



DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

DATE: February 27, 2024

TO: Chair Kropf, Vice-Chairs Wallan and Andersen, and
Members of the House Committee on Judiciary

FROM: Kimberly McCullough, Legislative Director
Oregon Department of Justice

SUBJECT: Support for Sections 1 and 2 of SB 1576A
Oregon Consumer Privacy Act Technical Fix

This testimony is presented in support of Sections 1 and 2 of SB 1576A, which make a technical fix to the Oregon Consumer Privacy Act.

In 2023, this legislature passed the Oregon Consumer Privacy Act (the “OCPA”) as SB 619. The OCPA affirmatively provides Oregonians with a number of important rights over their personal information, and imposes specific obligations on businesses who collect, use, store, disclose, analyze, delete or modify consumers’ personal data.

Section 9 of SB 619, now codified as ORS 646A.570, et. seq., includes provisions related to the Attorney General’s investigation and enforcement of privacy rights created by the Act. A drafting error is found in at ORS 646A.589(3)(a), which names the parties to whom the Attorney General may disclose documents obtained in an investigation:

(3)(a) The Attorney General shall hold in confidence and may not disclose to any person any documents, including data protection assessments, answers to interrogatories and transcripts of oral testimony, except that the Attorney General may disclose the documents to:

(A) The person that provided the documents or the oral testimony;

(B) The attorney or representative of the person that provided the documents or oral testimony;

(C) *Employees of the Attorney General*; or

(D) An official of the United States or of any state who is authorized to enforce federal or state consumer protection laws if the Attorney General first obtains a written agreement from the official in which the official agrees to abide by the confidentiality requirements of this subsection.

Sections 1 and 2 of SB 1576A change the italicized language above from “Employees of the Attorney General” to “Persons employed by the Attorney General.” This will ensure that we are able to share necessary documents and information related to investigations under OCPA with not only DOJ’s employees, but also the experts we hire to assist with our investigations. “Persons employed by the Attorney General” is standard language found similar laws DOJ enforces, including the Oregon False Claims Act, which is broad enough to encompass our experts.

Experts are frequently used in consumer protection cases, including privacy-related matters, that involve technical, complex issues. For instance, consulting experts are often retained to assist Attorneys General in evaluating whether a company that experienced a data breach had reasonable security. Experts are also used to interpret technical documents received from companies for the purpose of drafting follow-up lines of inquiry or preparing for witness interviews. Specific to the privacy law, experts may be needed to help attorneys interpret Data Protection Assessments and understand data flows relevant to controllers’ obligations under the OCPA.