready to provide additional information and perspectives as the Committee considers consumer privacy issues.

Sincerely,

Alyssa Doom
State Policy Director
Computer & Communications Industry Association