

By: Martinez Fischer

H.B. No. 4854

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the authority of individuals over the personal
3 identifying information collected, processed, or maintained about
4 the individuals and certain others by certain businesses.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Title 11, Business & Commerce Code, is amended by
7 adding Subtitle C to read as follows:

8 SUBTITLE C. PERSONAL IDENTIFYING INFORMATION

9 CHAPTER 541. PERSONAL IDENTIFYING INFORMATION PROCESSED OR
10 COLLECTED BY CERTAIN BUSINESSES

11 SUBCHAPTER A. GENERAL PROVISIONS

12 Sec. 541.001. DEFINITIONS. In this chapter:

13 (1) "Business" means a for-profit entity, including a
14 sole proprietorship, partnership, limited liability company,
15 corporation, association, or other legal entity that is organized
16 or operated for the profit or financial benefit of the entity's
17 shareholders or other owners.

18 (2) "Personal identifying information" means a
19 category of information relating to an identified or identifiable
20 individual. The term does not include a specific category of
21 personal identifying information that the attorney general exempts
22 from this definition by rule. The term includes:

23 (A) a social security number;

24 (B) a driver's license number, passport number,

1 military identification number, or any other similar number issued
2 on a government document and used to verify an individual's
3 identity;

4 (C) a financial account number, credit or debit
5 card number, or any security code, access code, or password that is
6 necessary to permit access to an individual's financial account;

7 (D) unique biometric information, including a
8 fingerprint, voice print, retina or iris image, or any other unique
9 physical representation;

10 (E) physical or mental health information,
11 including health care information;

12 (F) the private communications or other
13 user-created content of an individual that is not publicly
14 available;

15 (G) religious affiliation or practice
16 information;

17 (H) racial or ethnic origin information;

18 (I) precise geolocation tracking data; and

19 (J) unique genetic information.

20 (3) "Processing" means any operation or set of
21 operations that are performed on personal identifying information
22 or on sets of personal identifying information, including the
23 collection, creation, generation, recording, organization,
24 structuring, storage, adaptation, alteration, retrieval,
25 consultation, use, disclosure, transfer, or dissemination of the
26 information or otherwise making the information available.

27 (4) "Third party" means a person engaged by a business

1 to process, on behalf of the business, personal identifying
2 information collected by the business.

3 Sec. 541.002. APPLICABILITY. (a) This chapter applies
4 only to a business that:

5 (1) does business in this state;

6 (2) has more than 50 employees;

7 (3) collects the personal identifying information of
8 more than 5,000 individuals, households, or devices or has that
9 information collected on the business's behalf; and

10 (4) satisfies one or more of the following thresholds:

11 (A) has annual gross revenue in an amount that
12 exceeds \$25 million; or

13 (B) derives 50 percent or more of the business's
14 annual revenue by processing personal identifying information.

15 (b) Except as provided by Subsection (c), this chapter
16 applies only to personal identifying information that is:

17 (1) collected over the Internet or any other digital
18 network or through a computing device that is associated with or
19 routinely used by an end user; and

20 (2) linked or reasonably linkable to a specific end
21 user.

22 (c) This chapter does not apply to personal identifying
23 information that is:

24 (1) collected solely for facilitating the
25 transmission, routing, or connections by which digital personal
26 identifying information and other data is transferred between or
27 among businesses; or

1 (2) transmitted to and from the individual to whom the
2 personal identifying information relates if the collector of the
3 information does not access, review, or modify the content of the
4 information, or otherwise perform or conduct any analytical,
5 algorithmic, or machine learning processes on the information.

6 Sec. 541.003. EXEMPTIONS. This chapter does not apply to:

7 (1) publicly available information;

8 (2) protected health information governed by Chapter
9 181, Health and Safety Code, or collected by a covered entity or a
10 business associate of a covered entity, as those terms are defined
11 by 45 C.F.R. Section 160.103, that is governed by the privacy,
12 security, and breach notification rules in 45 C.F.R. Parts 160 and
13 164 adopted by the United States Department of Health and Human
14 Services under the Health Insurance Portability and Accountability
15 Act of 1996 (Pub. L. No. 104-191) and Title XIII of the American
16 Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5);

17 (3) personal identifying information collected by a
18 consumer reporting agency, as defined by Section 20.01, if the
19 information is to be:

