

The Impacts of Consumer Data Privacy on Florida's Economy

FEB. 2022

A Detailed Look at HB 9 and SB 1864

Legislative efforts to enact consumer data privacy have proliferated across the U.S. at a quickening pace. As of February 2022, there were 46 active consumer data privacy bills for consideration across 22 state legislatures.¹ To date, there have only been three states—California, Virginia, and Colorado—that have passed and enacted comprehensive legislation. Although these bills and enacted laws may differ in scope, business obligations, and consumer rights, they all seek to prescribe a regulatory framework for controlling and processing personal information in the absence of a singular, unifying federal consumer data privacy law.²

The 2022 Florida Legislature is considering two pieces of consumer data privacy legislation that would represent significant changes to how certain businesses collect, sell, and share consumer personal information, subject to certain exemptions and threshold requirements. The bills also provide consumers with certain express rights regarding their own information and avenues for potential legal recourse in the event of noncompliance. The bills under consideration include:

HB 9 --- Creates obligations for certain for-profit businesses (referred to as “controllers” and “processors”), such as publishing a privacy policy and limiting the

collection/use of personal information for only disclosed purposes. The bill also creates consumer rights, including the right to access personal information, the right to delete/correct personal information, and the right to opt out of the sale/sharing of personal information. A private right of action is provided when a controller, processor, or third-party fails to respond to a delete/correction request or continues to sell/share information after an opt-out has been received.

SB 1864 --- Creates the “Florida Privacy Protection Act” (FPPA) that would prescribe certain business obligations for controllers and processors meeting certain threshold requirements. Consumers are provided with certain rights to access, delete, correct, or opt out of the processing of personal information for targeted advertising or profiling. The bill does not allow for a private right of action but provides the Department of Legal Affairs with enforcement powers.

In October 2021, Florida TaxWatch released *Who Knows What? An Independent Analysis of the Potential Effects of Consumer Data Privacy Legislation in Florida*. Given the changes made to proposed bills during the 2022 Florida legislative session, Florida TaxWatch undertakes this subsequent review to provide an updated analysis of the potential impacts of enacting consumer data privacy. The analysis also incorporates newer empirical findings from a study examining consumer data privacy across different states.

¹ International Association of Privacy Professionals (IAPP), US State Privacy Legislation Tracker, Updated on February 10, 2022, Accessed on February 14, 2022.

² The U.S. maintains several sector-specific or information-specific laws that govern the safe handling of personal information as it relates to a key economic sector. For example, personal health information is regulated under the federal Health Insurance Portability and Accountability Act (HIPAA).

HB 9 and SB 1864 provide sweeping changes to how certain Florida businesses interact with consumer personal information. The two bills are a continuation of legislative efforts in the 2021 Florida legislative session to enact consumer data privacy but have undergone various changes since last year's efforts. Although the two bills share similar key terms and provisions, certain key differences exist.

Both bills apply to for-profit entities doing business in the state of Florida; however, one significant difference is the threshold for determining whether the law applies to a certain business. The Senate version (SB 1864) applies to for-profit companies that satisfy either of the following: (1) controls the processing of the personal information of 100,000 or more consumers; or (2) controls or processes the personal information of at least 25,000 consumers and derives 50 percent or more of global annual revenue from selling personal information about consumers.³

Under the House version (HB 9), companies would be covered if they satisfy at least two of the following three thresholds: (1) has global annual gross revenues over \$50 million; (2) annually buys, receives, sells, or shares the personal information of 50,000 or more consumers, households, and devices for targeted advertising; or (3) derives 50 percent or more of its global annual revenue from selling or sharing personal information about consumers.⁴ The House version also includes a list of 24 exemptions found at the beginning of the bill that would exempt a business if using personal information for one of the listed purposes.⁵

For businesses that do meet the respective threshold requirements, the two bills create certain obligations on controllers and processors. These obligations include measures such as maintaining an online privacy policy,

providing notice at the point of collection, responding to consumer requests to exercise rights, and requiring reasonable data security measures. Not included in the Senate version, HB 9 would also call for covered businesses to maintain a retention schedule that prohibits the use or retention of personal information after the initial purpose or three years after the consumer's last interaction.⁶

