

**Amendment - 1st Reading-white - Requested by: Jason Ellsworth - (S) Business, Labor, and Economic Affairs**

- 2023

68th Legislature 2023

Drafter: Erin Sullivan, 406-444-3594

SB0384.001.001

SENATE BILL NO. 384

INTRODUCED BY D. ZOLNIKOV, K. REGIER

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE CONSUMER DATA PRIVACY ACT;  
PROVIDING DEFINITIONS; ESTABLISHING APPLICABILITY; PROVIDING FOR CONSUMER RIGHTS TO  
PERSONAL DATA; ESTABLISHING REQUIREMENTS AND LIMITATIONS FOR A CONTROLLER OF  
PERSONAL DATA; ESTABLISHING REQUIREMENTS AND LIMITATIONS FOR A PROCESSOR OF  
PERSONAL DATA; PROVIDING FOR DATA PROTECTION ASSESSMENTS; PROVIDING EXEMPTIONS  
AND COMPLIANCE REQUIREMENTS; PROVIDING FOR ENFORCEMENT; AND PROVIDING ~~EFFECTIVE~~  
DATES A DELAYED EFFECTIVE DATE."

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

NEW SECTION. Section 1. Short title. [Sections 1 through 12] may be cited as the "Consumer Data Privacy Act".

NEW SECTION. Section 2. Definitions. As used in [sections 1 through 12], unless the context clearly indicates otherwise, the following definitions apply:

(1) "Affiliate" means a legal entity that shares common branding with another legal entity or controls, is controlled by, or is under common control with another legal entity.

(2) "Authenticate" means to use reasonable methods to determine that a request to exercise any of the rights afforded under [section 5(1)(a) through (1)(e)] is being made by, or on behalf of, the consumer who is entitled to exercise these consumer rights with respect to the personal data at issue.

(3) (a) "Biometric data" means data generated by automatic measurements of an individual's biological characteristics, such as a fingerprint, a voiceprint, eye retinas, irises, or other unique biological patterns or characteristics that are used to identify a specific individual.

(b) The term does not include:

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68th Legislature 2023

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- 1 (i) a digital or physical photograph;
- 2 (ii) an audio or video recording; or
- 3 (iii) any data generated from a digital or physical photograph or an audio or video recording, unless
- 4 that data is generated to identify a specific individual.
- 5 (4) "Child" means an individual under 13 years of age.
- 6 (5) (a) "Consent" means a clear affirmative act signifying a consumer's freely given, specific,
- 7 informed, and unambiguous agreement to allow the processing of personal data relating to the consumer. The
- 8 term may include a written statement, a statement by electronic means, or any other unambiguous affirmative
- 9 action.
- 10 (b) The term does not include:
- 11 (i) acceptance of a general or broad term of use or similar document that contains descriptions of
- 12 personal data processing along with other unrelated information;
- 13 (ii) hovering over, muting, pausing, or closing a given piece of content; or
- 14 (iii) an agreement obtained using dark patterns.
- 15 (6) (a) "Consumer" means an individual who is a resident of this state.
- 16 (b) The term does not include an individual acting in a commercial or employment context or as an
- 17 employee, owner, director, officer, or contractor of a company, partnership, sole proprietorship, nonprofit, or
- 18 government agency whose communications or transactions with the controller occur solely within the context of
- 19 that individual's role with the company, partnership, sole proprietorship, nonprofit, or government agency.
- 20 (7) "Control" or "controlled" means:
- 21 (a) ownership of or the power to vote more than 50% of the outstanding shares of any class of
- 22 voting security of a company;
- 23 (b) control in any manner over the election of a majority of the directors or of individuals exercising
- 24 similar functions; or
- 25 (c) the power to exercise controlling influence over the management of a company.
- 26 (8) "Controller" means an individual who or legal entity that, alone or jointly with others, determines
- 27 the purpose and means of processing personal data.

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68th Legislature 2023

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SB0384.001.001

(9) "Dark pattern" means a user interface designed or manipulated with the effect of substantially subverting or impairing user autonomy, decision-making, or choice.

(10) "Decisions that produce legal or similarly significant effects concerning the consumer" means decisions made by the controller that result in the provision or denial by the controller of financial or lending services, housing, insurance, education enrollment or opportunity, criminal justice, employment opportunities, health care services, or access to necessities such as food and water.

(11) "Deidentified data" means data that cannot be used to reasonably infer information about or otherwise be linked to an identified or identifiable individual or a device linked to the individual if the controller that possesses the data:

(a) takes reasonable measures to ensure that the data cannot be associated with an individual;

(b) publicly commits to process the data in a deidentified fashion only and to not attempt to reidentify the data; and

(c) contractually obligates any recipients of the data to satisfy the criteria set forth in subsections (11)(a) and (11)(b).

