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ARCHIVES DIVISION

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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 441
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
FINANCE AND SECURITIES REGULATION

FILED

03/27/2024 1:42 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Adopts rules from HB 2052 (2023) establishing a data brokers registry within DCBS

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 04/30/2024 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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Filed By:
Karen Winkel
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 04/23/2024

TIME: 11:00 AM - 11:30 AM

OFFICER: Teddy Badege

IN-PERSON HEARING DETAILS

ADDRESS: Labor and Industries Building, 350 Winter St. NE, Basement, Conf Rm E, Salem, OR 97301

REMOTE HEARING DETAILS

MEETING URL: [Click here to join the meeting](#)

PHONE NUMBER: 1-503-446-4951

CONFERENCE ID: 654460461

SPECIAL INSTRUCTIONS:

This is a hybrid meeting conducted in-person and virtually via Microsoft Teams:

Join on your computer, mobile app or room device

Meeting ID: 266 328 666 197

Passcode: atBsgH

NEED FOR THE RULE(S)

HB 2052 (2023) was introduced by Attorney General Ellen Rosenblum and was developed in consultation with the Attorney General's Consumer Privacy Task Force to address the dangers data brokers pose to Oregonians safety and privacy, and to provide Oregon consumers with information about data broker practices in the state. HB 2052 defines a data broker as someone who collects and sells, or licenses, brokered personal data to another person. HB 2052 requires a data broker to register with the Department of Consumer and Business Services (DCBS) prior to collecting and selling or licensing brokered personal data to another person.

The purpose of this rulemaking is to effectuate a program to prevent data brokers from collecting and selling or licensing personal data of Oregonians without registration. The registration program will provide Oregonians with important information about what data brokers might have their data, and how they can opt-out of the sale or request deletion of their data.

With this rulemaking, DCBS will provide consumers with a transparent, understandable and easy-to-use way to access information about data brokers operating in Oregon and will provide consumers with the information they need to opt-out of the collection and brokerage of their data.

HB 2052 permits the director of DCBS to utilize the Nationwide Multistate Licensing System and Registry (NMLS) for registering data brokers. One purpose for this rulemaking is to implement and operate an alternative registration pathway because NMLS is unavailable for DCBS to utilize as a data broker registry. MyLicensing Office will be utilized as the registration pathway for this program.

The Non-Depository Programs (NDP) section of the Division of Financial Regulation at DCBS will administer the registration and renewal process of this program, along with maintaining the internal and external registries for this program and administering the fee collection associated with this program.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

Draft rules are available from Karen Winkel, Rules Coordinator, Division of Financial Regulation located at 350 Winter St. NE, Salem, OR 97301 and are available on the division's website:

<https://dfr.oregon.gov/laws-rules/Pages/proposed-rules.aspx>.

House Bill 2052. Enrolled

<https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/HB2052/Enrolled>.

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

A Rulemaking Advisory Committee (RAC) was consulted regarding this equity statement. This rule is not anticipated to have any disparate impact on any particular demographic of consumers.

FISCAL AND ECONOMIC IMPACT:

The requirement for data brokers to register with the department may cost data brokers operational costs and will cost data broker entities the annual registration and renewal fees. As such, this program may cause an increased cost of compliance for some businesses. DCBS does not have specific information on the number of employees employed by data brokers subject to the registration requirement, but it is likely that some are small businesses independently owned and operated with fewer than 50 employees.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) The Department of Justice may receive consumer complaints related to data brokers' compliance with rules adopted pursuant to HB 2052. We do not anticipate a significant economic impact to our agency beyond the underlying statutory requirement to establish a registry.

(2)(a) In California, which has established a similar registration program, 505 data brokers are currently registered, and an additional 152 have pending or incomplete registrations with the California AG for 2023. Many of these entities also do business in Oregon, so it is likely that a similar number of businesses will be affected. However, we do not have specific information about the size of these businesses. We are aware of two Oregon based data brokers. We anticipate an impact on these local businesses to the amount as described above to cover compliance costs, administering of their registration with the agency, and costs incurred from any fees incurred for maintaining compliance with the registry program. DCBS does not have specific information as to the number of employees employed by these two local businesses.

