

Florida's Proposed Privacy Protection Act

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Due to the proliferation of data-driven products and services over the past few years, many countries and states around the world have adopted laws relating to the data collection and use of personal information. In places such as the European Union (EU), California, and Virginia, policymakers have enacted laws regulating the protection and privacy of consumer personal data. In Florida, HB 969 and SB 1734—also known as the “Florida Privacy Protection Act” (FPPA)—represent the latest foray into this space and would create new regulations about how businesses disclose information to online customers about how personal information is collected, used, and safeguarded. Florida TaxWatch undertakes this brief analysis to estimate the potential cost of compliance for businesses under the proposed law and discuss the potential outcomes that may follow.

BACKGROUND

HB 969 and SB 1734 represent sweeping changes to consumer privacy law in Florida. The bills would only apply to businesses that collect Florida’s consumers’ personal information, and either: (1) have a gross revenue of \$25 million or more; (2) earn 50 percent of their revenue from the sale or sharing of personal information; or (3) buy, receive, sell, or share the personal information of 50,000 or more consumers in a year.

Upon becoming law, the two bills would grant consumers the right to:

- Opt-out of the sale of their personal information;
- Know what personal information a business has collected about them;
- Delete or correct their personal information; and
- Control the sale of their minor child’s personal information.¹

1 CB/SB 1734 Senate Bill Analysis and Fiscal Impact Statement. March 23, 2021.

Businesses that are subject to the laws would be required to give consumers notice of their privacy rights and notice of when consumer information is bought or sold. Consumers’ opt-out would prevent companies from selling their data to third-party data brokers, data profiling, and targeted advertisers. Covered businesses must also implement stricter data security measures to ensure the continued privacy for their users. According to the proposed legislation, consumers would be able to pursue private civil suits in response to business violations and would be entitled to damages in an amount not less than \$100 and not greater than \$750 per consumer per incident.²

DIRECT COST OF COMPLIANCE

For businesses around the state of Florida, the implementation of the new data privacy law would require many companies to comply with new regulations, creating compliance costs both at the onset and over time. The total cost of FPPA compliance will likely vary considerably based on different factors, such as company size, maturity of business privacy systems, number of consumers, and how personal information is used. As a result, variability is to be expected.

To provide an estimate of these costs in Florida, the current brief follows the same methodology used by the California Department of Finance to calculate the compliance costs for California’s own data privacy law—called “California Consumer Privacy Act” (CCPA).³ Similar to the California brief, this report uses data from the U.S. Census Bureau Survey of U.S. Businesses (SUSB), which reports the number of firms by sector and employment in Florida.⁴

2 Ibid.

3 California Department of Finance, “Standardized Regulatory Impact Assessment: California Consumer Privacy Act of 2018 Regulations,” Published on Aug. 2019. Prepared by Berkeley Economic Advising and Research, LLC. https://www.dof.ca.gov/Forecasting/Economics/Major_Regulations/Major_Regulations_Table/documents/CCPA_Regulations-SRIA-DOF.pdf

4 U.S. Census Bureau, Statistics of U.S. Businesses (SUSB), <https://www.census.gov/programs-surveys/susb.html>

First, to calculate the initial compliance cost for Florida businesses, the brief follows the same methodology used in the California analysis and assumes:

- Small firms (<20 employees) incur \$50,000 in costs;
- Medium firms (20-100 employees) incur \$100,000 in costs;
- Medium/large firms (100-500 employees) incur \$450,000 in costs; and
- Very large firms (500+ employees) incur \$2,000,000 in costs.⁵

Incorporating the SUSB data specific to Florida, the total cost of initial compliance for FPPA is estimated at \$36.5 billion (See Table 1), constituting the vast majority of compliance efforts and representing 3.3 percent of Florida's Gross State Product in 2019.⁶

Table 1. Total Cost of Initial Compliance

Employees	Number of Firms	Cost per Firm	Total Cost of Initial Compliance
<20	409,941	\$50,000	\$20.49 Billion
20-99	31,289	\$100,000	\$3.12 Billion
100-499	7,167	\$450,000	\$3.22 Billion
500+	4,821	\$2,000,000	\$9.64 Billion
Total			\$36.50 Billion

Beyond the initial cost of compliance, companies will also incur costs for ongoing compliance over successive years; however, a bulk of the overall compliance costs will be at the onset of any privacy law enactment (roughly \$36.5 billion). Ongoing costs may come from operations and technology costs, training requirements, record-keeping requirements, and verification of requests.

