

SB 619 -1, -3, -4 STAFF MEASURE SUMMARY

Senate Committee On Judiciary

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Sub-Referral To: Joint Committee On Ways and Means

Meeting Dates: 3/7, 3/30

WHAT THE MEASURE DOES:

Specifies rights for consumers whose personal data is controlled or processed by persons who, in a calendar year, control or process the data of 100,000 or more consumers or devices that link to one or more consumers, or 25,000 consumers if more than 25 percent of revenue is from selling personal data, and details the obligations of those persons or entities (controllers). Provides a consumer the right to: confirm whether the controller is processing the consumer's personal data; request the categories of personal data processed; request a list of third parties to whom the data has been disclosed; receive a copy of the consumer's personal data; require the controller to correct inaccuracies in certain personal data, or to delete a consumer's personal data; and the right to opt out of processing for targeted advertising, sale of the personal data, or profiling the consumer for certain purposes. Specifies requirements for controllers to comply with a consumer's requests, including response time, consumers' appeal rights, and permits controllers to charge fees for multiple requests in a 12-month period.

Requires a controller to specify in its privacy notice the express purpose for which the personal data is collected and processed, the categories of data that are collected, the categories of third parties to whom the data is disclosed, the name under which the controller is registered to do business in the state, and how a consumer may exercise their rights and appeal a controller's decision. Directs controllers to provide an effective means to revoke consent with the same ease as the consumer provided consent. Prohibits controllers from processing data that is not reasonably necessary or compatible with purposes specified in the privacy notice, from processing sensitive data without consent and compliance with data protections for children, or from processing data for targeted advertising without consent for consumers between 13 and 15 years of age. Prohibits controllers from discriminating against consumers who have exercised rights provided by the measure. Specifies certain requirements for controllers who process deidentified data. Requires controllers to conduct and document a data assessment for each of the controller's processing activities that present a heightened risk of harm to consumers. Directs processors to assist controllers in meeting the controller's obligations under the measure.

Excludes public bodies and information that is covered by certain existing privacy protection laws. Additionally excludes information collected solely for enabling certain emergency notices, enabling employment, or enabling ownership of, a contractual relationship with, or receipt of employment benefits from a business entity. Permits a controller to cooperate in governmental inquiries, subpoenas, and summonses; to investigate, initiate or defend legal claims; to protect a person's safety; and other specified actions.

Authorizes the Attorney General to issue investigative demands and to bring a civil action for penalties, enjoin a violation, or obtain equitable relief. Requires the Attorney General to provide notice and an opportunity to cure a violation before bringing an action prior to January 1, 2025. Permits a private right of action after January 1, 2026 for a consumer who suffers an ascertainable loss of money or property as a result of a controller's violation of the measure, if commenced within two years of discovering the loss. Consumer rights and controller responsibilities in the measure become operative on July 1, 2024.

REVENUE: Revenue impact issued

FISCAL: Fiscal impact issued

ISSUES DISCUSSED:

- History and composition of Attorney General's Consumer Privacy Task Force
- Protections for 13 to 15 year-olds
- States with similar laws vary in what biometric data has higher protections
- Industry concerns regarding private right of action and cost of compliance
- Reasons for and against including certain personal and home devices in coverage
- Federal law coverage of medical devices and peer data
- Function of authorized agents to opt out of data collection
- Exemption sought for journalistic use of data contrasted with commercial use

EFFECT OF AMENDMENT:

-1 Clarifies and modifies certain definitions to align with other states' consumer data privacy laws. Specifies financial institutions exempt from measure with reference to Oregon law instead of federal law. Adds exemption for controller's internal research or operations in accordance with consumer's reasonable expectations. Narrows list of third party disclosures to exclude natural persons, when a consumer requests the list. Expands data to be deleted upon request to include data obtained from another source or derived data. Modifies controller's level of knowledge about whether a consumer is a child to align with federal standard, and requires opt in to profile a child under 13 years of age.

Permits additional consumer requests to controllers without fees if made to verify corrections of inaccuracies or controller's compliance with consumer's request. Removes requirement that a controller disclose the reasons for believing a request is fraudulent, if applicable. Allows controller to comply with consumer's opt out that conflicts with participation in a bona fide reward, club card, or loyalty program, by completing the opt out or sending the consumer notice of the conflict.

Adds confidentiality protections for data protection assessments. Removes disclosure to legislative committees as an exception to confidentiality of materials provided in response to AG investigation. Changes prerequisite to private right of action from an ascertainable loss of money or property to "an injury." Adds a delayed operative date of July 1, 2025 for global opt-out provisions. Sunsets notice and right to cure provisions on July 1, 2025. Extends operative date for private right of action provisions to July 1, 2026.

-3 Incorporates and modifies the -1 amendments. Removes private right action and specifies that Attorney General is the exclusive enforcer of the measure. Removes provision allowing for civil penalty assessment against both a controller and a director, member, officer, employee or agent who violations the measure. Clarifies threshold activities to be deemed a covered entity to exclude data processed solely for completing payment transactions. Provides exemption from measure for non-commercial activities of journalists, press, and news publishers, editors, and producers. Adds exemptions for certain federally regulated healthcare data that is not covered under HIPAA, as well as for providers of consumer finance loans, insurers, and fraud prevention nonprofits. Excludes from definition of sensitive data geolocation contents of communications or utility metering data. Removes requirement that controller specify how data was shared, when responding to consumer request for list of third parties data was shared with. Broadens trade secret protections. Provides right to opt out of sale of data and targeted advertising, and profiling in furtherance of decisions that produce legal effects. Delays operative date for nonprofits to July 2, 2025. Extends delayed operative date for global opt out provisions to January 1, 2026. Delays sunset on right to notice and cure provision to January 1, 2026.

-4 Incorporates the -3 amendments. Specifies that controller has the option to respond to consumer's request for list of third parties with whom data was shared by providing a list of third parties with whom the controller shared either the consumer's personal data or any personal data.

BACKGROUND:

This Summary has not been adopted or officially endorsed by action of the committee.

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The Oregon Attorney General convened a Consumer Privacy Task Force in 2019 to consider legislative proposals regarding consumers' online privacy and standards for businesses that obtain consumer data about the consumer's online activities. This measure is a product of that Task Force.

Senate Bill 619 would provide certain rights to consumers and set responsibilities for data controllers regarding data collected from consumers' online activities, and establish Attorney General authority to enforce provisions.