20 (A) reported in or used to generate a consumer
21 report, as defined by Section 1681a(d) of the Fair Credit Reporting
22 Act (15 U.S.C. Section 1681 et seq.); and

23 (B) used solely for a purpose authorized under
24 that Act;

25 (4) personal identifying information processed in
26 accordance with the Gramm-Leach-Bliley Act (Pub. L. No. 106-102)
27 and its implementing regulations; or

1 types of personal identifying information collected by the
2 business;

3 (4) a description of the inferences the business has
4 drawn about the individual or someone for whom the individual is a
5 personal representative or guardian from the information collected
6 by the business; and

7 (5) access to the individual's personal identifying
8 information, including in accordance with Subsection (c), a copy of
9 the individual's personal identifying information in a portable and
10 transferable format.

11 (c) On request of an individual, a business shall without
12 undue delay provide the individual with all personal identifying
13 information collected by the business that relates to the
14 individual or someone for whom the individual is a legal
15 representative or guardian. The business shall provide the
16 requested information to an individual under this section in a
17 portable, readily usable format that may be transferred, including
18 in connection with the sale of the information, by the individual to
19 another business.

20 Sec. 541.052. DELETION OF PERSONAL IDENTIFYING
21 INFORMATION. (a) An individual is entitled to request that a
22 business delete personal identifying information collected by the
23 business that relates to that individual or someone for whom the
24 individual is a legal representative or guardian.

25 (b) If an individual who maintains an account with a
26 business closes the account, the business shall:

27 (1) stop processing the individual's personal

1 identifying information on the date the individual closes the
2 account; and

3 (2) not later than the one-year anniversary of the
4 date the account is closed, permanently delete the individual's
5 personal identifying information unless retention of the
6 information is required by other law or is necessary to comply with
7 other law.

8 (c) If an individual makes a request for a business to
9 delete personal identifying information under this section, and
10 that business has provided the personal identifying information to
11 a third party, the business shall notify the third party of the
12 individual's request. The third party shall delete the individual's
13 personal identifying information not later than the one-year
14 anniversary of the date the third party received the notification
15 under this subsection.

16 SUBCHAPTER C. CONTRACTS WITH INDIVIDUALS

17 Sec. 541.101. DEFINITION. In this subchapter, "data
18 stream" means the continuous transmission of an individual's
19 personal identifying information through online activity or with a
20 device connected to the Internet that can be used by the business to
21 provide for the monetization of the information, customer
22 relationship management, or continuous identification of an
23 individual for commercial purposes.

24 Sec. 541.102. APPLICABILITY. This subchapter applies only
25 to a contract between a business and an individual under which, as a
26 term of the contract, the individual allows the business to
27 collect, store, or use the individual's personal identifying

1 information.

2 Sec. 541.103. CONSIDERATION UNDER CONTRACT. (a) An
3 individual may provide the individual's data stream or information
4 obtained by the individual under Section 541.051 as consideration
5 under a contract.

6 (b) A business may provide consideration in the form of
7 money or other incentive, including as an incentive to purchase
8 goods or services, under a contract that is reasonably related to
9 the value of the information or access offered by the individual
10 under the contract. This subsection does not prohibit a business
11 from differentiating the consideration offered to individuals
12 based on information or access offered by individuals, including
13 offering different individuals different prices or rates for goods
14 or services or providing different levels of quality for goods or
15 services based on the information and access offered by
16 individuals.

17 Sec. 541.104. CONTRACT REQUIREMENTS. (a) A contract
18 subject to this subchapter:

19 (1) must clearly state the terms, including the
20 duration, of the contract; and

21 (2) may not:

22 (A) require that the individual exclusively
23 contract with the business or otherwise restrict the individual's
24 ability to sell the individual's personal identifying information;
25 and

26 (B) prevent the individual from receiving or
27 considering alternative offers to purchase the individual's

1 personal identifying information.

2 (b) A contract provision that violates Subsection (a)(2) is
3 void and unenforceable.

4 SECTION 2. (a) Except as provided by Subsection (b) of this
5 section, this Act takes effect September 1, 2023.

6 (b) Section 541.052, Business & Commerce Code, as added by
7 this Act, takes effect January 1, 2024.