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Date: (Filing No. H-)

JUDICIARY

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
132ND LEGISLATURE
FIRST SPECIAL SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 1220, L.D. 1822, “An Act to Enact the Maine Online Data Privacy Act”

Amend the bill in section 1 in c. 1057 in §9601 in the first indented paragraph in the first line (page 1, line 6 in L.D.) by striking out the following: "Data Privacy and Protection" and inserting the following: 'Online Data Privacy'

Amend the bill in section 1 in c. 1057 in §9602 in subsection 7 in paragraph A in the 2nd line (page 2, line 2 in L.D.) by inserting after the following: "the" the following: 'collection or'

Amend the bill in section 1 in c. 1057 in §9602 in subsection 7 in paragraph B in subparagraph (1) in the 2nd line (page 2, line 7 in L.D.) by inserting after the following: "data" the following: 'collection or'

Amend the bill in section 1 in c. 1057 in §9602 in subsection 11 in the last line (page 2, line 30 in L.D.) by inserting after the following: "of" the following: 'collecting or'

Amend the bill in section 1 in c. 1057 in §9602 by striking out all of subsection 14 (page 2, lines 36 to 41 and page 3, lines 1 to 4 in L.D.) and inserting the following:

'14. De-identified data. "De-identified data" means data that does not identify, cannot reasonably be used to infer information about and cannot otherwise be linked to an identified or identifiable consumer, or a device that may be linked to an identified or identifiable consumer, if the controller that possesses the data:

- A. Takes reasonable measures to ensure that the de-identified data cannot be linked with a consumer;
- B. Commits in a publicly available terms and conditions document or in a publicly available privacy policy to maintain and use the data in its de-identified format; and
- C. Contractually obligates recipients of the data to satisfy the criteria and commitments in paragraphs A and B.'

COMMITTEE AMENDMENT

1 Amend the bill in section 1 in c. 1057 in §9602 in subsection 26 in paragraph A in the
2 2nd line (page 4, line 10 in L.D.) by striking out the following: "specific location of a
3 Consumer" and inserting the following: 'past or present specific location of a consumer'

4 Amend the bill in section 1 in c. 1057 in §9602 in subsection 27 in the last line (page
5 4, line 18 in L.D.) by inserting after the following: "data" the following: 'but not including
6 the collection of personal data'

7 Amend the bill in section 1 in c. 1057 in §9602 by striking out all of subsection 31
8 (page 4, lines 27 to 39 and page 5, lines 1 to 7 in L.D.) and inserting the following:

9 **31. Publicly available information. "Publicly available information":**

10 **A. Means information about a consumer that a person:**

11 (1) Lawfully obtains from a record of a governmental entity; or

12 (2) Reasonably believes has been lawfully made available to the general public by
13 the consumer or by widely distributed media; and

14 **B. Does not include:**

15 (1) Any obscene visual depiction as described in 18 United States Code, Section
16 1460;

17 (2) Biometric data;

18 (3) Genetic data, unless the genetic data has been made available to the general
19 public by the consumer;

20 (4) Any information that is collated or combined to create a consumer profile that
21 is made available to a user of a publicly available Internet website or mobile
22 application either for remuneration or free of charge;

23 (5) Any information that is made available for sale;

24 (6) Inferences derived from information described in subparagraph (4) or (5) or
25 inferences derived from a combination of publicly available information and other
26 personal data; or

27 (7) Intimate images a controller or processor knows have been created or shared
28 without consent of the consumer depicted in the images. For purposes of this
29 subparagraph, "intimate image" means a photograph, videotape, film or digital
30 recording of a consumer in a state of nudity or engaged in a sexual act or engaged
31 in sexual contact for which there is no public or newsworthy purpose.'

32 Amend the bill in section 1 in c. 1057 in §9602 in subsection 33 in paragraph B in
33 subparagraph (4) in the last line (page 5, line 22 in L.D.) by inserting after the following:
34 "party;" the following: 'or'

35 Amend the bill in section 1 in c. 1057 in §9602 in subsection 33 in paragraph B in
36 subparagraph (5) in division (b) in the first line (page 5, line 25 in L.D.) by striking out the
37 following: "audience; or" and inserting the following: 'audience.'

