

By: Holland

H.B. No. 4917

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of third-party data collection entities;
providing a civil penalty and authorizing a fee.

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

SECTION 1. Subtitle A, Title 11, Business & Commerce Code,
is amended by adding Chapter 509 to read as follows:

CHAPTER 509. THIRD-PARTY DATA COLLECTION

Sec. 509.001. DEFINITIONS. In this chapter:

(1) "Biometric identifier" has the meaning assigned by
Section 503.001.

(2) "Child" means an individual younger than 18 years
of age.

(3) "Collect," in the context of data, means to
obtain, receive, access, or otherwise acquire the data by any
means, including by purchasing or renting the data.

(4) "Covered data" means personal identifying
information to which this chapter applies as provided by Section
509.002.

(5) "Deidentified data" means information that does
not identify and is not linked or cannot reasonably be linked to an
individual or to a device linked to that individual, regardless of
whether the information is aggregated.

(6) "Employee" includes an individual who is a
director, officer, staff member, trainee, volunteer, or intern of

1 an employer or an individual working as an independent contractor
2 for an employer, regardless of whether the individual is paid,
3 unpaid, or employed on a temporary basis. The term does not include
4 an individual contractor who is a service provider.

5 (7) "Employee data" means information collected,
6 processed, or transferred by an employer if the information:

7 (A) is related to:

8 (i) a job applicant and was collected
9 during the course of the hiring and application process;

10 (ii) an employee who is acting in a
11 professional capacity for the employer, including the employee's
12 business contact information such as the employee's name, position,
13 title, business telephone number, business address, or business
14 e-mail address;

15 (iii) an employee's emergency contact
16 information; or

17 (iv) an employee or the employee's spouse,
18 dependent, covered family member, or beneficiary; and

19 (B) was collected, processed, or transferred
20 solely for:

21 (i) a purpose relating to the status of a
22 person described by Paragraph (A)(i) as a current or former job
23 applicant of the employer;

24 (ii) a purpose relating to the professional
25 activities of an employee described by Paragraph (A)(ii) on behalf
26 of the employer;

27 (iii) the purpose of having an emergency

1 contact on file for an employee described by Paragraph (A)(iii) and
2 for transferring the information in case of an emergency; and

3 (iv) the purpose of administering benefits
4 to which an employee described by Paragraph (A)(iv) is entitled or
5 to which another person described by that paragraph is entitled on
6 the basis of the employee's position with the employer.

7 (8) "Genetic data" means any data, regardless of
8 format, concerning an individual's genetic characteristics. The
9 term includes:

10 (A) raw sequence data derived from sequencing all
11 or a portion of an individual's extracted DNA; and

12 (B) genotypic and phenotypic information
13 obtained from analyzing an individual's raw sequence data.

14 (9) "Personal identifying information" has the
15 meaning assigned by Section [521.002](#).

16 (10) "Precise geolocation data" means information
17 accessed on a device or technology that shows the past or present
18 physical location of an individual or the individual's device with
19 sufficient precision to identify street-level location information
20 of the individual or device in a range of not more than 1,850 feet.
21 The term does not include location information regarding an
22 individual or device identifiable or derived solely from the visual
23 content of a legally obtained image, including the location of a
24 device that captured the image.

25 (11) "Process," in the context of data, means to
26 conduct or direct any operation or set of operations performed on
27 the data, including using, storing, or otherwise handling the data.

1 (12) "Publicly available information" means
2 information:

3 (A) that a business entity or service provider
4 reasonably believes is lawfully available to the general public:

5 (i) from a governmental record, unless use
6 of the information by the business entity violates the governmental
7 entity's restriction or terms of use for that information;

8 (ii) from widely distributed media,
9 including information from:

10 (a) a telephone book or online
11 directory;

12 (b) a television, Internet, or radio
13 program;

14 (c) the news media; or

15 (d) a generally available Internet
16 website or online service on which the relevant information has not
17 been restricted to a specific audience;

18 (iii) from a disclosure as required by law;
19 or

20 (iv) by visual observation in a public
21 place, other than data collected by a device in the individual's
22 possession; and

23 (B) that is not:

24 (i) an obscene visual depiction under 18
25 U.S.C. Section 1460;

26 (ii) an inference:

27 (a) made exclusively from multiple

1 independent sources of publicly available information; and
2 (b) that does not disclose an
3 individual's sensitive information;
4 (iii) a biometric identifier;
5 (iv) combined with personal identifying
6 information;
7 (v) genetic information not disclosed by
8 the individual in a manner provided by Paragraph (A); or
9 (vi) a nonconsensual intimate image, if
10 known to be nonconsensual.