(12) "Identified or identifiable individual" means an individual who can be readily identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, specific geolocation data, or an online identifier.

(13) "Institution of higher education" means any individual who or school, board, association, limited liability company, or corporation that is licensed or accredited to offer one or more programs of higher learning leading to one or more degrees.

(14) "Nonprofit organization" means any organization that is exempt from taxation under section 501(c)(3), 501(c)(4), 501(c)(6) or 501(c)(12) of the Internal Revenue Code of 1986 or any subsequent corresponding internal revenue code of the United States as amended from time to time.

(15) (a) "Personal data" means any information that is linked or reasonably linkable to an identified or identifiable individual.

(b) The term does not include deidentified data or publicly available information.

(16) (a) "Precise geolocation data" means information derived from technology, including but not

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- 2023

68th Legislature 2023

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SB0384.001.001

1 limited to global positioning system level latitude and longitude coordinates or other mechanisms, that directly  
2 identifies the specific location of an individual with precision and accuracy within a radius of 1,750 feet.

3 (b) The term does not include the content of communications, or any data generated by or  
4 connected to advanced utility metering infrastructure systems or equipment for use by a utility.

5 (17) "Process" or "processing" means any operation or set of operations performed, whether by  
6 manual or automated means, on personal data or on sets of personal data, such as the collection, use, storage,  
7 disclosure, analysis, deletion, or modification of personal data.

8 (18) "Processor" means an individual who or legal entity that processes personal data on behalf of a  
9 controller.

10 (19) "Profiling" means any form of automated processing performed on personal data to evaluate,  
11 analyze, or predict personal aspects related to an identified or identifiable individual's economic situation,  
12 health, personal preferences, interests, reliability, behavior, location, or movements.

13 (20) "Protected health information" has the same meaning as provided in the privacy regulations of  
14 the federal Health Insurance Portability and Accountability Act of 1996.

15 (21) "Pseudonymous data" means personal data that cannot be attributed to a specific individual  
16 without the use of additional information, provided the additional information is kept separately and is subject to  
17 appropriate technical and organizational measures to ensure that the personal data is not attributed to an  
18 identified or identifiable individual.

19 (22) "Publicly available information" means information that:

20 (a) is lawfully made available through federal, state, or municipal government records or widely  
21 distributed media; and or

22 (b) a controller has a reasonable basis to believe a consumer has lawfully made available to the  
23 public.

24 (23) (a) "Sale of personal data" means the exchange of personal data for monetary or other  
25 valuable consideration by the controller to a third party.

26 (b) The term does not include:

27 (i) the disclosure of personal data to a processor that processes the personal data on behalf of

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- 2023

68th Legislature 2023

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SB0384.001.001

- 1 the controller;
- 2 (ii) the disclosure of personal data to a third party for the purposes of providing a product or
- 3 service requested by the consumer;
- 4 (iii) the disclosure or transfer of personal data to an affiliate of the controller;
- 5 (iv) the disclosure of personal data in which the consumer directs the controller to disclose the
- 6 personal data or intentionally uses the controller to interact with a third party;
- 7 (v) the disclosure of personal data that the consumer:
- 8 (A) intentionally made available to the public via a channel of mass media; and
- 9 (B) did not restrict to a specific audience; or
- 10 (vi) the disclosure or transfer of personal data to a third party as an asset that is part of a merger,
- 11 acquisition, bankruptcy, or other transaction, or a proposed merger, acquisition, bankruptcy, or other
- 12 transaction in which the third party assumes control of all or part of the controller's assets.
- 13 (24) "Sensitive data" means personal data that includes:
- 14 (a) data revealing racial or ethnic origin, religious beliefs, a mental or physical health condition or
- 15 diagnosis, information about a person's sex life, sexual orientation, or citizenship or immigration status;
- 16 (b) the processing of genetic or biometric data for the purpose of uniquely identifying an individual;
- 17 (c) personal data collected from a known child; or
- 18 (d) precise geolocation data.
- 19 (25) (a) "Targeted advertising" means displaying advertisements to a consumer in which the
- 20 advertisement is selected based on personal data obtained or inferred from that consumer's activities over time
- 21 and across nonaffiliated internet websites or online applications to predict the consumer's preferences or
- 22 interests.
- 23 (b) The term does not include:
- 24 (i) advertisements based on activities within a controller's own internet websites or online
- 25 applications;
- 26 (ii) advertisements based on the context of a consumer's current search query or visit to an
- 27 internet website or online application;

**Amendment - 1st Reading-white - Requested by: Jason Ellsworth - (S) Business, Labor, and Economic Affairs**

- 2023

68th Legislature 2023

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SB0384.001.001

1 (iii) advertisements directed to a consumer in response to the consumer's request for information  
2 or feedback; or

3 (iv) processing personal data solely to measure or report advertising frequency, performance, or  
4 reach.