Table 2 (next page) presents the direct cost of compliance over the next ten years, broken down according to economic sector. Since the proposed law would only apply to businesses meeting one of three criteria (e.g. more than \$25 million revenue, etc.), the following table takes into account three separate scenarios, once again, following similar

methodology employed in the California report.⁷ The ">\$25 million revenue threshold" column incorporates all Florida companies with more than 500 employees and 37.5 percent of companies with 100-499 employees. The remaining number of companies would be assumed as making less than \$25 million in gross revenue. The "50% Threshold" and "75% Threshold" columns reflect assumptions that additional firms (with fewer employees) making less than \$25 million in gross revenue would be included and fall under the law due to the other two criteria.

These columns look at 50 percent and 75 percent of the number of firms, respectively, making less than \$25 million in gross revenue. Since these scenarios would capture a larger number of smaller companies than in the first scenario, these costs are higher and represent upper bound estimates for compliance costs over the next decade.⁸

The total estimated costs by sector, over the next decade, for the proposed privacy regulations are presented in a range. The lower bound estimate (or more conservative estimate) is for firms that exceed the \$25 million annual revenue threshold. The upper bound estimate includes more firms under the higher thresholds. TaxWatch finds that Florida businesses can expect to pay between an additional \$301.2 million and \$9.7 billion over the next decade due to ongoing compliance costs.

Because the preceding cost estimates are based on methodologies employed in the California report, there is a potential limitation to the figures calculated in this brief for Florida. It should be noted, however, that if more accurate, Florida-specific data were available, TaxWatch predicts the calculations would yield even higher cost estimates for several reasons. First, the California report is based on privacy criteria and design expectations specific to the California privacy bill. Since Florida's two proposed bills include more expansive definitions of personal information and require more complicated processes for businesses to comply, the compliance costs would be much higher in Florida. Second, the private cause of action provisions in Florida's bills are

5 The California report relied on a TrustArc survey given to professional firms with data collection operations already in place. A majority of these firms were large firms with 500+ employees. As a result, it is possible these proxy costs are overestimating the costs for smaller firms; however, absent of any reliable compliance costs, these estimates provide a reasonable upper estimate for initial compliance costs.

6 According to Federal Reserve Bank of St. Louis. <https://fred.stlouisfed.org/series/FLNGSP>

7 Using the per firm cost in the California report, the ">\$25 Million Revenue Threshold" column assumes an average cost of \$29,847.22. The "50% Threshold" and "75% Threshold" assume an average cost of \$29,877.10 and \$28,863.68, respectively, per firm.

8 For a complete explanation of methodology, reference California's impact assessment report. Specifically, reference Page 20 of 48.

Table 2. Total Cost of Ongoing Compliance Over Next Decade

NAICS CODE	NAICS DESCRIPTION	>\$25 Million Revenue Threshold	50% Threshold	75% Threshold
11	Agriculture, Forestry, Fishing and Hunting	\$395,476	\$15,517,832	\$23,265,930
21	Mining, Quarrying, and Oil and Gas Extraction	\$615,599	\$2,200,074	\$3,298,577
22	Utilities	\$880,493	\$3,876,751	\$5,812,424
23	Construction	\$12,450,022	\$754,831,151	\$1,131,720,539
31-33	Manufacturing	\$19,482,773	\$171,880,109	\$257,700,347
42	Wholesale Trade	\$31,223,923	\$372,556,101	\$558,574,445
44-45	Retail Trade	\$24,993,316	\$673,365,242	\$1,009,578,465
48-49	Transportation and Warehousing	\$17,076,341	\$187,742,661	\$281,483,117
51	Information	\$10,062,244	\$72,393,085	\$108,539,163
52	Finance and Insurance	\$19,747,667	\$255,986,467	\$383,801,255
53	Real Estate and Rental and Leasing	\$11,047,202	\$436,504,439	\$654,452,374
54	Professional, Scientific, and Technical Services	\$28,869,724	\$1,055,165,624	\$1,582,012,889
55	Management of Companies and Enterprises	\$23,814,351	\$12,924,307	\$19,377,451
56	Administrative and Support and Waste Management	\$27,090,083	\$460,335,266	\$690,182,002
61	Educational Services	\$5,909,750	\$91,598,161	\$137,333,389
62	Health Care and Social Assistance	\$23,217,406	\$682,757,519	\$1,023,660,333
71	Arts, Entertainment, and Recreation	\$6,745,472	\$115,205,190	\$172,727,477
72	Accommodation and Food Services	\$21,993,670	\$444,348,181	\$666,212,520
81	Other Services (except Public Administration)	\$11,230,017	\$640,966,941	\$961,003,598
99	Industries not classified	\$4,331,578	\$3,492,324	\$5,236,052
Totals		\$301,177,104	\$6,453,647,424	\$9,675,972,348