11 (13) "Sensitive covered data" means:

12 (A) a government-issued identifier not required
13 by law to be available publicly, including:

- 14 (i) a social security number;
15 (ii) a passport number; or
16 (iii) a driver's license number;

17 (B) information that describes or reveals an
18 individual's mental or physical health diagnosis, condition, or
19 treatment;

20 (C) an individual's financial information,
21 except the last four digits of a debit or credit card number,
22 including:

- 23 (i) a financial account number;
24 (ii) a credit or debit card number; or
25 (iii) information that describes or reveals
26 the income level or bank account balances of the individual;

27 (D) a biometric identifier;

- 1 (E) genetic data;
2 (F) precise geolocation data;
3 (G) an individual's private communication that:
4 (i) if made using a device, is not made
5 using a device provided by the individual's employer that provides
6 conspicuous notice to the individual that the employer may access
7 communication made using the device; and
8 (ii) includes, unless the third-party data
9 collection entity is the sender or an intended recipient of the
10 communication:
11 (a) the individual's voicemails,
12 e-mails, texts, direct messages, or mail;
13 (b) information that identifies the
14 parties involved in the communications; and
15 (c) information that relates to the
16 transmission of the communications, including telephone numbers
17 called, telephone numbers from which calls were placed, the time
18 calls were made, call duration, and location information of the
19 parties to the call;
20 (H) a log-in credential, security code, or access
21 code for an account or device;
22 (I) information identifying the sexual behavior
23 of the individual in a manner inconsistent with the individual's
24 reasonable expectation regarding the collection, processing, or
25 transfer of the information;
26 (J) calendar information, address book
27 information, phone or text logs, photos, audio recordings, or

1 videos:

2 (i) maintained for private use by an
3 individual and stored on the individual's device or in another
4 location; and

5 (ii) not communicated using a device
6 provided by the individual's employer unless the employee was
7 provided conspicuous notice that the employer may access
8 communication made using the device;

9 (K) a photograph, film, video recording, or other
10 similar medium that shows the individual or a part of the individual
11 nude or wearing undergarments;

12 (L) information revealing the video content
13 requested or selected by an individual that is not:

14 (i) collected by a provider of broadcast
15 television service, cable service, satellite service, streaming
16 media service, or other video programming, as that term is defined
17 by 47 U.S.C. Section 613(h)(2); or

18 (ii) used solely for transfers for
19 independent video measurement;

20 (M) information regarding a known child;

21 (N) information revealing an individual's racial
22 or ethnic origin, color, religious beliefs, or union membership;

23 (O) information identifying an individual's
24 online activities over time accessing multiple Internet websites or
25 online services; or

26 (P) information collected, processed, or
27 transferred for the purpose of identifying information described by

1 this subdivision.

2 (14) "Service provider" means a person that receives,
3 collects, processes, or transfers personal identifying information
4 on behalf of, and at the direction of, a business or governmental
5 entity, including a business or governmental entity that is another
6 service provider, in order for the person to perform a service or
7 function with or on behalf of the business or governmental entity.

8 (15) "Third-party data collection entity" means a
9 business entity that collects, processes, or transfers covered data
10 that the entity did not collect directly from the individual linked
11 or linkable to the data.

12 (16) "Transfer," in the context of data, means to
13 disclose, release, share, disseminate, make available, or license
14 the data by any means or medium.

15 Sec. 509.002. APPLICABILITY TO CERTAIN DATA. (a) Except as
16 provided by Subsection (b), this chapter applies to personal
17 identifying information from an individual who resides in this
18 state that is collected, transferred, or processed by a third-party
19 data collection entity.

20 (b) This chapter does not apply to the following data:

21 (1) deidentified data, if the third-party data
22 collection entity:

23 (A) takes reasonable technical measures to
24 ensure that the data is not able to be used to identify an
25 individual with whom the data is associated;

26 (B) publicly commits in a clear and conspicuous
27 manner:

1 (i) to process and transfer the data solely
2 in a deidentified form without any reasonable means for
3 reidentification; and

4 (ii) to not attempt to identify the
5 information to an individual with whom the data is associated; and

6 (C) contractually obligates a person that
7 receives the information from the provider:

8 (i) to comply with this subsection with
9 respect to the information; and

10 (ii) to require that those contractual
11 obligations be included in any subsequent transfer of the data to
12 another person;

13 (2) employee data;

14 (3) publicly available information; or

15 (4) inferences made exclusively from multiple
16 independent sources of publicly available information that do not
17 reveal sensitive covered data with respect to an individual.

18 Sec. 509.003. APPLICABILITY OF CHAPTER TO CERTAIN BUSINESS
19 ENTITIES. (a) Except as provided by Subsection (b), this chapter
20 applies to a third-party data collection entity, which is a
21 business entity that, in a 12-month period, derives:

22 (1) more than 50 percent of the entity's revenue from
23 processing or transferring covered data that the entity did not
24 collect directly from the individuals to whom the data pertains; or

25 (2) revenue from processing or transferring the
26 covered data of more than 50,000 individuals that the entity did not
27 collect directly from the individuals to whom the data pertains.