As mentioned previously, both bills provide consumers with certain rights regarding their personal information. Consumers have the right to request copies of their personal information, the right to delete information, and the right to correct inaccurate information. Consumers who wish to exercise these rights must submit a verifiable consumer request, and under HB 9, covered businesses would have 90 days to comply and respond to access, deletion, and correction requests, pending certain exceptions.⁷ Under SB 1864, covered businesses would initially have 45 days to respond to a verified consumer request to access, delete, or correct personal information, but the business can extend the deadline by an additional 45 days if reasonably necessary. The two bills also require an opt-in for personal information relating to minors between the ages of 13 and 18 in the House version and between ages 13 and 16 in the Senate version. Both bills would allow consumers to exercise the right to opt out of the sale or sharing of their personal information.

The two bills diverge significantly when considering the enforcement mechanisms and effective dates. Under HB 9, a private right of action exists for individual Florida consumers when a controller, processor, or third party fails to delete or correct personal information or continues to sell or share information after an opt-out request. Selling or sharing the personal information of a

³ Florida Senate, SB 1864: Consumer Data Privacy Bill Text, Accessed Feb. 14, 2022.

⁴ Florida House of Representatives, CS/HB 9: Consumer Data Privacy Bill Text, Accessed Feb. 14, 2022.

⁵ Florida House of Representatives, CS/HB 9: Consumer Data Privacy Bill Text, Accessed Feb. 14, 2022.

⁶ Florida House of Representatives, CS/HB 9: Consumer Data Privacy Bill Text, Accessed Feb. 14, 2022.

⁷ Note: Under the current bill language for HB 9, controllers who receive a verified consumer request to obtain copy of personal information collected, sold, or shared (right to know/access), have 45 days to deliver the information. However, controllers may extend this deadline by 45 days if reasonably necessary.

consumer age 18 or younger without obtaining consent can also enable a civil action. A court may grant statutory damages not less than \$100 and not greater than \$750 per consumer per incident, or actual damages. The House bill also allows the Florida consumer to recover attorney fees and costs upon prevailing.

Although HB 9's private right of action differs tremendously from last year's provision by not allowing for class-action lawsuits due to data breaches, Florida TaxWatch believes there is still a risk for frivolous litigation since accused businesses are not provided with a cure period to address a violation before going to court.⁸ Additionally, the one-way attorney fee structure advantages the prevailing plaintiff without allowing for the same recourse for prevailing defendants.

Under the current Senate version, the bill does not establish a private cause of action but instead provides enforcement authority to the Department of Legal Affairs. After the department has notified a controller or processor of an alleged violation, the department may grant a 45-day cure period for the alleged violation. Based on the current bill language, SB 1864 would go into effect on December 31, 2022, if passed, whereas HB 9 has an effective date of July 1, 2023.⁹

What Are the Economic Impacts?

Direct Cost of Compliance

Regardless of the final form of any consumer data privacy law, the legislative changes currently being debated would produce certain, unavoidable costs for businesses to comply. Back in March 2021, Florida TaxWatch produced its first estimate for compliance

costs by incorporating a methodology used by the California Department of Finance. The Florida TaxWatch brief found the total cost of initial compliance would exceed \$36.5 billion and between \$301.1 million and \$9.7 billion over the coming decade, disproportionately impacting small businesses in the process.¹⁰ Since then, the Florida Legislature pursued changes (both in 2021 and 2022) to reduce the potential compliance burden for smaller businesses.

In a more detailed analysis before the start of the 2022 legislative session, Florida TaxWatch released an updated report that examined the specific cost components of compliance.¹¹ These categories included staffing and training costs, IT infrastructure needs, responses to consumer requests, and data security safeguards. The comprehensive report found the updated cost of initial compliance would range between \$6.2 billion and \$21.0 billion. For ongoing compliance, the direct costs ranged between \$4.6 billion and \$12.7 billion annually.¹²

In this present study, Florida TaxWatch provides additional calculations and considerations for compliance costs, acknowledging legislative efforts to limit the potential scope of any consumer data privacy law. Absent any official estimate for compliance costs, these figures represent best guess estimates based on the best available data.

