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Privacy Bill Could Make Virginia Law “The Most Restrictive” In The World

LEXINGTON, VA — Legislation passed in Richmond can often have unintended consequences for Virginia taxpayers, but few more so than the amended Senate Bill SB769 according to the Virginia Institute for Public Policy. This would make Virginia’s law more restrictive than the two trendsetters: California and the European Union.

The bill would place a number of new restrictions on business websites. Businesses would need to revamp their websites to include cookie consent warnings, store proof of cookie consent, and to recognize opt-out “signals” by which an internet user might wish to automatically opt out. The Attorney General’s office could update the list of “signals” at any time, giving businesses across Virginia six months to rush to comply.

It appears that no U.S. State or nation anywhere in the world has such onerous requirements on business, and no cost-benefit analysis has been done on this bill which could put Virginia’s business-friendly reputation at stake.

When the European Union introduced cookie consent laws, the estimated cost was an annual \$2.3 billion¹. But Caleb Taylor, Director of Policy for the Virginia Institute for Public Policy, argues that SB769 would make things even worse. “This bill takes restrictions far further than the EU’s policy and could make Virginia laws some of the most restrictive in the world. Nobody seems to have checked how much this will cost Virginia businesses, or considered the practical question of how the Attorney General’s office is expected to police it all. We’re being asked to sign a blank check.”

For a so-called “privacy bill”, the irony is that data controllers would have to “document and store proof,” requiring them to retain remote data on website users which would potentially make the general public more vulnerable to hacking.

Cookie laws have proved divisive across the globe due to the significant cost of implementation for those businesses which do not employ a tech professional, general lack of compliance, legal bills, and the fact that users receive cookies anyway without a warning whenever they visit an out-of-state website. Another common complaint is from website users who simply find them “annoying”.

The European Union’s policy only achieved 51% compliance² after 4 years; it seems likely that this more onerous policy would see more than half of Virginia businesses failing to comply. Meanwhile, the \$7,500 fine would be a significant blow for small businesses but a mere slap on the wrist for big business.

Caleb Taylor continued, “It’s a pro-privacy bill that will make your data less private, an anti-cookies bill that won’t stop a single internet user having cookies on their device, with Virginia businesses (and ultimately taxpayers) being expected to foot the bill. The real kicker is that because people visit websites outside Virginia, and most Virginia websites will be either non-compliant or exempt, not a single Virginian will actually benefit from the new law. Consumers will still need to delete cookies from their machine from time to time.”

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1 - For further information, contact Caleb Taylor at info@virginiaaction.org.

2 – SB769 can be found at <https://lis.virginia.gov/bill-details/20251/SB769>.

¹ <https://www2.itif.org/2014-economic-costs-eu-cookie.pdf>

² <https://doi.org/10.2478/popets-2019-0023>