

Attorney General's Office 2022 Report on Consumer Privacy
February 9, 2023

Upon the request of Chair Marcotte, the AGO would convene a meeting of stakeholders to discuss the arrangement of laws in VT to solidify a Biometric Information Privacy Act (BIPA).

Issues included:

- Protection of biometric data (facial recognition)
- Should VT adopt the California Privacy Act (CCPA)
- Consumer protections should better address the privacy concerns of Vermonters.

General Principles of recommendations:

- Data Minimization: businesses collect only the data they require for business transactions with customers.
- Limits on Secondary Uses of Data: limits on the sharing of data once a business acquires that data.
- Data Brokers: do not collect data directly from consumers. They aggregate data from several sources. AGO wishes to adjust the Data Broker Law to address gaps in protection.
- Biometric Information:
- Enforcement: The AGO recommends that if a law is passed, that the enforcement not be restricted to the Attorney General.

The AGO observes that privacy laws need to center the consumer. Many consumer privacy policies in other states protect consumers, but do not require businesses to respect consumer privacy. Consumers need to be informed of how their data is collected, to opt out of the sale of data, or to request that their data be deleted. The recommendations of the AGO place controls upon the entities that collect, distribute, and profit from consumer data.

Such controls include Data Minimization to prohibit businesses from collecting more information than necessary to fulfill a transaction or retain information longer than necessary. Require third parties that acquire data to comply with the original consent for which the data was collected in order to Limit the Secondary Uses of Data. Enable consumers to opt out of online tracking and Data Broker sharing of data, doing this by codifying a “Do Not Track” Designation. Expanding the Data Broker Law to create Guardian consent, right to control sale of data, right to be forgotten and additional disclosures

Data Broke Law outlines that businesses must have parental consent for minors' data sharing, opt-out of sale of data link, a right to require businesses to delete their personal information, businesses must designate methods for submitting data-access requests, and consumers have a right to request the personal information collected and the third parties it was shared with.

Biometric Privacy Protections:

Biometric data are derived from our physical characteristics such as, faces, fingertips, voices, retinas, walking gate, how we type. The first BIPA act was introduced in Illinois in 2008

and has been met with intense criticism from stakeholders. Stakeholders for VT suggest looking at the Washington State BIPA, the AGO suggests looking at the best parts from both.

The AGO Proposes a BIPA that outlines 7 guidelines to protect consumer's biometric data. The guidelines include consent for businesses that intend to collect, use, or retain Biometric Identifiers, the allowance of businesses to disclose BI's to third-parties only in specific circumstances, only allow business to retain BI's if they have strong data security measures. Additionally, the guidelines want to address scenarios where BIs are collected in circumstances where acquiring consent would be almost impossible, such as surveillance cameras, require third parties that obtain BIs to only use them for purpose they were intended. Finally, the AGO wants to make notice and consent language as clear as possible so businesses will not be uncertain in how they are expected to comply.

Expansion of the Data Broker Law:

Data Broker's should be required to provide an opt-out, demand from consumers that Data Broker's delete their data, "a right to be forgotten", provide a statewide service that Vermonter's can register for, and Data Brokers are required to monitor it, similar to the Do Not Call registry. Must disclose data breach, called a Data Broker Security Breach. Presently, Data Brokers are not required to notify consumers, or the AGO, if a security breach occurs.

Conclusions:

A BIPA that includes a private right of action and clear and specific damages; data minimization similar to the CCPA; third parties must comply with original consent; opting out of Data Broker sharing of data through "Do Not Track" system' expansion of Data Broker Law; adoption of certain provisions of the CCPA.

Stakeholder responses:

This report contains 8 letters from 8 different stakeholder organizations detailing their opinions and recommendations on a BIPA for Vermont. In short, these opinions are mixed. Many stakeholders are in favor of the plan outlined by the AGO and some believe that modeling Vermont's plan after Illinois policy is the wrong idea. A statement included by the State Privacy & Security Coalition details that including a private right of action for statutory damages would create massive class action litigation exposure for any alleged violations of the law by commercial entities, significantly deterring uses of biometric data including for anti-fraud, authentication and other security purposes that benefit consumers.

Vermont Public Interest Research Group (VPIRG) is in support of a strong data minimization standard, as well as biometric privacy protection with a strong private right of action. Citing that the Illinois' Information Privacy Act is the right place to start for Vermont's biometric privacy protections.