(2)(b) Data brokers, as identified as small and large businesses, will be required to register with the department, and renew their registration annually. As such, data brokers are required to pay \$600 to register, and \$600 to renew their registration. Data brokers are subject to a fee of \$50 for any late renewals.

(2)(c) Based on available information and feedback from the RAC, the proposed rule will not require the acquisition of additional equipment or supplies, or an increase labor costs or administration to comply with the proposed changes to the rule.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Persons serving on the RAC included representatives of professional organizations, individual advisors' lawyers, privacy focused advocacy groups, and consumer advocacy groups, who have clients that may be affected by the proposed changes to the rule.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

441-840-0010, 441-840-0020, 441-840-0030, 441-840-0040, 441-840-0050, 441-840-0060, 441-840-0070, 441-840-0080, 441-840-0090

ADOPT: 441-840-0010

RULE SUMMARY: States the definition of key terms for purposes of data brokers.

CHANGES TO RULE:

441-840-0010

Definitions as Used in OAR 441-840-0010 to 441-840-0090

Unless a term is specifically defined elsewhere in these rules or the context otherwise requires, the definitions of ORS 646A.593(1) are hereby incorporated by reference and made part of these rules.

Statutory/Other Authority: ORS 646A.593(8)

Statutes/Other Implemented: ORS 646A.593

ADOPT: 441-840-0020

RULE SUMMARY: States the registration process and steps data brokers must follow in order to register with the department.

CHANGES TO RULE:

441-840-0020

Registration Requirements

(1) To register with the department for purposes of ORS 646A.593, a data broker shall:

(a) Pay the fees prescribed under OAR 441-840-0050; and

(b) Submit to the director electronically:

(A) The name and any assumed business name of the data broker;

(B) The street address and mailing address of the data broker;

(C) The name and address of the data broker's registered agent in Oregon;

(D) The main telephone number of the data broker;

(E) The data broker's primary website;

(F) The name, phone number and electronic mail address of contact person(s); and

(G) A declaration in which the data broker:

(i) States whether resident individuals may opt out of all or a portion of the data broker's collection, sale or licensing of the resident individuals' brokered personal data;

(ii) Identifies which of the data broker's activities of collecting, selling or licensing brokered personal data a resident individual may opt out of or which portion of the resident individual's brokered personal data the resident individual may opt out of providing or permitting the data broker to collect, sell or license;

(iii) Describes the method by which a resident individual may exercise the choices described in subparagraphs (a) and (b) of this paragraph; and

(iv) States whether a resident individual may authorize another person to exercise the choice described in subparagraph (a) of this paragraph on the resident individual's behalf and, if so, how to do so.

(c) Transmit to the director any information or documentation required to be submitted in connection with an application that cannot be filed electronically in a form and manner approved by the director.

(2) A data broker shall file electronically, in a form and manner approved by the director, all information and documentation submitted to the director pursuant to OAR 441-840-0020(1). If a data broker is unable to file any such information or documentation electronically, the data broker shall transmit such information or documentation in a form and manner approved by the director.

(3) A data broker's registration may be terminated or suspended for any violation of OAR 441-840-0020(1).

(4) A registration under this rule is not valid until the registration is approved by the department.

(5) Except as provided in OAR 441-840-0020(6), a registration under this rule is valid until the end of the calendar year in which the department approves the registration.

(6) A registration under this rule that is approved by the department after November 1 is valid until December 31 of the following year.

Statutory/Other Authority: ORS 646A.593(8)

Statutes/Other Implemented: ORS 646A.593(2) - 646A.593(4)

ADOPT: 441-840-0030

RULE SUMMARY: States the steps data brokers must follow and complete to correct any deficiencies found in their registry application, renewal, filing or amendment to filing.

