

Privacy & Data Security Law

Florida Consumer Privacy Bill Falls Short at the Eleventh Hour

By Jake Holland

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- Florida would've been third U.S. state with such legislation
 - Changes to latest bill version left untouched as the clock ran out
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Florida fell short in passing a comprehensive consumer privacy law after lawmakers were unable to reconcile last-minute changes to the bill before the legislative session adjourned Friday.

Had it succeeded, Florida would've been the third U.S. state to pass such legislation. The California Consumer Privacy Act passed in 2018, and Virginia greenlit its own privacy law earlier this year.

The Florida bill would've given residents the right to opt out of the sale of their personal information by businesses. It also would have given consumers the right to request that information be corrected or deleted.

But, as was the case in Washington, lawmakers in Florida remained divided over the best enforcement mechanism for the bill.

The Florida House of Representatives passed a bill with a strong private right of action—allowing consumers to sue over violations—whereas the Florida Senate passed a version that would've been enforced solely by the state's attorney general.

"It essentially means that for House leadership, the only thing that mattered was the private right of action," said Al Saikali, the Miami-based chair of Shook, Hardy & Bacon LLP's privacy and data security practice. "The Senate gave them most of everything else they requested."

A private right of action is important because attorneys general offices are often underfunded and understaffed and can't always meaningfully pursue companies that violate consumers' privacy, said Caitriona Fitzgerald, deputy director at the Electronic Privacy Information Center, an advocacy group.

Some businesses will choose to not comply with privacy regulations if there's no ability for consumers to sue, thinking those attorney general offices won't have the resources to go after them, Fitzgerald said.

"The House stood strong on the fact that a private right should be included," Fitzgerald said. "I think that's the right call."

The bill's failure gives lawmakers the chance to rewrite the legislation more clearly, said Kyle Dull, a privacy and cybersecurity senior associate at Squire Patton Boggs who's based in Miami and New York.

That includes additional clarity around concepts such as what constitutes a sale, a webpage, personal information, and consent, Dull said.

At the same time, the failure of the bill lessens the pressure on Congress to pass consumer privacy legislation, he said, since large companies that fall under California and Virginia's laws are able to feasibly comply with both.

"It's going to slow down the urgency of passing something at the federal level," Dull said. "Florida would've made things a little more confusing and maybe spurred Washington to act."

A federal law would "avoid the pitfalls companies face when trying to comply with a patchwork of various state and foreign laws," said Jena Valdetero, the Chicago-based co-chair of Greenberg Traurig LLP's data, privacy, and cybersecurity practice.

But it would also likely increase compliance costs for businesses that have so far avoided having to comply with the CCPA, Valdetero said.

Despite falling short on comprehensive privacy legislation, Sunshine State lawmakers approved April 29 a bill that would fine social media companies for removing Florida political candidates from their platforms during elections. Gov. Ron DeSantis (R) is expected to sign that legislation when it lands on his desk.

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