86R17033 TSR-D

By:  Martinez Fischer H.B. No. 4518

A BILL TO BE ENTITLED

AN ACT

relating to the privacy of a consumer's personal information collected by certain businesses; imposing a civil penalty.

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

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

SUBTITLE C. PRIVACY OF PERSONAL INFORMATION

CHAPTER 541. PRIVACY OF CONSUMER'S PERSONAL INFORMATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 541.001.  SHORT TITLE. This chapter may be cited as the Texas Consumer Privacy Act.

Sec. 541.002.  DEFINITIONS. In this chapter:

(1)  "Aggregate consumer information" means information that relates to a group or category of consumers from which individual consumer identities have been removed and that is not linked or reasonably linkable to a particular consumer or household, including through a device. The term does not include one or more individual consumer records that have been deidentified.

(2)  "Biometric information" means an individual's physiological, biological, or behavioral characteristics that can be used, alone or in combination with other characteristics or other identifying data, to establish the individual's identity. The term includes:

(A)  deoxyribonucleic acid (DNA);

(B)  an image of an iris, retina, fingerprint, face, hand, palm, or vein pattern or a voice recording from which an identifier template can be extracted such as a faceprint, minutiae template, or voiceprint;

(C)  keystroke patterns or rhythms;

(D)  gait patterns or rhythms; and

(E)  sleep, health, or exercise data that contains identifying information.

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

(4)  "Business purpose" means the use of personal information for:

(A)  the following operational purposes of a business or service provider, provided that the use of the information is reasonably necessary and proportionate to achieve the operational purpose for which the information was collected or processed or another operational purpose that is compatible with the context in which the information was collected:

(i)  auditing related to a current interaction with a consumer and any concurrent transactions, including counting ad impressions to unique visitors, verifying the positioning and quality of ad impressions, and auditing compliance with a specification or other standards for ad impressions;

(ii)  detecting a security incident, protecting against malicious, deceptive, fraudulent, or illegal activity, and prosecuting those responsible for any illegal activity described by this subparagraph;

(iii)  identifying and repairing or removing errors that impair the intended functionality of computer hardware or software;

(iv)  using personal information in the short term or for a transient use, provided that the information is not:

(a)  disclosed to a third party; and

(b)  used to build a profile about a consumer or alter an individual consumer's experience outside of a current interaction with the consumer, including the contextual customization of an advertisement displayed as part of the same interaction;

(v)  performing a service on behalf of the business or service provider, including:

(a)  maintaining or servicing an account, providing customer service, processing or fulfilling an order or transaction, verifying customer information, processing a payment, providing financing, providing advertising or marketing services, or providing analytic services; or

(b)  performing a service similar to a service described by Sub-subparagraph (a) on behalf of the business or service provider;

(vi)  undertaking internal research for technological development and demonstration; or

(vii)  undertaking an activity to:

(a)  verify or maintain the quality or safety of a service or device that is owned by, manufactured by, manufactured for, or controlled by the business; or

(b)  improve, upgrade, or enhance a service or device described by Sub-subparagraph (a); or

(B)  another operational purpose for which notice is given under this chapter.

(5)  "Collect" means to buy, rent, gather, obtain, receive, or access the personal information of a consumer by any means, including by actively or passively receiving the information from the consumer or by observing the consumer's behavior.

(6)  "Commercial purpose" means a purpose that is intended to result in a profit or other tangible benefit or the advancement of a person's commercial or economic interests, such as by inducing another person to buy, rent, lease, subscribe to, provide, or exchange products, goods, property, information, or services or by enabling or effecting, directly or indirectly, a commercial transaction. The term does not include the purpose of engaging in speech recognized by state or federal courts as noncommercial speech, including political speech and journalism.

(7)  "Consumer" means an individual who is a resident of this state.

(8)  "Deidentified information" means information that cannot reasonably identify, relate to, describe, be associated with, or be linked to, directly or indirectly, a particular consumer.

(9)  "Device" means any physical object capable of connecting to the Internet, directly or indirectly, or to another device.

(10)  "Identifier" means data elements or other information that alone or in conjunction with other information can be used to identify a particular consumer, household, or device that is linked to a particular consumer or household.

(11)  "Person" means an individual, sole proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, limited liability company, association, committee, and any other organization or group of persons acting in concert.

