

Amendment No. _____

FILED
Date _____
Time _____
Clerk _____
Comm. Amdt. _____

Signature of Sponsor

AMEND Senate Bill No. 1365

House Bill No. 1197*

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 47, Chapter 18, is amended by adding the following as a new part:

47-18-3101. Definitions.

As used in this part:

(1) "Aggregate consumer information":

(A) Means information that relates to a group or category of consumers, from which the identity of an individual consumer has been removed and is not reasonably capable of being directly or indirectly associated or linked with a consumer or household, including via a device; and

(B) Does not include one (1) or more individual consumer records that have been deidentified;

(2) "Attorney general" means the attorney general and reporter;

(3) "Biometric information":

(A) Means an individual's physiological, biological, or behavioral characteristics, including an individual's deoxyribonucleic acid (DNA), that can be used, singly or in combination with each other or with other identifying data, to establish individual identity; and

(B) Includes imagery of the iris, retina, fingerprint, face, hand, palm, vein patterns, and voice recordings, from which an identifier template, such



0561603442



003910

as faceprint, a minutiae template, or a voiceprint, can be extracted, and keystroke patterns or rhythms, gait patterns or rhythms, and sleep, health, or exercise data that contain identifying information;

(4) "Business" means:

(A) A sole proprietorship, partnership, limited liability company, corporation, association, or legal entity that:

(i) Is organized or operated for the profit or financial benefit of its shareholders or owners;

(ii) Does business in this state;

(iii) Collects personal information about consumers, or is the entity on behalf of which the information is collected;

(iv) Determines the purposes and means of processing personal information about consumers alone or jointly with others; and

(v) Satisfies one (1) or more of the following thresholds:

(a) Has global annual gross revenues in excess of twenty-five million dollars (\$25,000,000), as adjusted in January of every odd-numbered year to reflect an increase in the consumer price index;

(b) Annually buys, receives for the business's commercial purposes, sells, or shares for commercial purposes, the personal information of fifty thousand (50,000) or more consumers, households, or devices; or

(c) Derives fifty percent (50%) or more of its global annual revenues from selling or sharing personal information about consumers; or

(B) An entity that controls or is controlled by a business and that shares common branding with the business. As used in this subdivision

(4)(B):

(i) "Control" means:

(a) Ownership of, or the power to vote, more than fifty percent (50%) of the outstanding shares of a class of voting security of a business;

(b) Control over the election of a majority of the directors, or of individuals exercising similar functions; or

(c) The power to exercise a controlling influence over the management of a company; and

(ii) "Common branding" means a shared name, service mark, or trademark;

(5) "Business purpose":

(A) Means the use of personal information for the operational purpose of a business or service provider, or other notified purposes, if the use of personal information is reasonably necessary and proportionate to achieve the operational purpose for which the personal information was collected or processed or for another operational purpose that is compatible with the context in which the personal information was collected; and

(B) Includes:

(i) Auditing relating to a current interaction with a consumer and concurrent transactions, including, but not limited to, counting ad impressions to unique visitors, verifying positioning and quality of ad impressions, and auditing compliance with this specification and other standards;

(ii) Detecting security incidents; protecting against malicious, deceptive, fraudulent, or illegal activity; and prosecuting those responsible for that activity;

(iii) Debugging to identify and repair errors that impair existing intended functionality;

(iv) Short-term, transient use if the personal information is not disclosed to another third party and is not used to build a profile about a consumer or otherwise alter an individual consumer's experience outside the current interaction, including, but not limited to, the contextual customization of ads shown as part of the same interaction;

(v) Performing services on behalf of the business or service provider, including maintaining or servicing accounts, providing customer service, processing or fulfilling orders and transactions, verifying customer information, processing payments, providing financing, providing analytic services, or providing similar services on behalf of the business or service provider;

(vi) Undertaking internal research for technological development and demonstration; and

