

Privacy & Data Security Law

Florida Close to Passing Privacy Law as Deadline Looms (1)

By Jake Holland

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- Latest version removes private right of action
 - Tweaked bill must be approved by Florida House
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The Florida Senate passed its version of pending consumer privacy legislation, sending it back to the state's House of Representatives for consideration as the deadline for passage rapidly approaches.

The Senate bill, approved 29-11 on Thursday, looks different than the version approved last week by the state's House of Representatives.

The recently approved Senate version lacks a private right of action, meaning consumers wouldn't be able to sue for violations of the law, and enforcement would be left to the state's attorney general.

"While there are significant privacy compliance costs associated with the Florida bill, it's a significant win for the business community to have the private right of action removed," said Kristin Bryan, a senior associate at Squire Patton Boggs in Cleveland.

Businesses have faced scores of lawsuits under other privacy laws such as the California Consumer Privacy Act and the Illinois Biometric Information Privacy Act, which allow consumers to sue in certain instances.

Despite a heavily decreased litigation risk, some attorneys could try to premise negligence per se claims off violations of the Florida bill were it to become law, Bryan said.

The bill has a 30-day right to cure potential violations, but it's discretionary, meaning the attorney general can choose whether to extend that grace period to companies, said Al Saikali, the Miami-based chair of Shook, Hardy & Bacon LLP's privacy and data security practice.

If greenlit in its current form, the bill would give Floridians the right to opt out of the sale of their personal information by businesses. It also would give consumers the right to request that information be corrected or deleted.

California and Virginia are so far the only two states in the U.S. to have passed comprehensive consumer privacy legislation.

If the Sunshine State is to pass the consumer privacy bill this year, it will have to be approved by the Florida House before the legislative session concludes on Friday.

It's likely the House will pass this latest version, Saikali said, who noted it would be the first comprehensive privacy law approved by both chambers in a "red" state.

"It provides the path forward for what a federal privacy law could like," he said. "Aggressive consumer rights and company obligations but the lack of a private right of action."

If it does pass, it's likely to increase momentum in other states next year, said Joe Swanson, head of the cybersecurity and privacy practice of Carlton Fields P.A. in Tampa, Fla.

That's particularly noteworthy given the fact that Florida hasn't traditionally been thought of as a leader in privacy, he said.

"Florida's population is booming and businesses are moving here—it's a major economy and a very important state," Swanson said. "It may be a bellwether for other jurisdictions."

(Updates with additional reporting.)

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