A BILL TO BE ENTITLED

AN ACT
relating to the personal identifying information collected, processed, or maintained 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. PERSONAL IDENTIFYING INFORMATION

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

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 541.001. DEFINITIONS. In this chapter:

(1) "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.

(2) "Category one information" means personal identifying information that an individual may use in a personal, civic, or business setting, and includes:

(A) a social security number;

(B) a driver's license number, passport number, military identification number, or any other similar number issued on a government document and used to verify an individual's
identity;

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

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

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

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

(3) "Category two information" means personal identifying information that may present a privacy risk to an individual, including members of a constitutionally protected class, and includes:

(A) racial or ethnic origin information;

(B) religious affiliation or practice information;

(C) age;

(D) physical or mental impairment;

(E) precise geolocation tracking data; and

(F) unique genetic information.

(4) "Category three information" means specific facets of personal identifying information and includes:

(A) time of birth; and

(B) political party or association.
"Collect" means:

(A) buying, renting, gathering, obtaining, receiving, inferring, creating, or accessing any personal identifying information pertaining to an individual by any means; or

(B) obtaining personal identifying information relating to an individual, actively or passively, or by observing the individual's behavior.

"Device" means any physical object capable of connecting to the Internet, directly or indirectly, or to another device and transmitting information.

"Geolocation tracking" means the use of geolocation technology to determine or record the position of a person, including the use of a global positioning system, web-based imagery, and cell tower triangulation.

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

(A) a social security number;

(B) a driver's license number, passport number, military identification number, or any other similar number issued on a government document and used to verify an individual's identity;

(C) a financial account number, credit or debit card number, or any security code, access code, or password that is
necessary to permit access to an individual's financial account;
(D) unique biometric information, including a fingerprint, voice print, retina or iris image, or any other unique physical representation;
(E) physical or mental health information, including health care information;
(F) the private communications or other user-created content of an individual that is not publicly available;
(G) religious affiliation or practice information;
(H) racial or ethnic origin information;
(I) precise geolocation tracking data; and
(J) unique genetic information.
(9) "Privacy risk" means potential adverse consequences to an individual or society at large arising from the processing of personal identifying information, including:
(A) direct or indirect financial loss or economic harm;
(B) physical harm;
(C) psychological harm, including anxiety, embarrassment, fear, or other demonstrable mental trauma;
(D) significant inconvenience or expenditure of time;
(E) adverse outcomes or decisions with respect to an individual's eligibility for a right, benefit, or privilege in employment, including hiring, firing, promotion, demotion, or
compensation;

(F) credit or insurance harm, including denial of an application or obtaining less favorable terms related to housing, education, professional certification, or health care services;

(G) stigmatization or reputational harm;

(H) disruption and intrusion from unwanted commercial communications or contacts;

(I) price discrimination; and

(J) any other adverse consequence that affects an individual's private life, private family matters, actions or communications within an individual's home or similar physical, online, or digital location, if an individual has a reasonable expectation that personal identifying information will not be processed.

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

(11) "Third party" means a person engaged by a business to process, on behalf of the business, personal identifying information collected by the business.

Sec. 541.002. APPLICABILITY. (a) This chapter applies only to a business that:
(1) does business in this state;
(2) has more than 50 employees;
(3) collects the personal identifying information of more than 5,000 individuals, households, or devices or has that information collected on the business's behalf; and
(4) satisfies one or more of the following thresholds:
   (A) has annual gross revenue in an amount that exceeds $25 million; or
   (B) derives 50 percent or more of the business's annual revenue by processing personal identifying information.

(b) Except as provided by Subsection (c), this chapter applies only to personal identifying information that is:
   (1) collected over the Internet or any other digital network or through a computing device that is associated with or routinely used by an end user; and
   (2) linked or reasonably linkable to a specific end user.

(c) This chapter does not apply to personal identifying information that is:
   (1) collected solely for facilitating the transmission, routing, or connections by which digital personal identifying information and other data is transferred between or among businesses; or
   (2) transmitted to and from the individual to whom the personal identifying information relates if the collector of the information does not access, review, or modify the content of the information, or otherwise perform or conduct any analytical,
algorithmic, or machine learning processes on the information.

Sec. 541.003. EXEMPTIONS. 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) personal identifying information collected 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;

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

Sec. 541.004. RULES. The attorney general shall adopt rules necessary to implement, administer, and enforce this chapter.

SUBCHAPTER B. CONSUMER RIGHTS

Sec. 541.051. RIGHT TO KNOW: DISCLOSURE AND USE OF COLLECTED PERSONAL INFORMATION. An individual is entitled to request that a business that collects personal identifying information relating to the individual or someone for whom the individual is a legal representative or guardian disclose to the individual:

(1) the personal identifying information that is being collected by the business, including the categories and specific items of information the business collects;

(2) the sources from which the business collects the information;

(3) the business's purpose in collecting the information; and

(4) the names of third parties to which the information has been distributed or transferred by the business, including to names of any third parties that have purchased the information from the business.