(12)  "Personal information" means information that identifies, relates to, describes, can be associated with, or can reasonably be linked to, directly or indirectly, a particular consumer or household. The term does not include publicly available information. The term includes the following categories of information if the information identifies, relates to, describes, can be associated with, or can reasonably be linked to, directly or indirectly, a particular consumer or household:

(A)  an identifier, including a real name, alias, mailing address, account name, date of birth, driver's license number, unique identifier, social security number, passport number, signature, telephone number, or other government-issued identification number, or other similar identifier;

(B)  an online identifier, including an electronic mail address or Internet Protocol address, or other similar identifier;

(C)  a physical characteristic or description, including a characteristic of a protected classification under state or federal law;

(D)  commercial information, including:

(i)  a record of personal property;

(ii)  a good or service purchased, obtained, or considered;

(iii)  an insurance policy number; or

(iv)  other purchasing or consuming histories or tendencies;

(E)  biometric information;

(F)  Internet or other electronic network activity information, including:

(i)  browsing or search history; and

(ii)  other information regarding a consumer's interaction with an Internet website, application, or advertisement;

(G)  geolocation data;

(H)  audio, electronic, visual, thermal, olfactory, or other similar information;

(I)  professional or employment-related information;

(J)  education information that is not publicly available personally identifiable information under the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g) (34 C.F.R. Part 99);

(K)  financial information, including a financial institution account number, credit or debit card number, or password or access code associated with a credit or debit card or bank account;

(L)  medical information;

(M)  health insurance information; or

(N)  inferences drawn from any of the information listed under this subdivision to create a profile about a consumer that reflects the consumer's preferences, characteristics, psychological trends, predispositions, behavior, attitudes, intelligence, abilities, or aptitudes.

(13)  "Processing information" means performing any operation or set of operations on personal data or on sets of personal data, whether or not by automated means.

(14)  "Publicly available information" means information that is lawfully made available to the public from federal, state, or local government records if the conditions associated with making the information available are met. The term does not include:

(A)  biometric information of a consumer collected by a business without the consumer's knowledge;

(B)  data that is used for a purpose that is not compatible with the purpose for which the data is:

(i)  publicly maintained; or

(ii)  maintained in and made available from government records; or

(C)  deidentified or aggregate consumer information.

(15)  "Service provider" means a for-profit entity as described by Subdivision (3) that processes information on behalf of a business and to which the business discloses, for a business purpose, a consumer's personal information under a written contract, provided that the contract prohibits the entity receiving the information from retaining, using, or disclosing the information for any purpose other than:

(A)  providing the services specified in the contract with the business; or

(B)  for a purpose permitted by this chapter, including for a commercial purpose other than providing those specified services.

(16)  "Third party" means a person who is not:

(A)  a business to which this chapter applies that collects personal information from consumers; or

(B)  a person to whom the business discloses, for a business purpose, a consumer's personal information under a written contract, provided that the contract:

(i)  prohibits the person receiving the information from:

(a)  selling the information;

(b)  retaining, using, or disclosing the information for any purpose other than providing the services specified in the contract, including for a commercial purpose other than providing those services; and

(c)  retaining, using, or disclosing the information outside of the direct business relationship between the person and the business; and

(ii)  includes a certification made by the person receiving the personal information that the person understands and will comply with the prohibitions under Subparagraph (i).

(17)  "Unique identifier" means a persistent identifier that can be used over time and across different services to recognize a consumer, a custodial parent or guardian, or any minor children over which the parent or guardian has custody, or a device that is linked to those individuals. The term includes:

(A)  a device identifier;

(B)  an Internet Protocol address;

(C)  a cookie, beacon, pixel tag, mobile ad identifier, or similar technology;

(D)  a customer number, unique pseudonym, or user alias;

(E)  a telephone number; and

(F)  another form of a persistent or probabilistic identifier that can be used to identify a particular consumer or device.

(18)  "Verifiable consumer request" means a request:

(A)  that is made by a consumer, a consumer on behalf of the consumer's minor child, or a natural person or person who is authorized by a consumer to act on the consumer's behalf; and

(B)  that a business can reasonably verify, in accordance with rules adopted under Section 541.009, was submitted by:

(i)  the consumer about whom the business has collected personal information; or

(ii)  the consumer on behalf of the consumer's minor child about whom the business has collected personal information.

Sec. 541.003.  APPLICABILITY OF CHAPTER. (a) This chapter applies only to:

(1)  a business that:

(A)  does business in this state;

(B)  collects consumers' personal information or has that information collected on the business's behalf;

(C)  alone or in conjunction with others, determines the purpose for and means of processing consumers' personal information; and

(D)  satisfies one or more of the following thresholds:

(i)  has annual gross revenue in an amount that exceeds $25 million, as adjusted by the attorney general in accordance with the rules adopted under Section 541.009;

(ii)  alone or in combination with others, annually buys, sells, or receives or shares for commercial purposes the personal information of 50,000 or more consumers, households, or devices; or

(iii)  derives 50 percent or more of the business's annual revenue from selling consumers' personal information; and

(2)  an entity that controls or is controlled by a business described by Subdivision (1) and that shares a service mark, trademark, or shared name with the business.

