Computer & Communications Industry Association
Tech Advocacy Since 1972

March 4, 2022

Chair Burgess
Senate Judiciary Committee
404 South Monroe Street
Tallahassee, FL 32399-1100

Re: CCIA Comments on HB 9 - OPPOSE

Dear Chair Burgess, Vice Chair Gibson, and Members of the Senate Judiciary Committee:

On behalf of the Computer & Communications Industry Association (CCIA), I write to respectfully oppose 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. To guide lawmakers seeking to adopt such legislation, CCIA drafted a set of principles to promote fair and accountable data practices.[2] The provisions in HB 9 diverge from these best practices in three key ways, which I have outlined below.

As the Committee proceeds in considering HB 9 and the establishment of a new statewide consumer privacy framework, CCIA urges amendments to the bill to better align with our principles and 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

[1] For more information about CCIA please see: https://www.ccianet.org/about.
[2] Computer & Communications Industry Association, Considerations for State Consumer Privacy Legislation: Principles to Promote Fair and Accountable Data Practices (January, 2022), https://www.ccianet.org/wp-content/uploads/2022/02/CCIA-State-Privacy-Principles.pdf

readily apparent in the history of both state and federal privacy statutes.[3] As drafted, the scope of HB 9's private right of action is 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.

2. **Clear and interoperable definitions**

Existing comprehensive consumer privacy laws typically recognize a core set of rights and protections including individual control, transparency of processing activities, and limitations on third-party disclosures, which are all 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 and confusion for consumers. Therefore, CCIA encourages Members to ensure that any consumer privacy legislation supported by the Committee is reasonably aligned with existing definitions and rights in other jurisdictions' privacy laws so as to avoid unnecessary costs to Florida businesses and uncertainty for consumers.

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 "biometric information," "controller," "personal information," "targeted advertising," and "sell," or "sale," to promote consistent and operationalizable privacy protections across state borders.

3. **Mitigate operational burdens**

In meeting compliance requirements under a new privacy regime, businesses of all sizes will inevitably face logistical and financial challenges. 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.[4] 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.

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[3] *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.

[4] A study commissioned by the California Attorney General estimated that in-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," at 11 (August, 2019), https://www.dof.ca.gov/Forecasting/Economics/Major_Regulations/Major_Regulations_Table/documents/CCPA_Regulations-SRIA-DOF.pdf.

CCIA further supports the inclusion of an opportunity-to-cure provision in order to encourage organizations acting in good faith to rapidly resolve instances of noncompliance. 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.[5] 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. 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 Members 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

[5] 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.