



## **MEMORANDUM IN SUPPORT OF S. 365, THE NEW YORK PRIVACY ACT**

### **AN ACT to amend the general business law, in relation to the management and oversight of personal data**

*April 25, 2023*

**STATEMENT OF SUPPORT: Consumer Reports supports S. 365, the New York Privacy Act. Though the collection and monetization of New Yorkers' personal data has dramatically expanded over the last thirty years, consumers have almost no say over whether their information will be shared by a company with countless others. This important bill will allow New Yorkers to opt out of targeted advertising, profiling, and data sales, ensure that New Yorkers cannot be charged for protecting their data, and provide appropriate incentives for companies to comply.**

New Yorkers need strong rules to ensure their privacy. 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.

This bill corrects that imbalance by establishing strong privacy protections over consumers' personal information, including the following key protections:

- *Universal opt-out and authorized agent provisions.* Through this bill's universal opt-out provision, a consumer can set their preference to opt-out of targeted advertising and data sales once and businesses will be required to honor those choices as if the consumer contacted each business individually. Measures largely based on an opt-out model with no universal opt-out, like the original interpretation of the California Consumer Privacy Act (CCPA), would require consumers to contact hundreds, if not thousands, of different companies in order to fully protect their privacy. Making matters worse, Consumer Reports has documented that some CCPA opt-out processes are so onerous that they have the effect of preventing consumers from stopping the sale of their information.

This bill also allows consumers to use authorized agents to make privacy requests on their behalf. Privacy researchers, advocates, and publishers have already created multiple technologies that would fit the bill for an authorized agent under this bill, including the Global Privacy Control (GPC) and Consumer Reports' own Permission Slip, both of which could help make the opt-out model more workable for consumers.

- *Transparency and contestability rights relating to automated decision making.* New Yorkers deserve to know when algorithms make important decisions that affect their lives. The NYPA requires that businesses that use automated decision making tools that make legal or other similarly significant decisions affecting New Yorkers disclose that they are doing so and provide an avenue for the affected consumer to appeal the decision.
- *Strong enforcement.* Importantly, this bill includes a private right of action—and does not include a so-called “right to cure” in the administrative enforcement section. “Right to cure” provisions could force law enforcement to waste precious time and money building cases that go nowhere. And 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.
- *Non-discrimination.* Not only does the non-discrimination language in NYPA 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 bill.

For years, companies have freely collected and monetized New Yorkers’ personal information without their consent or awareness. The NYPA would give consumers meaningful privacy protections, and we urge your support of the bill.

**For more information, contact:**

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