

DATA PRIVACY

A Guide For Florida Policy Makers

🔗 **The Issue:** On August 31, 2022, University of Florida Health (UFH) reported that over 15 months between April 2021 and July 2022, “an employee may have inappropriately accessed information on patients’ medical records outside the scope of the employee’s job duties,” compromising the records of an estimated 941 patients.¹ According to UFH, “patient demographic information,” including names, dates of birth, mailing addresses, and phone numbers, were compromised as well as “limited clinical information.”²

Unfortunately, the data breach at UFH was not an isolated incident, with Broward Health reporting in January 2022 that “the personal and protected health information of more than 1.35 million individuals” had been compromised.³ Both instances highlight how vulnerable Floridian’s sensitive data is to nefarious actors and criminal networks. These significant data breaches also highlights the need for robust data protection legislation that grants citizens greater control over how private entities handle and store their sensitive data.

🔗 **Federal Failure, States Take The Lead:**

Despite a growing bipartisan consensus that Congress should pass a federal data standard,⁴ it has failed to pass a national data privacy bill. As a result, state legislatures have stepped in to fill the void. Since California passed the California Consumer Privacy Act (CCPA) in 2018, four other states- Connecticut, Virginia, Colorado, and Utah- have enacted data protection laws for their citizens.

Generally speaking, these state-level data laws grant citizens greater control over what data private companies hold on them and provide the right to have data deleted or corrected. These laws also mandate specific data protection requirements private entities must follow, such as having an in-house Data Protection Officer or prohibitions on selling data to third parties, to ensure sensitive information remains secure and out of the hands of cybercriminals.

Without a federal data protection bill or a state-level bill, Floridian’s data is considerably more vulnerable than citizens of other states, putting them at greater risk of falling victim to identity theft, emotional harm, or financial loss.

In 2022, Congress did consider a federal data protection standard, the American Data Privacy and Protection Act, however, it failed to receive a hearing in either chamber.

🔗 **The Perils of a Private Right of Action:** A unique feature of CCPA was the creation of a limited private right of action that allowed citizens to sue private companies for violations and receive monetary damages between \$100-\$750. In 2021, 145 CCPA lawsuits were filed by citizens, equivalent to a new case every 2.5 days.⁵ Unfortunately, giving citizens the right to sue for damages forces small businesses, many of whom do not have access to lawyers, into unnecessary lawsuits. Provisions of CCPA also allow California citizens to sue companies domiciled outside of the state.

Outside of CCPA, no other enacted state privacy bill contained a private right of action. Legislation in Connecticut, Utah, Colorado, and Virginia empowers the state attorney general to enforce data privacy requirements and obtain financial compensation for those affected.

In Florida, a private right of action was the principal reason a comprehensive data privacy bill failed. In the 2022 legislative session, the House version of a data privacy bill contained a private right of action, while the Senate version did not. Despite agreement that legislation was needed, the House and Senate were unable to reconcile their respective bills, and it once again failed to reach the governor's desk.

COMPLIANCE TIME

Imposing data protection regulations also requires allowing covered companies adequate time to comply, or lawmakers risk trapping small businesses in expensive and unnecessary litigation.

Recognizing this risk, Utah, Colorado, Connecticut, Virginia, and California all gave companies two years from the passage before their data protection laws took effect. Such a time frame allowed businesses, particularly small businesses, to become compliant and make the necessary investments in their data protection programs. Conversely, failure to provide such time for compliance ultimately makes it harder for good-faith businesses to comply with data security provisions.

POLICY RECOMMENDATIONS

➤ **No Private Right of Action:** Data Privacy reform in Florida must not repeat the mistakes of California. Allowing citizens the right to sue for monetary damages risks trapping businesses in costly litigation and enriching trial lawyers.

➤ **Restrictions must be commensurate with the sensitivity of data held:** Only companies holding the most sensitive data (social security numbers, financial information, biometric data, or other identifying information) should face the most stringent data protection requirements. Businesses that hold non-sensitive data on Floridians should face fewer restrictions on how that data is stored and how it can be used.

➤ **Compliance time:** Any future data privacy legislation must provide covered companies with adequate time to comply with the bill's provisions. Failure to include sufficient compliance time risks forcing businesses, many of whom act in good faith, into expensive court battles.

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ENDNOTES

- 1 Bill Levesque, "Notice to Our Patients of Data Privacy Event," *University of Florida Health*, August 31, 2022. Available Online: <https://ufhealth.org/news/2022/notice-our-patients-data-privacy-event>
- 2 Ibid.
- 3 "Broward Health Notifies Over 1.3 Million Individuals About October 2021 Data Breach," *HIPPA Journal*, January 4, 2022. Available Online: <https://www.hipaa-journal.com/broward-health-notifies-over-1-3-million-individuals-about-october-2021-data-breach/>
- 4 In June 2022, Representative Frank Pallone introduced the bipartisan American Data Privacy and Protection Act. A companion bill in the Senate was introduced by Senator Rodger Wicker (R-MS)
- 5 "The Rise of Privacy Litigation in California," Baker Potts, June 6, 2022. Available Online: <https://www.bakerbotts.com/thought-leadership/publications/2022/june/the-rise-of-privacy-litigation-in-california#:~:text=The%20California%20Consumer%20Privacy%20Act,uptick%20is%20expected%20to%20continue.>