(b)  For purposes of Subsection (a)(2), "control" means the:

(1)  ownership of, or power to vote, more than 50 percent of the outstanding shares of any class of voting security of a business;

(2)  control in any manner over the election of a majority of the directors or of individuals exercising similar functions; or

(3)  power to exercise a controlling influence over the management of a company.

(c)  For purposes of this chapter, a business sells a consumer's personal information to another business or a third party if the business sells, rents, discloses, disseminates, makes available, transfers, or otherwise communicates, orally, in writing, or by electronic or other means, the information to the other business or third party for monetary or other valuable consideration.

(d)  For purposes of this chapter, a business does not sell a consumer's personal information if:

(1)  the consumer uses or directs the business to intentionally disclose the information or uses the business to intentionally interact with a third party, provided that the third party does not sell the information, unless that disclosure is consistent with this chapter; or

(2)  the business:

(A)  uses or shares an identifier of the consumer to alert a third party that the consumer has opted out of the sale of the information;

(B)  uses or shares with a service provider a consumer's personal information that is necessary to perform a business purpose if:

(i)  the business provided notice that the information is being used or shared in the business's terms and conditions consistent with Sections 541.054 and 541.102(a)(8); and

(ii)  the service provider does not further collect, sell, or use the information except as necessary to perform the business purpose; or

(C)  transfers to a third party a consumer's personal information as an asset that is part of a merger, acquisition, bankruptcy, or other transaction in which the third party assumes control of all or part of the business, provided that information is used or shared consistent with Sections 541.051, 541.053, and 541.054(e).

(e)  For purposes of Subsection (d)(1), an intentional interaction occurs if the consumer does one or more deliberate acts with the intent to interact with a third party. Placing a cursor over, muting, pausing, or closing online content does not constitute a consumer's intent to interact with a third party.

Sec. 541.004.  EXEMPTIONS. (a) This chapter does not apply to:

(1)  publicly available information;

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

(3)  a health care provider governed by Chapter 181, Health and Safety Code, or a covered entity described by Subdivision (2) to the extent that the provider or entity maintains the personal information of a patient in the same manner as protected health information described by that subdivision;

(4)  information collected as part of a clinical trial subject to the Federal Policy for the Protection of Human Subjects in accordance with the good clinical practice guidelines issued by the International Council for Harmonisation or the human subject protection requirements of the United States Food and Drug Administration;

(5)  the sale of personal information to or by a consumer reporting agency, as defined by Section 20.01, if the information is to be:

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

(B)  used solely for a purpose authorized under that act;

(6)  personal information collected, processed, sold, or disclosed in accordance with:

(A)  the Gramm-Leach-Bliley Act (Pub. L. No. 106-102) and its implementing regulations; or

(B)  the Driver's Privacy Protection Act of 1994 (18 U.S.C. Section 2721 et seq.);

(7)  deidentified or aggregate consumer information; or

(8)  a consumer's personal information collected or sold by a business, if every aspect of the collection or sale occurred wholly outside of this state.

(b)  For purposes of Subsection (a)(8), the collection or sale of a consumer's personal information occurs wholly outside of this state if:

(1)  the business collects that information while the consumer is outside of this state;

(2)  no part of the sale of the information occurs in this state; and

(3)  the business does not sell any personal information of the consumer collected while the consumer is in this state.

(c)  For purposes of Subsection (b), the collection or sale of a consumer's personal information does not occur wholly outside of this state if a business stores a consumer's personal information, including on a device, when the consumer is in this state and subsequently collects or sells that stored information when the consumer and the information are outside of this state.

Sec. 541.005.  CERTAIN RIGHTS AND OBLIGATIONS NOT AFFECTED. A right or obligation under this chapter does not apply to the extent that the exercise of the right or performance of the obligation:

(1)  adversely affects a right of another consumer; or

(2)  infringes on a noncommercial activity of:

(A)  a publisher, editor, reporter, or other person connected with or employed by a newspaper, magazine, or other publication of general circulation, including a periodical newsletter, pamphlet, or report;

(B)  a radio or television station that holds a license issued by the Federal Communications Commission; or

(C)  an entity that provides an information service, including a press association or wire service.

