



March 14, 2022

The Honorable Whitney Westerfield
702 Capital Ave
Annex Room 228
Frankfort, KY 40601

Re: SB 15, An Act Relating to Consumer Data Privacy, Proposed Senate Substitute —
SUPPORT

Dear Senator Westerfield,

Consumer Reports¹ writes in support of the SB 15 Proposed Senate Substitute (SB 15), which outlines a strong framework to protect consumer privacy. SB 15 would extend to Kentucky consumers important rights: the right to know the information companies have collected about them, the right to delete that information, and the right to stop the disclosure of certain information to third parties, with additional rights for sensitive information.

Protections for personal information 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 limits data collection and sharing to what is reasonably necessary to provide the service

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.

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 SB 15 requires companies to honor browser privacy signals as an opt out 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 support several other key provisions in the bill:

- *Controls over targeted advertising.* We appreciate that SB 15 has an opt out of sharing, of tracking, and a strong definition of targeted advertising—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 This bill 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>.

- *Non-discrimination.* SB 15 has strong non-discrimination language. The non-discrimination language in SB 15 clarifies that consumers cannot be charged for exercising their rights under the law. We appreciate the work that has been done to ensure that privacy protections aren't just for those who can afford them.
- *Authorized agent rights.* We also appreciate that SB 15 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
- *Private right of action.* 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.

Thank you again for advancing this key legislation. We look forward to working with you to ensure that Kentucky consumers have the strongest possible privacy protections.

Sincerely,

Maureen Mahoney
Senior Policy Analyst

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.