

Fla. Privacy Bill Would Be Compliance 'Disaster,' Group Says

By [Allison Grande](#)

Law360 (April 26, 2021, 10:21 PM EDT) -- An internet trade group that counts [Google](#), [Facebook](#) and [Amazon](#) among its members is urging Florida lawmakers to refrain from enacting a consumer privacy bill that would give consumers more control over their personal data and could open the door to a flood of new lawsuits, arguing that the measure would be "disastrous" for both businesses and consumers.

The [Florida House of Representatives](#) last week [overwhelmingly passed](#) HB 969, which would give state residents the right to access, delete and stop the sale of their personal information while allowing them to sue businesses that violate these provisions. The measure now moves to the state Senate, which is separately considering a narrower companion bill, SB 1734, which would create similar privacy protections but does not contain a private right of action.

[The Internet Association](#), a trade group that represents leading global internet companies such as Facebook, [Twitter](#), Uber and [Microsoft](#) on matters of public policy, rallied against the legislative push on Friday, urging lawmakers to consider the "disastrous effects" that both "ill-considered" proposals could have on businesses and consumers.

"Both of Florida's House and Senate privacy bills have attempted to protect consumer's personal information, but they have missed the mark, and will negatively impact local businesses with needless additional expenses for measures that fail to deliver meaningful privacy protections to consumers," the group argued.

In pressing state lawmakers to oppose the proposals, the Internet Association pointed to the "high compliance costs" with which the legislation would saddle businesses, the potential for a lawsuit mechanism that would "end up benefiting the plaintiffs' attorneys rather than consumers," and what it said was lawmakers' failure to solicit sufficient input from the business community in drafting the measures.

According to Florida TaxWatch, the initial compliance costs of the Senate bill would be around \$36.5 billion and the measure would cost businesses with fewer than 20 employees \$20.5 billion in initial compliance, the Internet Association said.

While global enterprises "may be able to weather these costs," small and mid-size businesses "already made vulnerable by the impact of the COVID-19 pandemic" would likely be forced to close because of these costs, according to the trade group.

The group said the House bill would allow a new wave of class action litigation that would be "extremely expensive for both businesses and consumers." It added that studies had shown that private rights of action are "an ineffective mechanism for addressing privacy concerns."

The trade group pointed to the narrower private right of action contained in the first privacy bill enacted in the U.S., the California Consumer Privacy Act, which allows consumers to seek statutory damages only for data breaches that allegedly result from a company's failure to implement reasonable security procedures.

Since the CCPA took effect in January 2020, about 75 lawsuits have been filed, although [more than half](#) of these filings have alleged claims unrelated to a data breach, "which clog the courts with suits that are not permitted," the Internet Association said.

The trade group also said lawmakers ignored the interests of the business community by failing to engage with business groups during the drafting of the House bill and for giving stakeholders "little time for feedback" with respect to the Senate proposals, which was first floated on Feb. 25.

"A bill dealing with the complexities around data privacy needs input and consideration from every affected party," the Internet Association argued. "Lawmakers must work with business groups to adopt regulations that allow businesses to succeed while simultaneously protecting consumers' privacy."

The Florida bill would be the third comprehensive privacy framework in the U.S., behind the California privacy law, which was passed in 2018 and [was recently strengthened](#) by voters and a Virginia bill [that was enacted](#) earlier this year.

Another [top contender](#) to be the nation's next privacy law, a bill that passed the Washington state Senate in March, failed for the third year in a row this weekend, after the state's legislative session came to a close with the House declining to vote on the measure due to [longstanding disagreements](#) over whether consumers should be allowed to sue.

The Virginia law, which is slated to take effect in 2023, will hand consumers the ability to access, correct and delete their personal information and to opt out of the processing of this data for targeted advertising purposes. It also gives the state's attorney general exclusive authority to enforce the law, as lawmakers declined to establish a private right of action.

The California Privacy Rights Act, a successful ballot measure that is set to go live on the same day as the Virginia law, builds on the state's current privacy law in several ways, including by creating a new agency dedicated to data privacy, allowing consumers to correct inaccurate information and opt out of the sharing of their data, and establishing a new category of "sensitive" personal information that is afforded heightened safeguards.

The proposed Florida bills take a similar approach to enhancing consumer privacy protections, although there are key differences.

The House bill, which lawmakers approved in a 118-1 vote on April 21, would give consumers the right to opt out of the sale or sharing of their personal information and to request that their data be deleted or corrected. Consumers would also be able to bring lawsuits against companies that fail to adequately protect consumers' personal information from unauthorized access or disclosure; that fail to delete or correct personal data upon request; or that continue to sell or share data after a consumer has opted out.

The Senate proposal removes the lawsuit mechanism and narrows the opt-out requirement, although it would mandate that companies honor browser privacy

signals as a global opt-out instead of requiring consumers to stop the sale of their information on each individual website.

Following the passage of the House bill last week, Consumer Reports praised lawmakers for advancing the measure, while calling on the full legislature to advance a strong bill that would guarantee consumers critical privacy protections.

"For years, companies have freely collected and monetized personal information without consumers' consent or awareness," said Maureen Mahoney, senior policy analyst at Consumer Reports. "We applaud the Florida House of Representatives for advancing a privacy bill with strong enforcement and a comprehensive opt-out. But the bill should also make it easy for Floridians to opt out. We urge legislators to advance a strong final bill that allows Floridians to stop the sale of all of their information across companies in a single step."