



January 24, 2022

The Honorable Drew Hansen
Chair, Civil Rights and Judiciary Committee
Washington State House of Representatives
John L. O'Brien Building
P.O. Box 40600
Olympia, WA 98504-0600

Re: HB 1850, The Washington Foundational Data Privacy Act — SUPPORT

Dear Chair Hansen,

Consumer Reports¹ writes in support of the Washington Foundational Data Privacy Act (WFDPA), which outlines a strong framework to protect consumer privacy. Though consumers in Europe and California enjoy baseline privacy protections, Washingtonians currently do not have similar basic privacy rights. The WFDPA would address this by extending to Washington consumers the right to access, delete, correct, and stop the sale of their personal information, including through a global opt out.

These protections are long overdue: consumers are constantly tracked, and information about their online and offline activities are combined to provide detailed insights into a consumers' 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.

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

¹ Founded in 1936, Consumer Reports (CR) is an independent, nonprofit and nonpartisan organization that works with consumers to create a fair and just marketplace. Known for its rigorous testing and ratings of products, CR advocates for laws and company practices that put consumers first. CR is dedicated to amplifying the voices of consumers to promote safety, digital rights, financial fairness, and sustainability. The organization surveys millions of Americans every year, reports extensively on the challenges and opportunities for today's consumers, and provides ad-free content and tools to 6 million members across the U.S.

limits data collection and sharing to what is reasonably necessary to provide the service requested by the consumer, as outlined in our model bill.² A strong default prohibition on data sharing is preferable to an opt-out based regime which relies on users to hunt down and navigate divergent opt-out processes for potentially thousands of different companies. Consumer Reports has documented that some California Consumer Privacy Act (CCPA) opt-out processes are so onerous that they have the effect of preventing consumers from stopping the sale of their information.³

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. We appreciate that the WFDPA requires companies to honor browser privacy signals as a “Do Not Sell” signal. Privacy researchers, advocates, and publishers have already created a “Do Not Sell” specification, the Global Privacy Control (GPC),⁴ which could help make the opt-out model more workable for consumers.⁵

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

- *Controls over targeted advertising.* We appreciate that the WFDPA has a strong definition of targeted advertising and ensures that pseudonymous information is covered by the opt out—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”⁶ (appropriately, Prop. 24 expands the scope of California’s opt-out to include all data sharing and clarifies that targeted ads are clearly covered by this opt out).⁷ The WFDPA 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).

² *Model State Privacy Act*, CONSUMER REPORTS (Feb. 23, 2021), <https://advocacy.consumerreports.org/research/consumer-reports-model-state-data-privacy-act/>.

³ *Consumer Reports Study Finds Significant Obstacles to Exercising California Privacy Rights*, CONSUMER REPORTS (Oct. 1, 2020), https://advocacy.consumerreports.org/press_release/consumer-reports-study-finds-significant-obstacles-to-exercising-california-privacy-rights/.

⁴ Global Privacy Control, <https://globalprivacycontrol.org>.

⁵ 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>.

⁶ 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.

⁷ 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-on-proposition-24-693c26c8b4bd>.

- *Strong enforcement:* 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. We also appreciate that the bill creates a new agency to help enforce the measure, and that the “right to cure” provision in administrative enforcement sunsets in 2023: this “get-out-of-jail-free” card ties the AG’s hands and signals that a company won’t be punished for breaking the law.
- *Non-discrimination.* The WFDPA has strong non-discrimination language. Not only does the non-discrimination language in WFDPA clarify that consumers cannot be charged for exercising their rights under the law, but it makes it clear that legitimate loyalty programs, that reward consumers for repeated patronage, are supported by the law. We appreciate the work that has been done in the WFDPA to ensure that privacy protections aren’t just for those who can afford them.
- *Authorized agent rights.* We also appreciate that the WFDPA 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.⁸ Authorized agent services can be an important supplement to platform-level global opt outs. For example, an authorized agent could also perform deletion requests on behalf of consumers, for which there is not an analogous tool similar to the GPC.
- *Prohibition on dark patterns.* We thank you for including a prohibition on dark patterns—deceptive user interfaces that can lead consumers to take actions they didn’t intend to, including to share more personal information. This bill provides important protections to ensure that opt-in consent is meaningful. Too often, companies often use dubious dark patterns to nudge users to click “OK,” providing the veneer, but not the reality of, knowing consent.⁹

⁸ 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/wp-content/uploads/2021/02/CR_AuthorizedAgentCCPA_022021_VF_.pdf.

⁹ *Most Cookie Banners are Annoying and Deceptive. This Is Not Consent*, PRIVACY INTERNATIONAL (last visited Aug. 28, 2020), <https://privacyinternational.org/explainer/2975/most-cookie-banners-are-annoying-and-deceptive-not-consent>.

- *Data security requirements.* This bill would create new categories of personal information, and the bill appropriately requires companies to use reasonable security protocols to safeguard the confidentiality and integrity of covered information.

For these reasons, we strongly support this bill. Thank you for your consideration.

Sincerely,

Maureen Mahoney
Senior Policy Analyst

cc: Members, House Civil Rights and Judiciary Committee
The Honorable April Berg
The Honorable Vandana Slatter