House Government Oversight Committee
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Mike Rodgers – Director of Policy and Legislation for Attorney General Dave Yost
Proponent Testimony HB 376

Chairman Wilkin, Vice Chair White, and Ranking Member Hicks-Hudson, my name is Mike Rodgers and I am the Director of Policy and Legislation for Ohio Attorney General Dave Yost. I appreciate the opportunity to submit written proponent testimony for HB 376, and to highlight a few areas of the bill we believe can be improved through the legislative process.

Ohioans today are faced with constant requests to provide their personal information in exchange for joining a mailing list, downloading the newest app, and to create a new account. The practical implication of this activity is that many Ohioans must rely on countless entities to exercise appropriate diligence to keep this personal information safe.

The Ohio Personal Privacy Act seeks to give Ohioans greater control over their digital information through several core rights. Further, the bill requires covered businesses to maintain and make available their privacy policy and to comply with verified requests made in relation to the consumer rights provided by the bill. Of particular interest to our office is the fact that the bill establishes the Attorney General as the sole entity authorized to enforce these requirements.

While our office supports the core rights codified by the bill, and the expectation that businesses must be both transparent and responsive with Ohioans about how they use personal information, we would also ask the legislature to carefully consider potential edits to the bill to further strengthen these underlying concepts.

Lengthy List of Exemptions

As currently drafted, HB 376 contains more exemptions than other similar state laws. While our office takes no position as to the wisdom of specifically exempting a specific business type or industry, some of the language exempts entities based solely on whether a portion of that business falls under the purview of certain federal laws. The impact of that language is likely significant. For example, if a convenience store is covered in some form by the Clinical Health Act because it has a pharmacy and a minute clinic, this would mean that the personal data it collects for its customer loyalty program would not be covered by the protections in this bill.

It is the legislature's prerogative to determine who is required to abide by the protections in the bill, but if greater clarity could be provided as to the intended scope of these exemptions, it may save us from inadvertently investigating an entity the legislature intended to be exempt.

No rulemaking authority

During the bill's development, the Attorney General's Office commented on a lack of general detail about how many of the processes included within the bill were intended to work. In our experience, the traditional way to fill in some of these process gaps is through administrative rulemaking.

For example, one of the requirements for a consumer to delete information states, *such a verifiable request shall reasonably describe the personal data the consumer is requesting be deleted*. This begs the question as to what is a *verifiable request*, and what is a *reasonable description*?

We would renew our request that the bill grant our office limited rulemaking authority to help fill in some of these logistical and administrative gaps. I would note that any rules promulgated by our office would be subject to legislative oversight by the Joint Committee on Agency Rule Review, and that a little rulemaking will provide a lot of added certainty for consumers and businesses covered by this law.

Right to cure language

Prior to initiating a lawsuit, our office must provide written notice identifying what we believe a covered entity is violating and giving them an opportunity to cure. If the business cures the violation within the 30-day period, our office is prohibited from initiating an enforcement action.

This right to cure provision is generous. This means that if we spend time and resources investigating a complaint and actually catch an entity violating the act, we cannot initiate a lawsuit activating any of the authorized forms of relief if they cure their violation after receiving our notice. While this probably makes the most sense when this authority is new, if we catch someone violating this law a decade after it was passed and enacted, should they also be entitled to the same right to cure?

As a solution, the legislature might consider adding a sunset clause to this right to cure provision. This is inherently a policy question, but our office will likely be unable to consistently obtain results for consumers if we have to perpetually warn violators and allow them to cure before taking legal action.

Concern about cost

While we appreciate the recognition that our office will need additional resources as the sole investigative and prosecuting authority for these new protections, candidly, we do not know if the amount currently appropriated in the bill will be sufficient. Competition for attorneys in the field of data privacy is fierce. While our office is authorized to recover civil penalties and attorney fees under the bill, those amounts are highly speculative, particularly given the generous and perpetual right to cure provision.

Because the costs to effectively startup and administer this new program are unknown, we would simply ask that the legislature remain open to revisiting this topic in the future once the demands on our office are better understood.

In closing, we support the worthy aims of the sponsors. We believe the edits we seek will allow us to more fully recognize their vision for this measure in Ohio. When this bill becomes law, we want to be successful and effective in vindicating the rights of Ohioans whose data are not properly protected. We appreciate the legislature's consideration of our concerns to help us achieve this shared objective.