38 Amend the bill in section 1 in c. 1057 in §9602 in subsection 33 in paragraph B by
39 striking out all of subparagraph (6) (page 5, lines 26 to 28 in L.D.).

1 Amend the bill in section 1 in c. 1057 in §9602 in subsection 34 by striking out all of
2 paragraph F (page 5, lines 38 and 39 in L.D.) and inserting the following:

3 'F. Account numbers, credit card numbers or debit card numbers, if circumstances exist
4 wherein such numbers can be used without additional identifying information, access
5 codes or passwords;'

6 Amend the bill in section 1 in c. 1057 in §9602 in subsection 37 in paragraph B in
7 subparagraph (4) in the first line (page 6, line 21 in L.D.) by striking out the following:
8 "Processing" and inserting the following: 'Collecting or processing'

9 Amend the bill in section 1 in c. 1057 in §9603 in subsection 1 in the first line (page 6,
10 line 28 in L.D.) by striking out the following: "July" and inserting the following:
11 'September'

12 Amend the bill in section 1 in c. 1057 in §9604 in subsection 2 in paragraph O in the
13 first line (page 8, line 26 in L.D.) by inserting after the following: "Data" the following:
14 'collected.'

15 Amend the bill in section 1 in c. 1057 in §9604 in subsection 2 in paragraph O in
16 subparagraph (3) in the last line (page 8, line 34 in L.D.) by striking out the following: "or"

17 Amend the bill in section 1 in c. 1057 in §9604 in subsection 2 in paragraph P in the
18 last line (page 8, line 39 in L.D.) by striking out the following: "41713." and inserting the
19 following: '41713; or'

20 Amend the bill in section 1 in c. 1057 in §9604 in subsection 2 by inserting after
21 paragraph P the following:

22 'Q. Personal data collected and used pursuant to the federal Controlled Substances Act,
23 21 United States Code, Section 830.'

24 Amend the bill in section 1 in c. 1057 in §9606 by striking out all of subsection 1 (page
25 9, lines 19 to 39 in L.D.) and inserting the following:

26 '1. Consumer rights. A consumer has the right to:

27 A. Confirm whether a controller is collecting or processing the consumer's personal
28 data;

29 B. If a controller collects or processes a consumer's personal data, access the
30 consumer's personal data;

31 C. Correct inaccuracies in the consumer's personal data, taking into account the nature
32 of the personal data and the purposes of the processing of the consumer's personal data;

33 D. Require a controller to delete personal data provided by, or obtained about, the
34 consumer unless retention of the personal data is required by law;

35 E. When processing of personal data is done by automatic means, obtain a copy of the
36 consumer's personal data collected and processed by the controller in a portable and,
37 to the extent technically feasible, readily usable format that allows the consumer to
38 transmit the data to another controller easily and without hindrance;

39 F. Obtain a list of the 3rd parties to which the controller has sold the consumer's
40 personal data or, if the controller does not maintain information about the 3rd parties

1 to which the controller has sold the personal data of the specific consumer, obtain a list
2 of the 3rd parties to which the controller has sold any consumer's personal data; and

3 G. Opt out of the collection and processing of the consumer's personal data for
4 purposes of:

5 (1) Targeted advertising;

6 (2) The sale of personal data; or

7 (3) Profiling in furtherance of any automated decision that produces any legal or
8 similarly significant effect concerning the consumer.'

9 Amend the bill in section 1 in c. 1057 in §9606 by striking out all of subsection 3 (page
10 10, lines 3 to 8 in L.D.) and inserting the following:

11 **3. Exercise of consumer rights.** This subsection governs the exercise of the
12 consumer rights established in subsection 1.

13 A. A controller shall establish a secure and reliable method pursuant to section 9608,
14 subsection 6 for a consumer to exercise a consumer right under this section.

15 B. A consumer may exercise a consumer right under this section, including through
16 another individual who has authority under subsection 4 to exercise the consumer's
17 rights, using the method established by the controller under paragraph A.'