Sec. 541.006.  COMPLIANCE WITH OTHER LAWS; LEGAL PROCEEDINGS. This chapter does not:

(1)  restrict a business's ability to:

(A)  comply with:

(i)  applicable federal, state, or local laws; or

(ii)  a civil, criminal, or regulatory inquiry, investigation, subpoena, or summons by a federal, state, or local authority;

(B)  cooperate with a law enforcement agency concerning conduct or activity that the business, a service provider of the business, or a third party reasonably and in good faith believes may violate other applicable federal, state, or local laws; or

(C)  pursue or defend against a legal claim; or

(2)  require a business to violate an evidentiary privilege under federal or state law or prevent a business from disclosing to a person covered by an evidentiary privilege the personal information of a consumer as part of a privileged communication.

Sec. 541.007.  CONSTRUCTION; RELATION TO OTHER STATE AND FEDERAL LAW. (a) This chapter shall be liberally construed to effect its purposes and to harmonize, to the extent possible, with other laws of this state relating to the privacy or protection of personal information.

(b)  To the extent of a conflict between a provision of this chapter and a provision of federal law, including a regulation or an interpretation of federal law, federal law controls and conflicting requirements or other provisions of this chapter do not apply.

(c)  To the extent of a conflict between a provision of this chapter and another statute of this state with respect to the privacy or protection of consumers' personal information, the provision of law that affords the greatest privacy or protection to consumers prevails.

Sec. 541.008.  PREEMPTION OF LOCAL LAW. This chapter preempts and supersedes any ordinance, order, or rule adopted by a political subdivision of this state relating to the collection or sale by a business of a consumer's personal information.

Sec. 541.009.  RULES. (a) The attorney general shall adopt rules necessary to implement, administer, and enforce this chapter.

(b)  The rules adopted under Subsection (a) must establish:

(1)  procedures for the adjustment of the monetary threshold under Section 541.003(a)(1)(D) in January of every odd-numbered year to reflect any increase in the consumer price index;

(2)  procedures governing the determination of, submission of, and compliance with a verifiable consumer request for information with the goal of minimizing administrative burdens on consumers and businesses subject to this chapter by taking into account available technology and security concerns, including:

(A)  treating as a verifiable consumer request a request submitted through a password-protected online account maintained by the consumer with the business while logged into the account; and

(B)  providing a mechanism for a request submitted by a consumer who does not maintain an account with the business;

(3)  procedures to facilitate and govern the submission of and compliance with a request to opt out of the sale of personal information under Section 541.054;

(4)  guidelines for the development of a recognizable and uniform opt-out logo or button for use on businesses' Internet websites in a manner that promotes consumer awareness of the opportunity to opt out of the sale of personal information; and

(5)  procedures and guidelines, including any necessary exceptions, to ensure that the notices and information businesses are required to provide under this chapter, including information regarding financial incentive offerings, are:

(A)  provided in a manner that is easily understood by the average consumer;

(B)  accessible by consumers with disabilities; and

(C)  available in the languages primarily used by consumers to interact with businesses.

(c)  The attorney general may adopt other rules necessary to further the purposes of this chapter, including rules as necessary to:

(1)  update the categories of personal information listed under Section 541.002(12) and the definition of identifier under Section 541.002 to account for privacy concerns, implementation obstacles, or changes in technology and data collection methods;

(2)  update the designated methods for submitting requests to facilitate a consumer's ability to obtain information from a business under Section 541.103; and

(3)  establish any exceptions necessary to comply with federal law or other laws of this state, including laws relating to trade secrets and intellectual property rights.

Sec. 541.010.  ATTORNEY GENERAL OPINION. A business or a third party may seek an opinion from the attorney general for guidance on how to comply with this chapter.

Sec. 541.011.  USE OF PERSONAL INFORMATION IN RESEARCH. For purposes of this chapter, "research" means scientific, systematic study and observation, including basic research or applied research that is in the public interest and that adheres to all other applicable ethics and privacy laws or studies conducted in the public interest in the area of public health. Research with personal information that may have been collected from a consumer in the course of the consumer's interactions with a business's service or device for other purposes must be:

(1)  compatible with the business purpose for which the personal information was collected;

(2)  subsequently pseudonymized and deidentified, or deidentified and in the aggregate, such that the information cannot reasonably identify, relate to, describe, be capable of being associated with, or be linked, directly or indirectly, to a particular consumer;

(3)  made subject to technical safeguards that prohibit reidentification of the consumer to whom the information may pertain;

(4)  subject to business processes that specifically prohibit reidentification of the information;

(5)  made subject to business processes to prevent inadvertent release of deidentified information;

(6)  protected from any reidentification attempts;

(7)  used solely for research purposes that are compatible with the context in which the personal information was collected;

(8)  not used for any commercial purpose; and

(9)  subjected by the business conducting the research to additional security controls that limit access to the research data to only those individuals in a business as are necessary to carry out the research purpose.

