88R13525 MLH-D

By:  Martinez Fischer H.B. No. 4854

A BILL TO BE ENTITLED

AN ACT

relating to the authority of individuals over the personal identifying information collected, processed, or maintained about the individuals and certain others by certain businesses.

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)  "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.

(3)  "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.

(4)  "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

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

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

SUBCHAPTER B. AUTHORITY OF INDIVIDUALS TO ACCESS AND DELETE CERTAIN INFORMATION

Sec. 541.051.  ACCESS TO INFORMATION; DATA PORTABILITY. (a) 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.

(b)  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 (c), a copy of the individual's personal identifying information in a portable and transferable format.

(c)  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. 541.052.  DELETION OF PERSONAL IDENTIFYING INFORMATION. (a) An individual is entitled to request that a business delete personal identifying information collected by the business that relates to that individual or someone for whom the individual is a legal representative or guardian.

(b)  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.

(c)  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 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 541.051 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.

SECTION 2.  (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2023.

(b)  Section 541.052, Business & Commerce Code, as added by this Act, takes effect January 1, 2024.