(vii) Undertaking activities to verify or maintain the quality or safety of a service or device that is owned, manufactured, manufactured for, or controlled by the business, and to improve, upgrade, or enhance the service or device that is owned, manufactured, manufactured for, or controlled by the business;

(6) "Collect":

(A) Means to buy, rent, gather, obtain, receive, or access any personal information pertaining to a consumer by any means; and

(B) Includes actively or passively receiving information from the consumer or by observing the consumer's behavior;

(7) "Commercial purposes" means to advance the commercial or economic interests of a person, such as inducing another person to buy, rent, lease, join, subscribe to, provide, or exchange products, goods, property, information, or services, or directly or indirectly enabling or effecting a commercial transaction;

(8) "Consumer" means a natural person who resides in or is domiciled in this state, however identified, including by a unique identifier, and who is:

(A) In this state for other than a temporary or transitory purpose;

or

(B) Domiciled in this state but resides outside this state for a temporary or transitory purpose;

(9) "Deidentified" means information that does not reasonably identify, relate to, or describe a particular consumer, or is not reasonably capable of being directly or indirectly associated or linked with a particular consumer, if a business that uses deidentified information:

(A) Implements technical safeguards that prohibit reidentification of the consumer to whom the information may pertain;

(B) Implements business processes that specifically prohibit reidentification of the information;

(C) Implements business processes to prevent inadvertent release of deidentified information; and

(D) Does not attempt to reidentify the information;

(10) "Health insurance information" means a consumer's insurance policy number or subscriber identification number, or a unique identifier used by a health insurer to identify the consumer, or information in the consumer's application and claims history, including appeals records, if the information is reasonably capable of being directly or indirectly associated or linked with a consumer or household, including via a device, by a business, or by a service provider;

(11) "Homepage" means:

(A) The introductory page of an internet website and an internet webpage where personal information is collected; or

(B) In the case of a mobile application, the application's platform page or download page; a link within the application, such as the "About" or "Information" application configurations or settings page; and any other location that allows consumers to review the notice required by § 47-18-3109, including, but not limited to, before downloading the application;

(12) "Person" means an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, limited liability company, association, committee, and other organization or group of persons acting in concert;

(13) "Personal information":

(A) Means information that identifies, relates to, or describes a particular consumer or household, or is reasonably capable of being directly or indirectly associated or linked with, a particular consumer or household; and

(B) Includes:

(i) Identifiers such as a real name, alias, postal address, unique identifier, online identifier, internet protocol address, email

address, account name, social security number, driver license number, passport number, or other similar identifiers;

(ii) Information that identifies, relates to, or describes, or could be associated with, a particular individual, including, but not limited to, a name, signature, social security number, physical characteristics or description, address, telephone number, passport number, driver license or state identification card number, insurance policy number, education, employment, employment history, bank account number, credit card number, debit card number, or any other financial information, medical information, or health insurance information;

(iii) Characteristics of protected classifications under state or federal law;

(iv) Commercial information, including records of personal property, products or services purchased, obtained, or considered, or other purchasing or consuming histories or tendencies;

(v) Biometric information;

(vi) Internet or other electronic network activity information, including browsing history, search history, and information regarding a consumer's interaction with an Internet website, application, or advertisement;

(vii) Geolocation data;

(viii) Audio, electronic, visual, thermal, olfactory, or similar information;

(ix) Professional or employment-related information;

(x) Education information that is not publicly available, personally identifiable information as defined in the federal Family

Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g and 34 C.F.R. § 99.1 et seq.); and

(xi) Inferences drawn from the information identified in this subdivision (13)(B) to create a profile about a consumer reflecting the consumer's preferences, characteristics, psychological trends, predispositions, behavior, attitudes, intelligence, abilities, and aptitudes; and

(C) Does not include consumer information that is:

(i) Publicly and lawfully made available from federal, state, or local government records; or

(ii) Deidentified or aggregate consumer information;

