#### **BILL ANALYSIS**

Senate Research Center 88R17110 SRA-F

H.B. 4 By: Capriglione et al. (Hughes) State Affairs 5/2/2023 Engrossed

#### AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In the absence of robust federal regulations regarding the collection and use of consumer data, a movement has begun at the state level with various state legislatures looking to set their own standards. The State of Texas has not yet established comprehensive regulations for the collection, use, processing, and treatment of consumers' personal data by certain business entities. H.B. 4 seeks to do so by enacting the Texas Data Privacy and Security Act, which aims to maximize both the utility of the rights provided to consumers and interoperability with other states to minimize compliance costs for businesses.

H.B. 4 amends current law relating to the regulation of the collection, use, processing, and treatment of consumers' personal data by certain business entities and imposes a civil penalty.

#### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

## **SECTION BY SECTION ANALYSIS**

SECTION 1. Authorizes this Act to be cited as the Texas Data Privacy and Security Act.

SECTION 2. Amends Title 11, Business and Commerce Code, by adding Subtitle C, as follows:

SUBTITLE C. CONSUMER DATA PROTECTION

CHAPTER 541. CONSUMER DATA PROTECTION

## SUBCHAPTER A. GENERAL PROVISIONS

Sec. 541.001. DEFINITIONS. Defines "affiliate," "control," "controlled," "authenticate," "biometric data," "business associate," "child," "consent," "consumer," controller," "covered entity," "dark pattern," "decision that produces a legal or similarly significant effect concerning a consumer," "deidentified data," "health care provider," "health record," "identified or identifiable individual," "institution of higher education," "known child," "nonprofit organization," "personal data," "political organization," "precise geolocation data," "process," "processing," "processor," "profiling," "protected health information," "pseudonymous data," "publicly available information," "sale of personal data," "sensitive data," "state agency," "targeted advertising," "third party," and "trade secret"

Sec. 541.002. APPLICABILITY OF CHAPTER. (a) Provides that this chapter applies only to a person that:

- (1) conducts business in this state or produces a product or service consumed by residents of this state;
- (2) processes or engages in the sale of personal data; and

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- (3) is not a small business as defined by the United States Small Business Administration, except to the extent that Section 541.107 applies to a person described by this subdivision.
- (b) Provides that this chapter does not apply to:
  - (1) a state agency or a political subdivision of this state;
  - (2) a financial institution or data subject to Title V, Gramm-Leach-Bliley Act (15 U.S.C. Section 6801 et seq.);
  - (3) a covered entity or business associate governed by the privacy, security, and breach notification rules issued by the United States Department of Health and Human Services, 45 C.F.R. Parts 160 and 164, established under the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Section 1320d et seq.), and the Health Information Technology for Economic and Clinical Health Act (Division A, Title XIII, and Division B, Title IV, Pub. L. No. 111-5);
  - (4) a nonprofit organization; or
  - (5) an institution of higher education.

Sec. 541.003. CERTAIN INFORMATION EXEMPT FROM CHAPTER. Provides that the following information is exempt from this chapter:

- (1) protected health information under the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Section 1320d et seq.);
- (2) health records;
- (3) patient identifying information for purposes of 42 U.S.C. Section 290dd-2;
- (4) identifiable private information:
  - (A) for purposes of the federal policy for the protection of human subjects under 45 C.F.R. Part 46;
  - (B) collected as part of human subjects research under the good clinical practice guidelines issued by The International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use (ICH) or of the protection of human subjects under 21 C.F.R. Parts 50 and 56; or
  - (C) that is personal data used or shared in research conducted in accordance with the requirements set forth in this chapter or other research conducted in accordance with applicable law;
- (5) information and documents created for purposes of the Health Care Quality Improvement Act of 1986 (42 U.S.C. Section 11101 et seq.);
- (6) patient safety work product for purposes of the Patient Safety and Quality Improvement Act of 2005 (42 U.S.C. Section 299b-21 et seq.);
- (7) information derived from any of the health care-related information listed in this section that is deidentified in accordance with the requirements for deidentification under the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Section 1320d et seq.);
- (8) information originating from, and intermingled to be indistinguishable with, or information treated in the same manner as, information exempt under this section