1 (b) This chapter does not apply to:

2 (1) a business entity that:

3 (A) is engaging in the business of processing
4 employee data for a third party for the sole purpose of providing
5 benefits to the third party's employees; or

6 (B) is collecting covered data from another
7 entity to which the entity is related by common ownership or
8 corporate control if a reasonable consumer would expect the
9 entities to share the relevant data;

10 (2) a business entity that is a service provider with
11 respect to the entity's use of covered data;

12 (3) a governmental entity or an entity that is
13 collecting, processing, or transferring covered data as a service
14 provider for a governmental entity; or

15 (4) an entity that serves as a congressionally
16 designated nonprofit, national resource center, or clearinghouse
17 to provide assistance to victims, families, child-serving
18 professionals, and the general public on missing and exploited
19 children issues.

20 Sec. 509.004. NOTICE ON WEBSITE OR MOBILE APPLICATION. A
21 third-party data collection entity that maintains an Internet
22 website or mobile application shall post a conspicuous notice on
23 the website or application that:

24 (1) states that the entity maintaining the website or
25 application is a third-party data collection entity;

26 (2) must be clear, not misleading, and be readily
27 accessible by the general public, including individuals with a

1 disability;

2 (3) contains language provided by rule of the
3 secretary of state for inclusion in the notice; and

4 (4) provides a link to the "do not collect" online
5 registry established under Section 509.006.

6 Sec. 509.005. REGISTRATION. (a) To conduct business in
7 this state, a third-party data collection entity to which this
8 chapter applies that collects, processes, or transfers the covered
9 date of individuals residing in this state shall register with the
10 secretary of state by filing a registration statement and paying a
11 registration fee of \$300.

12 (b) The registration statement must include:

13 (1) the legal name of the third-party data collection
14 entity;

15 (2) a contact person and the primary physical address,
16 e-mail address, telephone number, and Internet website address for
17 the entity;

18 (3) a description of the categories of data the entity
19 processes and transfers;

20 (4) a statement of whether or not the entity
21 implements a purchaser credentialing process that includes taking
22 reasonable steps to confirm that:

23 (A) the actual identity of the entity's customer
24 and the customer's use of the data matches the identity and intended
25 use provided to the entity by the customer; and

26 (B) the entity's customers will not use the data
27 for a nefarious purpose;

1 (5) if the entity has actual knowledge that the entity
2 possesses personal identifying information of a child:

3 (A) a statement detailing the data collection
4 practices, databases, sales activities, and opt-out policies that
5 are applicable to the personal identifying information of a child;
6 and

7 (B) a statement on how the entity complies with
8 applicable federal and state law regarding the collection, use, or
9 disclosure of personal identifying information from and about a
10 child on the Internet;

11 (6) the number of security breaches the entity has
12 experienced during the year immediately preceding the year in which
13 the registration is filed, and if known, the total number of
14 consumers affected by each breach;

15 (7) any litigation or unresolved complaints related to
16 the operation of the entity; and

17 (8) any Internet website link the entity provides to
18 allow individuals to easily access the "do not collect" online
19 registry established under Section 509.006.

20 (c) A registration of a third-party data collection entity
21 may include any additional information or explanation the
22 third-party data collection entity chooses to provide to the
23 secretary of state concerning the entity's data collection
24 practices.

25 (d) A registration certificate expires on the first
26 anniversary of its date of issuance. A third-party data collection
27 entity may renew a registration certificate by filing a renewal

1 application, in the form prescribed by the secretary of state, and
2 paying a renewal fee in the amount of \$300.

3 Sec. 509.006. REGISTRY OF THIRD-PARTY COLLECTING ENTITIES;
4 DO NOT COLLECT REQUESTS. (a) The secretary of state shall
5 establish and maintain, on its Internet website, a searchable,
6 central registry of third-party data collection entities
7 registered under Section 509.005.

8 (b) The registry must include:

9 (1) a search feature that allows a person searching
10 the registry to identify a specific third-party data collection
11 entity;

12 (2) for each third-party data collection entity, the
13 information filed under Section 509.005(b); and

14 (3) a link and mechanism by which individuals may
15 submit do not collect requests to third-party collection entities,
16 other than consumer reporting agencies, as provided by Subsection
17 (c).