The per-firm compliance cost first introduced in Florida TaxWatch's October 2021 report still provides useful insights into the potential cost for each affected firm (See Table 1). Covered businesses would be reasonably expected to hire data privacy professionals, implement sufficient IT infrastructure, build out processes to respond to consumer requests, and ensure data security safeguards.

⁸ Note: Under the current bill language for HB 9, businesses are afforded a 45-day cure period when the Department of Legal Affairs has notified a controller, processor, or third party in writing of an alleged violation. This cure period is not provided, however, in cases when a Florida consumer brings a civil action against a controller, processor, or third party under a private right of action.

⁹ Florida Senate, SB 1864: Consumer Data Privacy Bill Text, Accessed Feb. 14, 2022 and Florida House of Representatives, CS/HB 9: Consumer Data Privacy Bill Text, Accessed Feb. 14, 2022.

¹⁰ Florida TaxWatch, Florida's Proposed Privacy Protection Act, Mar. 2021.

¹¹ Florida TaxWatch, Who Knows What? An Independent Analysis of the Potential Effects of Consumer Data Privacy Legislation in Florida," Oct. 2021.

¹² Florida TaxWatch, Who Knows What? An Independent Analysis of the Potential Effects of Consumer Data Privacy Legislation in Florida," Oct. 2021.

When aggregating these different cost categories, compliance costs range between \$732,000 and nearly \$2.5 million for each firm.¹³ To provide a level of external validity, a 2021 Cisco benchmark study found the average consumer data privacy budget to be \$2.4 million.¹⁴ Florida TaxWatch assumes these per-firm costs are still relevant and valid even in light of recent legislative changes since the listed business obligations and compliance activities have not witnessed substantive changes in recent months.

Table 1. Per-Firm Cost of Initial Compliance Due to Consumer Data Privacy

Description	Lower Bound	Upper Bound
Staffing and Training	\$138,865	\$393,848
IT Infrastructure and Systems	\$253,660	\$1,300,000
Responses to Consumer Requests	\$140,000	\$275,000
Data Security Safeguards	\$200,000	\$500,000
Total, All Categories	\$732,525	\$2,468,848

Source: Florida TaxWatch

Estimating how many firms would likely be affected by any Florida consumer data privacy law is a crucial factor going forward. Both HB 9 and SB 1864 contain threshold requirements for a business to be covered; however, a lack of publicly available data on how many firms collect personal information for any purposes limits any substantive analysis. In the October 2021 report, Florida TaxWatch assumed all Florida firms with 500+ employees and 50 percent of firms with between 100-499 employees would be required to comply. These assumptions were based on a previous California study that quantified compliance for the California Consumer Privacy Act (CCPA).¹⁵ Using these assumptions and incorporating data from the U.S. Census Bureau, Florida TaxWatch estimated there would be 8,493 Florida firms

affected by consumer data privacy out of a total 464,687 firms in the state (See Table 2).

Table 2. Number of Florida Firms

Firm Employment Size	Number of Firms
<20 Employees	420,822
20-99 Employees	31,816
100-499 Employees	7,111
500+ Employees	4,938
Total	464,687
Firms Affected	8,493

Source: Florida TaxWatch; 2018 Statistics of U.S. Businesses

For the state of Florida, the total cost of initial compliance from implementing data privacy is estimated to be between \$6,221,335,825 and \$20,967,926,064.¹⁶ This estimated range depends on the per-firm cost estimates and the potential number of affected firms displayed in Tables 1 and 2. Any subsequent changes to either component will influence the final aggregate cost of compliance. For example, if many covered businesses have already taken steps to comply with comprehensive consumer data privacy laws in other states, the resulting compliance cost may be on the lower end of the projected range. If on the other hand, more firms than expected fall under the law change, the resulting compliance cost may be on the higher end. Since Florida TaxWatch contends the per-firm compliance cost is not likely to change much, determining how many firms would be affected by any consumer data privacy law is more consequential for estimating the final aggregate compliance cost. To supplement and reinforce these findings, Florida TaxWatch considers a recently produced empirically-based model used to quantify the cost of state-level consumer data privacy legislation.