(14) "Probabilistic identifier" means the identification of a consumer or a device to a degree of certainty of more probable than not based on any categories of personal information included in, or similar to, the categories listed under subdivision (13);

(15) "Processing" means an operation or set of operations that are performed on personal data or on sets of personal data, whether or not by automated means;

(16) "Pseudonymize" means the processing of personal information in a manner that renders the personal information no longer attributable to a specific consumer without the use of additional information as long as the additional information is kept separately and is subject to technical and organizational measures to ensure that the personal information is not attributed to an identified or identifiable consumer;

(17) "Research" means scientific, systematic study and observation, including basic research or applied research, that is in the public interest and that

adheres to applicable ethics and privacy laws or studies conducted in the public interest in the area of public health;

(18) "Sell" means to sell, rent, release, disclose, disseminate, make available, transfer, or otherwise communicate orally, in writing, or by electronic or other means, a consumer's personal information by a business to another business or a third party for monetary or other valuable consideration;

(19) "Service" means work or labor furnished in connection with the sale or repair of goods;

(20) "Service provider" means a sole proprietorship, partnership, limited liability company, corporation, association, or other legal entity that:

(A) Is organized or operated for the profit or financial benefit of its shareholders or other owners; and

(B) Processes information on behalf of a business and to which the business discloses a consumer's personal information for a business purpose pursuant to a written contract that prohibits the entity receiving the information from retaining, using, or disclosing the personal information for a purpose other than the specific purpose of performing the services specified in the contract for the business, or as otherwise permitted by this section, including retaining, using, or disclosing the personal information for a commercial purpose other than providing the services specified in the contract with the business;

(21) "Share":

(A) Means to share, rent, release, disclose, disseminate, make available, transfer, or access a consumer's personal information for advertising; and

(B) Includes:

(i) Allowing a third party to use or advertise to a consumer based on a consumer's personal information without disclosure of the personal information to the third party; and

(ii) Monetary transactions, nonmonetary transactions, and transactions for other valuable consideration between a business and a third party for advertising for the benefit of a business;

(22) "Third party" means a person who is not:

(A) A business that collects personal information from consumers under this part; or

(B) A person to whom the business discloses personal information about consumers for a business purpose pursuant to a written contract;

(23) "Unique identifier" means a persistent identifier that can be used to recognize a consumer, a family, or a device that is linked to a consumer or family, over time and across different services, including a device identifier; an internet protocol address; cookies, beacons, pixel tags, mobile ad identifiers, or similar technology; customer number, unique pseudonym, or user alias; telephone numbers, or other forms of persistent or probabilistic identifiers that can be used to identify a particular consumer or device. As used in this subdivision (23), "family" means a custodial parent or guardian and minor children of whom the parent or guardian has custody, or a household; and

(24) "Verifiable consumer request" means a request that:

(A) Is made by a consumer, by a consumer on behalf of the consumer's minor child, or by a natural person or a person authorized by the consumer to act on the consumer's behalf; and

(B) The business can reasonably verify pursuant to rules adopted by the attorney general to be the consumer about whom the business has collected personal information.

47-18-3102. Privacy policy for personal information.

(a) A business that collects personal information about consumers shall maintain an online privacy policy, make the policy available on its internet website, and update the policy at least once every twelve (12) months. The online privacy policy must include:

(1) Tennessee-specific consumer privacy rights;

(2) A list of the categories of personal information the business collects or has collected about consumers;

(3) Of the categories identified in subdivision (a)(2), a list that identifies which categories of personal information the business sells or shares, or has sold or shared, about consumers. If the business does not sell or share personal information, then the business shall disclose that fact;

(4) Of the categories identified in subdivision (a)(2), a list that identifies which categories of personal information the business discloses or shares, or has disclosed or shared, about consumers for a business purpose. If the business does not disclose or share personal information for a business purpose, then the business shall disclose that fact; and

(5) The right to opt-out of the sale or sharing to third parties and the ability to request deletion or correction of certain personal information.