18 (c) The secretary of state shall ensure that under the
19 mechanism described by Subsection (b) an individual has the
20 capability to easily submit a single request requiring all
21 registered third-party data collection entities to:

22 (1) delete, not later than the 30th day after
23 receiving the request, all covered data related to the requesting
24 individual that is in their possession and was not collected from
25 the individual directly; and

26 (2) cease collecting, processing, or transferring
27 covered data related to the requesting individual, unless the

1 entity receives the individual's affirmative express consent to
2 continue to collect, process, or transfer data, as applicable, in
3 accordance with Subsection (e).

4 (d) Notwithstanding Subsection (c), a third-party data
5 collection entity may decline to comply with a request under that
6 subsection if the entity:

7 (1) knows that the individual has been convicted of a
8 crime related to the abduction or sexual exploitation of a child,
9 and that the data the entity is collecting is necessary to
10 effectuate the purposes of a federal or state sex offender registry
11 or of an entity described by Section 509.003(b)(4); or

12 (2) is a consumer reporting agency governed by the
13 Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.).

14 (e) For purposes of Subsection (c)(2), an individual is
15 considered to have given the individual's affirmative express
16 consent if the individual, by an affirmative act, clearly
17 communicates the individual's specific and unambiguous
18 authorization for the act or practice in response to a specific
19 request by a third-party data collection entity that:

20 (1) is provided to the individual in a clear,
21 conspicuous, and separate disclosure presented through:

22 (A) the primary medium by which the entity offers
23 its products or services; or

24 (B) another medium regularly used in conjunction
25 with the entity's products or services;

26 (2) includes a description of the processing purpose
27 for which the individual's consent is sought, that:

1 (A) clearly states the specific categories of
2 personal identifying information the business will collect,
3 process, or transfer for that purpose;

4 (B) includes a prominent heading; and

5 (C) is written in easily understood language
6 intended to enable a reasonable individual to identify and
7 understand the processing purpose for which consent is sought;

8 (3) explains the individual's right to give and revoke
9 consent under this section;

10 (4) is made in a manner reasonably accessible to and
11 usable by an individual with a disability;

12 (5) is made available in each language in which the
13 business provides a product or service for which consent is sought;

14 (6) presents the option to refuse consent at least as
15 prominently as the option to accept; and

16 (7) ensures that refusing to consent takes not more
17 than the same amount of steps to complete as the option to accept
18 consent.

19 (f) If the processing purpose disclosed to an individual in
20 a request made under Subsection (e) changes, a third-party data
21 collection entity must request and receive a new consent that meets
22 the requirements of that subsection before the entity is able to
23 collect, transfer, or process any further information pursuant to
24 that consent.

25 (g) An individual's inaction or continued use of a service
26 or product provided by a third-party data collection entity does
27 not constitute an individual's affirmative express consent for

1 purposes of Subsection (e).

2 (h) A third-party data collection entity may not obtain or
3 attempt to obtain an individual's affirmative express consent under
4 Subsection (b) through:

5 (1) the use of a false, fraudulent, or materially
6 misleading statement or representation; or

7 (2) the design, modification, or manipulation of a
8 user interface to impair a reasonable individual's autonomy to
9 consent or to withhold certain personal identifying information.

10 Sec. 509.007. CIVIL PENALTY. (a) A third-party data
11 collection entity that violates Section 509.004, 509.005, or
12 509.006 is liable to this state for a civil penalty as prescribed by
13 this section.

14 (b) A civil penalty imposed against a third-party data
15 collection entity under this section:

16 (1) subject to Subdivision (2), may not be in an amount
17 less than the total of:

18 (A) \$100 for each day the entity is in violation
19 of Section 509.004 or 509.005; and

20 (B) the amount of unpaid registration fees for
21 each year the entity failed to register in violation of Section
22 509.005; and

23 (2) may not exceed \$10,000 assessed against the same
24 entity in a 12-month period.

25 (c) The attorney general may bring an action to recover a
26 civil penalty imposed under this section. The attorney general may
27 recover reasonable attorney's fees and court costs incurred in

1 bringing the action.

2 Sec. 509.008. DECEPTIVE TRADE PRACTICE. A violation of
3 this chapter constitutes a deceptive trade practice in addition to
4 the practices described by Subchapter E, Chapter 17, and is
5 actionable under that subchapter.

6 Sec. 509.009. RULES. The secretary of state shall adopt
7 rules as necessary to implement this chapter.

8 SECTION 2. Not later than December 1, 2023, the secretary of
9 state shall adopt rules necessary to facilitate registration by a
10 third-party data collection entity under Section 509.005, Business
11 & Commerce Code, as added by this Act.

12 SECTION 3. Chapter 509, Business & Commerce Code, as added
13 by this Act, applies only to the collection, processing, or
14 transfer of personal identifying information by a third-party data
15 collection entity on or after the effective date of this Act.

16 SECTION 4. This Act takes effect September 1, 2023.