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OREGON JOINS STATE PRIVACY MARCH

In the absence of federal action, states keep marching forward with their own comprehensive consumer data privacy laws with mixed results. Oregon joins California, Colorado, Connecticut, Indiana, Iowa, Montana, Tennessee, Texas, Utah and Virginia in enacting a non-uniform privacy law. See S.B. 619 (signed by governor July 18, 2023, effective July 1, 2024).

The Act applies to any person that conducts business in Oregon, or that provides products or services to residents of Oregon, and that during a calendar year, controls or processes:

- (1) The personal data of 100,000 or more consumers, other than personal data controlled or processed solely for the purpose of completing a payment transaction; or
- (2) The personal data of 25,000 or more consumers, while deriving 25 percent or more of the person's annual gross revenue from selling personal data.

The Act generally does not apply to, among others:

- (1) Protected health information that a covered entity or business associate processes in accordance with, or documents that a covered entity or business associate creates for the purpose of complying with, the Health Insurance Portability and Accountability Act;
- (2) Activity that involves collecting, maintaining, disclosing, selling, communicating or using information for the purpose of evaluating a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living if done strictly in accordance with the provisions of the Fair Credit Reporting Act;
- (3) Information collected, processed, sold or disclosed under and in accordance with the Gramm-Leach-Bliley Act (GLBA) and Driver's Privacy Protection Act of 1994;
- (4) A federally insured federal or state-chartered financial institution or credit union or a financial institution's affiliate or subsidiary that is only and directly engaged in financial activities; and
- (5) Information that originates from, or is intermingled so as to be indistinguishable from, information that a Oregon Consumer Finance Act licensee collects, processes, uses or maintains in the same manner as is required under the GLBA.

Among other provisions, under the Act, consumers generally have the right to:

- (1) Confirm whether a controller of data is processing or has processed of the consumer's personal data and obtain a copy of such data;
- (2) Require a controller to correct inaccuracies;
- (3) Require a controller to delete personal data; and
- (4) Opt out of a controller's processing of data if the controller processes data for the purpose of targeted advertising, sale, or profiling.

Personal data must be provided to a consumer in a portable and, to the extent technically feasible, readily usable format that allows the consumer to transmit the data to another person without hindrance.

Sensitive personal data generally may not be processed without the consumer's consent or, in the case of a known child, pursuant to the Children's Online Privacy Protection Act. "Sensitive data" means personal data that:

- (1) Reveals a consumer's racial or ethnic background, national origin, religious beliefs, mental or physical condition or diagnosis, sexual orientation, status as transgender or non-binary, status as a victim of crime or citizenship or immigration status;
- (2) Belongs to a child;
- (3) Accurately identifies a consumer's present or past location within a radius of 1,750 feet, or the present or past location of a device that links or is linkable to a consumer by means of technology that includes, but is not limited to, a global positioning system that provides latitude and longitude coordinates; or
- (4) Is genetic or biometric in nature.

A Delaware privacy law is awaiting the governor's signature. The Delaware bill exempts data and financial institutions subject to GLBA. We will report on the bill once signed. While Florida also has passed privacy legislation, that law is more narrow in scope than the laws mentioned above.

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