13 Florida TaxWatch, "Who Knows What? An Independent Analysis of the Potential Effects of Consumer Data Privacy Legislation in Florida," Oct. 2021.

14 Cisco, 2021 Data Privacy Benchmark Study – Forged by the Pandemic: The Age of Privacy, Jan. 26, 2021.

15 Berkeley Economic Advising and Research, LLC (Prepared for State of California Department of Justice), Standardized Regulatory Impact Assessment: California Consumer Privacy Act of 2018 Regulations, Aug. 2019.

16 Reference Tables 1 and 2. Lower Bound Estimate = 8,493 * \$732,525 = \$6,221,334,825 /// Upper Bound Estimate = 8,493 * \$2,468,848 = \$20,967,926,064.

Case Study: Data Processing, Hosting & Related Services

As a case study example, Florida TaxWatch proxies the number of consumer data-driven companies in Florida by analyzing a specific category within the North American Industry Classification System (NAICS). The Data Processing, Hosting, and Related Services (NAICS 518) is an industry that provides infrastructure for hosting and/or data processing services and includes many large firms typically associated with the collection of personal information.¹

Based on U.S. Census Bureau data, there are at least 820 firms in Florida belonging to this particular NAICS industry.² Assuming the per-firm compliance cost presented in Table 1, the aggregate cost of compliance for these firms would be \$2.02 billion. It should be emphasized this figure is a conservative estimate and does not consider businesses in other industries that may also meet the threshold requirements.

Digital advertising agencies, software publishers, and music subscription companies, for example, would not be captured under this specific NAICS Code. If including the other potential businesses across different sectors, the estimated compliance cost across Florida's economy would undoubtedly rise.

1 NAICS Association, "518210 – Data Processing, Hosting, and Related Services," Accessed on Feb. 14, 2022.

2 U.S. Census Bureau, Statistics of U.S. Businesses (SUSB): The Number of Firms and Establishments, Employment, and Annual Payroll by State, Industry, and Enterprise Employment: 2018, Release Date: May 28, 2021.

Additional Empirical Evidence of Compliance Costs

A recent study by the Information Technology & Innovation Foundation (ITIF) examined the potential compliance cost of implementing consumer data privacy across different states.¹⁷ Based on econometric methods, ITIF designed a model to observe the empirical change in a state's Gross Operating Surplus (GOS)—total profit of enterprises minus intermediate costs and workers compensation—due to the passage of a state-level privacy bill.¹⁸

17 Information and Technology & Innovation Foundation (ITIF), The Looming Cost of a Patchwork of State Privacy Laws, Jan. 24, 2022.

18 GOS = Output – Intermediate Expenses – Compensation of Employees.

Compared to previous attempts to quantify compliance costs, the ITIF study provided several advancements by considering the following:

1. Some industries are more data-intensive than others and are likely to face higher compliance costs as a result;
2. State consumer data privacy laws can affect companies located elsewhere; and
3. The use of gross operating surplus can show how a consumer data privacy law may reduce output (e.g., reduced productivity or market efficiency) and/or increase intermediate costs (e.g., building IT systems or hiring more data privacy professionals).¹⁹

A longstanding challenge in estimating the economic effects of consumer data privacy has been determining how many businesses outside of traditionally technology-heavy industries use data (i.e., personal information). The ITIF model adapts to this core difficulty by assigning data-intensity weights to different industries depending on how reliant they are on data and data-related tools and services.²⁰ Conceptually, for those industries more reliant on data and associated products, any consumer data privacy law would have a greater effect and subsequent cost.

