



State Representative Rick Carfagna
State Representative Thomas Hall
Sponsor Testimony - House Bill 376
House Government Oversight Committee
September 28, 2021

Rep. Rick Carfagna

Chairman Wilkin, Vice-Chair White, Ranking Member Sweeney, and fellow colleagues of the House Government Oversight Committee. Thank you for allowing us to present sponsor testimony on House Bill 376 - the Ohio Personal Privacy Act (OPPA). Rep. Hall and I are thrilled to work alongside Lt. Governor Jon Husted, InnovateOhio, and Attorney General Dave Yost to position Ohio as a technology leader on multiple fronts. The OPPA will balance reasonable data privacy standards to protect Ohioans with less bureaucracy and regulation on businesses.

Currently, there is no national standard for regulating the collection and use of personal information. The purpose of this bill is not only to establish a statewide standard for data privacy in Ohio, but also serve as a national model, one that we hope states will look to emulate and ultimately for our federal government to adopt as our country's policy.

At present, three states - California, Virginia, and Colorado - have enacted data privacy statutes, with many more in the early stages of development. There are elements and exemptions from California's and Virginia's laws incorporated into OPPA, but ultimately, we've developed this specific to the aspects that are unique and important to Ohio.

Let's first discuss the scope of OPPA. OPPA would apply to businesses in Ohio that satisfy one or more of the following:

- Their gross revenue in Ohio exceeds \$25 million.
- They control or process personal data of 100,000 or more consumers.
- They derive over 50% of their gross revenue from the sale of personal data, and process or control personal data of 50,000 or more consumers.

Under the OPPA, we are proposing various rights to consumers concerning their personal data:

- First, they should have the right to ACCESS their personal data and obtain a copy of such in a portable format.
- We believe they should have the right to CORRECT any inaccuracies to that data.
- We want to give Ohioans the right to DELETE personal data provided by or obtained about them.
- We're going to provide the opportunity for consumers to OPT-OUT of the sale of their personal data.
- And when Ohioans exercise these rights under OPPA, it's critical that they do so without any threat of unlawful discrimination by businesses. This legislation provides those very protections.
- Businesses that are subject to OPPA will have to respond within 60 days of receipt of a consumer request, which may be extended for an additional 60 days when "reasonably necessary" and communicated to the consumer.

Lastly, the bill establishes a Consumer right to appeal, where consumers may make a complaint to the Ohio Attorney General's Office, who we are designating as the exclusive authority to enforce the OPPA. No private right of action exists under this legislation, which sets us apart from other states in that we intend to be firm but fair. We are here to be reasonable. We want to ensure that not only are Ohioans in control of their data, but that businesses and affected organizations are on a pathway to compliance before any enforcement action has to be taken. That's why we're providing a 30-day period after a complaint is reported to the AG's office for the entity to "cure" any potential violations, to fix their privacy policies, and ensure it doesn't happen again.

Rep. Thomas Hall

The OPPA includes a list of obligations for businesses to follow. For example, we want them to craft privacy notices about the personal data that is being collected and processed and make them reasonably accessible. We want disclosures as to where data is being sold, and some clear instructions as to how a consumer may exercise their opt-out rights. You're also going to see some limitations to both the types of data and the purposes of data as they relate to what can be collected and processed absent consumer consent.

This bill also contains a number of exemptions for businesses subject to, or personal data regulated by, the Gramm-Leach-Bliley Act, HIPAA, the Fair Credit Reporting Act, the Driver's Privacy Protection Act, and the Federal Family Educational Rights & Privacy Act. Public entities, institutions of higher education, and business-to-business transactions are also exempt from the OPPA.

Finally, throughout this legislative process you're going to hear a lot about NIST. NIST stands for the National Institute of Standards and Technology. They are the gold standard when it comes to cybersecurity benchmarks, and they recently released a data privacy framework for businesses and organizations to adopt. It's our preference to see businesses create their own

data privacy programs that meet the NIST industry-recommended standards. Our bill takes it a step further to encourage this by providing an affirmative defense against legal claims so long as a business is operating under the NIST framework and requiring all the rights and obligations outlined in the bill. Again, let's be firm but fair.

Chairman Wilkin and members of this committee, as the youngest member of the Ohio General Assembly, I know that those in my generation have a larger online presence and are more subject to knowingly or unknowingly sharing their personal information to third parties. I believe we should provide the tools necessary to empower and inform all Ohioans on understanding and controlling the collection of their data.

By enacting the Ohio Personal Privacy Act, our state can be a leader in protecting the personal information of consumers while removing confusion for businesses by providing clear guidelines on privacy standards.

This bill is the product of two years' worth of research, interested party meetings, and several rounds of drafts by the Lt. Governor and InnovateOhio. In the coming weeks, you can expect a number of stakeholders to provide their insight on this bill's importance, and provide for thoughtful conversation to this committee.

Thank you again for your consideration, and at this time we would be happy to answer any questions.