



April 5, 2021

The Honorable Governor Ron DeSantis
State of Florida
The Capitol
400 South Monroe Street
Tallahassee, FL 32399

The Honorable Senator Wilton Simpson
Florida Senate President
409 The Capitol
404 South Monroe Street
Tallahassee, FL 32399

The Honorable Representative Chris Sprowls
Florida Speaker of the House
420 The Capitol
402 South Monroe Street
Tallahassee, FL 32399

Re: Opposition to Florida SB 1734 and HB 969

Dear Governor DeSantis, Senate President Simpson, and House Speaker Sprowls:

The undersigned trade associations, companies, and organizations collectively represent a broad cross-section of the United States business community spanning various industries, including advertising and marketing, mail delivery services, Internet and online services, financial services, e-commerce, surveys and research, software, technology, and others. Together, we include thousands of companies that do business in Florida, employ millions of Americans, and deliver goods and services that benefit and provide substantial value to the economy and consumers across Florida.

We believe consumer privacy is an important value, and Floridians deserve meaningful privacy protections. However, Florida SB 1734 and HB 969 (the “Bills”) would not provide appropriate privacy protections to Florida consumers.¹ Instead, they would enrich trial lawyers and unjustly punish businesses that are fighting to come back from the devastating effects of a global pandemic. **Before considering advancing these Bills, we ask you to amend them to address significant issues like those listed below so that Floridians can continue to reap the benefits of a robust economy.** As presently drafted, the Bills would provide ineffective privacy protections and enact significantly onerous, unworkable new requirements for Florida businesses of all sizes, and these additional costs are almost certain to be passed onto consumers.

¹ See SB 1734, Gen. Sess. (Fla. 2021), located [here](#); HB 969, Gen. Sess. (Fla. 2021), located [here](#).

I. The Bills Would Severely Impact Business Operations in Florida

The Bills would significantly limit businesses serving Floridians. For example, HB 969 would create onerous data retention restrictions that would prohibit businesses' use of personal information one year after the consumer's last interaction with the business.² This provision would create significant hurdles for businesses like hotels, cruise lines, restaurants, theme parks, and others that are trying to reconnect with customers more than a year after they last interacted with them. This provision would especially impact businesses in the tourism and hospitality industries that may not have had many significant interactions with consumers in the past year due to COVID-19.

II. The Bills Would Disproportionately Harm Small Businesses

A recent fiscal impact study of the Bills estimates that the total cost of initial compliance would amount to approximately \$36.5 billion, with approximately \$20.49 billion of those costs falling to firms with less than twenty employees.³ The same study concludes that small businesses are likely to face a disproportionately higher share of compliance costs relative to larger enterprises, and the Bills may serve as a disincentive for companies to relocate to Florida.⁴ At a time when Florida is working to put businesses back on their feet after an incredibly challenging year addressing the global pandemic, the same concern for businesses' ability to survive and interest in sustaining a healthy economy should be applied to legislative efforts to further consumer privacy.

III. The Bills' Private Right of Action Would Be a Windfall for Trial Lawyers

The Bills include broad private right of action provisions that would create a complex enforcement system without tangible privacy benefits for consumers. Allowing private actions would flood Florida's courts with frivolous lawsuits driven by opportunistic trial lawyers searching for technical violations of the Bills rather than focusing on actual consumer harm. SB 1734, for instance, would require businesses to effectuate a consumer request to opt out of personal information sales within two business days.⁵ This two-day requirement would not provide enough time for businesses to update suppression files and systems to ensure personal information associated with a consumer is not passed on to third parties. However, a violation of this onerous provision could give rise to a private right of action, which would serve as a boon to the plaintiff's bar while crippling well-intentioned Florida businesses. The threat of an expensive lawsuit may force smaller companies to agree to settle claims against them even if they are convinced they are without merit. Including a private right of action in the Bills would have a chilling effect on the state's economy by creating the threat of steep penalties for businesses that are good actors but inadvertently fail to conform to technical provisions of law.

IV. The Bills Are Based On An Untested Regime From a State That Differs Substantially from Florida

The Bills appear to draw many of their provisions from an outdated version of the California Consumer Privacy Act of 2018 ("CCPA"). The CCPA was drafted through a uniquely California-focused lens. As a California-centric law, the CCPA does not take into account differences in Floridian consumers' expectations as compared to Californians' expectations, nor does it address the unique realities and considerations of companies that do business in the Sunshine State. Florida

² See HB 969, Section 2, § 501.173(2)(g).

³ Florida TaxWatch, *Florida's Proposed Privacy Protection Act* at 2 (March 2021), located [here](#).

⁴ *Id.* at 4.

⁵ See SB 1734, Section 5, § 501.175(5)(c).

should not adopt legislation that is based on the outdated, untested, and operationally burdensome legal regime that is the CCPA when there are more clear, effective, and meaningful ways to foster strong privacy protections for Florida consumers.

* * *

Our organizations strongly support protecting consumer privacy, but we believe the Bills would impose significantly onerous requirements on entities doing business in Florida and would not provide workable privacy protections for Florida consumers. We therefore respectfully ask you to reconsider the Bills, and we stand ready to work with you to achieve privacy reform that works for all Floridians.

If you would like to discuss the contents of this letter, please contact Dan Jaffe, Executive Vice President of Government Relations for the Association of National Advertisers at djaffe@ana.net, or Chris Oswald, Senior Vice President of Government Relations for the Association of National Advertisers at coswald@ana.net.

Sincerely,

Association of National Advertisers
American Advertising Federation
American Association of Advertising Agencies
Email Sender and Provider Coalition
Insights Association
Interactive Advertising Bureau
Internet Coalition
National Business Coalition on eCommerce and Privacy
Network Advertising Initiative
Out of Home Advertising Association of America
Software & Information Industry Association (SIIA)

CC:

The Honorable Senator Kathleen Passidomo
Chair of the Florida Senate Rules Committee
400 Senate Building
404 South Monroe Street
Tallahassee, FL 32399

Members of the Senate Rules Committee

The Honorable Senator Jennifer Bradley
324 Senate Building
404 South Monroe Street
Tallahassee, FL 32399

The Honorable Representative Fiona McFarland
1101 The Capitol
402 South Monroe Street
Tallahassee, FL 32399