Of the top five data-intensive industries listed in the ITIF report (see Appendix A), three industries stick out in particular: Telecommunications, Finance and Insurance, and Utilities. Not only do these three industries account for \$116.3 billion in Florida's Gross State Product (GSP), but they are also less frequently thought of as industries directly affected by consumer data privacy.²¹

19 Information and Technology & Innovation Foundation (ITIF), The Looming Cost of a Patchwork of State Privacy Laws, Jan. 24, 2022.

20 Information and Technology & Innovation Foundation (ITIF), The Looming Cost of a Patchwork of State Privacy Laws, Jan. 24, 2022. See Appendix A for a detailed discussion on its methodology for calculating data-intensity weights.

21 U.S. Bureau of Economic Analysis (BEA), GDP by State, Dec. 23, 2021. Data for Florida can be found in Table SAGDP2N_FL_1997_2020.

Table 3. New Privacy Restrictions Contained in Each Consumer Data Privacy Bill

Consumer Rights/Business Obligations	Florida House of Representatives (HB 9)	Florida Senate (SB 1864)
Right of Access	✓	✓
Right of Rectification	✓	✓
Right of Deletion	✓	✓
Right of Restriction		
Right of Portability	✓	
Right to Opt-Out of Sales	✓	✓
Right Against Automated Decision-Making		✓
Private Right of Action	✓	
Opt-in Default (Age)	✓	✓
Notice/Transparency Requirement	✓	✓
Risk Assessments		
Prohibition on Discrimination	✓	✓
Purpose/Processing Limitation	✓	✓
Source: Florida TaxWatch; International Association of Privacy Professionals (IAPP) US State Privacy Legislation Tracker		

Also worth noting, the Real Estate industry—which contributes the most economic output to Florida's economy (\$214.2 billion)—was the thirteenth-highest data-intensive industry on the ITIF list.²² Collectively, these findings suggest that for some of Florida's largest industries by economic output, consumer data privacy can still have a consequential effect even though the law is intended to focus on information technology sectors.

The ITIF report found a statistically significant negative relationship between the passage of an additional state privacy restriction (e.g., the right to access, the right to delete, the right to correct) and a state's GOS. Each additional privacy restriction was associated with an average 0.39 percent decrease in GOS among a state's private industries. Applying this finding to Florida, which had a GOS of \$441.22 billion in 2020, each additional privacy restriction would reduce the state's GOS by \$1.72 billion according to the empirical model.²³

22 U.S. Bureau of Economic Analysis (BEA), GDP by State, Dec. 23, 2021. Data for Florida can be found in Table SAGDP2N_FL_1997_2020.

23 Knoema (Using data from the U.S. Bureau of Economic Analysis – BEA), "Florida – Gross Operating Surplus," Accessed Feb. 14, 2022.

To translate this finding into practical terms, Florida TaxWatch used the International Association of Privacy Professional's (IAPP) state privacy legislation tracker, which lists all active legislation across the U.S. along with the specific privacy restrictions contained in each bill.²⁴ For Florida, the tracker found the Senate's consumer data privacy bill (SB 1864) would create nine new privacy restrictions, whereas the House's consumer data privacy bill (HB 9) would create 10 new privacy restrictions (See Table 2).

Applying these privacy restrictions to the ITIF empirical model, Florida's HB 9 would create 10 new restrictions, decreasing the state's GOS by an estimated 3.9 percent, a loss to the economy equal to \$17.2 billion annually. In comparison, Florida's SB 1864 would create nine new restrictions, decreasing the state's GOS by an estimated 3.5 percent, a loss to the economy equal to \$15.5 billion

24 International Association of Privacy Professionals (IAPP), US State Privacy Legislation Tracker, Updated on February 10, 2022, Accessed on February 14, 2022.

annually.²⁵ Contained within these two cost estimates are the effects of compliance costs, market inefficiencies, and other productivity losses. Both cost estimates for the House and Senate bills—\$17.2 billion and \$15.5 billion, respectively—fall within the \$6.2 billion and \$21.0 billion range that Florida TaxWatch originally calculated in its October 2021 report.

