



October 23, 2023

Chair Michael O. Moore

Chair Tricia Farley-Bouvier

Joint Committee on Advanced Information Technology, the Internet and Cybersecurity

Massachusetts Legislature

24 Beacon St.

Room 109-B

Boston, MA 02133

Re: Massachusetts H. 83/S.25, Massachusetts Data Privacy and Protection Act — *SUPPORT*

Dear Chair Moore and Chair Farley-Bouvier,

Consumer Reports¹ strongly supports H. 83/S. 25, which would create the most meaningful state level privacy protections in the nation. The bill would require businesses to abide by strong data minimization provisions, which would prevent them from collecting or processing information that is not reasonably necessary to provide the specific product or service requested by consumers. It would also extend to Massachusetts consumers important new protections relating to their personal information, including prohibitions against collecting or processing sensitive data unless it is strictly necessary, a ban on the use of sensitive data for targeted advertisements, restrictions against targeting advertisements to children, and more.

Under current law, consumers possess very limited power to protect their personal information in the digital economy, while online businesses operate with virtually no limitations as to how they collect and process that information (so long as they note their behavior somewhere in their privacy policy). As a result, companies have amassed massive amounts of data about consumers, which is often combined with their offline activities to provide detailed insights into their most personal characteristics, including health conditions, political affiliations, and sexual preferences. This information is often retained for indeterminate amounts of time, sold as a matter of course,

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.

and is used to deliver targeted advertising, facilitate differential pricing, and enable opaque algorithmic scoring—all of which, aside from reducing individual autonomy and dignity, can lead to disparate outcomes along racial and ethnic lines.

H. 83/S. 25 corrects that imbalance by establishing strong privacy protections over consumers' personal information. In particular, we appreciate that H. 83/S. 25 includes:

Strong Data Minimization Provisions

By far, H. 83/S. 25's most important contribution to consumer privacy is the prohibition in Section 2 against businesses collecting or processing covered information unless "reasonably necessary and proportionate" to "provide or maintain a specific product or service requested by the individual to whom the data pertains." In today's digital economy, consumers are often faced with an all-or-nothing proposition: they may either "choose" to consent to a company's data processing activities, or forgo the service altogether if they do not approve of any one of a company's practices (which often allow the business to track and sell the consumer's information to nebulous third-parties or build future artificial intelligence products using their information).

H. 83/S. 25 would turn this arrangement on its head by ensuring consumers' privacy by default and prevent individuals from having to take any action – either to opt-in or opt-out – in order to protect themselves. We know that measures based on an opt-out model (especially those without a universal opt-out provision) are destined to fail because they require consumers to contact hundreds, if not thousands, of different companies in order to fully protect their privacy. These opt-out processes are often so onerous that they have the effect of preventing consumers from stopping the sale of their information.² H. 83/S. 25 instead puts the burden of privacy protection on those that otherwise have every incentive to exploit consumer data for their own benefit.

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.

Strong Definitions

² Maureen Mahoney, California Consumer Privacy Act: Are Consumers' Rights Protected, CONSUMER REPORTS (Oct. 1, 2020), https://advocacy.consumerreports.org/wp-content/uploads/2020/09/CR_CCPA-Are-ConsumersDigital-Rights-Protected_092020_vf.pdf.

H. 83/S. 25's definitions of covered data, biometric information, sensitive information, and targeted advertising are all notably stronger than most other state privacy proposals. Crucially, the definition of covered data includes information that "identifies or is linked or reasonably linkable, alone or in combination with other information, to an individual or a **device** that identifies or is linked or reasonably linkable to an individual [emphasis added]." Much of the tracking and profiling occurring in the mobile space is tied to device identifiers that, while not usually directly associated with a first and last name, can quickly be tied to their owner when combined with other information, such as geolocation data. Ensuring device identifiers are covered will extend privacy coverage to where an increasing amount of internet activity and digital commerce occurs: on individuals' smart devices.

Appropriately Scoped Non-discrimination Provisions

Not only does the non-discrimination language in Section 6 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.

Consumer Rights

We appreciate that this legislation includes important consumer rights to know, access, correct, and delete personal information that companies have collected about them. However, in order to make these rights more actionable we urge the drafters to include provisions for authorized agents to submit privacy rights requests on behalf of consumers. Many existing state privacy laws create obligations to respond to authorized agents, which allow consumers to exercise their data rights en-masse, instead of needing to do so separately on individual company websites.³ Authorized agents can dramatically speed up the process of opting-out by automating requests to businesses and managing the tedious paperwork that many opt-out processes require. For example, Consumer Reports' own Permission Slip app has sent nearly 1 million rights requests to businesses with the imprimatur of other state privacy laws.⁴

Civil Rights Protections

A key harm observed in the digital marketplace today is the disparate impact that can occur through processing of personal data for the purpose of creating granularized profiles of individuals based off of data both collected and inferred about them. Therefore a crucial piece of strong privacy legislation is ensuring that a business' processing of personal data does not discriminate against or otherwise makes opportunity or public accommodation unavailable on

³ As of October 23, 2023, state privacy laws that require businesses to honor authorized agents include: California, Colorado, Connecticut, Delaware, Montana, Oregon, and Texas.

⁴ Ginny Fahs, Introducing Permission Slip, the app to take back control of your data, Consumer Reports (Nov. 16, 2022), <https://digital-lab-wp.consumerreports.org/2022/11/16/introducing-permission-slip/>

the basis of protected classes. We appreciate that Section 9614 contains specific language prohibiting the use of personal information to discriminate against consumers.

We look forward to working with you to ensure that Massachusetts consumers have the strongest possible privacy protections.

Sincerely,

Matt Schwartz
Policy Analyst