18 Amend the bill in section 1 in c. 1057 in §9606 in subsection 4 in paragraph A in the
19 2nd line (page 10, line 12 in L.D.) by inserting after the following: "the" the following:
20 'collection and'

21 Amend the bill in section 1 in c. 1057 by striking out all of §9607 (page 11, lines 34 to
22 42 and page 12, lines 1 to 6 in L.D.) and inserting the following:

23 **§9607. Authorized agent**

24 **1. Authority to designate agent to opt out of collection and processing.** A consumer
25 may designate another person to serve as the consumer's authorized agent, and act on the
26 consumer's behalf, to exercise the consumer's right under section 9606, subsection 1,
27 paragraph G to opt out of the collection and processing of personal data.

28 **2. Method of designating agent.** The consumer may designate an authorized agent
29 by way of, among other methods, a technology, including, but not limited to, an Internet
30 link or a browser setting, browser extension or global device setting, indicating the
31 consumer's intent to exercise the consumer's right under section 9606, subsection 1,
32 paragraph G to opt out of the collection and processing of personal data.

33 **3. Authentication of agent's opt-out request.** A controller shall comply with a
34 request received from an authorized agent to exercise the consumer's right under section
35 9606, subsection 1, paragraph G to opt out of the collection and processing of personal data
36 if, using commercially reasonable efforts, the controller is able to authenticate:

37 A. The identity of the consumer; and

38 B. The authorized agent's authority to act on the consumer's behalf.'

39 Amend the bill in section 1 in c. 1057 in §9608 in subsection 1 in paragraph C in the
40 first line (page 12, line 13 in L.D.) by striking out the following: "Process" and inserting
41 the following: 'Collect or process'

1 Amend the bill in section 1 in c. 1057 in §9608 in subsection 1 in paragraph D in
2 subparagraph (1) in the first line (page 12, line 16 in L.D.) by striking out the following:
3 "Process" and inserting the following: 'Collect or process'

4 Amend the bill in section 1 in c. 1057 in §9608 in subsection 2 in paragraph A in the
5 last line (page 12, line 38 in L.D.) by inserting after the following: "pertains" the following:
6 'including any routine administrative, operational, website or account-servicing activity
7 that is consistent with the reasonable expectations of the consumer under the circumstances.
8 This paragraph does not prevent a controller from processing personal data collected in
9 accordance with this paragraph to provide advertising to a consumer based on the
10 consumer's activities within the controller's own websites or online applications'

11 Amend the bill in section 1 in c. 1057 in §9608 in subsection 4 in paragraph A in the
12 first line (page 13, line 25 in L.D.) by inserting after the following: "sensitive data," the
13 following: 'collected or'

14 Amend the bill in section 1 in c. 1057 in §9608 in subsection 4 in paragraph B in the
15 first line (page 13, line 27 in L.D.) by inserting after the following: "for" the following:
16 'collecting and'

17 Amend the bill in section 1 in c. 1057 in §9608 by striking out all of subsection 5 (page
18 13, lines 41 and 42 and page 14, lines 1 to 7 in L.D.) and inserting the following:

19 **'5. Notice of sale of personal data, targeted advertising or profiling; opt-out**
20 **mechanism.** If a controller sells personal data to 3rd parties, collects or processes personal
21 data for the purposes of targeted advertising or processes personal data for the purposes of
22 profiling the consumer in furtherance of decisions that produce legal or similarly significant
23 effects concerning the consumer, the controller shall clearly and conspicuously disclose the
24 sale, collection or processing, as well as the manner in which a consumer may exercise the
25 right to opt out of the sale, collection or processing. The disclosure required under this
26 subsection must be prominently displayed on the controller's publicly accessible website
27 and the language used must be clear, easy to understand and unambiguous.'

28 Amend the bill in section 1 in c. 1057 in §9608 in subsection 6 by striking out all of
29 paragraph C (page 14, lines 21 to 41 and page 15, lines 1 to 8 in L.D.) and inserting the
30 following:

31 'C. A controller may satisfy the controller's obligation under this subsection to establish
32 a secure and reliable mechanism for a consumer to exercise the right to opt out under
33 subsection 5 by:

34 (1) Providing a clear and conspicuous link on the controller's publicly accessible
35 website to a webpage that allows a consumer, an authorized agent of the consumer
36 or a person authorized by section 9606, subsection 4 to exercise the consumer's
37 rights to opt out of any collection or processing of the consumer's personal data for
38 the purposes of targeted advertising or profiling or any sale of personal data; and

