

AMENDMENTS TO FLORIDA HB 969

Suggested amendments to Florida HB 969 are set forth below. All proposed amendments are to Section 2 of the bill, which would add “Section 501.173 Consumer data privacy.” to the Florida Statutes.

I. VEST ENFORCEMENT OF HB 969 IN THE DEPARTMENT OF LEGAL AFFAIRS

A private right of action would have a chilling effect on the state’s economy by creating the threat of steep penalties for companies that are good actors but inadvertently fail to conform to technical provisions of law. Private litigant enforcement provisions and related potential penalties for violations represent an overly punitive approach that does not effectively address consumer privacy concerns or deter undesired business conduct. A private right of action would expose covered entities to extraordinary and potentially enterprise-threatening costs for technical violations of law rather than drive systemic and helpful changes to business practices. It would also encumber covered entities’ attempts to innovate by threatening them with expensive litigation costs, especially if those companies are visionaries striving to develop transformative new technologies. 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.

- Proposed Amendment: Strike subsections (12) and (13) in their entirety and insert the underlined text as subsection (12); renumber sections:

(12) ENFORCEMENT AND IMPLEMENTATION.—

(a) The department shall have exclusive authority to enforce the provisions of this section.

(b) Prior to initiating any action under this section, the department shall provide a business, service provider, or other person or entity 30 days’ written notice identifying the specific provisions of this section the department alleges have been or are being violated. If within the 30-day period, the business, service provider, or other person or entity cures the noticed violation and provides the department an express written statement that the alleged violations have been cured and that no further violations shall occur, no action shall be initiated against the business, service provider, or other person or entity.

(c) If a business, service provider, or other person or entity continues to violate this section following the cure period in subsection (b) or breaches an express written statement provided to the department under that subsection, the department may initiate an action against such business, service provider, or other person or entity and may seek an injunction to restrain any violations of this section and civil penalties of not more than \$2,500 for each unintentional violation or \$7,500 for each intentional violation under this section.

(d) Nothing in this section shall be construed as providing the basis for, or be subject to, a private right of action for violations of this section or under any other laws.

II. EXEMPT PSEUDONYMIZED INFORMATION FROM CONSUMER RIGHTS

Pseudonymized data protects an individual's privacy because it does not include data that specifically identifies individuals, like a name, email address, or postal address would. Pseudonymized data, by definition, is not linked to such identifying information. If pseudonymous data is covered, in order to provide access, correction, or deletion rights, Floridian businesses may feel compelled to specifically identify individuals, instead of maintaining data in pseudonymized form, which would undermine the privacy protective nature of pseudonymized data. By focusing consumer rights on controlling the use of such data instead, the Florida law would better foster privacy protections for consumers.

- Proposed Amendment: Insert new section subsection 10(c) and underlined text:

10(c). The consumer rights contained in subsections (3) through (5) shall not apply to pseudonymous information in cases where a business is able to demonstrate any information necessary to identify the consumer is kept separately and is subject to effective technical and organizational controls that prevent the controller from accessing such information. "Pseudonymous information" means personal information that cannot be attributed to a specific natural person without the use of additional information, provided that such additional information is kept separately and is subject to appropriate technical and organizational measures to ensure that the personal information is not attributed to an identified or identifiable natural person.

III. KEEPING CONSUMER RIGHTS WITHIN THEIR CONTROL

The Florida law should protect consumer rights to ensure their rights are exercised only with their authorization. The lack of detail on verifying authorized parties to submit requests could lead to other persons or entities submitting bulk opt out choices on behalf of Florida consumers without any proof that they were authorized to submit such requests. Such a result could significantly cripple a small business's ability to operate and grow its business.

- Proposed Amendment: Strike subsection (9)(c) in its entirety; renumber sections.

IV. CLARIFY THE NOTIFICATION REQUIREMENT

HB 969 includes notice requirements in 2(c) – 2(d) that do not clarify how third-party companies could achieve such notice. Because the provisions apply broadly to "a business that collects personal information," third-party companies would be required to provide notice "at or before the point of collection," which is impossible because they do not interact directly with consumers.

Without a technical fix, third parties may be prevented from collecting data. This outcome could impact the economy, business competition, and sales of data that have no

privacy implications and that are necessary to deliver products and services that consumers value and expect, as well as “sales” of data that help protect against fraud.

- Proposed Amendment: Add the following language to 2(c) – 2(d).
 - (c) A business that collects personal information from a consumer shall, at or before the point of collection, inform consumers of the categories of personal information to be collected and the purposes for which the categories of personal information will be used.
 - (d) A business may not collect additional categories of personal information from a consumer or use personal information collected for additional purposes without providing the consumer with notice consistent with this section.

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