

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:

1 (A) deoxyribonucleic acid (DNA);

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

6 (C) keystroke patterns or rhythms;

7 (D) gait patterns or rhythms; and

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

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

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

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

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

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

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

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

11 (a) disclosed to a third party; and

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

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

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

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

27 (vi) undertaking internal research for

1 technological development and demonstration; or

2 (vii) undertaking an activity to:

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

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

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

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

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

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

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

1 consumer.

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

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

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

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

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

27 (B) an online identifier, including an

1 electronic mail address or Internet Protocol address, or other
2 similar identifier;

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

6 (D) commercial information, including:

7 (i) a record of personal property;

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

10 (iii) an insurance policy number; or

11 (iv) other purchasing or consuming
12 histories or tendencies;

13 (E) biometric information;

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

16 (i) browsing or search history; and

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

20 (G) geolocation data;

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

23 (I) professional or employment-related
24 information;

25 (J) education information that is not publicly
26 available personally identifiable information under the Family
27 Educational Rights and Privacy Act of 1974 (20 U.S.C. Section

1 1232g) (34 C.F.R. Part 99);

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

6 (L) medical information;

7 (M) health insurance information; or

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

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

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

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

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

25 (i) publicly maintained; or

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

1 (C) deidentified or aggregate consumer
2 information.

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

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

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

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

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

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

21 (i) prohibits the person receiving the
22 information from:

23 (a) selling the information;

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

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

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

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

13 (A) a device identifier;

14 (B) an Internet Protocol address;

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

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

19 (E) a telephone number; and

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

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

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

27 (B) that a business can reasonably verify, in

1 accordance with rules adopted under Section 541.009, was submitted
2 by:

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

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

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

10 (1) a business that:

11 (A) does business in this state;

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

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

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

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

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

26 (iii) derives 50 percent or more of the
27 business's annual revenue from selling consumers' personal

1 information; and

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

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

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

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

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

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

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

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

1 (2) the business:

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

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

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

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

14 (C) transfers to a third party a consumer's
15 personal information as an asset that is part of a merger,
16 acquisition, bankruptcy, or other transaction in which the third
17 party assumes control of all or part of the business, provided that
18 information is used or shared consistent with Sections 541.051,
19 541.053, and 541.054(e).

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

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

27 (1) publicly available information;

1 (2) protected health information governed by Chapter
2 181, Health and Safety Code, or collected by a covered entity or a
3 business associate of a covered entity, as those terms are defined
4 by 45 C.F.R. Section 160.103, that is governed by the privacy,
5 security, and breach notification rules in 45 C.F.R. Parts 160 and
6 164 adopted by the United States Department of Health and Human
7 Services under the Health Insurance Portability and Accountability
8 Act of 1996 (Pub. L. No. 104-191) and Title XIII of the American
9 Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5);

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

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

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

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

27 (B) used solely for a purpose authorized under

1 that act;

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

4 (A) the Gramm-Leach-Bliley Act (Pub. L. No.
5 106-102) and its implementing regulations; or

6 (B) the Driver's Privacy Protection Act of 1994
7 (18 U.S.C. Section 2721 et seq.);

8 (7) deidentified or aggregate consumer information;
9 or

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

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

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

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

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

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

1 when the consumer and the information are outside of this state.

2 Sec. 541.005. CERTAIN RIGHTS AND OBLIGATIONS NOT AFFECTED.

3 A right or obligation under this chapter does not apply to the
4 extent that the exercise of the right or performance of the
5 obligation:

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

7 (2) infringes on a noncommercial activity of:

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

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

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

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

18 (1) restrict a business's ability to:

19 (A) comply with:

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

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

25 (B) cooperate with a law enforcement agency
26 concerning conduct or activity that the business, a service
27 provider of the business, or a third party reasonably and in good

1 faith believes may violate other applicable federal, state, or
2 local laws; or

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

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

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

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

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

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

27 Sec. 541.009. RULES. (a) The attorney general shall adopt

1 rules necessary to implement, administer, and enforce this chapter.