broader than their California counterpart, allowing consumers to bring a civil suit if a business violates any provision of the act. Even if a firm had to pay \$750 in damages to 50,000 consumers, this would easily add up to \$37.5 million in a single class action case. The costs would be astronomically higher if multiple class action lawsuits ensued. Third, although the bill is apparently designed to target the largest firms with more information technology capabilities, the growing digital integration of activities across standard operating systems (e.g. payment processing; cloud computing; mobile, digital, and web platforms; and social media integration) among small businesses expands the scope of reach for these proposed bills in Florida, leading to higher costs for smaller companies.

As such, it is safe to assume that the fiscal implications and exposure small and large businesses will be subject to—from implementation, compliance, and defense—is a multiple of

the estimated amount above (\$36.5 billion). To more accurately assess the economic impact, we would need more information from data scientists to estimate what it would take to build and install proper safeguards at a business, especially given the novel applications prescribed by the legislative proposals.

ANALYSIS

SMALL BUSINESSES ARE LIKELY TO FACE A DISPROPORTIONATELY HIGHER SHARE OF COMPLIANCE COSTS RELATIVE TO LARGER ENTERPRISES.

Intuitively, it would make sense that costs would center on larger sized technology firms that derive a majority of revenue from data collection; however, evidence from the European Union's implementation of data privacy laws suggest the opposite may be true: small-sized firms incur more costs.⁹ The current brief also finds that for small businesses in Florida (<20 employees), the estimated cost of initial compliance could amount to \$20.5 billion. The reason why larger firms may have a competitive advantage is because they are more likely to have significant in-house regulatory resources to understand compliance requirements. Unlike their small business counterparts, large firms have also been able to adapt to similar data privacy laws in the EU and in other states, giving them a head start in the compliance race. These concerns will present considerable challenges for small businesses in the short term as they adapt to regulations with fewer resources than larger companies.

DATA PRIVACY REGULATION MAY SERVE AS A DISINCENTIVE FOR COMPANIES TO RELOCATE TO FLORIDA.

At current, the bills do not contain conditions for companies to have a physical presence in the state. Rather, the proposed legislation would apply to any company doing business in Florida that satisfies one or more of the criteria listed previously and is involved in data collection. The intent is to focus on large technology firms that may be based in other states or countries; however, since the legislation could conceivably apply to smaller businesses, the regulation may disincentivize companies from relocating to Florida due to added compliance costs that would follow. This disincentive may hurt Florida's ability to attract high-waged, high-skilled jobs in the future, and certainly hamper the state's overall post-COVID recovery.

CONSUMERS MAY DERIVE AN ECONOMIC BENEFIT FROM PRIVACY PROTECTIONS GRANTED BY THE PROPOSED LAW CHANGES.

The proposed legislation would grant consumers greater control over their own personal data and provide them with additional avenues for recourse in the event their data is unwantedly collected or sold. The economic value to consumers for these protections can be subjective in nature due to varying conditions. There is, for example, no universal method for pricing personal information. To provide a rough estimate, the California analysis found that the value of personal information to consumers would be about \$12 billion annually.¹⁰ This amount is the value consumers ascribe to having greater control over their own personal information. With this figure in mind, it is worth mentioning that consumers only attain maximum benefits if they choose to exercise the privacy rights as outlined in the proposed legislation.