SUBCHAPTER B. CONSUMER'S RIGHTS

Sec. 541.051.  RIGHT TO DISCLOSURE OF PERSONAL INFORMATION COLLECTED. (a) A consumer is entitled to request that a business that collects the consumer's personal information disclose to the consumer the categories and specific items of personal information the business has collected.

(b)  To receive the disclosure of information under Subsection (a), a consumer must submit to the business a verifiable consumer request using a method designated by the business under Section 541.103.

(c)  On receipt of a verifiable consumer request under this section, a business shall disclose to the consumer in the time and manner provided by Section 541.105:

(1)  each enumerated category and item within each category of personal information under Section 541.002(12) that the business collected about the consumer during the 12 months preceding the date of the request;

(2)  each category of sources from which the information was collected;

(3)  the business or commercial purpose for collecting or selling the personal information; and

(4)  each category of third parties with whom the business shares the personal information.

(d)  This section does not require a business to:

(1)  retain a consumer's personal information that was collected for a one-time transaction if the information is not sold or retained in the ordinary course of business; or

(2)  reidentify or otherwise link any data that, in the ordinary course of business, is not maintained in a manner that would be considered personal information.

Sec. 541.052.  RIGHT TO DELETION OF PERSONAL INFORMATION COLLECTED. (a) A consumer is entitled to request that a business that collects the consumer's personal information delete any personal information the business has collected from the consumer by submitting a verifiable consumer request using a method designated by the business under Section 541.103.

(b)  Except as provided by Subsection (c), on receipt of a verifiable consumer request under this section, a business shall delete from the business's records any personal information collected from the consumer and direct a service provider of the business to delete the information from the provider's records.

(c)  A business or service provider of the business is not required to comply with a verifiable consumer request received under this section if the business or service provider needs to retain the consumer's personal information to:

(1)  complete the transaction for which the information was collected;

(2)  provide a good or service requested by the consumer or reasonably anticipated to be requested by the consumer in the context of the ongoing business relationship between the business and consumer;

(3)  perform under a contract between the business and the consumer;

(4)  detect a security incident, protect against malicious, deceptive, fraudulent, or illegal activity, or prosecute those responsible for any illegal activity described by this subdivision;

(5)  identify and repair or remove errors from computer hardware or software that impair its intended functionality;

(6)  exercise free speech or ensure the right of another consumer to exercise the right of free speech or another right afforded by law;

(7)  comply with Chapter 1289 (H.B. 2268), Acts of the 83rd Legislature, Regular Session, 2013, or a legal obligation;

(8)  engage in public or peer-reviewed scientific, historical, or statistical research that is in the public interest and that adheres to all other applicable ethics and privacy laws provided that:

(A)  the business's deletion of the information is likely to render impossible or seriously impair the achievement of that research; and

(B)  the consumer has provided to the business informed consent to retain the information; or

(9)  use the information internally:

(A)  so long as the use is reasonably aligned with the expectations of the consumer based on the consumer's relationship with the business; or

(B)  in a manner that is lawful and compatible with the context in which the consumer provided the information.

Sec. 541.053.  RIGHT TO DISCLOSURE OF PERSONAL INFORMATION SOLD OR DISCLOSED. (a) A consumer is entitled to request that a business that sells, or discloses for a business purpose, the consumer's personal information disclose to the consumer:

(1)  the categories of personal information the business collected about the consumer;

(2)  the categories of personal information about the consumer the business sold, or disclosed for a business purpose; and

(3)  the categories of third parties to whom the personal information was sold or disclosed.

(b)  To receive the disclosure of information under Subsection (a), a consumer must submit to the business a verifiable consumer request using a method designated by the business under Section 541.103.

(c)  On receipt of a verifiable consumer request under this section, a business shall disclose to the consumer in the time and manner provided by Section 541.105:

(1)  each enumerated category of personal information under Section 541.002(12) that the business collected about the consumer during the 12 months preceding the date of the request;

(2)  the categories of third parties to whom the business sold the consumer's personal information during the 12 months preceding the date of the request, by reference to each enumerated category of information under Section 541.002(12) sold to each third party; and

(3)  the categories of third parties to whom the business disclosed for a business purpose the consumer's personal information during the 12 months preceding the date of the request, by reference to each enumerated category of information under Section 541.002(12) disclosed to each third party.

