

By: Capriglione

H.B. No. 3741

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the personal identifying information collected,
3 processed, or maintained by certain businesses; imposing a civil
4 penalty.

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

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

8 SUBTITLE C. PERSONAL IDENTIFYING INFORMATION

9 CHAPTER 541. PERSONAL IDENTIFYING INFORMATION PROCESSED OR

10 COLLECTED BY CERTAIN BUSINESSES

11 SUBCHAPTER A. GENERAL PROVISIONS

12 Sec. 541.001. DEFINITIONS. In this chapter:

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

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

21 (A) a social security number;

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

1 identity;

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

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

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

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

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

17 (A) racial or ethnic origin information;

18 (B) religious affiliation or practice
19 information;

20 (C) age;

21 (D) physical or mental impairment;

22 (E) precise geolocation tracking data; and

23 (F) unique genetic information.

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

26 (A) time of birth; and

27 (B) political party or association.

1 (5) "Collect" means:

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

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

9 (6) "Device" means any physical object capable of
10 connecting to the Internet, directly or indirectly, or to another
11 device and transmitting information.

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

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

21 (A) a social security number;

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

26 (C) a financial account number, credit or debit
27 card number, or any security code, access code, or password that is

1 necessary to permit access to an individual's financial account;

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

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

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

10 (G) religious affiliation or practice
11 information;

12 (H) racial or ethnic origin information;

13 (I) precise geolocation tracking data; and

14 (J) unique genetic information.

15 (9) "Privacy risk" means potential adverse
16 consequences to an individual or society at large arising from the
17 processing of personal identifying information, including:

18 (A) direct or indirect financial loss or economic
19 harm;

20 (B) physical harm;

21 (C) psychological harm, including anxiety,
22 embarrassment, fear, or other demonstrable mental trauma;

23 (D) significant inconvenience or expenditure of
24 time;

25 (E) adverse outcomes or decisions with respect to
26 an individual's eligibility for a right, benefit, or privilege in
27 employment, including hiring, firing, promotion, demotion, or

1 compensation;

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

6 (G) stigmatization or reputational harm;

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

9 (I) price discrimination; and

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

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

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

26 Sec. 541.002. APPLICABILITY. (a) This chapter applies
27 only to a business that:

1 (1) does business in this state;

2 (2) has more than 50 employees;

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

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

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

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

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

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

16 (2) linked or reasonably linkable to a specific end
17 user.

18 (c) This chapter does not apply to personal identifying
19 information that is:

20 (1) collected solely for facilitating the
21 transmission, routing, or connections by which digital personal
22 identifying information and other data is transferred between or
23 among businesses; or

24 (2) transmitted to and from the individual to whom the
25 personal identifying information relates if the collector of the
26 information does not access, review, or modify the content of the
27 information, or otherwise perform or conduct any analytical,

1 algorithmic, or machine learning processes on the information.

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

3 (1) publicly available information;

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

13 (3) personal identifying information collected by a
14 consumer reporting agency, as defined by Section 20.01, if the
15 information is to be:

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

19 (B) used solely for a purpose authorized under
20 that Act;

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

24 (5) education information that is not publicly
25 available personally identifiable information under the Family
26 Educational Rights and Privacy Act of 1974 (20 U.S.C. Section
27 1232g) (34 C.F.R. Part 99).

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

3 SUBCHAPTER B. CONSUMER RIGHTS

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

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

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

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

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

21 Sec. 541.052. RIGHT TO HAVE INACCURATE INFORMATION
22 CORRECTED. Subject to Section 541.153, an individual is entitled
23 to request that a business that collects personal identifying
24 information related to the individual or someone for whom the
25 individual is a legal representative or guardian correct any
26 inaccurate information collected or maintained by the business that
27 relates to the individual or the person for whom the individual is a

1 legal representative or guardian.

2 Sec. 541.053. RIGHT TO ACCESS AND OBTAIN INFORMATION.

3 Subject to Section 541.154, an individual is entitled to:

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

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

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

18 SUBCHAPTER C. CONTRACTS WITH INDIVIDUALS

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

26 Sec. 541.102. APPLICABILITY. This subchapter applies only
27 to a contract between a business and an individual under which, as a

1 term of the contract, the individual allows the business to
2 collect, store, or use the individual's personal identifying
3 information.

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

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

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

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

23 (2) may not:

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

1 (B) prevent the individual from receiving or
2 considering alternative offers to purchase the individual's
3 personal identifying information.

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

6 SUBCHAPTER D. BUSINESS DUTIES

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

11 (b) A business may not:

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

14 (2) collect or process category three information.

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

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

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

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

24 Sec. 541.152. NOTICE REQUIRED. (a) A business in a
25 conspicuous manner shall provide a notice that includes a
26 reasonably full and complete description of the business's
27 practices governing the processing of personal identifying

1 information before collecting personal identifying information.

2 The notice must include:

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

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

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

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

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

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

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

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

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

24 (c) If a business receives a dispute regarding the accuracy
25 of personal identifying information that relates to the individual
26 or someone for whom the individual is a legal representative or
27 guardian from the individual, the business shall, unless the

1 business conducts an investigation and determines the information
2 is accurate, promptly correct the inaccurate information. The
3 individual making the dispute may provide supplementary
4 information when necessary to correct inaccurate personal
5 identifying information.

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

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

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

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

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

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

26 (4) a description of the inferences the business has
27 drawn about the individual or someone for whom the individual is a

1 personal representative or guardian from the information collected
2 by the business; and

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

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

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

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

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

27 (b) If an individual makes a request for a business to

1 delete personal identifying information under this section, and
2 that business has provided the personal identifying information to
3 a third party, the business shall notify the third party of the
4 individual's request. The third party shall delete the individual's
5 personal identifying information not later than the one-year
6 anniversary of the date the third party received the notification
7 under this subsection.

8 SUBCHAPTER E. ENFORCEMENT

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

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

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

21 Sec. 541.202. BUSINESS IMMUNITY FROM LIABILITY. A business
22 that is in compliance with this chapter and engages a third party to
23 process on behalf of the business personal identifying information
24 collected by the business may not be held liable for a violation of
25 Section 541.155(b) by the third party if the business does not have
26 actual knowledge or a reasonable belief that the third party
27 intends to violate that section.

1 Sec. 541.203. NO PRIVATE CAUSE OF ACTION. This chapter does
2 not create a private cause of action.

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

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