

BILL SUMMARY
1st Session of the 58th Legislature

Bill No.:	HB 1602
Version:	FA1 – Floor Substitute
Request Number:	7151
Author:	Rep. Walke
Date:	3/3/2021
Impact:	See Analysis Below

Research Analysis

The Floor Substitute for HB 1602 creates the Oklahoma Computer Data Privacy Act. The measure allows a customer to request that a business which collects personal information disclose the categories and specific items of information collected, and to delete the consumer's personal information collected by the business. The consumer would be entitled to opt out of the sale of their personal information by the business to third parties. A business would be prohibited to collect a consumer's personal information prior to notifying the consumer of each category of information to be collected, and the purposes for which it will be used, and must obtain the consumer's consent. The bill prohibits a business from discriminating against a consumer who exercises a right included in the act.

The measure applies only to an entity that does business in Oklahoma, collects consumers' personal information, determines the purpose for and means of processing that personal information, and satisfies certain revenue or customer number thresholds. It does not apply to publicly available information, protected health information or a health care provider governed by health privacy laws, information collected as part of a clinical trial, or information sold to be used pursuant to the Fair Credit Reporting Act, the Gramm-Leach-Bliley Act, or the Driver's Privacy Protection Act of 1994.

The bill provides that, in case of conflict with another statute, the one which affords the greatest privacy or protection to consumers will prevail. In case of conflict with some future federal statute, the federal statute would prevail. The act would preempt any rule or ordinance of a political subdivision relating to collection or sale of a consumer's personal information.

HB 1602 voids a provision of a contract or agreement which purports to waive or limit a right, remedy or means of enforcement under the act.

KEY DIFFERENCES BETWEEN FLOOR VERSION AND FLOOR SUBSTITUTE:

Section 2 is amended by modifying the definitions of *business purpose* and *publicly available information*.

Section 3 is amended to modify to whom this bill applies by adding entities that share the same or substantially similar brand name and/or common database for consumers' personal information.

Section 4, which provides certain information that is not affected by this act, was amended to include: certain medical information; business associate of a covered entity governed by the privacy, security, and data breach notification rules; certain de-identified information; and information that is collected, used or disclosed in research.

Section 4 is amended to prohibit businesses and other persons from re-identifying information for certain purposes.

Section 4 is amended to apply federal and state data privacy and security laws to information that is re-identified.

Section 4 is amended to require any contract for the sale or license of de-identified information to include certain provisions, beginning January 1, 2023.

Section 4 is also amended to include a definition of re-identify and additional definitions that apply to this section's provisions.

Section 6 is amended to include that this bill does not restrict a business's ability to detect a security incident; protect against malicious, deceptive, fraudulent or illegal activity; or prosecute those responsible for any illegal activity described in this section.

Section 7 is amended to allow federal law to prevail if the federal government passes comprehensive data privacy regulations that conflict with this bill.

Section 9 of the original bill is deleted. The original section 9 prescribed rules and procedure for the Corporation Commission to enforce the measure.

Section 16 is amended by the deletion of a private right of action against a person who violates this measure.

The effective date is amended to January 1, 2023, from November 1, 2021.

Prepared By: Sean Webster

Analysis

The Floor Substitute for HB 1602 creates the Oklahoma Computer Data Privacy Act, but unlike the introduced version of the measure, the Floor Substitute does not task the Oklahoma Corporation Commission with implementing, administering and enforcing the Act. This modification alleviates the significant fiscal impact to the Oklahoma Corporation Commission, expressed in the fiscal impact for the introduced version of the measure. The Floor Substitute no longer tasks a state agency with such duties.

The Floor Substitute also creates and grants to the State a civil action against violators of the Act. The Floor Substitute authorizes the Oklahoma Attorney General (OAG) to initiate such actions and recover reasonable expenses, including reasonable attorney fees, court costs, and investigative costs. The Floor Substitute requires such collections to be deposited in the General Revenue Fund. There is no way to project the number of civil actions that could/would be initiated under the provisions of the Act or to forecast the amount of staff effort required of the OAG in pursuing such actions. The OAG has discretion with regard to initiating such civil actions, therefore, the OAG has the ability to focus efforts on civil actions that are profitable and generate a net positive impact to state revenues. The measure does not directly provide for cost reimbursement to the OAG; therefore, it is reasonable to anticipate requests for increased appropriations by the OAG in future years.

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Other Considerations

None.

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