(b) A consumer has the right to request that a business that collects personal information disclose to the consumer the categories and specific pieces of personal information the business collects from or about consumers. A business shall provide the information to a consumer only upon receipt of a verifiable consumer request. A business is not obligated to respond with information to the consumer if the business cannot verify that the consumer making the request is the consumer about whom the

business has collected information or is a person authorized by the consumer to act on the consumer's behalf.

(c) A business that collects personal information shall, at or before the point of collection, inform consumers of the categories of personal information to be collected and the purposes for which the categories of personal information will be used.

(d) A business shall not collect additional categories of personal information or use personal information collected for additional purposes without providing the consumer with notice consistent with this part.

(e) A business shall provide and follow a retention schedule that prohibits the use and retention of personal information after satisfaction of the initial purpose for collecting or obtaining the information, after the duration of a contract, or one (1) year after the consumer's last interaction with the business, whichever occurs first. This subsection (e) does not apply to biometric information used for ticketing purposes and does not apply if the information is only kept for the time related to the duration of the ticketed event.

47-18-3103. Consumer right to request copy of personal data collected.

(a) A consumer has the right to request that a business that collects personal information about the consumer disclose the personal information that has been collected by the business.

(b) A business that receives a verifiable consumer request from a consumer to access personal information shall promptly take steps to disclose and deliver, free of charge to the consumer, the personal information required by this section. The information may be delivered by mail or electronically, and if provided electronically, the information must be in a portable and, to the extent technically feasible, readily useable format that allows the consumer to transmit this information to another entity without hindrance. A business may provide personal information to a consumer at any time, but

may not be required to provide personal information to a consumer more than twice in a twelve-month period.

(c) A business shall disclose the following to the consumer upon request:

(1) The specific pieces of personal information it has collected about the consumer;

(2) The categories and sources from which it collected the consumer's personal information;

(3) The business or commercial purpose for collecting or selling the consumer's personal information; and

(4) The categories of third parties that the business shares the consumer's personal information.

(d) This section does not require a business to:

(1) Retain personal information about a consumer collected for a single one-time transaction if, in the ordinary course of business, that information about the consumer is not retained; or

(2) Reidentify or otherwise link data that, in the ordinary course of business, is not maintained in a manner that would be considered personal information.

47-18-3104. Right to have personal information deleted or corrected; requirements for research.

(a) A consumer has the right to request that a business delete personal information about the consumer that the business has collected from the consumer.

(b) A business that receives a verifiable consumer request from a consumer to delete the consumer's personal information shall delete the consumer's personal information from its records and direct service providers to delete the consumer's personal information from their records.

(c) A business or a service provider is not required to comply with a consumer's request to delete the consumer's personal information if it is necessary for the business or service provider to maintain the consumer's personal information to:

(1) Complete the transaction for which the personal information was collected;

(2) Fulfill the terms of a written warranty or product recall conducted in accordance with federal law;

(3) Provide a good or service requested by the consumer, or reasonably anticipated within the context of a business's ongoing business relationship with the consumer, or otherwise perform a contract between the business and the consumer;

(4) Detect security incidents, protect against malicious, deceptive, fraudulent, or illegal activity; or prosecute those responsible for that activity;

(5) Debug to identify and repair errors that impair existing intended functionality;

(6) Engage in public or peer-reviewed scientific, historical, or statistical research in the public interest that adheres to applicable ethics and privacy laws when the business's deletion of the information is likely to render impossible or seriously impair the achievement of the research, if the consumer has provided informed consent;

(7) Enable solely internal uses that are reasonably aligned with the expectations of the consumer based on the consumer's relationship with the business;

(8) Comply with a legal obligation; or

(9) Otherwise internally use the consumer's personal information in a lawful manner that is compatible with the context in which the consumer provided the information.