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that is maintained by a covered entity or business associate as defined by the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Section 1320d et seq.) or by a program or a qualified service organization as defined by 42 U.S.C. Section 290dd-2;

- (9) information that is included in a limited data set as described by 45 C.F.R. Section 164.514(e), to the extent that the information is used, disclosed, and maintained in the manner specified by 45 C.F.R. Section 164.514(e);
- (10) information collected or used only for public health activities and purposes as authorized by the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Section 1320d et seq.);
- (11) the collection, maintenance, disclosure, sale, communication, or use of any personal information bearing on a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living by a consumer reporting agency or furnisher that provides information for use in a consumer report, and by a user of a consumer report, but only to the extent that the activity is regulated by and authorized under the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.);
- (12) personal data collected, processed, sold, or disclosed in compliance with the Driver's Privacy Protection Act of 1994 (18 U.S.C. Section 2721 et seq.);
- (13) personal data regulated by the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g);
- (14) personal data collected, processed, sold, or disclosed in compliance with the Farm Credit Act of 1971 (12 U.S.C. Section 2001 et seq.);
- (15) data processed or maintained in the course of an individual applying to, being employed by, or acting as an agent or independent contractor of a controller, processor, or third party, to the extent that the data is collected and used within the context of that role;
- (16) data processed or maintained as the emergency contact information of an individual under this chapter that is used for emergency contact purposes; or
- (17) data that is processed or maintained and is necessary to retain to administer benefits for another individual that relates to an individual described by Subdivision (15) and used for the purposes of administering those benefits.

Sec. 541.004. INAPPLICABILITY OF CHAPTER. Provides that this chapter does not apply to the processing of personal data by a person in the course of a purely personal or household activity.

Sec. 541.005. EFFECT OF COMPLIANCE WITH PARENTAL CONSENT REQUIREMENTS UNDER CERTAIN FEDERAL LAW. Provides that a controller or processor that complies with the verifiable parental consent requirements of the Children's Online Privacy Protection Act (15 U.S.C. Section 6501 et seq.) with respect to data collected online is considered to be in compliance with any requirement to obtain parental consent under this chapter.

## SUBCHAPTER B. CONSUMER'S RIGHTS

Sec. 541.051. CONSUMER'S PERSONAL DATA RIGHTS; REQUEST TO EXERCISE RIGHTS. (a) Provides that a consumer is entitled to exercise the consumer rights authorized by this section at any time by submitting a request to a controller specifying the consumer rights the consumer wishes to exercise. Authorizes a parent or legal

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guardian of a known child, with respect to the processing of personal data belonging to the child, to exercise the consumer rights on behalf of the child.