5 (26) "Third party" means an individual or legal entity, such as a public authority, agency, or body,  
6 other than the consumer, controller, or processor or an affiliate of the controller or processor.

7 (27) "Trade secret" has the same meaning as provided in 30-14-402.  
8

9 **NEW SECTION. Section 3. Applicability.** The provisions of [sections 1 through 12] apply to persons  
10 that conduct business in this state or persons that produce products or services that are targeted to residents of  
11 this state and:

12 (1) control or process the personal data of not less than 100,000 consumers, excluding personal  
13 data controlled or processed solely for the purpose of completing a payment transaction; or

14 (2) control or process the personal data of not less than 25,000 consumers and derive more than  
15 25% of gross revenue from the sale of personal data.  
16

17 **NEW SECTION. Section 4. Exemptions.** (1) [Sections 1 through 12] do not apply to any:

18 (a) body, authority, board, bureau, commission, district, or agency of this state or any political  
19 subdivision of this state;

20 (b) nonprofit organization;

21 (c) institution of higher education;

22 (d) national securities association that is registered under 15 U.S.C. 78o-3 of the federal Securities  
23 Exchange Act of 1934, as amended;

24 (e) financial institution or data subject to Title V of the Financial Services Modernization Act of  
25 1999, 15 U.S.C. 6801, et seq.; or

26 (f) covered entity or business associate as defined in the privacy regulations of the federal Health  
27 Insurance Portability and Accountability Act of 1996, 45 CFR 160.103.

**Amendment - 1st Reading-white - Requested by: Jason Ellsworth - (S) Business, Labor, and Economic Affairs**

- 2023

68th Legislature 2023

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SB0384.001.001

Children's Online Privacy Protection Act of 1998, 15 U.S.C. 6501, et seq., shall be considered compliant with any obligation to obtain parental consent pursuant to [sections 1 through 12].

**NEW SECTION. Section 5. Consumer personal data -- opt-out -- compliance -- appeals.** (1) A consumer must have the right to:

(a) confirm whether a controller is processing the consumer's personal data and access the consumer's personal data, unless such confirmation or access would require the controller to reveal a trade secret;

(b) correct inaccuracies in the consumer's personal data, considering the nature of the personal data and the purposes of the processing of the consumer's personal data;

(c) delete personal data about the consumer;

(d) obtain a copy of the consumer's personal data previously provided by the consumer to the controller in a portable and, to the extent technically feasible, readily usable format that allows the consumer to transmit the personal data to another controller without hindrance when the processing is carried out by automated means, provided the controller is not required to reveal any trade secret; and

(e) opt out of the processing of the consumer's personal data for the purposes of:

(i) targeted advertising;

(ii) the sale of the consumer's personal data, except as provided in [section 7(2)]; or

(iii) profiling in furtherance of automated decisions that produce legal or similarly significant effects concerning the consumer.

(2) A consumer may exercise rights under this section by a secure and reliable means established by the controller and described to the consumer in the controller's privacy notice.

(3) (a) A consumer may designate an authorized agent in accordance with [section 6] to exercise the rights of the consumer to opt out of the processing of the consumer's personal data under subsection (1)(e) on behalf of the consumer.

(b) A parent or legal guardian of a known child may exercise the consumer rights on the known child's behalf regarding the processing of personal data.

**Amendment - 1st Reading-white - Requested by: Jason Ellsworth - (S) Business, Labor, and Economic Affairs**

- 2023

68th Legislature 2023

Drafter: Erin Sullivan, 406-444-3594

SB0384.001.001

1 (c) A guardian or conservator of a consumer subject to a guardianship, conservatorship, or other  
2 protective arrangement, may exercise the rights on the consumer's behalf regarding the processing of personal  
3 data.

4 (4) Except as otherwise provided in [sections 1 through 12], a controller shall comply with a  
5 request by a consumer to exercise the consumer rights authorized pursuant to this section as follows:

6 (a) A controller shall respond to the consumer without undue delay, but not later than 45 days after  
7 receipt of the request. The controller may extend the response period by 45 additional days when reasonably  
8 necessary, considering the complexity and number of the consumer's requests, provided the controller informs  
9 the consumer of the extension within the initial 45-day response period and the reason for the extension.

10 (b) If a controller declines to act regarding the consumer's request, the controller shall inform the  
11 consumer without undue delay, but not later than 45 days after receipt of the request, of the justification for  
12 declining to act and provide instructions for how to appeal the decision.

13 (c) Information provided in response to a consumer request must be provided by a controller, free  
14 of charge, once for each consumer during any 12-month period. If requests from a consumer are manifestly  
15 unfounded, excessive, technically infeasible, or repetitive, the controller may charge the consumer a  
16 reasonable fee to cover the administrative costs of complying with the request or decline to act on the request.  
17 The controller bears the burden of demonstrating the manifestly unfounded, excessive, technically infeasible, or  
18 repetitive nature of the request.