(d) A consumer has the right to request a business that maintains inaccurate personal information about the consumer to correct the inaccurate personal information, taking into account the nature of the personal information and the purposes of the processing of the personal information. A business that receives a verifiable consumer request to correct inaccurate personal information shall use commercially reasonable efforts to correct the inaccurate personal information as directed by the consumer.

(e) Research with personal information that may have been collected from a consumer in the course of the consumer's interactions with a business's service or device for other purposes must be:

(1) Compatible with the business purpose for which the personal information was collected;

(2) Subsequently pseudonymized and deidentified, or deidentified and in the aggregate, such that the information does not reasonably identify, relate to, or describe, or is not capable of being directly or indirectly associated or linked with, a particular consumer;

(3) Made subject to technical safeguards that prohibit reidentification of the consumer to whom the information may pertain;

(4) Subject to business processes that specifically prohibit reidentification of the information;

(5) Made subject to business processes to prevent inadvertent release of deidentified information;

(6) Protected from reidentification attempts;

(7) Used solely for research purposes that are compatible with the context in which the personal information was collected and not used for a commercial purpose; and

(8) Subjected by the business conducting the research to additional security controls that limit access to the research data to only those individuals in a business necessary to carry out the research purpose.

47-18-3105. Right to request personal data sold or shared.

(a) A consumer has the right to request that a business that sells or shares personal information about the consumer, or discloses the information for a business purpose, to disclose to the consumer:

(1) The categories of personal information about the consumer the business sold or shared;

(2) The categories of third parties to which the personal information about the consumer was sold or shared by category of personal information for each category of third parties to which the personal information was sold or shared; and

(3) The categories of personal information about the consumer that the business disclosed for a business purpose.

(b) A business that sells or shares personal information about consumers or discloses the information for a business purpose shall disclose the information specified in subsection (a) to the consumer upon receipt of a verifiable consumer request from the consumer.

(c) A third party shall not sell or share personal information about a consumer that has been sold or shared to the third party by a business unless the consumer has received explicit notice and is provided an opportunity to opt-out.

47-18-3106. Right to opt-out of the sale or sharing of personal information to third parties.

(a) A consumer has the right at any time to direct a business that sells or shares personal information about the consumer to third parties to not sell or share the consumer's personal information. This right may be referred to as the right to opt-out.

(b) A business that sells or shares personal information to third parties shall provide notice to consumers that this information may be sold and shared and that consumers have the right to opt-out of the sale or sharing of their personal information.

(c) Notwithstanding subsection (a), a business shall not sell or share the personal information of a consumer if the business has actual knowledge that the consumer is not sixteen (16) years of age or older, unless the consumer, in the case of consumers thirteen (13) to fifteen (15) years of age, or the consumer's parent or guardian if the consumer is twelve (12) years of age or younger, has affirmatively authorized the sale or sharing of the consumer's personal information. A business that willfully disregards the consumer's age is deemed to have had actual knowledge of the consumer's age. This right may be referred to as the right to opt-in.

(d) A business that has received direction from a consumer prohibiting the sale or sharing of the consumer's personal information, or that has not received consent to sell or share a minor consumer's personal information, is prohibited from selling or sharing the consumer's personal information after its receipt of the consumer's direction, unless the consumer subsequently provides express authorization for the sale or sharing of the consumer's personal information.

(e) A business does not sell personal information when:

(1) A consumer uses or directs the business to intentionally disclose personal information or uses the business to intentionally interact with a third party as long as the third party does not also sell the personal information, unless that disclosure would be consistent with this section. An intentional interaction occurs when the consumer intends to interact with the third party, via one (1) or more deliberate interactions. Hovering over, muting, pausing, or closing a given piece of content does not constitute a consumer's intent to interact with a third party;

(2) The business uses or shares an identifier for a consumer who has opted out of the sale or sharing of the consumer's personal information for the purposes of alerting third parties that the consumer has opted out of the sale or sharing of the consumer's personal information;

(3) The business uses or shares with a service provider personal information of a consumer that is necessary to perform a business purpose if:

(A) The business has provided notice to the service provider that the personal information of the consumer is being used or shared in its terms and conditions consistent with § 47-18-3109; and

(B) The service provider does not further collect, sell, share, or use the personal information of the consumer except as necessary to perform the business purpose; or

(4) The business transfers to a third party the personal information of a consumer as an asset that is part of a merger, acquisition, bankruptcy, or other transaction in which the third party assumes control of all or part of the business. If a third party materially alters how it uses or shares the personal information of a consumer in a manner that is materially inconsistent with the promises made at the time of collection, then the third party shall provide prior notice of the new or changed practice to the consumer. The notice must be sufficiently prominent and robust to ensure that existing consumers can easily exercise their choices consistently with this section.

(f) A business does not share personal information when:

(1) A consumer uses or directs the business to intentionally disclose personal information or intentionally interact with one (1) or more third parties; or

(2) The business uses or shares an identifier for a consumer who has opted-out of sharing the consumer's personal information for the purposes of

alerting persons that the consumer has opted-out of sharing the consumer's personal information.

47-18-3107. Discrimination against consumers who exercise their rights.

(a)

(1) A business shall not discriminate against a consumer who exercised the consumer's rights under this part. Discrimination under this section includes:

(A) Denying goods or services to the consumer;

(B) Charging different prices or rates for goods or services, including through the use of discounts or other benefits or imposing penalties;

(C) Providing a different level or quality of goods or services to the consumer; and

(D) Suggesting that the consumer will receive a different price or rate for goods or services or a different level or quality of goods or services.

(2) This subsection (a) does not prohibit a business from charging a consumer a different price or rate, or from providing a different level or quality of goods or services to the consumer, if that difference is reasonably related to the value provided to the business by the consumer's data.

(b)

(1) A business may offer financial incentives, including payments to consumers as compensation, for the collection, sale, or deletion of personal information.

(2) A business may offer a different price, rate, level, or quality of goods or services to the consumer if the price or difference is directly related to the value provided to the business by the consumer's personal information.

(3) A business that offers financial incentives shall notify consumers of the financial incentives.

(4) A business may enter a consumer into a financial incentive program only if the consumer gives the business prior consent that clearly describes the material terms of the financial incentive program. The consent may be revoked by the consumer at any time.

(5) A business shall not use financial incentive practices that are unjust, unreasonable, coercive, or usurious in nature.

47-18-3108. Requests for personal information; third parties and service providers.

(a) To comply with this section, a business shall, in a form that is reasonably accessible to consumers, make available two (2) or more methods for submitting verifiable consumer requests, including, but not limited to, a toll-free telephone number and, if the business maintains an internet website, a link on the homepage of the website. The business shall not require the consumer to create an account with the business in order to make a verifiable consumer request.

(b) The business shall deliver the information required or act on the request in §§ 47-18-3103 - 47-18-3106 to a consumer free of charge within forty-five (45) days after receiving a verifiable consumer request. The response period may be extended once by thirty (30) additional days when reasonably necessary, taking into account the complexity of the consumer's requests as long as the business informs the consumer of the extension within the initial forty-five-day response period along with the reason for the extension. The information must be delivered in a readily usable format that allows the consumer to transmit the information from one (1) entity to another entity without hindrance.

(c) If a third party assumes control of all or part of a business and acquires a consumer's personal information as part of the transfer, and the third party materially

alters how it uses a consumer's personal information or shares the information in a manner that is materially inconsistent with the promises made at the time of collection, then the third party must provide prior notice of the new or changed practice to the customer. The notice must be sufficiently prominent and robust to ensure that existing consumers can easily exercise their choices.