- (b) Requires a controller to comply with an authenticated consumer request to exercise the right to:
  - (1) confirm whether a controller is processing the consumer's personal data and to access the personal data;
  - (2) correct inaccuracies in the consumer's personal data, taking into account the nature of the personal data and the purposes of the processing of the consumer's personal data;
  - (3) delete personal data provided by or obtained about the consumer;
  - (4) if the data is available in a digital format, obtain a copy of the consumer's personal data that the consumer previously provided to the controller in a portable and, to the extent technically feasible, readily usable format that allows the consumer to transmit the data to another controller without hindrance; or
  - (5) opt out of the processing of the personal data for purposes of:
    - (A) targeted advertising;
    - (B) the sale of personal data; or
    - (C) profiling in furtherance of a decision that produces a legal or similarly significant effect concerning the consumer.
- Sec. 541.052. CONTROLLER RESPONSE TO CONSUMER REQUEST. (a) Requires a controller, except as otherwise provided by this chapter, to comply with a request submitted by a consumer to exercise the consumer's rights pursuant to Section 541.051 as provided by this section.
  - (b) Requires a controller to respond to the consumer request without undue delay, which is prohibited from being later than the 45th day after the date of receipt of the request. Authorizes the controller to extend the response period once by an additional 45 days when reasonably necessary, taking into account the complexity and number of the consumer's requests, so long as the controller informs the consumer of the extension within the initial 45-day response period, together with the reason for the extension.
  - (c) Requires a controller, if the controller declines to take action regarding the consumer's request, to inform the consumer without undue delay, which is prohibited from being later than the 45th day after the date of receipt of the request, of the justification for declining to take action and provide instructions on how to appeal the decision in accordance with Section 541.053.
  - (d) Requires a controller to provide information in response to a consumer request free of charge, at least twice annually per consumer. Authorizes the controller, if a request from a consumer is manifestly unfounded, excessive, or repetitive, to charge the consumer a reasonable fee to cover the administrative costs of complying with the request or to decline to act on the request. Provides that the controller bears the burden of demonstrating for purposes of this subsection that a request is manifestly unfounded, excessive, or repetitive.
  - (e) Provides that a controller, if the controller is unable to authenticate the request using commercially reasonable efforts, is not required to comply with a consumer request submitted under Section 541.051 and is authorized to request that the

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consumer provide additional information reasonably necessary to authenticate the consumer and the consumer's request.

- (f) Provides that a controller that has obtained personal data about a consumer from a source other than the consumer is considered in compliance with a consumer's request to delete that personal data pursuant to Section 541.051(b)(3) by:
  - (1) retaining a record of the deletion request and the minimum data necessary for the purpose of ensuring the consumer's personal data remains deleted from the business's records and not using the retained data for any other purpose under this chapter; or
  - (2) opting the consumer out of the processing of that personal data for any purpose other than a purpose that is exempt under the provisions of this chapter.
- Sec. 541.053. APPEAL. (a) Requires a controller to establish a process for a consumer to appeal the controller's refusal to take action on a request within a reasonable period of time after the consumer's receipt of the decision under Section 541.052(c).
  - (b) Requires that the appeal process be conspicuously available and similar to the process for initiating action to exercise consumer rights by submitting a request under Section 541.051.
  - (c) Requires a controller to inform the consumer in writing of any action taken or not taken in response to an appeal under this section not later than the 60th day after the date of receipt of the appeal, including a written explanation of the reason or reasons for the decision.
  - (d) Requires the controller, if the controller denies an appeal, to provide the consumer with the online mechanism described by Section 541.152 through which the consumer is authorized to contact the attorney general to submit a complaint.
- Sec. 541.054. WAIVER OR LIMITATION OF CONSUMER RIGHTS PROHIBITED. Provides that any provision of a contract or agreement that waives or limits in any way a consumer right described by Sections 541.051, 541.052, and 541.053 is contrary to public policy and is void and unenforceable.
- Sec. 541.055. METHODS FOR SUBMITTING CONSUMER REQUESTS. (a) Requires a controller to establish two or more secure and reliable methods to enable consumers to submit a request to exercise their consumer rights under this chapter. Requires that the methods take into account:
  - (1) the ways in which consumers normally interact with the controller;
  - (2) the necessity for secure and reliable communications of those requests; and
  - (3) the ability of the controller to authenticate the identity of the consumer making the request.
  - (b) Prohibits a controller from requiring a consumer to create a new account to exercise the consumer's rights under this subchapter but authorizes a controller to require a consumer to use an existing account.
  - (c) Requires the controller, except as provided by Subsection (d), if the controller maintains an Internet website, to provide a mechanism on the website for

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consumers to submit requests for information required to be disclosed under this chapter.

(d) Provides that a controller that operates exclusively online and has a direct relationship with a consumer from whom the controller collects personal information is only required to provide an e-mail address for the submission of requests described by Subsection (c).