CHANGES TO RULE:

441-840-0030

Deficiencies in Data Broker Registration or Registration Renewal

(1) A registration or registration renewal under this rule will not be approved if the information and documentation submitted under OAR 441-840-0020(1) or OAR 441-840-0040 is incomplete, inaccurate, or otherwise deficient in any material respect.¶

(2) If a data broker submits any information or documentation under OAR 441-840-0020(1) or OAR 441-840-0040 that is incomplete, inaccurate, or otherwise deficient in any material respect, the director will notify the data broker of any such deficiencies by email. If the data broker fails to resolve the deficiencies within 30 days after the date on which the email notice was sent:¶

(a) The registration will be considered abandoned;¶

(b) The registration will not be approved; and¶

(c) Any fees paid by the data broker under OAR 441-840-0050 will be forfeit and will not be refunded or otherwise credited to the data broker.¶

(3) The failure of a data broker registered under this rule to maintain an active registration to do business in the state of Oregon is a continuing violation for which civil penalties may be imposed under ORS 646A.593(7). ¶

(4) The director may suspend the registration of a data broker for failure of a data broker registered under this rule to maintain an active registration to do business in the state of Oregon. The procedure for suspension of the registration under this rule is as follows:¶

(a) The director shall notify the data broker that the business registration in the state of Oregon is not active. This notice may be sent by email to the email address of the company's contact person.¶

(b) If the business registration is not active in the state of Oregon within 30 calendar days after sending the notice in subsection (a) of this rule, the director shall suspend the registration of the data broker.¶

(c) A data broker whose registration has been suspended under this rule may reinstate the registration by obtaining an active business registration with the state of Oregon and submitting a written request for reinstatement to the director at any time prior to December 31 of the year the registration was suspended. If the data broker has an active business registration with the state of Oregon and the registration would still be active but for the suspension, the director will reinstate the registration as of the date the written request was received by the director.¶

(d) If the data broker does not file a written request to reinstate the registration as of December 31, the registration will expire and the data broker will have to apply for a new registration in Oregon by submitting a new application.

Statutory/Other Authority: ORS 646A.593(8)

Statutes/Other Implemented: ORS 646A.593(2) - 646A.593(4)

ADOPT: 441-840-0040

RULE SUMMARY: States the renewal process and steps data brokers must follow in order to renew their application with the department.

CHANGES TO RULE:

441-840-0040

Renewal of Data Broker Registration

(1) To renew a valid registration under this rule, a data broker shall, at least 30 days before the expiration of the registration:¶

(a) Pay the fees prescribed under OAR 441-840-0050; and¶

(b) Submit to the director in the manner specified in OAR 441-840-0020(2):¶

(A) A declaration in which the data broker attests that the information and documentation submitted by the data broker under OAR 441-840-0020, as modified by any information and documentation submitted by the data broker under OAR 441-840-0070, is true and correct in all material respects; or¶

(B) All information and documentation required under OAR 441-840-0020(1). ¶

(2) The approval of a registration renewed in accordance with this rule shall be effective immediately upon the expiration of the registration that is the subject of the renewal.¶

(3) A data broker's registration may be terminated or suspended for any violation of OAR 441-840-0040(1).

Statutory/Other Authority: ORS 646A.593(8)

Statutes/Other Implemented: ORS 646A.593(2) - 646A.593(4)

ADOPT: 441-840-0050

RULE SUMMARY: Sets the fee amounts data brokers must pay to the director to register with the department and the fee amounts data brokers must pay to renew their application with the department annually.

CHANGES TO RULE:

441-840-0050

Fees Payable to the Director

(1) A data broker shall pay to the director the following fees at the time of registration or renewal of registration:¶

(a) A nonrefundable application or renewal fee of \$600.¶

(b) An additional fee of \$50 will be assessed for any renewals submitted after December 31 and prior to March 1.¶

(2) A data broker shall pay the fees in a form and manner approved by the director.