(d) A contract between a business and a service provider must prohibit the service provider from:

(1) Selling or sharing the personal information;

(2) Retaining, using, or disclosing the personal information for a purpose other than the business purposes specified in the contract for the business, including retaining, using, or disclosing the personal information for a commercial purpose other than the business purposes specified in the contract with the business;

(3) Retaining, using, or disclosing the information outside of the direct business relationship between the service provider and the business; or

(4) Combining the personal information that the service provider receives from or on behalf of the business with personal information that it receives from or on behalf of another person or entity or that the service provider collects from its own interaction with the consumer; provided, that the service provider may combine personal information to perform a business purpose.

(e) A contract between a business and a third party must prohibit the third party that receives a consumer's personal information from:

(1) Selling or sharing the personal information;

(2) Retaining, using, or disclosing the personal information for a purpose other than the specific purpose of performing the services specified in the contract, including retaining, using, or disclosing the personal information for a commercial purpose other than providing the services specified in the contract;

(3) Retaining, using, or disclosing the personal information for a purpose other than for the specific purpose of performing the services specified in the contract, including retaining, using, or disclosing the personal information for a commercial purpose other than providing the services specified in the contract; and

(4) Retaining, using, or disclosing the information outside of the direct business relationship between the person and the business. The contract must include a certification made by the person or entity receiving the personal information stating that the person or entity understands and will comply with the restrictions under this subsection (e).

(f) A contract between a business and a third party or between a business and a service provider for receiving personal information must include a provision that a contract between a third party and a subcontractor, or between a service provider and any subcontractor, must require the subcontractor to meet the obligations of the third party or service provider with respect to personal information.

(g) A third party or service provider, or a subcontractor thereof, who violates the restrictions imposed upon it under this section is liable for violations. A business that discloses personal information to a third party or service provider in compliance with this section is not liable if the person receiving the personal information uses it in violation of the restrictions under this section as long as, at the time of disclosing the personal information, the business does not have actual knowledge or reason to believe that the person intends to commit the violation.

47-18-3109. Form to opt-out of sale or sharing of personal information.

(a) A business shall:

(1) Provide a clear and conspicuous link on the business's internet homepage, entitled "Do Not Sell or Share My Personal Information", to an internet webpage that enables a consumer, or a person authorized by the

consumer, to opt-out of the sale or sharing of the consumer's personal information. A business shall not require a consumer to create an account in order to direct the business not to sell the consumer's personal information;

(2) Include a description of a consumer's rights along with a separate link to the "Do Not Sell or Share My Personal Information" internet webpage in its online privacy policy or policies;

(3) Ensure that individuals responsible for handling consumer inquiries about the business's privacy practices or the business's compliance with this part are informed of the requirements in § 47-18-3106 and this section and how to direct consumers to exercise their rights under § 47-18-3106 and this section;

(4) For consumers who opt-out of the sale or sharing of their personal information, refrain from selling or sharing personal information collected by the business about the consumer;

(5) For consumers who opted-out of the sale or sharing of their personal information, respect the consumer's decision to opt-out for at least twelve (12) months before requesting that the consumer authorize the sale of the consumer's personal information; and

(6) Use personal information collected from the consumer in connection with the submission of the consumer's opt-out request solely for the purposes of complying with the opt-out request.

(b) This section does not require a business to include the required links and text on the homepage that the business makes available to the public generally if the business:

(1) Maintains a separate and additional homepage that is dedicated to consumers in this state and that includes the required links and text; and

(2) Takes reasonable steps to ensure that the consumers in this state are directed to the homepage for consumers in this state and not the homepage made available to the public generally.

(c) A consumer may authorize another person to opt-out of the sale or sharing of the consumer's personal information on the consumer's behalf, and a business shall comply with an opt-out request received from a person authorized by the consumer to act on the consumer's behalf, pursuant to rules adopted by the attorney general.

47-18-3110. Exceptions.