## SUBCHAPTER C. CONTROLLER AND PROCESSOR DATA-RELATED DUTIES AND PROHIBITIONS

Sec. 541.101. CONTROLLER DUTIES; TRANSPARENCY. (a) Provides that a controller:

- (1) is required to limit the collection of personal data to what is adequate, relevant, and reasonably necessary in relation to the purposes for which that personal data is processed, as disclosed to the consumer; and
- (2) for purposes of protecting the confidentiality, integrity, and accessibility of personal data, is required to establish, implement, and maintain reasonable administrative, technical, and physical data security practices that are appropriate to the volume and nature of the personal data at issue.

## (b) Prohibits a controller from:

- (1) except as otherwise provided by this chapter, processing personal data for a purpose that is neither reasonably necessary to nor compatible with the disclosed purpose for which the personal data is processed, as disclosed to the consumer, unless the controller obtains the consumer's consent;
- (2) processing personal data in violation of state and federal laws that prohibit unlawful discrimination against consumers;
- (3) discriminating against a consumer for exercising any of the consumer rights contained in this chapter, including by denying goods or services, charging different prices or rates for goods or services, or providing a different level of quality of goods or services to the consumer; or
- (4) processing the sensitive data of a consumer without obtaining the consumer's consent, or, in the case of processing the sensitive data of a known child, without processing that data in accordance with the Children's Online Privacy Protection Act (15 U.S.C. Section 6501 et seq.).
- (c) Prohibits Subsection (b)(3) from being construed to require a controller to provide a product or service that requires the personal data of a consumer that the controller does not collect or maintain or to prohibit a controller from offering a different price, rate, level, quality, or selection of goods or services to a consumer, including offering goods or services for no fee, if the consumer has exercised the consumer's right to opt out under Section 541.051 or the offer is related to a consumer's voluntary participation in a bona fide loyalty, rewards, premium features, discounts, or club card program.

Sec. 541.102. PRIVACY NOTICE. (a) Requires a controller to provide consumers with a reasonably accessible and clear privacy notice that includes:

(1) the categories of personal data processed by the controller, including, if applicable, any sensitive data processed by the controller;

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- (2) the purpose for processing personal data;
- (3) how consumers are authorized to exercise their consumer rights under Subchapter B, including the process by which a consumer is authorized to appeal a controller's decision with regard to the consumer's request;
- (4) if applicable, the categories of personal data that the controller shares with third parties;
- (5) if applicable, the categories of third parties with whom the controller shares personal data; and
- (6) a description of the methods required under Section 541.055 through which consumers can submit requests to exercise their consumer rights under this chapter.
- (b) Requires a controller, if a controller engages in the sale of personal data that is sensitive data, to include a certain notice. Sets forth the language required to be included in the notice.
- (c) Requires the controller, if the controller engages in the sale of personal data that is biometric data, to include a certain notice. Sets forth the language required to be included in the notice.
- Sec. 541.103. SALE OF DATA TO THIRD PARTIES AND PROCESSING DATA FOR TARGETED ADVERTISING; DISCLOSURE. Requires the controller, if a controller sells personal data to third parties or processes personal data for targeted advertising, to clearly and conspicuously disclose that process and the manner in which a consumer is authorized to exercise the right to opt out of that process.
- Sec. 541.104. DUTIES OF PROCESSOR. (a) Requires a processor to adhere to the instructions of a controller and to assist the controller in meeting or complying with the controller's duties or requirements under this chapter, including:
  - (1) assisting the controller in responding to consumer rights requests submitted under Section 541.051 by using appropriate technical and organizational measures, as reasonably practicable, taking into account the nature of processing and the information available to the processor;
  - (2) assisting the controller with regard to complying with the requirement relating to the security of processing personal data and to the notification of a breach of security of the processor's system under Chapter 521 (Unauthorized Use of Identifying Information), taking into account the nature of processing and the information available to the processor; and
  - (3) providing necessary information to enable the controller to conduct and document data protection assessments under Section 541.105.
  - (b) Requires that a contract between a controller and a processor govern the processor's data processing procedures with respect to processing performed on behalf of the controller. Requires that the contract include:
    - (1) clear instructions for processing data;
    - (2) the nature and purpose of processing;
    - (3) the type of data subject to processing;
    - (4) the duration of processing;

