OHIO LEGISLATIVE SERVICE COMMISSION

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# Substitute Bill Comparative Synopsis

## Sub. H.B. 376

## 134th General Assembly

House Government Oversight

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This table summarizes how the latest substitute version of the bill differs from the immediately preceding version. It addresses only the topics on which the two versions differ substantively. It does not list topics on which the two bills are substantively the same.

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| **Consumer Protection Enforcement Fund** | |
| Requires money collected by the Attorney General in relation to violations of the Ohio Personal Privacy Act, other than amounts paid directly to consumers, to be deposited into the Consumer Protection Enforcement Fund *(R.C. 1355.09(E) and R.C. 1345.51(A)(3), not in the bill)* | Same, but adds a cross-reference in the Consumer Sales Practices Act as well *(R.C. 1345.51(A)(3) and 1355.11(E))*. |

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| **Definitions** | |
| Defines "business" to mean a limited liability company, limited liability partnership, corporation, sole proprietorship, association, or financial institution, or the parent or subsidiary of any of the foregoing. | Similar, but removes the inclusion of parent or subsidiary companies from the definition of "business" and instead includes a criterion that a business, alone or jointly with others, determines the purpose and means of processing personal data *(R.C. 1355.01(C))*. |
| No provision. | Excludes "processors" from the definition of "business" to the extent that the processor is acting in the role of a processor *(R.C. 1355.01(C) and 1355.10(C))*. |
| Stipulates that the disclosure of personal data by a business to a third party in accordance with an acquisition or merger does not constitute the sale of the personal data, so long as the third party agrees to comply with the representations made by the business in the applicable privacy policy *(R.C. 1355.01(O)(2)(f))*. | Removes the requirement that the third party comply with the relevant privacy policy *(R.C. 1355.01(O)(2)(f))*. |
| No provision. | Defines "targeted advertising" as displaying to a consumer an advertisement that is selected based on personal data obtained or inferred over time from the consumer's activities across nonaffiliated websites, applications, or online services to predict consumer preferences or interests.

Specifies that "targeted advertising" does not include any of the following:

- Advertising to a consumer in response to the consumer's request for information or feedback;
- Advertisements based on activities within a business's or processor's own websites or online applications; |

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| | <ul><li>Advertisements based on the context of a consumer's current search query, visit to a website, or online application;</li><li>Processing personal data solely for measuring or reporting advertising performance, reach, or frequency *(R.C. 1355.01(P))*.</li></ul> |
| **Exemptions** | |
| No provision. | Exempts, from the requirements of the Ohio Personal Privacy Act, personal data regulated by the federal Children's Online Privacy Protection Act, if collected, processed, and maintained in compliance with that law and its implementing regulations or exemptions. *(R.C 1355.02(B)(7))*. |
| **Exemptions related to responsibilities and requirements** | |
| Specifies that the Ohio Personal Privacy Act's requirements do not apply to the extent necessary for the business, service provider, or third party to cooperate with law enforcement *(R.C. 1355.02(D))*. | Replaces "service providers" with "processors" *(R.C. 1355.02(D))*. |
| No provision. | Expands the exemption to provide that the Ohio Personal Privacy Act does not apply to the extent reasonably necessary for the business or processor to do any of the following:<ul><li>Provide a product or service specifically requested by a consumer or a child's parent or guardian;</li><li>Perform a contract to which a consumer or child's parent or guardian is a party, including fulfilling the terms of a written warranty;</li></ul> |

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|  | ▪ Comply with the request of a consumer or child's parent or guardian prior to entering into a contract;<br><br>▪ Take immediate steps to protect an interest that is essential for the life of the consumer or of another natural person, and where the processing cannot be manifestly based on another legal basis. *(R.C. 1355.02(D)(9) to (12)).* |
| **Collection of personal data** | |
| States that the requirements of the Ohio Personal Privacy Act are not to be construed as requiring a business to collect personal data that the business would not otherwise collect in the ordinary course of its business *(R.C. 1355.02(G)).* | Adds processors to this interpretation language *(R.C. 1355.02(G)).* |
| **Pseudonymous data** | |
| No provision. | Specifies that the consumer rights provided in the Ohio Personal Privacy Act do not apply to pseudonymous data in cases where the business or processor is able to demonstrate that any information necessary to identify the consumer is kept separately and is subject to effective technical and organizational controls to prevent the business or processor from accessing such information *(R.C. 1355.02(I)).* |
| **Trade secrets** | |
| No provision. | Specifies that nothing in the Ohio Personal Privacy Act requires a business or processor to disclose a trade secret *(R.C. 1355.02(J)).* |

