



Testimony to the House Government Oversight Committee
Opposition to House Bill 376
Hayley Tsukayama, Legislative Activist, Electronic Frontier Foundation
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Dear Chair Wilkin, Vice-Chair White, Ranking Member Brown, and members of the House Government Oversight Committee:

Thank you for the opportunity to submit written testimony. I write today on behalf of the Electronic Frontier Foundation, a non-profit organization that works to protect civil liberties in the digital age. EFF represents more than 35,000 active donors and members, including thousands of supporters in Ohio.

Ohio's lawmakers are right to recognize the need to address privacy, and for wanting to hold big technology firms to account when they trample on individual privacy rights. Ohio has a chance to become a leader in state privacy if it passes a strong bill that provides this accountability. But the Ohio Personal Privacy Act, as written, will not set a new high standard. Instead, it will enshrine how companies already do business and, in doing so, potentially lower the bar on privacy protections for the people of Ohio. For these reasons, we respectfully oppose House Bill 376, and urge the legislature to amend it to provide the strong, meaningful privacy protections that Ohioans need.

As other consumer advocates have said, strong privacy protections are long overdue in the United States. Companies—including large tech firms such as Google, Facebook and Amazon, as well as companies dedicated to the exchange of data—have been allowed to operate [largely unchecked](#) as they vacuum up information about some of our most personal characteristics. Individuals who use their products (and, in many cases, even [those who don't](#)) are almost powerless to control how their information—often highly personal information about what they do, who they associate with, or where they go—flows between companies.

EFF believes that individuals have the right to control their personal information, including who can collect it, who can access it, and when it should be deleted. We support strong privacy laws that enshrine these rights and provide individuals with mechanisms to stand up against mammoth companies that mine their personal lives for information. While privacy is a complicated issue, we believe that the goal of privacy legislation should be clear: to give individuals, not companies, the power to act in their own best privacy interests.

The OPPA, unfortunately, does not accomplish these goals. Instead, it takes an approach that further stacks the deck against individuals trying to exert control over their own information. The bill takes many provisions from the Virginia Consumer Data Protection Act, which was passed last year and signed by Gov. Ralph Northam (D-Va.). The bill was originally handed to its sponsor [by a lobbyist for Amazon](#) and has earned the support

of the very large tech companies it purports to be targeting. Through loose definitions—such as those for targeted advertising—and a catalog of carveouts, the Virginia bill allows companies to skirt the few protections established by the law.

The OPPA shares many of these flaws, and also adds provisions that further give companies a way to slip out of the rights the bill grants. In particular, it offers a safe harbor it offers companies that comply with the National Institute of Standards and Technology (NIST) framework for privacy. NIST's [Privacy Framework](#) advises companies on ways to categorize and maintain information, but is insufficient as a stand-in for a privacy law. The NIST standards were designed to be voluntary standards for safeguarding information, but do not meaningfully include the consumer in the conversation over what information can be collected or how it can be used. In other words, this is yet another way that the OPPA sets up very limited protections and then gives companies a huge backdoor to route around them. This safe harbor should be eliminated.

We have a few additional suggestions for other changes that should be made to OPPA to meaningfully protect individual privacy. Ideally, EFF advocates for privacy bills to follow an opt-in model, meaning that companies must first seek permission to use people's information. If a bill must place the onus of managing privacy solely on the individual, however, there are also tools that privacy bills can give consumers to navigate it more effectively. The bill could, for example, recognize browser signals—which individuals can voluntarily choose to send—as requests to opt out of information processing. Colorado, which adopted a slightly more consumer-friendly version of Virginia's law, has done this already. OPPA could also be amended to eliminate the need for consumers to verify their identities to opt out of the sale of data, an unnecessary additional burden on consumers who have already taken it upon themselves to protect their privacy.

Furthermore, those who choose to exercise their privacy rights should not be punished for doing so. OPPA currently expressly allows for companies to charge a different rate or quality of service to someone who opts out of the sale of their information. This is discrimination and makes privacy a luxury for those who can afford it. But we believe every individual, no matter their income, has the same right to privacy.

We also urge you to improve enforcement mechanisms in the OPPA. Laws are only as good as their teeth, and the OPPA as written, lacks the necessary bite. Eliminating the right to cure violations of the law would also go a long way to ensuring that individuals have an actual chance of holding companies to account for harming them. Currently, OPPA grants businesses a 30-day right to cure for any violation of the law. This right to cure for privacy laws of this kind originated in the California Consumer Privacy Act; voters chose to amend the law to eliminate it—as is our recommendation. Other states have also limited their rights to cure. Colorado has chosen to place a sunset on the right to

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cure, while Nevada has a right to cure in its data broker privacy law that limits cure to those who have not previously violated the law.

Finally, EFF has long advocated for individuals' right to sue companies that violate their rights. Opponents of strong privacy laws have often attacked the private right of action, calling it unnecessary. Including a private right of action, in fact, is how legislators normally approach privacy laws. Many privacy statutes contain a private right of action, including federal laws on [wiretaps](#), [stored electronic communications](#), [video rentals](#), [driver's licenses](#), [credit reporting](#), and [cable subscriptions](#). So do many other kinds of laws that protect the public, including federal laws on [clean water](#), [employment discrimination](#), and [access to public records](#). Consumer data privacy should be no different.

Ohio has a chance to be a national leader in privacy and stand up with individuals against some of Big Tech's worst practices. We urge you not to squander this chance by passing a bill that is, ultimately, full of empty promises.

Sincerely,



Hayley Tsukayama
Legislative Activist
Electronic Frontier Foundation
(415) 436-9333 x 161