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- (5) the rights and obligations of both parties; and
- (6) a requirement that the processor is required to:
  - (A) ensure that each person processing personal data is subject to a duty of confidentiality with respect to the data;
  - (B) at the controller's direction, delete or return all personal data to the controller as requested after the provision of the service is completed, unless retention of the personal data is required by law;
  - (C) make available to the controller, on reasonable request, all information in the processor's possession necessary to demonstrate the processor's compliance with the requirements of this chapter;
  - (D) allow, and cooperate with, reasonable assessments by the controller or the controller's designated assessor; and
  - (E) engage any subcontractor pursuant to a written contract that requires the subcontractor to meet the requirements of the processor with respect to the personal data.
- (c) Authorizes a processor, notwithstanding the requirement described by Subsection (b)(6)(D), in the alternative, to arrange for a qualified and independent assessor to conduct an assessment of the processor's policies and technical and organizational measures in support of the requirements under this chapter using an appropriate and accepted control standard or framework and assessment procedure. Requires the processor to provide a report of the assessment to the controller on request.
- (d) Prohibits this section from being construed to relieve a controller or a processor from the liabilities imposed on the controller or processor by virtue of its role in the processing relationship as described by this chapter.
- (e) Provides that a determination of whether a person is acting as a controller or processor with respect to a specific processing of data is a fact-based determination that depends on the context in which personal data is to be processed. Provides that a processor that continues to adhere to a controller's instructions with respect to a specific processing of personal data remains in the role of a processor.
- Sec. 541.105. DATA PROTECTION ASSESSMENTS. (a) Requires a controller to conduct and document a data protection assessment of each of the following processing activities involving personal data:
  - (1) the processing of personal data for purposes of targeted advertising;
  - (2) the sale of personal data;
  - (3) the processing of personal data for purposes of profiling, if the profiling presents a reasonably foreseeable risk of:
    - (A) unfair or deceptive treatment of or unlawful disparate impact on consumers;
    - (B) financial, physical, or reputational injury to consumers;
    - (C) a physical or other intrusion on the solitude or seclusion, or the private affairs or concerns, of consumers, if the intrusion would be offensive to a reasonable person; or

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- (D) other substantial injury to consumers;
- (4) the processing of sensitive data; and
- (5) any processing activities involving personal data that present a heightened risk of harm to consumers.
- (b) Requires that a data protection assessment conducted under Subsection (a):
  - (1) identify and weigh the direct or indirect benefits that may flow from the processing to the controller, the consumer, other stakeholders, and the public, against the potential risks to the rights of the consumer associated with that processing, as mitigated by safeguards that can be employed by the controller to reduce the risks; and
  - (2) factor into the assessment:
    - (A) the use of deidentified data;
    - (B) the reasonable expectations of consumers;
    - (C) the context of the processing; and
    - (D) the relationship between the controller and the consumer whose personal data will be processed.
- (c) Requires a controller to make a data protection assessment requested under Section 541.153(b) available to the attorney general pursuant to a civil investigative demand under Section 541.153.
- (d) Provides that a data protection assessment is confidential and exempt from public inspection and copying under Chapter 552 (Public Information), Government Code. Provides that disclosure of a data protection assessment in compliance with a request from the attorney general does not constitute a waiver of attorney-client privilege or work product protection with respect to the assessment and any information contained in the assessment.
- (e) Authorizes a single data protection assessment to address a comparable set of processing operations that include similar activities.
- (f) Authorizes a data protection assessment conducted by a controller for the purpose of compliance with other laws or regulations to constitute compliance with the requirements of this section if the assessment has a reasonably comparable scope and effect.
- Sec. 541.106. DEIDENTIFIED OR PSEUDONYMOUS DATA. (a) Requires a controller in possession of deidentified data to:
  - (1) take reasonable measures to ensure that the data cannot be associated with an individual;
  - (2) publicly commit to maintaining and using deidentified data without attempting to reidentify the data; and
  - (3) contractually obligate any recipient of the deidentified data to comply with the provisions of this chapter.
  - (b) Prohibits this chapter from being construed to require a controller or processor to:

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- (1) reidentify deidentified data or pseudonymous data;
- (2) maintain data in identifiable form or obtain, retain, or access any data or technology for the purpose of allowing the controller or processor to associate a consumer request with personal data; or
- (3) comply with an authenticated consumer rights request under Section 541.051, if the controller:
  - (A) is not reasonably capable of associating the request with the personal data or it would be unreasonably burdensome for the controller to associate the request with the personal data;
  - (B) does not use the personal data to recognize or respond to the specific consumer who is the subject of the personal data or associate the personal data with other personal data about the same specific consumer; and
  - (C) does not sell the personal data to any third party or otherwise voluntarily disclose the personal data to any third party other than a processor, except as otherwise permitted by this section.
- (c) Provides that the consumer rights under Sections 541.051(b)(1)-(4) and controller duties under Section 541.101 do not apply to pseudonymous data in cases in which the controller is able to demonstrate any information necessary to identify the consumer is kept separately and is subject to effective technical and organizational controls that prevent the controller from accessing the information.
- (d) Requires a controller that discloses pseudonymous data or deidentified data to exercise reasonable oversight to monitor compliance with any contractual commitments to which the pseudonymous data or deidentified data is subject and to take appropriate steps to address any breach of the contractual commitments.
- Sec. 541.107. REQUIREMENTS FOR SMALL BUSINESSES. (a) Prohibits a person described by Section 541.002(a)(3) from engaging in the sale of personal data that is sensitive data without receiving prior consent from the consumer.
  - (b) Provides that a person who violates this section is subject to the penalty under Section 541.155.

### SUBCHAPTER D. ENFORCEMENT

- Sec. 541.151. ENFORCEMENT AUTHORITY EXCLUSIVE. Provides that the attorney general has exclusive authority to enforce this chapter.
- Sec. 541.152. INTERNET WEBSITE AND COMPLAINT MECHANISM. Requires the attorney general to post on the attorney general's Internet website:
  - (1) information relating to:
    - (A) the responsibilities of a controller under Subchapters B and C;
    - (B) the responsibilities of a processor under Subchapter C; and
    - (C) a consumer's rights under Subchapter B; and
  - (2) an online mechanism through which a consumer is authorized to submit a complaint under this chapter to the attorney general.