39 (2) No later than September 1, 2026, allowing a consumer to opt out of any
40 collection or processing of the consumer's personal data for the purposes of
41 targeted advertising or any sale of personal data through an opt-out preference
42 signal sent, with the consumer's consent, by a platform, technology or mechanism
43 to the controller indicating the consumer's intent to opt out of the collection,

1 processing or sale as described in section 9607, subsection 2. The platform,
2 technology or mechanism:

3 (a) Must be consumer-friendly and easy to use by the average consumer;

4 (b) Must use clear, easy to understand and unambiguous language;

5 (c) Must be as consistent as possible with any other similar platform,
6 technology or mechanism required by federal or state law, rule or regulation;

7 (d) Must enable the controller to reasonably determine whether the consumer
8 is a resident of the State, which reasonable determination may be based on the
9 location associated with the consumer's Internet protocol address, and whether
10 the consumer has made a legitimate request to opt out of any such collection,
11 processing or sale of the consumer's personal data;

12 (e) May not unfairly disadvantage another controller; and

13 (f) May not make use of a default setting but must require the consumer to
14 make an affirmative, freely given and unambiguous choice to opt out of any
15 such collection, processing or sale of the consumer's personal data.

16 A controller that recognizes an opt-out preference signal that has been approved by the
17 laws of another state is considered to be in compliance with this paragraph.'

18 Amend the bill in section 1 in c. 1057 in §9608 in subsection 6 in paragraph D in the
19 first line (page 15, line 9 in L.D.) by inserting after the following: "any" the following:
20 'collection or'

21 Amend the bill in section 1 in c. 1057 in §9609 in subsection 1 in paragraph B in
22 subparagraph (6) in the first line (page 16, line 4 in L.D.) by striking out the following:
23 "After providing the controller an opportunity to object, engage a" and inserting the
24 following: 'Engage any'

25 Amend the bill in section 1 in c. 1057 in §9609 in subsection 2 in paragraph C in the
26 last line (page 16, line 31 in L.D.) by striking out the following: "9611" and inserting the
27 following: '9610'

28 Amend the bill in section 1 in c. 1057 in §9609 in subsection 4 in paragraph C in the
29 last line (page 17, line 8 in L.D.) by striking out the following: "9614" and inserting the
30 following: '9613'

31 Amend the bill in section 1 in c. 1057 by striking out all of §9610 (page 17, lines 12 to
32 20 in L.D.).

33 Amend the bill in section 1 in c. 1057 in §9611 in subsection 1 in paragraph A in the
34 first line (page 17, line 24 in L.D.) by inserting after the following: "The" the following:
35 'collection or'

36 Amend the bill in section 1 in c. 1057 in §9611 in subsection 1 in paragraph C in the
37 first line (page 17, line 26 in L.D.) by inserting after the following: "The" the following:
38 'collection or'

39 Amend the bill in section 1 in c. 1057 in §9611 by striking out all of subsection 2 (page
40 17, lines 36 to 40 in L.D.) and inserting the following:

1 **2. Data protection assessments required.** A controller shall conduct and document
2 a data protection assessment for each of the controller's collection or processing activities
3 that present a heightened risk of harm to a consumer. A single data protection assessment
4 may address a comparable set of collection or processing operations that include similar
5 activities.'

6 Amend the bill in section 1 in c. 1057 in §9611 by striking out all of subsection 3 (page
7 18, lines 1 to 16 in L.D.) and inserting the following:

8 **3. Required elements.** A data protection assessment required by subsection 2 must
9 be conducted in accordance with the requirements of this subsection.

10 A. The data protection assessment must identify and weigh the benefits that may flow
11 directly and indirectly from the collection or processing to the controller, the consumer,
12 other interested parties and the public against:

13 (1) The potential risks to the rights of the consumer associated with the collection
14 or processing as mitigated by safeguards that may be employed by the controller
15 to reduce these risks; and

16 (2) The necessity and proportionality of collection or processing in relation to the
17 stated purpose of the collection or processing.

18 B. The controller shall factor into a data protection assessment:

19 (1) The use of de-identified data;

20 (2) The reasonable expectations of consumers;

21 (3) The context of the collection or processing; and

22 (4) The relationship between the controller and the consumer whose personal data
23 will be collected or processed.'