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| **Privacy disclosure** | |
| Requires a privacy policy to disclose the purposes for collecting or selling personal data *(R.C. 1355.03(C)(1)(d))*. | No provision. |
| Requires a privacy policy to disclose whether a business sells personal data, the categories of third parties to whom the business sells personal data, and the purposes of the sale *(R.C. 1355.03(C)(1)(g))*. | Requires, if the business sells personal data to third parties, the privacy policy to disclose such processing, as well as the categories of third parties to whom the business sells personal data, and how a consumer may exercise the right to opt out of such processing *(R.C. 1355.03(C)(1)(f))*. |
| Requires a business's privacy policy to provide a general description of the business's data security practices *(R.C. 1355.03(C)(1)(j))*. | No provision. |
| Requires a privacy policy to provide a description of how the business will notify consumers when it makes a material change to its privacy policy or decides to process personal data for purposes incompatible with the privacy policy *(R.C. 1355.03(C)(1)(l))*. | Similar, but requires the privacy policy to disclose the mechanism the business uses to make this notification *(R.C. 1355.03(C)(1)(j))*. |
| **Methods for exercising rights** | |
| Prescribes multiple methods for exercising the rights provided in the Ohio Personal Privacy Act *(R.C. 1355.04 to 1355.06)*. | The same, but consolidates all of the various methods into one uniform method for exercising all of the rights provided to consumers under the Ohio Personal Privacy Act *(R.C. 1355.04)*. |
| Enables consumers to exercise the rights authorized under the Ohio Personal Privacy Act *(R.C. 1355.04 to 1355.06)*. | Similar, but expands this authority to the parent or guardian of a known child *(R.C. 1355.04(A))*. |
| Requires businesses to comply with a request to not sell personal data within 30 calendar days *(R.C. 1355.06(B)(3))*. | Requires businesses to comply with such all rights requests within 45 calendar days *(R.C. 1355.04(C)(1))*. |

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| No provision. | Requires, upon receipt of a request, a business to comply with all requirements of the Ohio Personal Privacy Act as they relate to the request, including notifying the necessary processors *(R.C. 1355.04(D))*. |
| **Disclosure of personal data** | |
| Provides consumers with a right to request access to and the disclosure of the personal data that a business collects about a consumer *(R.C. 1355.04(A))*. | Similar, but instead authorizes consumers to request a copy of the consumer's personal data that the consumer previously provided to the business electronically in a portable and usable format *(R.C. 1355.05(A))*. |
| Requires, upon receipt of a request, a business to disclose the personal data the business has collected about the consumer *(R.C. 1355.04(B)(3)(b))*. | Allows, alternatively, a business to provide an accurate description or summary of the data the business collects *(R.C. 1355.05(B)(2))*. |
| Allows consumers to request that the personal data be provided electronically using paper mailed to the consumer *(R.C. 1355.04(E))*. | No provision. |
| **Correction of inaccuracies** | |
| No provision. | Provides consumers with the right to request that inaccuracies in personal data that the consumer previously provided to the business *(R.C. 1355.06)*. |
| No provision. | Requires businesses to correct inaccurate information as requested by the consumer *(R.C. 1355.06)*. |

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| **Deletion of personal data** | |
| Specifies various contexts in which businesses are not required to comply with a request to delete personal data, most of which are redundant when compared to exemptions that apply to the Ohio Personal Privacy Act as a whole, but also includes the following instances, which do not appear to be redundant:<br><br>▪ A business is not required to comply with a request to delete personal data as needed to provide a product or service specifically requested by a consumer, or reasonably anticipated within the context of the business's ongoing business relationship with the consumer, or otherwise perform a contract or warranty to which the consumer is a party, or take steps at the request of the consumer prior to entering into a contract.<br><br>▪ A business is not required to comply with a request to delete personal data take immediate steps to protect an interest that is essential for the life of the consumer or of another natural person, and where the processing cannot be manifestly based on another legal basis *(R.C. 1355.05(E)(6) and (7)).* | Similar, but removes redundant language in favor of exemptions that apply to the whole Ohio Personal Privacy Act *(R.C. 1355.07(E) and 1355.02(D)).* |
| **Request to not sell** | |
| No provision. | Allows consumers to request that a business not process the consumer's personal data for purposes of targeted advertising *(R.C. 1355.08(A)(2) and (B)).* |

