



DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

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TO: Tewodros Badege, Financial Policy Analyst
Department of Consumer and Business Services Division of Financial Regulation

FROM: Kate Denison, Deputy Legislative Director
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SUBJECT: Department of Justice Comments on Proposed OAR 441-830-0010 *et seq.*

Background

The Department of Justice (DOJ) is grateful to participate in the Data Brokers Registry (HB 2052) Rulemaking Advisory Committee (RAC). This rulemaking stems from a legislative proposal developed by the Attorney General's Consumer Privacy Task Force ("Task Force") and is intended to shed some light on the largely unregulated \$319 billion data broker industry. The law requires those who broker Oregonians' personal data – as defined by the law – to register with the Department of Consumer and Business Services (DCBS), and to provide basic contact information about whether a consumer can "opt out" of the data broker's collection and sale of their personal information, and a method for requesting an opt out (if applicable).

DOJ Comments on Proposed Rule 441-830-0010

Definitions: 441-830-0010

DOJ recommends that definitions used in the rule align with the language in [HB 2052](#) (2023). To that end, we suggest the following changes:

- Remove definitions for the terms "collect" and "sell." The Task Force purposefully left these terms undefined in the law;
- If the definitions of "collect" and "sell" are left in the bill, replace the following terms:
 - "consumer" with "resident individual";
 - "personal information" with "brokered personal information";
- Expand the definition of "data broker" so it includes all of the exemption listed in HB 2052(1)(c)(B), or simply state that "data broker" has the same meaning as defined in HB 2052(1)(c).

Application Requirements: 441-830-0020

This section needs some editing for grammar and to avoid confusion. The confusion portions are as follows:

- Subsection (1) refers to (4)(a) of section 441-830-0010. There is no such subsection, as the definition of “data broker” is found at (4) of 441-830-0010, but there is no (4)(a). Possibly this was intended to refer to the missing exemptions for the definition of “data broker” referenced in our comments to the definitions section above.
- Subsection (1)(a) is listed as “information and materials” that shall be submitted electronically, but it seems to just be elaboration on how a person submits materials.
- It is unclear if subsection (1)(b) is asking for proof of registration to do business in Oregon (which would fit under “materials and information), or if this is a requirement to register to do business in Oregon (in which case it would not be “material and information” to be submitted but would instead be a separate requirement).
- Subsection (1)(c) does not fit under the opening paragraph (1), as payment of a fee is not submission of “materials and information.”
- Subsection (1)(d) does not fit under paragraph (1), as is not “materials and information” to be submitted but elaboration on how to submit materials.

To rewrite this section, it would make more sense to first say that anyone who fits the definition of data broker (which should be updated to include the exemptions, as noted above) needs to register, and that in order to register they need to do the things listed above.

Disclosure of Significant Developments: 441-830-0070

To the extent that the rule requires notification of a data breach, we suggest that it reference and coincide with the requirements in the Oregon Consumer Information Protection Act, ORS 646A.600 *et seq.*

Data Broker Duty to Protect Personal Information: 441-830-0090

The Task Force did not include any affirmative requirements for data brokers in the provisions of HB 2052 beyond a registration requirement, so it is unclear why this particular requirement appears in the rules. In addition, to the degree that the various requirements in ORS 646A already apply to data brokers, it seems redundant to state it here.

If this section is included in the rules, DOJ prefers the first proposed option for this section, referencing the Oregon Consumer Information Privacy Act, ORS 646A.600 *et seq.*

Termination or Suspension of a Data Broker Registration: 441-830-0110

At the RAC meeting, certain members questioned whether this section is overbroad as currently written and/or falls outside DCBS's responsibility to host a registry, particularly subsection (1)(d) related to termination of a registration based on a data brokers' engagement in dishonest, fraudulent or illegal practices or conduct.

While DOJ supports robust oversight of data brokers and their activities, we agree that subsection (1)(d) goes beyond what was contemplated by the Task Force. Several states have implemented data broker laws that go beyond a registry, and we may decide to expand our law to do additional things in the future. But for now, the idea was simply to require a registry, not for DCBS to regulate potentially dishonest, fraudulent, or otherwise illegal activities of a data broker.

On the other hand, Task Force discussions did reflect an assumption that DCBS would have authority to terminate a registration for failure to comply with the requirements set forth in Section 1(3) of HB 2052. Subsections (c) and (e) of the proposed rule are consistent with that assumption, and it would frustrate the policy purpose of HB 2052 to disallow termination for failure to pay registration fees or follow the requirements of these rules implementing the law.

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