24 Amend the bill in section 1 in c. 1057 in §9611 by striking out all of subsection 7 (page
25 18, lines 33 to 38 in L.D.) and inserting the following:

26 **7. Deadlines for performing data protection assessments.** A controller shall
27 conduct and document a data protection assessment as required by this section:

28 A. Within 6 months of the date that the controller first engages in a collection or
29 processing activity that presents a heightened risk of harm to a consumer; and

30 B. Within 6 months of making a material change to any collection or processing
31 activity that presents a heightened risk of harm to a consumer.'

32 Amend the bill in section 1 in c. 1057 in §9611 by striking out all of subsection 8 (page
33 18, lines 39 and 40 in L.D.) and inserting the following:

34 **8. Application.** The requirement to conduct a data protection assessment under this
35 section applies only to collection or processing activities that occur on or after September
36 1, 2026.'

37 Amend the bill in section 1 in c. 1057 in §9613 in subsection 1 in paragraph J in the
38 first line (page 20, line 7 in L.D.) by striking out the following: "; or" and inserting the
39 following: ';

1 Amend the bill in section 1 in c. 1057 in §9613 in subsection 1 in paragraph K in the
2 last line (page 20, line 9 in L.D.) by striking out the following: ";" and inserting the
3 following: '; or'

4 Amend the bill in section 1 in c. 1057 in §9613 in subsection 1 by inserting after
5 paragraph K the following:

6 'L. Transfer assets to a 3rd party in the context of a merger, acquisition, bankruptcy or
7 similar transaction when the 3rd party assumes control, in whole or in part, of the
8 controller's assets, but only if the controller, in a reasonable time prior to the transfer,
9 provides an affected consumer with:

10 (1) A notice describing the transfer, including the name of the entity receiving the
11 consumer's personal data and the applicable privacy policies of the receiving entity;
12 and

13 (2) A reasonable opportunity to:

14 (a) Withdraw any previous consent related to the consumer's personal data;
15 and

16 (b) Request deletion of the consumer's personal data.'

17 Amend the bill in section 1 in c. 1057 in §9613 in subsection 5 in paragraph B in the
18 first line (page 21, line 7 in L.D.) by inserting after the following: "an individual's" the
19 following: 'collection or'

20 Amend the bill in section 1 in c. 1057 in §9613 by striking out all of subsection 6 (page
21 21, lines 9 to 11 in L.D.) and inserting the following:

22 **'6. Burden of proof.** If a controller collects or processes personal data pursuant to an
23 exemption in this section, the controller bears the burden of demonstrating that the
24 collection or processing qualifies for the exemption and complies with the limitations in
25 subsection 7.'

26 Amend the bill in section 1 in c. 1057 in §9613 by striking out all of subsection 7 (page
27 21, lines 12 to 20 in L.D.) and inserting the following:

28 **'7. Limitations.** Personal data collected or processed by a controller or processor
29 pursuant to an exemption in this section may be collected or processed only to the extent
30 that the collection or processing is:

31 A. Subject to reasonable administrative, technical and physical measures to protect the
32 confidentiality, integrity and accessibility of the personal data and reduce reasonably
33 foreseeable risks of harm to consumers relating to the collection, use or retention of
34 personal data;

35 B. Reasonably necessary and proportionate to the purposes listed in this section; and

36 C. Adequate, relevant and limited to what is necessary in relation to the specific
37 purposes listed in this section.'

38 Amend the bill in section 1 in c. 1057 in §9613 by striking out all of subsection 8 (page
39 21, lines 21 to 23 in L.D.) and inserting the following:

1 **8. Collecting or processing personal data pursuant to an exemption.** A person
2 that collects or processes personal data pursuant to an exemption in this section may not be
3 considered a controller solely based on that collection or processing of personal data.'