What Are Some of the Unintended Consequences?

The legislative bills as written produce certain direct compliance costs for companies; however, in addition to these direct effects, there are other secondary outcomes and unintended consequences to consider.

Financially Motivated and Malicious Lawsuits

The inclusion of any private right of action opens the door to potential litigation abuse. Although the proposed private right of action contained in HB 9 no longer applies to data breaches (preventing class-action lawsuits), the bill would still allow consumers to sue companies for failing to respond to verifiable requests. The bill would allow a prevailing plaintiff to seek attorney's fees in addition to the statutory damages; however, the legislation does not provide the same recourse for a prevailing defendant. Additionally, the absence of a cure period for businesses to respond to an intent to sue further increases the risk of litigation. It is plausible that a bad actor could file mass correction/deletion requests with the intent of catching at least one company by surprise, leading to a noncompliance violation and potential litigation. For this reason, including provisions that disincentivize meritless lawsuits would mitigate the potential for unnecessary legal expenses.

²⁵ To find these two figures, Florida TaxWatch first took the findings from the ITIF study—one new restriction would decrease state GOS by 0.39 percent—and multiplied by each bill's number of new privacy restrictions. For HB 9: $0.39 \times 10 = 3.90\%$. For SB 1864: $0.39 \times 9 = 3.51\%$. Then Florida TaxWatch multiplied these percentages by Florida's Gross Operating Surplus for 2020 (\$441.22 billion). For HB 9: 3.90% of \$441.22 billion = \$17.2 billion. For SB 1864: 3.51% of \$441.22 billion = \$15.5 billion.

Costs for Small Businesses

Based on the threshold requirements, the proposed consumer data privacy bills seek to avoid burdensome compliance costs for small businesses. The original Florida TaxWatch brief in March 2021 illuminated the massive unintended consequences for small businesses if threshold requirements were not carefully considered. Despite the substantive changes since then, small businesses can still face several secondary effects of any consumer data privacy law. To remain economically competitive in a pandemic-ridden and technology-driven economy, some small businesses may face economic pressure to adopt consumer data privacy measures even if not mandated to. The market expectation to adopt such measures may come at a large financial cost at a time when many small businesses are still struggling to deal with COVID-19 related costs. Furthermore, since large technology firms are often the target for consumer data privacy legislation, they can expend the resources to attract data privacy professionals away from small and mid-sized businesses in other industries.

Insufficient Time to Come into Compliance

Both legislative bills have effective dates by which time companies would have to come into compliance with any new consumer data privacy law. For the Senate's SB 1864, the effective date is December 31, 2022, and for the House's HB 9, the effective date is July 1, 2023. Given the technical complexities and IT infrastructure needed to fully comply, providing covered businesses with ample time to build out necessary systems and processes will be imperative. Inadequate time to prepare for a consumer data privacy law's operative date may lead to unintentional noncompliance and litigation for failing to respond. It should be noted that both Colorado and Virginia—which both signed consumer data privacy into law in 2021—have operative dates of July 1, 2023, and January 1, 2023, respectively to provide businesses with sufficient time to prepare.

Conclusions and Recommendations

The unprecedented growth in data-driven products and services has precipitated legislative actions to regulate how certain businesses deal with consumer personal information. Across various U.S. states and around the world, these policy efforts have differed in prescription but all seem to reflect an expanding interest among consumers to have more control over their personal data and privacy. Florida TaxWatch believes it is important and imperative to address this issue given the principle of privacy is enshrined in the Florida Constitution. Nevertheless, good governance and sound policymaking require understanding the impact any legislative change may have on taxpayers and the broader economy. In an economy still dealing with pandemic uncertainties, the Florida Legislature must carefully weigh the potential direct and indirect outcomes of their policy decisions, especially on an issue as far-reaching as consumer data privacy.