(d)  A business shall provide the information described by Subsections (c)(2) and (3) in two separate lists.

(e)  A business that did not sell, or disclose for a business purpose, the consumer's personal information during the 12 months preceding the date of receiving the consumer's verifiable consumer request under this section shall disclose that fact to the consumer.

Sec. 541.054.  RIGHT TO OPT OUT OF SALE OF PERSONAL INFORMATION. (a) A consumer is entitled at any time to opt out of the sale of the consumer's personal information by a business to third parties by directing the business not to sell the information. A consumer may authorize another person solely to opt out of the sale of the consumer's personal information on the consumer's behalf. Except as provided by Subsection (c), a business shall comply with a direction not to sell that is received under this subsection.

(b)  A business that sells to a third party consumers' personal information shall provide on the business's Internet website's home page:

(1)  notice to consumers that:

(A)  the information may be sold; and

(B)  consumers have the right to opt out of the sale; and

(2)  a clear and conspicuous link that:

(A)  enables a consumer, or a person authorized by the consumer, to opt out of the sale of the consumer's personal information; and

(B)  is titled "DO NOT SELL MY PERSONAL INFORMATION."

(c)  A business may not sell to a third party the personal information of a consumer who opts out of the sale of that information under this section before the first anniversary of the date the consumer opted out, unless the consumer provides express authorization for the business to sell the consumer's personal information. After the period prescribed by this subsection expires, a business may request that the consumer consent to the sale of the consumer's personal information by the business.

(d)  A business may use any personal information collected from the consumer in connection with the consumer's opting out under this section solely to comply with this section.

(e)  A third party to whom a business has sold the personal information of a consumer may not sell the information unless the consumer receives explicit notice of the potential sale and is provided the opportunity to exercise the right to opt out of the sale as provided by this section.

(f)  Notwithstanding Subsection (b), a business is not required to provide the link required by that subsection on the Internet website the business makes available to the public if the business:

(1)  provides the required link on a separate and additional Internet website that is maintained by the business and dedicated to consumers; and

(2)  takes reasonable steps to ensure that consumers are directed to the website described by Subdivision (1) instead of the website the business makes available to the public.

(g)  A business may not require a consumer to create an account with the business to opt out of the sale of the consumer's personal information.

Sec. 541.055.  RIGHT TO OPT IN FOR SALE OF PERSONAL INFORMATION OF CERTAIN MINORS. (a) The requirement for consent to sell a consumer's personal information under this section may be referred to as the consumer's "right to opt in."

(b)  A business may not sell a consumer's personal information if the business has actual knowledge that the consumer is younger than 16 years of age unless:

(1)  for a consumer who is at least 13 years of age but younger than 16 years of age, the business receives express authorization to sell the consumer's personal information from the consumer; or

(2)  for a consumer who is younger than 13 years of age, the business receives express authorization to sell the consumer's personal information from the consumer's parent or legal guardian.

(c)  A business that wilfully disregards the age of a consumer whose personal information the business sells to a third party is considered to have actual knowledge of the consumer's age.

Sec. 541.056.  WAIVER OR LIMITATION PROVISION VOID. (a) A provision of a contract or other agreement that purports to waive or limit a right, remedy, or means of enforcement under this chapter is contrary to public policy and is void.

(b)  This section does not prevent a consumer from:

(1)  declining to request information from a business;

(2)  declining to opt out of a business's sale of the consumer's personal information; or

(3)  authorizing a business to sell the consumer's personal information after previously opting out.

SUBCHAPTER C. BUSINESS RIGHTS AND OBLIGATIONS

Sec. 541.101.  NOTIFICATION OF COLLECTION REQUIRED. (a) A business that collects a consumer's personal information shall, at or before the point of collection, notify the consumer of each category of personal information to be collected and the purposes for which the category of information will be used.

(b)  A business may not collect an additional category of personal information or use personal information collected for an additional purpose unless the business provides notice to the consumer of the additional category or purpose in accordance with Subsection (a).

(c)  If a third party that assumes control of all or part of a business as described by Section 541.003(d)(2)(C) materially alters the practices of the business in how personal information is used or shared, and the practices are materially inconsistent with a notice provided to a consumer under Subsection (a) or (b), the third party must notify the consumer of the third party's new or changed practices before the third party uses or shares the personal information in a conspicuous manner that allows the consumer to easily exercise a right provided under this chapter.

(d)  Subsection (c) does not authorize a business to make a material, retroactive change or other change to a business's privacy policy in a manner that would be a deceptive trade practice actionable under Subchapter E, Chapter 17.