Statutory/Other Authority: ORS 646A.593(8)

Statutes/Other Implemented: ORS 646A.593(3)(b)

ADOPT: 441-840-0060

RULE SUMMARY: States the rules for the use of an assumed business name for data brokers.

CHANGES TO RULE:

441-840-0060

Rules for Use of an Assumed Business Name

(1) In addition to any requirements for registering an assumed business name with the Secretary of State, a data broker who intends to use an assumed business name to identify the person's data broker business shall also comply with the following before doing business under the assumed business name:¶

(a) If the assumed business name contains words or phrases described in ORS 56.023, the data broker must obtain specific written approval from the director under ORS 705.635 and OAR 441-005-0010.¶

(b) The data broker must list the name as any other assumed or doing business as names in the application. ¶

(2) Regardless of the lack of any ownership interest in the assumed business name, the data broker is responsible for all actions of those acting under the assumed business name which relate to brokering data.

Statutory/Other Authority: ORS 646A.593(8)

Statutes/Other Implemented: ORS 646A.593(2) - 646A.593(4)

ADOPT: 441-840-0070

RULE SUMMARY: States the data brokers' duty to disclose to the department any significant developments relating to the breach of security of consumers personal information or any material changes to the information the data broker provided in their application form, including address changes, phone number changes, and any change in assumed business name registered with Secretary of State.

CHANGES TO RULE:

441-840-0070

Disclosure of Significant Developments

(1) A data broker shall disclose to the director of any breach of security as required in ORS 646A.604 within 45 days of any such breach.¶

(2) A registered data broker shall notify the director within 45 days following:¶

(a) Any changes in the information required on the data broker under OAR 441-840-0020 or OAR 441-840-0040:¶

(b) Any other material changes to information submitted in registration application under OAR 441-840-0020 or OAR 441-840-0040.¶

(c) Any change in assumed business name registered with Secretary of State.¶

(3) A data broker's registration may be terminated or suspended for any violation of OAR 441-840-0070(2).

Statutory/Other Authority: ORS 646A.593(8), 646A.626

Statutes/Other Implemented: ORS 646A.593(2) - 646A.593(4), ORS 646A.604(3)

ADOPT: 441-840-0080

RULE SUMMARY: States the grounds for investigation by the director a data broker may be subject to for any violation of the rules set forth in OAR 441-840-0010 to 441-840-0090.

CHANGES TO RULE:

441-840-0080

Investigation by Director

(1) The director may make such inquiries and conduct such investigations as the director deems necessary to determine whether a data broker has violated or is violating any requirement under ORS 646A.593 or any of the rules set forth in OAR 441-840-0010 to 441-840-0090. ¶

(2) In connection with any inquiry or investigation described in section (1) of this rule, the director may address any proper inquiry to a data broker that is registered or required to be registered under ORS 646A.593 in relation to the data broker's collection, sale, or licensing of brokered personal data within this state or the data broker's compliance with any requirement under ORS 646A.593 or any of the rules set forth in OAR 441-840-0010 to 441-840-0090. ¶

(3) Any data broker to whom an inquiry is addressed under section (2) of this rule shall promptly and truthfully respond to such inquiry.

Statutory/Other Authority: ORS 646A.593(8)

Statutes/Other Implemented: ORS 646A.593(1) - 646A.593(8)

ADOPT: 441-840-0090

RULE SUMMARY: States the grounds for termination a data broker may be subject to for any violation of the rules set forth in OAR 441-840-0010 to 441-840-0090.

CHANGES TO RULE:

441-840-0090

Termination or Suspension of Data Broker Registration

A data broker's registration may be terminated or suspended for any violation of the rules set forth in OAR 441-840-0010 to 441-840-0090.

Statutory/Other Authority: ORS 646A.593(8)

Statutes/Other Implemented: ORS 646A.593(2) - 646A.593(4)