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- Sec. 541.153. INVESTIGATIVE AUTHORITY. (a) Authorizes the attorney general, if the attorney general has reasonable cause to believe that a person has engaged in, is engaging in, or is about to engage in a violation of this chapter, to issue a civil investigative demand. Provides that the procedures established for the issuance of a civil investigative demand under Section 15.10 (Civil Investigative Demands) apply to the same extent and manner to the issuance of a civil investigative demand under this section.
  - (b) Authorizes the attorney general to request, pursuant to a civil investigative demand issued under Subsection (a), that a controller disclose any data protection assessment that is relevant to an investigation conducted by the attorney general. Authorizes the attorney general to evaluate the data protection assessment for compliance with the requirements set forth in Sections 541.101, 541.102, and 541.103.
- Sec. 541.154. NOTICE OF VIOLATION OF CHAPTER; OPPORTUNITY TO CURE. Requires the attorney general, before bringing an action under Section 541.155, to notify a person in writing, not later than the 30th day before bringing the action, identifying the specific provisions of this chapter the attorney general alleges have been or are being violated. Prohibits the attorney general from bringing an action against the person if:
  - (1) within the 30-day period, the person cures the identified violation; and
  - (2) the person provides the attorney general a written statement that the person:
    - (A) cured the alleged violation;
    - (B) notified the consumer that the consumer's privacy violation was addressed;
    - (C) provided supportive documentation to show how the privacy violation was cured; and
    - (D) made changes to internal policies to ensure that no further violations will occur.
- Sec. 541.155. CIVIL PENALTY; INJUNCTION. (a) Provides that a person who violates this chapter following the cure period described by Section 541.154 or who breaches a written statement provided to the attorney general under that section is liable for a civil penalty in an amount not to exceed \$7,500 for each violation.
  - (b) Authorizes the attorney general to bring an action in the name of this state to:
    - (1) recover a civil penalty under this section;
    - (2) restrain or enjoin the person from violating this chapter; or
    - (3) recover the civil penalty and seek injunctive relief.
  - (c) Authorizes the attorney general to recover reasonable attorney's fees and other reasonable expenses incurred in investigating and bringing an action under this section.
  - (d) Requires the attorney general to deposit a civil penalty collected under this section in the state treasury to the credit of the general revenue fund.
- Sec. 541.156. NO PRIVATE RIGHT OF ACTION. Prohibits this chapter from being construed as providing a basis for, or being subject to, a private right of action for a violation of this chapter or any other law.

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# SUBCHAPTER E. CONSTRUCTION OF CHAPTER; EXEMPTIONS FOR CERTAIN USES OF CONSUMER PERSONAL DATA

Sec. 541.201. CONSTRUCTION OF CHAPTER. (a) Prohibits this chapter from being construed to restrict a controller's or processor's ability to:

- (1) comply with federal, state, or local laws, rules, or regulations;
- (2) comply with a civil, criminal, or regulatory inquiry, investigation, subpoena, or summons by federal, state, local, or other governmental authorities:
- (3) investigate, establish, exercise, prepare for, or defend legal claims;
- (4) provide a product or service specifically requested by a consumer or the parent or guardian of a child, perform a contract to which the consumer is a party, including fulfilling the terms of a written warranty, or take steps at the request of the consumer before entering into a contract;
- (5) take immediate steps to protect an interest that is essential for the life or physical safety of the consumer or of another individual and in which the processing cannot be manifestly based on another legal basis;
- (6) prevent, detect, protect against, or respond to security incidents, identity theft, fraud, harassment, malicious or deceptive activities, or any illegal activity;
- (7) preserve the integrity or security of systems or investigate, report, or prosecute those responsible for breaches of system security;
- (8) engage in public or peer-reviewed scientific or statistical research in the public interest that adheres to all other applicable ethics and privacy laws and is approved, monitored, and governed by an institutional review board or similar independent oversight entity that determines:
  - (A) if the deletion of the information is likely to provide substantial benefits that do not exclusively accrue to the controller;
  - (B) whether the expected benefits of the research outweigh the privacy risks; and
  - (C) if the controller has implemented reasonable safeguards to mitigate privacy risks associated with research, including any risks associated with reidentification; or
- (9) assist another controller, processor, or third party with any of the requirements under this subsection.
- (b) Prohibits this chapter from being construed to prevent a controller or processor from providing personal data concerning a consumer to a person covered by an evidentiary privilege under the laws of this state as part of a privileged communication.
- (c) Prohibits this chapter from being construed as imposing a requirement on controllers and processors that adversely affects the rights or freedoms of any person, including the right of free speech.
- (d) Prohibits this chapter from being construed as requiring a controller, processor, third party, or consumer to disclose a trade secret.

