

HF2309 - 1E - Minnesota Consumer Data Privacy Act

Chief Author: **Steve Elkins**
 Committee: **State And Local Government Finance And Policy**
 Date Completed: **3/4/2024 10:07:23 PM**
 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	FY2023	FY2024	FY2025	FY2026	FY2027
General Fund	-	-	-	988	748	
Total	-	-	-	988	748	
Biennial Total						1,736

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2023	FY2024	FY2025	FY2026	FY2027
General Fund	-	-	-	4	4
Total	-	-	-	4	4

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: Kristi Schroedl **Date:** 3/4/2024 10:07:23 PM
Phone: 651-284-6544 **Email:** kristi.schroedl@lbo.mn.gov

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		FY2023	FY2024	FY2025	FY2026	FY2027
General Fund	-	-	-	-	988	748
Total	-	-	-	-	988	748
Biennial Total				-		1,736
1 - Expenditures, Absorbed Costs*, Transfers Out*						
General Fund	-	-	-	-	988	988
Total	-	-	-	-	988	988
Biennial Total				-		1,976
2 - Revenues, Transfers In*						
General Fund	-	-	-	-	-	240
Total	-	-	-	-	-	240
Biennial Total				-		240

Bill Description

HF2309 creates the Minnesota Consumer Data Privacy Act (the “Act”). The Act creates consumer rights regarding certain covered private businesses including 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. There are also categories of entities, activities, and types of information that are excluded from the Act.

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:

Covered private businesses must generally respond to such consumer requests as soon as feasibly possible but not later than 45 days, 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. As part of this process, businesses are required to submit their written explanation of any actions taken or not taken on an appeal to the consumer as well as information for how to file a complaint with the Attorney General’s Office (“OAG”). The business must also, upon request by a consumer or by the OAG, compile and provide a copy of the appeal records to the OAG.

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 process sensitive consumer data without the consumer’s consent (or in the case of a known child, without obtaining the consent of the child’s parent or legal guardian), consistent with the Children’s Online Privacy Protection Act; (6) provide consumers an effective mechanism to revoke previously given consent for processing personal data; (7) not process personal data for targeted advertising or sell the personal data of a known child between the ages of 13 and 16, without the consumer’s consent; (8) not use the personal data it maintains in an unlawful discriminatory manner.

The Act also requires covered private businesses to conduct a data protection assessment. The business must disclose

the assessment to the OAG upon request, if it is relevant to an investigation by the OAG. Such assessments obtained by the OAG are classified as non-public data under the MGDPA.

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. This paragraph of the Act has a sunset provision stating that it will expire on January 31, 2026.

The Act further states that the OAG may bring a civil action against a covered private business to enforce a provision of the act in accordance with 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, an injunction, and civil penalties of not more than \$7,500 for each violation.

The Act's effective date is July 31, 2025. However, post-secondary institutions regulated by the Office of Higher Education and nonprofit corporations governed by chapter 317A, are not required to comply with the Act until July 31, 2029.

Assumptions

The Attorney General's Office ("AGO") enforcement activities will begin on July 31, 2025, which is the Act's effective date.

The AGO estimates that after enactment of the Act and for the foreseeable future, 3 FTE attorneys and 1 FTE investigator will be necessary to monitor compliance with the Act, identify potential violations of the Act, and bring enforcement actions as appropriate. Furthermore, the AGO will require funding for ongoing expert services for training as well as consultation related to potential violations, compliance monitoring, and enforcement of the Act.

After July 31, 2025, the AGO will seek to gain compliance with the Act's requirements and initiate investigation into violations. The AGO estimates that at least five matters will progress to a formal investigation and/or litigation that the attorneys and investigator will pursue each fiscal year, beginning in FY26. The AGO assumes that these investigations will be time and resource intensive and will also require the engagement and consultation of technology experts.

These assumptions are consistent with that the enforcement resources associated with Oregon's Privacy Law. See reference #1.

The AGO will also incur litigation expenses in any lawsuit it brings to enforce and remediate violations of the Act in accordance with Minn. Stat. § 8.31. Those costs will necessarily include filing fees, discovery costs, and ADR expenses. Given the technical nature of this area, it will likely be necessary to retain expert litigation witnesses. For purposes of this fiscal note, the AGO estimates that it will incur approximately \$20,000 in such costs for each enforcement action it brings. The AGO further estimates that it will bring two enforcement actions in fiscal year 2026, and three enforcement actions in fiscal year 2027, respectively, under the authority conferred by HF 2309.

Revenue may be generated in the investigations and enforcement actions the AGO 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 AGO 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 AGO assumes that recovery of fees and civil penalties will

begin in Fiscal Year 2027 and therefore does not project revenue for Fiscal Year 2026.

The AGO assumes it will initiate enforcement actions beginning in Fiscal Year 2026, which will result in settlements or successful litigation beginning in Fiscal Year 2027. Specifically, the AGO assumes it will bring and have successfully litigated or settled at least two cases that will provide revenue to the State, in addition to enforcing and remediating violations of the Act. 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 2027, and \$360,000 in Fiscal Year 2028. It is possible, depending on the violations being litigated, that the AGO 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 AGO in practice obtains substantial civil penalties where allowed by law; for purposes of preparing this fiscal note, the revenue projections are measured.

The Attorney General's Office estimates that it will expend 4500 hours of attorney time and 1500 hours of legal assistant (investigator/other staff) time per fiscal year.

Expenditure and/or Revenue Formula

Expenditures:

	Hourly Billing Rate	Hours	Total Cost to AGO [hours x billing rate]
Attorney, [Consumer Protection]	\$163	4,500	\$733,500
Investigator [Investigator/other non-attorney staff]	\$103	1500	\$154,500
<i>Other - Expert Fees</i>			\$100,000
Total			988,000

Revenue:

Source of revenue: <i>litigation, recovery, fines, etc.</i>	Total Amount received	Amount to General Fund	Amount To Other Source: [Consumers/special fund/agency, etc]	Amount To AGO
FY27	240,000			
FY28	360,000			
Total				

Long-Term Fiscal Considerations

It is assumed that the increased staff (referenced above) will be needed on an ongoing basis, beginning in Fiscal Year 2025. Estimated sources of revenue for civil penalties deposited in the general fund will be ongoing.

Local Fiscal Impact

References/Sources

Reference #1: <https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureAnalysisDocument/80815>

Agency Contact: Laura Sayles

Agency Fiscal Note Coordinator Signature: Laura Capuana

Date: 3/4/2024 9:55:17 PM

Phone: 651-402-2213

Email: laura.capuana@ag.state.mn.us