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Final Fiscal Note

Drafting Number: LLS 21-0077 Date: September 27, 2021
Prime Sponsors: Sen. Rodriguez; Lundeen Bill Status: Signed into Law
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Bill Topic: PROTECT PERSONAL DATA PRIVACY

- Summary of Fiscal Impact:
[X] State Revenue [ ] TABOR Refund
[X] State Expenditure [ ] Local Government
[ ] State Transfer [ ] Statutory Public Entity

This bill creates personal data privacy rights and requires businesses that process personal data to fulfill certain duties. It increases state revenue and expenditures beginning July 1, 2023.

Appropriation Summary: No appropriation is required.

Fiscal Note Status: The fiscal note reflects the enacted bill.

Table 1
State Fiscal Impacts Under SB 21-190

Table with 4 columns: Category, Budget Year FY 2021-22, Out Year FY 2022-23, Out Year FY 2023-24. Rows include Revenue, Expenditures (Cash Funds, Centrally Appropriated, Total Expenditures, Total FTE), Transfers, and TABOR Refund.

## **Summary of Legislation**

This bill creates the Colorado Privacy Act within the Colorado Consumer Protection Act. The bill addresses consumers' rights to privacy, companies' responsibility to protect personal data, and authorizes the Attorney General and district attorneys to take enforcement action for violations. The bill defines various terms related to covered businesses, consumers, and data, including defining the term "controller" as the person or group of people who determine how data is used and processed.

**Applicability.** The bill applies to a controller that conducts business in Colorado or produces products or services that are intentionally targeted to residents of Colorado and:

- controls or processes the personal data of 100,000 or more consumers per year; or
- derives revenue or receives a discount on the price of goods or services from the sale of personal data and processes or controls the personal data of 25,000 consumers or more.

The bill is not applicable to certain entities and data types specified in the bill. The entities include state and local governments, state institutions of higher education, certain financial institutions, and consumer reporting agencies. Data that is not applicable are subject to specific state and federal laws, and include health and employment records.

**Consumer personal data rights.** Consumers may exercise the following rights by submitting a request to a controller:

- right to opt out of the processing of the consumer's personal data;
- right of access to confirm that the controller is processing the consumer's personal data;
- right to correct inaccurate personal data collected from the consumer;
- right to delete a consumer's personal data; and
- right to data portability, which allows a consumer to access the data in a portable format.

**Duties of controllers.** The bill identifies the following duties for controllers:

- *duty of transparency* – controllers are required to provide consumers with comprehensive privacy notices;
- *duty of purpose specification* – controllers must specify the express purposes for which personal data are collected and processed;
- *duty of data minimization* – controllers must limit the collection of data to the amount necessary for the express purposes for which the data are processed;
- *duty to avoid secondary use* – controllers cannot process personal data for purposes that are not compatible with the express purposes for which the data are processed;
- *duty of care* – controllers must take reasonable measures to secure personal data;
- *duty to avoid unlawful discrimination* – controllers cannot process personal data in violation of anti-discrimination laws; and
- *duty regarding sensitive data* – controllers cannot process sensitive data without a consumer's consent.

**Rules.** The Attorney General may promulgate rules to implement the bill, but is required to adopt rules regarding the technical specifications for one or more universal opt-out mechanisms for consumers by July 1, 2023. In addition, the Attorney General may adopt rules that govern the process of issuing opinion letters and interpretive guidance to become effective by January 25, 2025.

**Data protection assessments.** The bill prohibits a controller from conducting processing that presents a heightened risk of harm to a consumer without conducting and documenting a data protection assessment for processing activities after July 1, 2023. The assessment must be made available to the Attorney General upon request.

**Enforcement.** The bill specifies that a violation is a deceptive trade practice and that the Attorney General and district attorneys have exclusive enforcement authority. Prior to an enforcement action, the Attorney General or district attorney will issue a notice of violation to the controller if a cure is deemed possible. If a controller fails to cure the violation within 60 days, an action may be brought. This provision is repealed January 1, 2025. A controller or processor that violates the provisions of the bill is subject to a civil penalty and may be enjoined from further violations. The bill does not authorize a private right of action.

**Local preemption.** The bill preempts laws, ordinances, resolutions, regulations, or the equivalent adopted by local governments that govern the processing of personal data by controllers or processors.

## **Background and Assumptions**

Under House Bill 18-1128, a governmental entity and an entity that maintains, owns, or licenses personal identifying information is required to disclose a security breach to the Colorado Attorney General within 30 days of any breach, if the breach is believed to impact 500 or more Colorado residents. The number of complaints and notifications received under HB18-1128 average 100 per year. The fiscal note assumes that this bill will increase complaints received by the Department of Law by at least 100 per year.

## **State Revenue**

The bill will result in an increase in revenue from civil penalties on violations, but no increase is expected prior to FY 2023-24, and no amount of revenue has been estimated. Revenue received by the Attorney General is deposited to the Legal Services Cash Fund, but revenue may also be deposited into a variety of funds, depending on the language of the court settlements. Penalty revenue collected by the state is subject to TABOR. The impact on TABOR refunds is not estimated as FY 2023-24 falls outside of the current TABOR forecast period.

## **State Expenditures**

The bill will increase expenditures by \$323,691 and 2.0 FTE beginning in FY 2023-24 in the Department of Law from the Consumer Protection Custodial Fund. Costs are shown in Table 2, and explained below.

**Table 2  
Expenditures Under HB 21-190**

	FY 2021-22	FY 2022-23	FY 2023-24
<b>Department of Law</b>			
Personal Services	-	-	\$216,968
Operating Expenses	-	-	\$2,700
Capital Outlay Costs	-	-	\$12,400
Expert Consultant	-	-	\$25,000
Centrally Appropriated Costs <sup>1</sup>	-	-	\$66,623
<b>Total Cost</b>	-	-	<b>\$323,691</b>
<b>Total FTE</b>	-	-	<b>2.0 FTE</b>

<sup>1</sup>Centrally appropriated costs are not included in the bill's appropriation

**Department of Law.** The Consumer Protection Section in the Department of Law requires an increase in staff to review complaints, assess which complaints are appropriate for investigation, and determine which investigated complaints are appropriate for enforcement action.

The section will add 1.0 FTE of a Criminal Investigator II and 1.0 FTE of an Assistant Attorney General II. These positions are shown at midrange salaries because the complexity of investigations and enforcement actions require more experienced employees. The fiscal note also includes costs for information technology security experts to consult on some investigations.

**Centrally appropriated costs.** Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. These costs, which include employee insurance and supplemental employee retirement payments, are estimated to be \$66,623 in FY 2023-24.

## Local Government

Although district attorneys are authorized to enforce the provisions of the bill, they are not expected to so. It is assumed complaints received by district attorneys will be referred to the Attorney General due the complexity and nature of the investigations, which would require additional staff and training to handle these type of cases at the local level.

## Effective Date

The bill takes was signed into law by the Governor on July 7, 2021, and takes effect July 1, 2023, assuming no referendum petition is filed, and applies to conduct occurring on or after that date.

## **State and Local Government Contacts**

All State Agencies