As stated in a previous Florida TaxWatch study and reiterated in this brief, the potential cost of compliance would range between \$732,000 and \$2.5 million for a single affected firm. When aggregated across the economy, this equates to between \$6.2 billion and \$21.0 billion in compliance costs. Florida TaxWatch acknowledges that given the lack of publicly available data, estimating exactly how many firms would be affected under current threshold requirements still remains difficult.

Supplementing these Florida TaxWatch findings, a 2021 Cisco data privacy benchmark study found the average privacy budget for a covered businesses averages \$2.4 million. Additional empirical evidence from the ITIF finds that an additional privacy restriction reduces a state's gross operating surplus by 0.39 percent.

When considering Florida and the current consumer data privacy legislation, this means HB 9 would lead to 10 new privacy restrictions, reducing Florida's GOS by 3.9 percent or roughly \$17.2 billion annually. In comparison, SB 1864 would create nine new privacy restrictions, reducing Florida's GOS by 3.5 percent or roughly \$15.5 billion annually. Both estimates are within the Florida TaxWatch range offered previously. There are also secondary effects worth noting, such as the potential for small businesses to still incur a compliance cost due to market expectations and the potential for frivolous lawsuits through a private right of action.

Florida TaxWatch believes that affording consumers greater rights over their personal information and privacy is a good idea; however, policymakers should ensure they know the true cost of implementing consumer data privacy before enacting a comprehensive, wide-reaching law. Duplicative compliance and enforcement across a patchwork of state laws will generate direct compliance costs and unintentional consequences that will only grow as more states consider their own legislation. Absent any unifying federal framework, these costs appear unavoidable but can be minimized to a degree.

Florida TaxWatch commends the Florida Legislature for its endeavor to address consumer data privacy and recommends the following measures to mitigate adverse costs and unintentional consequences:

1. Enforcement is seen as a central part of consumer data privacy legislation, enabling accountability when actors are non-compliant; however, a private right of action creates legal risk for frivolous litigation. Even though the risk has been greatly mitigated since the last legislative session—when class-action lawsuits could be initiated—a limited private right of action still allows bad actors to make mass deletion/correction/opt-out requests to find a single company that does not respond in time.

The result is a slew of attorney's fees to only the prevailing plaintiffs. For these reasons, the Florida Legislature should consider enforcement mechanisms through the Department of Legal Affairs, as is the case in Colorado, Virginia, and California's consumer data privacy laws.

