

## **U.S. Chamber of Commerce: Data Privacy Model Legislation Section by Section Summary**

### **Section 1**

**Definition of Business:** Businesses covered by the Act are those with receipts greater than those required by the Small Business Administration to be defined a small business. The Act applies to both for-profit and non-profit organizations.

**Information Covered by the Act:** Information, other than aggregated, deidentified, pseudonymized or publicly available data, that identifies a consumer will be protected by the Act.

### **Section 2: Notice and Transparency**

**Notice:** Businesses are required to provide notice, in a clear and conspicuous manner, about how they collect, use and share personal information.

**Transparency and Access:** Businesses, upon a verifiable request from a consumer, are required to disclose the categories of personal information collected, used or shared by the business in addition to the purposes for which the data is processing. Additionally, businesses must provide consumers with the categories of third parties with whom it shares personal information. A third party would not include a service provider with whom a business has a contract to process information on the business' behalf, nor would it include an affiliate of a business.

### **Section 3: Opt-Out Consent**

Businesses, upon verifiable request, from a consumer are required to honor a consumer's request to stop sharing personal information with third parties. This requirement is subject to a number of exceptions.

### **Section 4: Data Deletion**

Businesses, upon verifiable request, are required to make a good faith effort to delete personal information about consumers. This requirement is subject to a number of exceptions.

### **Section 5: Scope**

In certain circumstances, the Act will not apply. For example, when the obligations would restrict a business' ability to: comply with other laws; provide information to or cooperate with law enforcement; exercise or defend against legal claims. The Act further does not apply to information collected in the context of employment, independent contractors, or temporary workers.

### **Section 6: Safe Harbors**

The Act, like the Children's Online Privacy Protection Act (COPPA), provides for Safe Harbor programs where businesses will be deemed to be in compliance with the Act if they follow industry guidelines approved by the Federal Trade Commission.

The Act also provides liability protections against business in the event a third party causes a violation of the Act.

## **Section 7: Enforcement**

Violations of the Act will be treated as an unfair or deceptive trade practice under the Federal Trade Commission's authority pursuant to Section 5 of the FTC Act. For purposes of enforcing this Act, the FTC will have jurisdiction over [both non-profits,] and common carriers subject to the Communications Act of 1934. Businesses that have committed violations that are neither willful nor reckless will have the opportunity to cure before the FTC can commence an enforcement action. ***[The Chamber recognizes that businesses not under FTC jurisdiction are subject to the jurisdiction of other agencies and will be subject to enforcement by those agencies. The U.S. Chamber adopted privacy principles that apply to all industry sectors that handle consumer data and are not specific to any subset of industry sectors. These principles shall be applied consistently across all industry sectors. The Chamber will continue to actively engage policymakers and stakeholders to ensure in accordance with its principles consistent enforcement across sectors.]***

## **Section 8: Relationship to Other Laws**

The Act will preempt state and local privacy statutes, regulations, requirements and tort action. The law also supersedes all federal statutes or regulations relating to the privacy or security of personal information, however, it preserves the following specific laws only: the Children's Online Privacy Protection Act, the Communications Assistance of Law Enforcement Act, Section 227 of the Communications Act, the Fair Credit Reporting Act, the Health Insurance Portability and Accountability Act, the Electronic Communications Privacy Act, and authority granted to regulate the privacy of airlines under the Federal Aviation Act. ***[The Chamber recognizes that robust federal privacy laws already apply to many sectors of the economy. A federal law should work to harmonize or replace sectoral privacy approaches unless there is a meaningful reason to keep an existing sectoral law. Although the Chamber recognizes the importance of allowing data protection, privacy, or consumer protection laws like HIPAA and the Federal Aviation Act, as amended (49 U.S.C. § 40101 et seq.) to remain in place, the Chamber will continue to actively engage policymakers and stakeholders about how other sectoral laws should interact with a new privacy framework. The Commission's authority may need to be modified if certain sectoral laws are eliminated. The Chamber's position is that a new privacy framework should not impose dual enforcement of federal agencies upon regulated entities.]***