Sec. 541.102.  ONLINE PRIVACY POLICY OR POLICY NOTICE. (a) A business that collects, sells, or for a business purpose discloses a consumer's personal information shall disclose the following information in the business's online privacy policy or other notice of the business's policies:

(1)  a description of a consumer's rights under Sections 541.051, 541.053, and 541.107 and designated methods for submitting a verifiable consumer request for information under this chapter;

(2)  for a business that collects personal information about consumers, a description of the consumer's right to request the deletion of the consumer's personal information;

(3)  separate lists containing the categories of consumers' personal information described by Section 541.002(12) that, during the 12 months preceding the date the business updated the information as required by Subsection (b), the business:

(A)  collected;

(B)  sold, if applicable; or

(C)  disclosed for a business purpose, if applicable;

(4)  the categories of sources from which the information under Subdivision (3) is collected;

(5)  the business or commercial purposes for collecting personal information;

(6)  if the business does not sell consumers' personal information or disclose the information for a business or commercial purpose, a statement of that fact;

(7)  the categories of third parties to whom the business sells or discloses personal information;

(8)  if the business sells consumers' personal information, the Internet link required by Section 541.054(b); and

(9)  if applicable, the financial incentives offered to consumers under Section 541.108.

(b)  If a business described by Subsection (a) does not have an online privacy policy or other notice of the business's policies, the business shall make the information required under Subsection (a) available to consumers on the business's Internet website or another website the business maintains that is dedicated to consumers in this state.

(c)  A business must update the information required by Subsection (a) at least once each year.

Sec. 541.103.  METHODS TO SUBMIT VERIFIABLE CONSUMER REQUEST. (a) A business shall designate and make available to consumers, in a form that is reasonably accessible, at least two methods for submitting a verifiable consumer request for information required to be disclosed or deleted under Subchapter B. The methods must include, at a minimum:

(1)  a toll-free telephone number that a consumer may call to submit the request; and

(2)  the business's Internet website at which the consumer may submit the request, if the business maintains an Internet website.

(b)  The methods designated under Subsection (a) may also include:

(1)  a mailing address;

(2)  an electronic mail address;

(3)  another Internet web page or portal;

(4)  other contact information; or

(5)  any consumer-friendly method approved by the attorney general under Section 541.009.

(c)  A business may not require a consumer to create an account with the business to submit a verifiable consumer request.

Sec. 541.104.  VERIFICATION OF CONSUMER REQUEST. (a) A business that receives a consumer request under Section 541.051 or 541.053 shall promptly take steps to reasonably verify, in accordance with rules adopted under Section 541.009, that:

(1)  the consumer who is the subject of the request is a consumer about whom the business has collected, sold, or for a business purpose disclosed personal information; and

(2)  the request is made by:

(A)  the consumer;

(B)  a consumer on behalf of the consumer's minor child; or

(C)  a person authorized to act on the consumer's behalf.

(b)  A business may use any personal information collected from the consumer in connection with the business's verification of a request under this section solely to verify the request.

(c)  A business that is unable to verify a consumer request under this section is not required to comply with the request.

Sec. 541.105.  DISCLOSURE REQUIREMENTS. (a) Not later than the 45th day after the date a business receives a verifiable consumer request under Section 541.051 or 541.053, the business shall disclose free of charge to the consumer the information required to be disclosed under those sections.

(b)  A business may extend the time in which to comply with Subsection (a) once by an additional 45 days if reasonably necessary or by an additional 90 days after taking into account the number and complexity of verifiable consumer requests received by the business. A business that extends the time in which to comply with Subsection (a) shall notify the consumer of the extension and reason for the delay within the period prescribed by that subsection.

(c)  The disclosure required by Subsection (a) must:

(1)  cover personal information collected, sold, or disclosed for a business purpose, as applicable, during the 12 months preceding the date the business receives the request; and

(2)  be made in writing and delivered to the consumer:

(A)  by mail or electronically, at the consumer's option, if the consumer does not have an account with the business; or

(B)  through the consumer's account with the business.

(d)  An electronic disclosure under Subsection (c) must be in a readily accessible format that allows the consumer to electronically transmit the information to another person or entity.

(e)  A business is not required to make the disclosure required by Subsection (a) to the same consumer more than twice in a 12-month period.

(f)  Notwithstanding Subsection (a), if a consumer's verifiable consumer request is manifestly baseless or excessive, in particular because of repetitiveness, a business may charge a reasonable fee after taking into account the administrative costs of compliance or refusal to comply with the request. The business has the burden of demonstrating that a request is manifestly baseless or excessive.