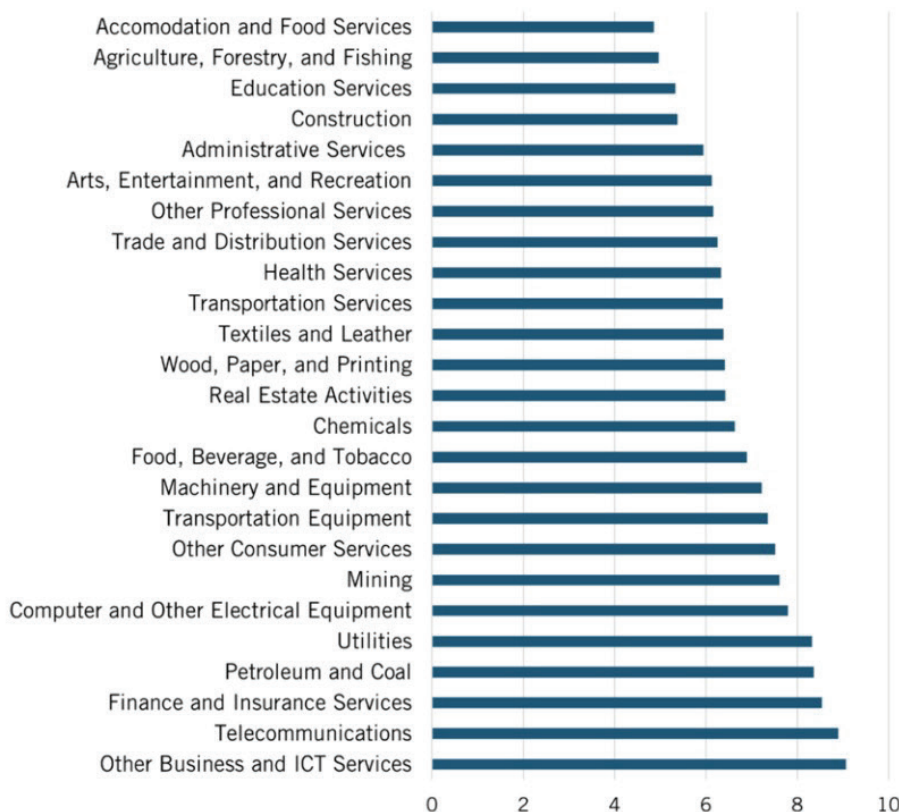
2. Assuming a private right of action is still included in any bill, language should be included that establishes a cure period by which a business can respond to an intent to sue, potentially remedying the purported noncompliance before going to court. Furthermore, legislative language should be included that creates a "two-way" attorney fee provision in which the prevailing party would be awarded attorney fees and costs. This would potentially disincentivize bad actors from pursuing meritless lawsuits.
3. Ensuring covered companies have adequate time to build out systems and processes to comply would help prevent unintentional noncompliance and resulting enforcement problems. Consideration should be given to pushing back the effective date to 2024. Both Virginia and Colorado enacted consumer data privacy laws in 2021 and made their effective dates in 2023 for the aforementioned reasons.
4. The Florida Legislature should provide an official estimate of the economic cost of implementing consumer data privacy in Florida. The absence of an official estimate is concerning given the potential for the proposed legislation to magnify compliance costs for various Florida businesses. Consideration should be given to making a formal assessment of both direct and indirect costs to large and small firms in Florida over time. Any estimate should also examine how the costs would fluctuate in response to a growing patchwork of other state consumer data privacy laws.

Appendix A

The Information Technology & Innovation Foundation's (ITIF) data-intensity modifiers accounted for the fact that some industries are more reliant on data and data-related tools/services, and as a result, would be more susceptible to the effects of any consumer data privacy law. To assign these weights, the ITIF report used 2013 U.S. Census ICT Survey data on intangible software expenditures and U.S. Bureau of Labor Statistics data on employment by industry. The data were then used to compute the ratios of data-related service expenditures per worker in each industry. For a more thorough methodology overview, please visit ITIF's report titled *The Looming Cost of a Patchwork of State Privacy Laws* (Released Jan. 24, 2022). Note: DIM stands for Data-Intensity Modifiers.

$$DIM_z = \ln \left(\frac{\text{Intangible Software Expenditure}_z}{\text{Employment}_z} \right)$$

Figure 6: Data intensity by Industry (as a log of noncapitalized software expenditures per worker)



Source: Information Technology & Innovation Foundation (ITIF) – Appendix A of *The Looming Cost of a Patchwork of State Privacy Laws*

ABOUT FLORIDA TAXWATCH

As an independent, nonpartisan, nonprofit taxpayer research institute and government watchdog, it is the mission of Florida TaxWatch to provide the citizens of Florida and public officials with high quality, independent research and analysis of issues related to state and local government taxation, expenditures, policies, and programs. Florida TaxWatch works to improve the productivity and accountability of Florida government. Its research recommends productivity enhancements and explains the statewide impact of fiscal and economic policies and practices on citizens and businesses.

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KURT WENNER	Sr. VP of Research

RESEARCH PROJECT TEAM

TONY CARVAJAL	<i>Executive Vice President</i>	
JONATHAN GUARINE	<i>Research Economist</i>	Primary Author
CHRIS BARRY	<i>VP of Communications & External Affairs</i>	Design, Layout, Publication

All Florida TaxWatch research done under the direction of Dominic M. Calabro, President, CEO, Publisher & Editor.


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Florida TaxWatch
106 N. Bronough St.
Tallahassee, FL 32301

o: 850.222.5052
f: 850.222.7476

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