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

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

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

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

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

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

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

25 (5) procedures and guidelines, including any
26 necessary exceptions, to ensure that the notices and information
27 businesses are required to provide under this chapter, including

1 information regarding financial incentive offerings, are:

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

4 (B) accessible by consumers with disabilities;
5 and

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

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

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

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

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

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

25 Sec. 541.011. USE OF PERSONAL INFORMATION IN RESEARCH. For
26 purposes of this chapter, "research" means scientific, systematic
27 study and observation, including basic research or applied research

1 that is in the public interest and that adheres to all other
2 applicable ethics and privacy laws or studies conducted in the
3 public interest in the area of public health. Research with
4 personal information that may have been collected from a consumer
5 in the course of the consumer's interactions with a business's
6 service or device for other purposes must be:

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

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

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

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

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

21 (6) protected from any reidentification attempts;

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

25 (8) not used for any commercial purpose; and

26 (9) subjected by the business conducting the research
27 to additional security controls that limit access to the research

1 data to only those individuals in a business as are necessary to
2 carry out the research purpose.

3 SUBCHAPTER B. CONSUMER'S RIGHTS

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

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

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

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

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

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

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

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

27 (1) retain a consumer's personal information that was

1 collected for a one-time transaction if the information is not sold
2 or retained in the ordinary course of business; or

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

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

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

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

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

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

27 (3) perform under a contract between the business and

1 the consumer;

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

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

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

11 (7) comply with Chapter 1289 (H.B. 2268), Acts of the
12 83rd Legislature, Regular Session, 2013, or a legal obligation;

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

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

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

22 (9) use the information internally:

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

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

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

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

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

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

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

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

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

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

27 (3) the categories of third parties to whom the

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

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

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

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

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

24 (1) notice to consumers that:

25 (A) the information may be sold; and

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

1 (2) a clear and conspicuous link that:

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

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

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

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

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

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

27 (1) provides the required link on a separate and

1 additional Internet website that is maintained by the business and
2 dedicated to consumers; and

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

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

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

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

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

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

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

26 Sec. 541.056. WAIVER OR LIMITATION PROVISION VOID. (a) A
27 provision of a contract or other agreement that purports to waive or

1 limit a right, remedy, or means of enforcement under this chapter is
2 contrary to public policy and is void.

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

4 (1) declining to request information from a business;

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

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

9 SUBCHAPTER C. BUSINESS RIGHTS AND OBLIGATIONS

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

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

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

1 consumer to easily exercise a right provided under this chapter.

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

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

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

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

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

22 (A) collected;

23 (B) sold, if applicable; or

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

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

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

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

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

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

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

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

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

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

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

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

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

- 6 (1) a mailing address;
7 (2) an electronic mail address;
8 (3) another Internet web page or portal;
9 (4) other contact information; or
10 (5) any consumer-friendly method approved by the
11 attorney general under Section 541.009.

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

14 Sec. 541.104. VERIFICATION OF CONSUMER REQUEST. (a) A
15 business that receives a consumer request under Section 541.051 or
16 541.053 shall promptly take steps to reasonably verify, in
17 accordance with rules adopted under Section 541.009, that:

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

- 21 (2) the request is made by:
22 (A) the consumer;
23 (B) a consumer on behalf of the consumer's minor
24 child; or
25 (C) a person authorized to act on the consumer's
26 behalf.

27 (b) A business may use any personal information collected

1 from the consumer in connection with the business's verification of
2 a request under this section solely to verify the request.

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

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

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

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

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

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

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

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

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

5 (e) A business is not required to make the disclosure
6 required by Subsection (a) to the same consumer more than twice in a
7 12-month period.

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

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

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

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

27 (1) technical safeguards and business processes to

1 prohibit reidentification of the consumer to whom the information
2 may pertain; and

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

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

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

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

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

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

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

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

26 Sec. 541.108. FINANCIAL INCENTIVES. (a) Subject to
27 Subsection (b), a business may offer a financial incentive to a

1 consumer, including a payment as compensation, for the collection,
2 sale, or disclosure of the consumer's personal information.

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

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

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

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

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

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

19 (1) are entered into contemporaneously; and

20 (2) have at least one common party.

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

26 Sec. 541.110. INFORMATION REQUIRED. A business shall
27 ensure that each person responsible for handling consumer inquiries

1 about the business's privacy practices or compliance with this
2 chapter is informed of the requirements of this chapter and of how
3 to direct a consumer in exercising any of the rights to which a
4 consumer is entitled under this chapter.

5 SUBCHAPTER D. REMEDIES

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

9 (1) \$2,500 for each violation; or

10 (2) \$7,500 for each violation, if the violation is
11 intentional.

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

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

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

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

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