(g)  A business that does not comply with a consumer's verifiable consumer request under Subsection (a) shall notify the consumer, within the time the business is required to respond to a request under this section, of the reasons for the refusal and the rights the consumer may have to appeal that decision.

Sec. 541.106.  DEIDENTIFIED INFORMATION. (a) A business that uses deidentified information may not reidentify or attempt to reidentify a consumer who is the subject of deidentified information without obtaining the consumer's consent or authorization.

(b)  A business that uses deidentified information shall implement:

(1)  technical safeguards and business processes to prohibit reidentification of the consumer to whom the information may pertain; and

(2)  business processes to prevent inadvertent release of deidentified information.

(c)  This chapter may not be construed to require a business to reidentify or otherwise link information that is not maintained in a manner that would be considered personal information.

Sec. 541.107.  DISCRIMINATION PROHIBITED. (a) A business may not discriminate against a consumer because the consumer exercised a right under this chapter, including by:

(1)  denying a good or service to the consumer;

(2)  charging the consumer a different price or rate for a good or service, including denying the use of a discount or other benefit or imposing a penalty;

(3)  providing a different level or quality of a good or service to the consumer; or

(4)  suggesting that the consumer will be charged a different price or rate for, or provided a different level or quality of, a good or service.

(b)  This section does not prohibit a business from offering or charging a consumer a different price or rate for a good or service, or offering or providing to the consumer a different level or quality of a good or service, if the difference is reasonably related to the value provided to the consumer by the consumer's data.

Sec. 541.108.  FINANCIAL INCENTIVES. (a) Subject to Subsection (b), a business may offer a financial incentive to a consumer, including a payment as compensation, for the collection, sale, or disclosure of the consumer's personal information.

(b)  A business may enroll a customer in a financial incentive program only if the business provides to the consumer a clear description of the material terms of the program and obtains the consumer's prior opt-in consent, which:

(1)  contains a clear description of those material terms; and

(2)  may be revoked by the consumer at any time.

(c)  A business may not use financial incentive practices that are unjust, unreasonable, coercive, or usurious in nature.

Sec. 541.109.  CERTAIN ACTIONS TO AVOID REQUIREMENTS PROHIBITED. (a) A business may not divide a single transaction into more than one transaction with the intent to avoid the requirements of this chapter.

(b)  For purposes of this chapter, two or more substantially similar or related transactions are considered a single transaction if the transactions:

(1)  are entered into contemporaneously; and

(2)  have at least one common party.

(c)  A court shall disregard any intermediate transactions conducted by a business with the intent to avoid the requirements of this chapter, including the disclosure of information by a business to a third party to avoid complying with the requirements under this chapter applicable to a sale of the information.

Sec. 541.110.  INFORMATION REQUIRED. A business shall ensure that each person responsible for handling consumer inquiries about the business's privacy practices or compliance with this chapter is informed of the requirements of this chapter and of how to direct a consumer in exercising any of the rights to which a consumer is entitled under this chapter.

SUBCHAPTER D. REMEDIES

Sec. 541.151.  CIVIL PENALTY; INJUNCTION. (a) A person who violates this chapter is liable to this state for a civil penalty in an amount not to exceed:

(1)  $2,500 for each violation; or

(2)  $7,500 for each violation, if the violation is intentional.

(b)  If it appears to the attorney general that a person is engaging in, has engaged in, or is about to engage in conduct that violates this chapter, the attorney general may give notice to the person of the alleged violation. If the person fails to cure the alleged violation before the 30th day after the date notice is given, the attorney general may bring an action in the name of the state against the person to restrain the violation by a temporary restraining order or by a permanent or temporary injunction or to recover the civil penalty imposed under this section, or both.

(c)  The attorney general is entitled to recover reasonable expenses, including reasonable attorney's fees, court costs, and investigatory costs, incurred in obtaining injunctive relief or civil penalties, or both, under this section. Amounts collected under this section shall be deposited in a dedicated account in the general revenue fund and may be appropriated only for the purposes of the administration and enforcement of this chapter.

Sec. 541.152.  BUSINESS IMMUNITY FROM LIABILITY. A business that discloses to a third party, or discloses for a business purpose to a service provider, a consumer's personal information in compliance with this chapter may not be held liable for a violation of this chapter by the third party or service provider if the business does not have actual knowledge or a reasonable belief that the third party or service provider intends to violate this chapter.

Sec. 541.153.  SERVICE PROVIDER IMMUNITY FROM LIABILITY. A business's service provider may not be held liable for a violation of this chapter by the business.

SECTION 2.  This Act takes effect September 1, 2020.