4 Amend the bill in section 1 in c. 1057 in §9614 in subsection 2 in paragraph C in the
5 first line (page 21, line 42 in L.D.) by inserting after the following: "processor's" the
6 following: 'collection or'

7 Amend the bill in section 1 in c. 1057 by inserting after §9614 the following:

8 **§9615. Report**

9 By February 1, 2027 and annually thereafter, the Attorney General shall submit a report
10 to the joint standing committee of the Legislature having jurisdiction over judiciary matters
11 regarding the implementation and operation of this chapter. The report must include, at a
12 minimum, the following information:

13 **1. Number of notices.** The number of notices the Attorney General has issued under
14 section 9613, subsection 2 and the nature of the violations alleged in the notices;

15 **2. Number of persons sent a notice.** The number of persons sent a notice described
16 in subsection 1 that conferred with the Attorney General during the notice period described
17 in section 9613, subsection 2 in a manner that alleviated the need for a civil action under
18 the Maine Unfair Trade Practices Act;

19 **3. Number of civil actions.** The number of civil actions brought by the Attorney
20 General under the Maine Unfair Trade Practices Act to enforce violations of this chapter;
21 and

22 **4. Recommendations.** Any recommendations the Attorney General has for improving
23 the operation of this chapter.

24 The joint standing committee of the Legislature having jurisdiction over judiciary
25 matters may report out legislation related to the report.'

26 Amend the bill in section 1 in chapter 1057 by renumbering the sections to read
27 consecutively.

28 Amend the bill by striking out all of sections 2 and 3 and inserting the following:

29 **'Sec. 2. Appropriations and allocations.** The following appropriations and
30 allocations are made.

31 **ATTORNEY GENERAL, DEPARTMENT OF THE**
32 **Administration - Attorney General 0310**

33 Initiative: Provides funding for one Assistant Attorney General position, one Paralegal
34 position, one Technician position and related costs to administer and enforce the Maine
35 Online Data Privacy Act.

36	GENERAL FUND	2025-26	2026-27
37	POSITIONS - LEGISLATIVE COUNT	0.000	3.000
38	Personal Services	\$0	\$420,508
39	All Other	\$0	\$20,000
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41	GENERAL FUND TOTAL	\$0	\$440,508

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Sec. 3. Effective date. This Act takes effect September 1, 2026.'

Amend the bill by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.

SUMMARY

This amendment, which is the majority report of the committee, makes the following changes to the bill.

1. It changes the effective date of the Maine Online Data Privacy Act from July 1, 2026 to September 1, 2026.

2. It clarifies that the term "process" does not include the collection of personal data and makes technical changes throughout the bill to address the difference between collection and processing of personal data and sensitive data.

3. It amends the definition of "publicly available information" to exclude any information used to create a consumer profile, any information made available for sale and inferences derived from these types of information.

4. It clarifies the types of consumer financial information that are considered "sensitive data" under the Act.

5. It provides that the Act does not prohibit the transfer of personal data as part of the transfer of assets to a 3rd party in the context of a merger, acquisition or bankruptcy as long as the controller provides an affected consumer with a notice describing the transfer, including the name of the entity acquiring the personal data and the entity's privacy policies as well as a reasonable opportunity for the consumer to withdraw any previous consent related to the consumer's personal data and to request deletion of the consumer's personal data.

6. It exempts personal data collected and used pursuant to the federal Controlled Substances Act, 21 United States Code, Section 830, from the scope of the Act.

7. It provides that, although a controller must limit the collection of personal data to what is reasonably necessary and proportionate to provide or maintain a specific product or service requested by the consumer, such services include routine administrative, operational, website or account-servicing activities that are consistent with the reasonable expectations of the consumer under the circumstances, including collection of the consumer's personal data to provide advertising to the consumer based on the consumer's activities within the controller's own websites or online applications.

8. It removes the provision of the bill that requires a processor to provide a controller an opportunity to object to the processor's engaging of a subcontractor, but retains the provision of the bill requiring the processor to require any subcontractor to assist with processing only in accordance with a written contract that requires the subcontractor to meet the processor's obligations regarding the personal data under the processor's contract with the controller.

9. It removes the provision of the bill requiring 3rd parties to provide specific notices to consumers.

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10. It removes the requirement that controllers conduct data protection assessments for each algorithm used on personal data.

11. Unlike the bill, which requires only a single report on February 1, 2027, it requires the Attorney General to submit, beginning February 1, 2027, an annual report to the joint standing committee of the Legislature having jurisdiction over judiciary matters regarding the implementing and operation of the Act.

FISCAL NOTE REQUIRED
(See attached)