(a) This part does not restrict any business or third party's ability to:

(1) Comply with federal, state, or local laws;

(2) Comply with a civil, criminal, or regulatory inquiry, investigation, subpoena, or summons by federal, state, or local authorities;

(3) Cooperate with law enforcement agencies concerning conduct or activity that the business, service provider, or third party reasonably and in good faith believes may violate federal, state, or local law;

(4) Exercise legal rights or privileges; or

(5) Collect, use, retain, sell, or disclose deidentified personal information or aggregate consumer information. If a business uses deidentified information, then the business shall:

(A) Implement technical safeguards that prohibit reidentification of the consumer to whom the information may pertain;

(B) Implement business processes that specifically prohibit reidentification of the information;

(C) Implement business processes to prevent inadvertent release of deidentified information; and

(D) Not attempt to reidentify the information.

(b) This part does not apply to:

(1) A business that collects or discloses its employees' personal information, so long as the business is collecting or disclosing the information within the scope of the business's role as an employer;

(2) Health information that is collected by 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 in 45 C.F.R. parts 160 and 164;

(3) A covered entity governed by the privacy, security, and breach notification rules issues by the United States department of health and human services in 45 C.F.R. parts 160 and 164, to the extent the provider or covered entity maintains patient information in the same manner as medical information or protected health information as described in subdivision (b)(2);

(4) Information collected as part of a clinical trial subject to the Federal Policy for the Protection of Human Subjects pursuant to good clinical practice guidelines issued by the International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use or pursuant to human subject protection requirements of the United States food and drug administration;

(5) Sale or sharing of personal information to or from a consumer reporting agency if that information is to be reported in or used to generate a consumer report as defined by 15 U.S.C. § 1681(a), and if use of that information is limited by the federal Fair Credit Reporting Act (15 U.S.C. § 1681 et seq.);

(6) Personal information collected, processed, sold, or disclosed pursuant to the federal Gramm-Leach-Bliley Act (15 U.S.C. § 6801 et seq.) and implementing regulations;

(7) Personal information collected, processed, sold, or disclosed pursuant to the federal Driver's Privacy Protection Act of 1994 (18 U.S.C. § 2721 et. seq.);

(8) Education information covered by the federal Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232(g) and 34 C.F.R. part 99); or

(9) Information collected as part of public or peer reviewed scientific or statistical research in the public interest.

47-18-3111. Contracts.

A provision of a contract or agreement that waives or limits a consumer's rights under this part, including, but not limited to, a right to a remedy or means of enforcement, is deemed contrary to public policy and is void and unenforceable. This section does not prevent a consumer from declining to request information from a business, declining to opt-out of a business's sale or sharing of the consumer's personal information, or authorizing a business to sell or share the consumer's personal information after previously opting out. This section only applies to contracts entered into on or after January 1, 2022.

47-18-3112. Private cause of action.

A consumer whose nonencrypted and nonredacted personal information or email address, in combination with a password or security question and answer that would allow access to the account, is subject to an unauthorized access and exfiltration, theft, or disclosure as a result of a business' violation of the duty to implement and maintain reasonable security procedures and practices appropriate to the nature of the information to protect the personal information may bring a civil action for:

(1) Damages in an amount not less than one hundred dollars (\$100) and not greater than seven hundred fifty dollars (\$750) per consumer per incident or actual damages, whichever is greater; and

(2) Injunctive or declaratory relief, as the court deems proper.

47-18-3113. Enforcement and implementation.

(a) If the attorney general has reason to believe that a business, service provider, or other person or entity is in violation of this part and that proceedings would

be in the public interest, then the attorney general may bring an action against the business, service provider, or other person or entity and may seek a civil penalty of not more than two thousand five hundred dollars (\$2,500) for each unintentional violation or seven thousand five hundred dollars (\$7,500) for each intentional violation. The fines may be tripled if the violation involves a consumer who is sixteen (16) years of age or younger.

(b) The attorney general may adopt rules to implement this part.

(c) A business may be found to be in violation of this part if it fails to cure an alleged violation within thirty (30) days after being notified in writing by the attorney general of the alleged noncompliance.

SECTION 2. This act takes effect January 1, 2022, the public welfare requiring it.