



March 21, 2022

The Honorable Deborah Ruggiero, Chair
Rhode Island House Innovation, Internet and Technology Committee
Rhode Island State House
Providence, Rhode Island 02903

Re: H. 7400, Rhode Island Data Transparency and Privacy Protection Act – OPPOSE

Dear Chair Ruggiero,

Consumer Reports¹ writes in respectful opposition to the Rhode Island Data Transparency and Privacy Protection Act (H. 7400). This bill seeks to provide to Rhode Island consumers information about how their data is collected and shared, by requiring businesses to post the categories of information collected about them and the categories of third parties to whom the data is disclosed. However, in its current form it would provide little useful information to consumers, and could be harmful to consumers by failing to reveal the extent to which their data is collected, used, and shared.

As an initial matter, 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. A strong data minimization requirement that limits data collection and sharing to what is reasonably necessary to provide the service requested by the consumer, as outlined in Consumer Reports' model state privacy bill, should be at the heart of any privacy law.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

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.

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

potentially thousands of different companies, or an opt-in regime, in which consumers could be nudged by confusing consent pop-ups to authorize more data sharing than they intended.³

However, a bill limited to providing a notice requirement should at the very least ensure that consumers have useful information about how their data is collected and shared online. Not only is there no requirement in the bill that the notice be clearly-written or conspicuous, but the definitions would not capture most of the information and entities involved in online data sales. Limiting coverage of the bill to customers who visit the website of the covered entity exempts data brokers, such as Acxiom and Intelius, that collect personal details about consumers' behavior online, their income, and addresses, and use it to create a detailed profile about them, typically without having a direct relationship to the consumer.⁴ This information is then sold and resold, and often used for marketing and potentially for other purposes.⁵ These entities should be covered by any privacy law that seeks to provide transparency to consumers about how their information is bought and sold online.

Second, the bill's definition of personal information is far too narrow. The definition of personal information should cover "information that identifies or could reasonably be linked, directly or indirectly, with a particular consumer, household, or consumer device."⁶ Limiting the definition of personal information to a limited set of identifiable data would essentially exempt ad tech companies and data brokers from the bill, who typically keep data in pseudonymous form, though such data can be easily reidentified.⁷

Similarly, the definition of "disclose" is too narrow to fully capture most online data sharing. Instead, it should cover all data made available or transferred to another company for a commercial purpose (with narrowly tailored exceptions). Oftentimes, data disclosed for targeted advertising is not exchanged in any way; advertisers provide money and data to ad tech companies to deliver ads on other sites. To better capture the ways in which online data is shared, we recommend the following definition:

"Disclose" means sharing, selling, renting, releasing, disclosing, disseminating, making available, transferring, or otherwise communicating orally, in writing, or by electronic or

³ *California Consumer Privacy Act: Are Consumers' Digital Rights Protected?*, Consumer Reports (Oct. 1, 2020), https://advocacy.consumerreports.org/press_release/consumer-reports-study-finds-significant-obstacles-to-exercising-california-privacy-rights/.

⁴ Douglas MacMillan, *Data Brokers are Selling Your Secrets. How States are Trying to Stop Them*, Wash. Post (Jun. 24, 2019) <https://www.washingtonpost.com/business/2019/06/24/data-brokers-are-getting-rich-by-selling-your-secrets-how-states-are-trying-stop-them/>.

⁵ *Data Brokers: A Call for Transparency and Accountability*, Fed. Trade Comm'n (May 2014), <https://www.ftc.gov/system/files/documents/reports/data-brokers-call-transparency-accountability-report-federal-trade-commission-may-2014/140527databrokerreport.pdf>.

⁶ Model State Privacy Act, *supra* note 2.

⁷ Justin Sherman, *Big Data May Not Know Your Name. But It Knows Everything Else*, Wired (Dec. 19, 2021), <https://www.wired.com/story/big-data-may-not-know-your-name-but-it-knows-everything-else/>.

other means, a consumer's personal information by the business to a third party for monetary or other valuable consideration, or otherwise for a commercial purpose.

As written, the bill could be harmful to consumers by failing to provide useful information about the extent to which their information is disclosed online. We would be happy to provide additional information, and look forward to working with you to ensure that Rhode Island consumers have the strongest possible privacy protections.

Sincerely,

Maureen Mahoney
Senior Policy Analyst

cc: Members, Rhode Island House Innovation, Internet and Technology Committee