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| Prohibits business from selling the personal data of children without complying with the requirements of the federal Children's Online Privacy Protection Act of 1998 *(R.C. 1355.06(C))*. | Limits this prohibition to the personal data of children collected online and also requires businesses to comply with the exemptions of the relevant federal law *(R.C. 1355.08(C))*. |
| Requires businesses that sell personal data to provide clear and conspicuous notice of this fact in such a manner as to enable a consumer to opt out of the sale of the consumer's person data *(R.C. 1355.06(D))*. | Similar, but also applies this requirement to businesses that use processed personal data for the purpose of targeted advertising. Also, requires businesses to provide notice in a manner that enables consumers to also opt out of the use of that data for targeted advertising. *(R.C. 1355.08(D).)* |
| Requires businesses to inform its processors or third parties of a consumer's request to opt out and request that they comply with the consumer's opt-out request *(R.C. 1355.06(F))*. | Similar, but requires businesses to *reasonably* inform the processor or third party *(R.C. 1355.08(F))*. |
| **Nondiscrimination** | |
| Specifies that the prohibition against discriminating against consumers for exercising their rights under the Ohio Personal Privacy Act is not to be construed as requiring a business to provide a product or service that requires the personal data of a consumer that the business does not collect or maintain *(R.C. 1355.07(D)(1))*. | Similar, but also stipulates that the prohibition is not to be construed as requiring a business to provide a product or service to a consumer that has exercised the right to not have the consumer's data sold *(R.C. 1355.09(D)(1))*. |
| Specifies that the prohibition against discriminating against consumers is not to be construed as prohibiting a business from offering a different price or level of service to a consumer, if the consumer has requested the business not sell the consumer's personal data, if the offer is related to a consumer's voluntary participation in a bona fide loyalty club *(R.C. 1355.07(D)(2))*. | Same, but removes the requirement that the prohibition be applied only when a consumer exercises the right to opt out of their data being sold *(R.C. 1355.09(D)(2))*. |

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| **Processor contracts** | |
| Requires businesses to enter into a contract with the data processors that the business uses that prohibits the processor from processing personal data except to provide services to the business *(R.C. 1355.08(A))*. | Similar, but states that a contract between a business and a processor must govern the data processing procedures of the processor with respect to processing performed on behalf of the business *(R.C. 1355.10(A))*. |
| Authorizes businesses to allow processors to do all of the following: | No provision. |
| ▪ Retain and employ a sub-processor, where the sub-processor meets the requirements for a processor under the Ohio Personal Privacy Act; | |
| ▪ Internal processing to improve the quality of its products or services, provided that the processing of personal data is in compliance with the requirements of the Ohio Personal Privacy Act; | |
| ▪ Detect or prevent data security incidents, fraud, or illegal activity; | |
| ▪ Use data as otherwise permitted by the Ohio Personal Privacy Act *(R.C. 1355.08(B))*. | |
| No provision. | Requires processors to do all of the following: |
| | ▪ Taking into account the nature of the processing, assist a business, to the extent reasonably possible and through the use of appropriate technical and organizational measures, in fulfilling the obligation of the business to respond to consumer requests; |

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| | ▪ Develop, implement, and maintain reasonable administrative, technical, and physical safeguards to protect the security and confidentiality of personal data processed by the processor. The safeguards must reflect the nature and scope of the activities of the processor and its role in processing the personal data.<br><br>▪ At the direction of the business and pursuant to the contract described above, delete or return, except as required by law, all personal data to the business as requested at the end of the contract period;<br><br>▪ If the processor uses the services of a sub-processor with respect to a business, require the sub-processor to meet the obligations of the processor with respect to any personal data collected *(R.C. 1355.10(B))*. |

## Enforcement by Attorney General

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| Gives the Attorney General the authority to oversee and enforce the Ohio Personal Privacy Act with regard to businesses *(R.C. 1355.09)*. | The same, but expands this authority to include oversight and enforcement against processors as well *(R.C. 1355.11)*. |

## Liability

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| No provision. | Specifies that, where more than one business or processor, or both a business and a processor, involved in the same processing violate the Ohio Personal Privacy Act, liability must be apportioned according to the amount of responsibility born by each *(R.C. 1355.11(J))*. |

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| **Intent language** | |
| No provision. | Specifies that the intent of the General Assembly in enacting the Ohio Personal Privacy Act is to establish a statewide, comprehensive enactment that applies to all parts of the state, operates uniformly throughout the state, and sets forth police regulations *(R.C. 1355.11(K))*. |
| No provision. | Prohibits political subdivisions from regulating the collection, processing, or sale of personal data by a business *(R.C. 1355.11(K))*. |
| **Effective date** | |
| No provision. | Specifies that the Ohio Personal Privacy Act's requirements take effect one year after the bill's effective date *(Section 4)*. |
| **Appropriation** | |
| Authorizes the Attorney General to use $250,000 of the Operating Expenses appropriation in fiscal years 2022 and 2023 to enforce the requirements of the act *(Section 2)*. | Same, but provides this authority only for fiscal year 2023 *(Section 3)*. |

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