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Sec. 541.202. COLLECTION, USE, OR RETENTION OF DATA FOR CERTAIN PURPOSES. (a) Prohibits the requirements imposed on controllers and processors under this chapter from restricting a controller's or processor's ability to collect, use, or retain data to:

- (1) conduct internal research to develop, improve, or repair products, services, or technology;
- (2) effect a product recall;
- (3) identify and repair technical errors that impair existing or intended functionality; or
- (4) perform internal operations that:
  - (A) are reasonably aligned with the expectations of the consumer;
  - (B) are reasonably anticipated based on the consumer's existing relationship with the controller; or
  - (C) are otherwise compatible with processing data in furtherance of the provision of a product or service specifically requested by a consumer or the performance of a contract to which the consumer is a party.
- (b) Provides that a requirement imposed on a controller or processor under this chapter does not apply if compliance with the requirement by the controller or processor, as applicable, would violate an evidentiary privilege under the laws of this state.
- Sec. 541.203. DISCLOSURE OF PERSONAL DATA TO THIRD-PARTY CONTROLLER OR PROCESSOR. (a) Provides that a controller or processor that discloses personal data to a third-party controller or processor, in compliance with the requirements of this chapter, does not violate this chapter if the third-party controller or processor that receives and processes that personal data is in violation of this chapter, provided that, at the time of the data's disclosure, the disclosing controller or processor did not have actual knowledge that the recipient intended to commit a violation.
  - (b) Provides that a third-party controller or processor receiving personal data from a controller or processor in compliance with the requirements of this chapter does not violate this chapter for the transgressions of the controller or processor from which the third-party controller or processor receives the personal data.

Sec. 541.204. PROCESSING OF CERTAIN PERSONAL DATA BY CONTROLLER OR OTHER PERSON. (a) Prohibits personal data processed by a controller under this subchapter from being processed for any purpose other than a purpose listed in this subchapter unless otherwise allowed by this chapter. Authorizes personal data processed by a controller under this subchapter to be processed to the extent that the processing of the data is:

- (1) reasonably necessary and proportionate to the purposes listed in this subchapter; and
- (2) adequate, relevant, and limited to what is necessary in relation to the specific purposes listed in this subchapter.
- (b) Requires that personal data collected, used, or retained under Section 541.202(a), where applicable, take into account the nature and purpose of such collection, use, or retention. Provides that the personal data described by this subsection is subject to reasonable administrative, technical, and physical

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measures to protect the confidentiality, integrity, and accessibility of the personal data and to reduce reasonably foreseeable risks of harm to consumers relating to the collection, use, or retention of personal data.

- (c) Provides that a controller that processes personal data under an exemption in this subchapter bears the burden of demonstrating that the processing of the personal data qualifies for the exemption and complies with the requirements of Subsections (a) and (b).
- (d) Provides that the processing of personal data by an entity for the purposes described by Section 541.201 does not solely make the entity a controller with respect to the processing of the data.
- Sec. 541.205. LOCAL PREEMPTION. Provides that this chapter supersedes and preempts any ordinance, resolution, rule, or other regulation adopted by a political subdivision regarding the processing of personal data by a controller or processor.
- SECTION 3. (a) Requires the Department of Information Resources (DIR), under the management of the chief privacy officer, to review the implementation of the requirements of Chapter 541, Business and Commerce Code, as added by this Act.
  - (b) Requires DIR, not later than September 1, 2024, to create an online portal available on DIR's Internet website for members of the public to provide feedback and recommend changes to Chapter 541, Business and Commerce Code, as added by this Act. Requires that the online portal remain open for receiving feedback from the public for at least 90 days.
  - (c) Requires DIR, not later than January 1, 2025, to make available to the public a report detailing the status of the implementation of the requirements of Chapter 541, Business and Commerce Code, as added by this Act, and any recommendations to the legislature regarding changes to that law.
  - (d) Provides that this section expires September 1, 2025.

SECTION 4. Provides that data protection assessments required to be conducted under Section 541.105, Business and Commerce Code, as added by this Act, apply only to processing activities generated after the effective date of this Act and are not retroactive.

SECTION 5. Requires the attorney general, not later than March 1, 2024, to post the information and online mechanism required by Section 541.152, Business and Commerce Code, as added by this Act.

SECTION 6. Severability clause.

SECTION 7. Effective date: March 1, 2024.