

HF1492 - 0 - Minnesota Consumer Data Privacy Act

Chief Author: **Steve Elkins**
 Committee: **State Government Finance and Policy**
 Date Completed: **3/8/2021 10:01:12 AM**
 Agency: **Attorney General**

State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings	X	
Tax Revenue		X
Information Technology		X
Local Fiscal Impact		
		X

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

State Cost (Savings)	Biennium			Biennium		
	Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025
General Fund	-	-	378	278	278	
Total	-	-	378	278	278	
Biennial Total			378			556

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2021	FY2022	FY2023	FY2024	FY2025
General Fund	-	-	3	3	3
Total	-	-	3	3	3

LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

LBO Signature: Adam Blom **Date:** 3/8/2021 10:01:12 AM
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State Cost (Savings) Calculation Details

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

*Transfers In/Out and Absorbed Costs are only displayed when reported.

State Cost (Savings) = 1-2		Biennium			Biennium	
Dollars in Thousands		FY2021	FY2022	FY2023	FY2024	FY2025
General Fund	-	-	-	378	278	278
Total		-	-	378	278	278
Biennial Total					378	556
1 - Expenditures, Absorbed Costs*, Transfers Out*						
General Fund	-	-	-	618	638	638
Total		-	-	618	638	638
Biennial Total					618	1,276
2 - Revenues, Transfers In*						
General Fund	-	-	-	240	360	360
Total		-	-	240	360	360
Biennial Total					240	720

Bill Description

HF 1492 creates the Minnesota Consumer Data Privacy Act (“the Act”). The Act creates consumer rights regarding how certain covered private businesses generally, those that control or process personal data of 100,000 consumers or more in a calendar year or derive over 25% of their gross revenue from the sale of personal consumer data and processes or controls personal data of 25,000 consumers or more.

The Act creates a number of rights for consumers relating to their personal data, including the right to request that private businesses handling or using their personal data do the following:

- Provide consumers access to their personal data;
- Allow consumers to correct inaccurate personal data;
- Delete consumers personal data;
- Allow consumers to obtain their personal data (i.e., portability);
- Allow consumers to opt out of the processing of their personal data for purposes of targeted advertising, sales, or profiling.

Covered private businesses must generally respond to such consumer requests within 15 to 45 days (depending on the nature of the consumer’s request) and free of charge (up to twice annually for each consumer). The Act also requires private businesses to establish an internal appeal process, whereby consumers may appeal a refusal by the business to take action on a consumer’s request.

The Act also requires covered private businesses to: (1) provide consumers with meaningful privacy notices, (2) disclose if they are selling personal data to third-parties for targeted advertising; (3) limit their collection of consumers’ personal data to only what is reasonably necessary; (4) establish, implement, and maintain reasonable administrative, technical, and physical data security practices to protect the confidentiality, integrity, and accessibility of such personal data; (5) not use the personal data it maintains in an unlawful discriminatory manner; and (6) conduct a data protection assessment, which must be disclosed to the Office of the Attorney General (“OAG”) upon request.

The Act authorizes the OAG to enforce violations in accordance with section 8.31. The Act provides that the OAG must provide the private business with a warning letter identifying alleged violations and providing 30-days to cure such violations. If, after 30 days, the OAG believes the violations have not been cured, it may bring an enforcement action pursuant to section 8.31. In addition to other remedies provided by law (including the remedies provided by section 8.31), the Act provides the OAG may recover its litigation expenses and civil penalties of up to \$7,500 per violation.

The Act’s effective date is July 31, 2022.

Assumptions

The Office of the Attorney General's Office enforcement activities will begin on July 31, 2022, which is the Act's effective date.

The OAG assumes that it will receive at least 100 consumer complaints each year relating to non-compliance or reported violations of the Act. The OAG assumes these complaints will be handled with existing resources, which includes entry of the complaints into the AGO's existing consumer complaint database, responding to the complainant and entity being complained about via letter or telephone using the existing staff and resources of the OAG's Consumer Action division, which responds to hundreds of calls and consumer complaints each day. The AGO further assumes that there will be frequent communication with covered private businesses to inquire about their compliance with the Act's requirements.

The OAG assumes that based on the patterns of unlawful practices it identifies from evaluation of the consumer complaints (and other reports) it receives, it will initiate at least 5 full investigations, including Civil Investigative Demands in accordance with Minn. Stat. § 8.31, each year. The OAG assumes that these investigations will be time and resource intensive and may (depending on the nature of the investigation) also require the employment of technological experts.

Expenditure and/or Revenue Formula

It is estimated that, beginning in Fiscal Year 2023, 2 FTE attorneys and 1 FTE investigator will be necessary to perform the enforcement activities (and reporting requirements) authorized by HF 1492. 1 FTE attorney is \$222,000 and 1 FTE investigator is \$133,500.

The OAG will also incur litigation expenses in any lawsuit it brings to enforce and remediate violations of HF 1492 in accordance with Minn. Stat. § 8.31. Those costs will necessarily include filing fees, discovery costs, and ADR expenses. Depending on the nature of such lawsuits, it may also be necessary to retain expert witnesses. For purposes of this fiscal note, the OAG estimates that it will incur approximately \$20,000 in such costs for each enforcement action it brings. The OAG further estimates that it will bring two enforcement actions in fiscal year 2023, and three enforcement actions in fiscal year 2024, respectively, under the authority conferred by HF 1492.

Revenue may be generated in the investigations and enforcement actions the OAG brings under the Act in the form of civil penalties that are directed to the General Fund. See Minn. Stat. § 8.31, subd. 3 (providing for civil penalties of up to \$25,000 per violation). In addition, the Act itself allows the OAG to recover civil penalties of "not more than \$7,500 for each violation" and incurred litigation expenses, both of which would be directed to the General Fund.

Recognizing the uncertainties inherent in any litigation and the uncertainties of predicting the fiscal year of recovery of such funds (which necessarily is at the end of litigation), the OAG assumes that recovery of fees and civil penalties will begin in Fiscal Year 2023.

Starting in Fiscal Year 2023, the OAG assumes it will bring and successfully litigate or settle at least two cases that will provide revenue to the State, in addition to enforcing and remediating violations of HF 1492. The AGO assumes it will recover its expert costs on each of these two matters (estimated to be \$20,000 for each enforcement action), plus civil penalties on each matter of \$25,000 per violation estimated to be \$120,000 total per case. Thus, revenue of \$240,000 is projected in Fiscal Year 2023, and \$360,000 in Fiscal Year 2024.

It is possible, depending on the violations being litigated, that the OAG could recover substantial civil penalties that amount to hundreds of thousands of dollars, or more. See Minn. Stat. § 645.25 ("when a penalty or forfeiture is provided for the violation of a law, such penalty or forfeiture shall be construed to be for each such violation."). Accordingly, because the OAG in practice obtains substantial civil penalties where allowed by law; for purposes of preparing this fiscal note, the revenue projections are measured.

Long-Term Fiscal Considerations

It is assumed that the increased staff (referenced above) will be needed on an ongoing basis, beginning in Fiscal Year 2023.

Local Fiscal Impact

N/A

References/Sources

OAG staff.

I have reviewed the content of this fiscal note and believe it is a reasonable estimate of the expenditures and revenues associated with this proposed legislation.

If Information Technology costs are included, my agency's Chief Information Officer has reviewed the estimate.

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