DIFFERENTIAL BENEFITS TO CONSUMERS LARGELY BASED ON INCOME DIFFERENCES MAY INTRODUCE EQUITY CONCERNS.

If enacted, the proposed data privacy laws would introduce differential benefits to portions of the population due to varying degrees of technical knowledge and expertise. Insofar as factors such as computer literacy play a part in understanding the privacy rights, there may be a growing divide between those who have greater technical expertise and those who do not. The end result would be a disadvantage for low-income portions of the population.

THE PROPOSED PRIVACY LAWS MAY INTRODUCE A BOON IN PRIVATE LITIGATION, CREATING ADDITIONAL COSTS FOR COMPANIES AND OCCUPYING MORE RESOURCES FROM COURTS.

Under proposed legislation, businesses that fail to comply under the proposed data privacy bill would be subject to private lawsuits by consumers, who would be able to claim between \$100-\$750 in damages per incident or actual damages, whichever is greater. The ramifications of these private causes of action could be considerable for businesses, although the costs are not estimated in this present analysis. It can be reasonably assumed that in addition to compliance costs, businesses will face

⁹ Scott, Mark, Laurens Cerulus, and Steven Overly (2019), "How Silicon Valley Gamed Europe's Privacy Rules," POLITICO. <https://www.politico.eu/article/europe-data-protection-gdpr-general-data-protection-regulation-facebook-google/>

¹⁰ The authors of the California analysis looked at total advertising revenue split between desktop and mobile platforms. Using U.S. Census Bureau data, the authors then looked at the total number of internet users with both a computer and phone, only a phone, or only a computer and proxied the costs. The numbers were then multiplied.

additional costs from impending litigation. Again, this could unintentionally benefit larger corporations who often have the legal resources and finances to respond to civil lawsuits. Additionally, courts will have to contend with larger caseloads as these cases may grow in size. All these outcomes are being observed in California following implementation of the state's privacy bill. In the one year since the privacy law was enacted, there have already been 76 consumer class actions citing the California privacy law with prescribed damages up to \$750 per consumer per incident.¹¹ The cases are working their way through both federal and state courts.

CONCLUSIONS AND RECOMMENDATIONS

In this brief, Florida TaxWatch provides an estimate for the economic impact to businesses under the proposed data privacy legislation currently under consideration in the Florida Legislature. Florida TaxWatch finds that the initial cost of compliance will average around \$36.5 billion in aggregate across Florida's economy. The cost of ongoing compliance will add additional expenses in the range of \$301.2 million to \$9.7 billion. Given the novel nature of the proposed legislation, and the uncertainty regarding expected compliance across diverse industries, the cost estimates presented in this brief should be analyzed with caution. Absent any concrete, publicly available data, these cost estimates are subject to change in the future.

At present, it is clear that although the data privacy legislation would create some economic value and perceived privacy to consumers (due to greater control over personal information), there would be considerable costs for businesses to come into compliance with the data privacy laws. These compliance costs would disproportionately affect smaller businesses with fewer resources to comply with new regulation, and may serve as a disincentive for out-of-state businesses to relocate to Florida. Although the cost of future litigation is indeterminate at the moment, it can be assumed that these additional costs would further harm businesses with fewer legal resources at their disposal.

Florida TaxWatch recommends that state policymakers take these cost estimates into mind while considering data privacy legislation. Specifically, TaxWatch recommends that policymakers analyze the unintentional costs that may accrue to smaller businesses in the wake of these legislative changes, and weigh them against the potential benefits to consumers from greater data privacy. More than just affecting large technology firms, the sweeping legislation would affect companies across industries of varying size, leading to possible unintentional consequences.

Due to the pandemic's ongoing strain on Florida's economic recovery, and in the absence of accurate compliance cost estimates for businesses within Florida, state policymakers should at least first conduct a formal economic impact analysis to study the possible effects of the law change and delay implementation beyond January 1, 2022 until more can be known.

¹¹ Akin Gump, 2020 CCPA Litigation Report: Trends and Developments, Released Mar. 23, 2021.

ABOUT FLORIDA TAXWATCH

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