Sec. 541.052. RIGHT TO HAVE INACCURATE INFORMATION CORRECTED. Subject to Section 541.153, an individual is entitled to request that a business that collects personal identifying information related to the individual or someone for whom the individual is a legal representative or guardian correct any inaccurate information collected or maintained by the business that relates to the individual or the person for whom the individual is a
Sec. 541.053. RIGHT TO ACCESS AND OBTAIN INFORMATION. Subject to Section 541.154, an individual is entitled to:

(1) access and obtain personal identifying information related to the individual or someone for whom the individual is a legal representative or guardian that is collected by a business; and

(2) at the option of the individual, transfer personal identifying information from one business to another business, including in connection with the sale of that information under a contract described by Subchapter C.

Sec. 541.054. RIGHT TO DELETION OF SENSITIVE PERSONAL INFORMATION. Subject to Section 541.155, an individual is entitled to request that a business delete sensitive personal information collected by the business that relates to that individual or someone for whom the individual is a legal representative or guardian.

SUBCHAPTER C. CONTRACTS WITH INDIVIDUALS

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

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

Sec. 541.103. CONSIDERATION UNDER CONTRACT. (a) An individual may provide the individual's data stream or information obtained by the individual under Section 541.154 as consideration under a contract.

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

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

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

(2) may not:

(A) require that the individual exclusively contract with the business or otherwise restrict the individual's ability to sell the individual's personal identifying information; and
(B) prevent the individual from receiving or considering alternative offers to purchase the individual's personal identifying information.

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

SUBCHAPTER D. BUSINESS DUTIES

Sec. 541.151. RESTRICTIONS ON USE OF PERSONAL IDENTIFYING INFORMATION. (a) Subject to the requirements of this section, a business may collect and process category one and category two information.

(b) A business may not:

(1) sell, transfer, or communicate category two information to any third party; or

(2) collect or process category three information.

(c) Without the express written consent of the individual, a business may not:

(1) perform geolocation tracking of an individual, including for purposes of contact tracing; or

(2) sell data relating to an individual that is collected from geolocation tracking.

(d) A business shall protect and properly secure all personal identifying information collected by or in the possession of the business.

Sec. 541.152. NOTICE REQUIRED. (a) A business in a conspicuous manner shall provide a notice that includes a reasonably full and complete description of the business's practices governing the processing of personal identifying information.
information before collecting personal identifying information. The notice must include:

(1) the categories of personal identifying information processed by the business;

(2) details on the type of processing used by the business;

(3) the purposes for which the business processes personal identifying information; and

(4) the involvement of any third party in processing personal identifying information on behalf of the business.

(b) The notice required by Subsection (a) must be:

(1) clear, drafted in plain language, and easy to understand; and

(2) located in a prominent location at the business and on the business's Internet website if the business has an Internet website.

Sec. 541.153. DUTY TO MAINTAIN ACCURATE INFORMATION. (a) A business must ensure that the personal identifying information the business maintains is accurate.

(b) A business shall clearly and conspicuously publish an e-mail address, fax number, or mailing address to enable an individual to dispute the accuracy of the personal identifying information collected or maintained by the business.

(c) If a business receives a dispute regarding the accuracy of personal identifying information that relates to the individual or someone for whom the individual is a legal representative or guardian from the individual, the business shall, unless the
business conducts an investigation and determines the information is accurate, promptly correct the inaccurate information. The individual making the dispute may provide supplementary information when necessary to correct inaccurate personal identifying information.

(d) The business may not charge a fee to remove, correct, or modify inaccurate personal identifying information under this section.

(e) A business shall provide written notice to the individual who disputed the accuracy of the personal identifying information of the actions it has taken in response to the dispute not later than the fifth business day after the date on which the dispute was received.

Sec. 541.154. ACCESS TO INFORMATION; DATA PORTABILITY. (a) A business shall allow an individual to promptly and reasonably obtain:

(1) confirmation of whether personal identifying information concerning the individual or someone for whom the individual is a legal representative or guardian is processed by the business;

(2) a description of the categories of personal identifying information processed by the business;

(3) an explanation in plain language of the specific types of personal identifying information collected by the business;

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

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

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

Sec. 541.155. DELETION OF PERSONAL IDENTIFYING INFORMATION. (a) If an individual who maintains an account with a business closes the account, the business shall:

(1) stop processing the individual's personal identifying information on the date the individual closes the account; and

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

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

SUBCHAPTER E. ENFORCEMENT

Sec. 541.201. CIVIL PENALTY. (a) A business that violates
this chapter or a third party that violates Section 541.155(b) is
liable to this state for a civil penalty in an amount of not more
than $10,000 for each violation, not to exceed a total amount of $1
million.

(b) The attorney general may bring an action in the name of
the state against the business or third party to recover the civil
penalty imposed under this section.

(c) The attorney general is entitled to recover reasonable
expenses, including reasonable attorney's fees, court costs, and
investigatory costs, incurred in bringing an action under this
section.

Sec. 541.202. BUSINESS IMMUNITY FROM LIABILITY. A business
that is in compliance with this chapter and engages a third party to
process on behalf of the business personal identifying information
collected by the business may not be held liable for a violation of
Section 541.155(b) by the third party if the business does not have
actual knowledge or a reasonable belief that the third party
intends to violate that section.
Sec. 541.203. NO PRIVATE CAUSE OF ACTION. This chapter does not create a private cause of action.

SECTION 2. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2021.

(b) Sections 541.054 and 541.155, Business & Commerce Code, as added by this Act, take effect January 1, 2022.