19 (d) If a controller is unable to authenticate a request to exercise any of the rights afforded under  
20 subsections (1)(a) through (1)(e) of this section using commercially reasonable efforts, the controller may not  
21 be required to comply with a request to initiate an action pursuant to this section and shall provide notice to the  
22 consumer that the controller is unable to authenticate the request to exercise the right or rights until the  
23 consumer provides additional information reasonably necessary to authenticate the consumer and the  
24 consumer's request to exercise the consumer's rights. A controller may not be required to authenticate an opt-  
25 out request, but a controller may deny an opt-out request if the controller has a good faith, reasonable, and  
26 documented belief that the request is fraudulent. If a controller denies an opt-out request because the controller  
27 believes the request is fraudulent, the controller shall send notice to the person who made the request



disclosing that the controller believes the request is fraudulent and that the controller may not comply with the request.

(e) A controller that has obtained personal data about a consumer from a source other than the consumer must be deemed in compliance with the consumer's request to delete the consumer's data pursuant to subsection (1)(c) by:

(i) 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 controller's records and not using the retained data for any other purpose pursuant to the provisions of [sections 1 through 12]; and

(ii) opting the consumer out of the processing of the consumer's personal data for any purpose except for those exempted pursuant to the provisions of [sections 1 through 12].

(5) A controller shall establish a process for a consumer to appeal the controller's refusal to act on a request within a reasonable period after the consumer's receipt of the decision. The appeal process must be conspicuously available and like the process for submitting requests to initiate action pursuant to this section. Not later than 60 days after receipt of an appeal, a controller shall inform the consumer in writing of any action taken or not taken in response to the appeal, including a written explanation of the reasons for the decisions. If the appeal is denied, the controller shall also provide the consumer with an online mechanism, if available, or other method through which the consumer may contact the attorney general to submit a complaint.

**NEW SECTION. Section 6. Authorized agent.** (1) A consumer may designate another person to serve as the consumer's authorized agent and act on the consumer's behalf to opt out of the processing of the consumer's personal data for one or more of the purposes specified in [section 5(1)(e)].

(2) A controller shall comply with an opt-out request received from an authorized agent if the controller is able to verify, with commercially reasonable effort, the identity of the consumer and the authorized agent's authority to act on the consumer's behalf.

**NEW SECTION. Section 7. Data processing by controller -- limitations.** (1) A controller shall:

(a) limit the collection of personal data to what is adequate, relevant, and reasonably necessary in

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- 2023

68th Legislature 2023

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SB0384.001.001

relation to the purposes for which the personal data is processed, as disclosed to the consumer;

(b) establish, implement, and maintain reasonable administrative, technical, and physical data security practices to protect the confidentiality, integrity, and accessibility of personal data appropriate to the volume and nature of the personal data at issue; and

(c) provide an effective mechanism for a consumer to revoke the consumer's consent under this section that is at least as easy as the mechanism by which the consumer provided the consumer's consent and, on revocation of the consent, cease to process the personal data as soon as practicable, but not later than 45 days after the receipt of the request.

(2) A controller may not:

(a) except as otherwise provided in [sections 1 through 12], process personal data for purposes that are not reasonably necessary to or compatible with the disclosed purposes for which the personal data is processed as disclosed to the consumer unless the controller obtains the consumer's consent;

(b) process sensitive data concerning a consumer without obtaining the consumer's consent or, in the case of the processing of sensitive data concerning a known child, without processing the sensitive data in accordance with the Children's Online Privacy Protection Act of 1998, 15 U.S.C. 6501, et seq.;

(c) process personal data in violation of the laws of this state and federal laws that prohibit unlawful discrimination against consumers;

(d) process the personal data of a consumer for the purposes of targeted advertising or sell the consumer's personal data without the consumer's consent under circumstances in which a controller has actual knowledge that the consumer is at least 13 years of age but younger than 16 years of age; or

(e) discriminate against a consumer for exercising any of the consumer rights contained in [sections 1 through 12], including 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.

(3) Nothing in ~~subsection (1)~~ subsections (1) or (2) may be 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 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 their right

**Amendment - 1st Reading-white - Requested by: Jason Ellsworth - (S) Business, Labor, and Economic Affairs**

- 2023

68th Legislature 2023

Drafter: Erin Sullivan, 406-444-3594

SB0384.001.001

to opt out pursuant to [sections 1 through 12] or the offering is in connection with a consumer's voluntary participation in a bona fide loyalty, rewards, premium features, discounts, or club card program.

(4) If a controller sells personal data to third parties or processes personal data for targeted advertising, the controller shall clearly and conspicuously disclose the processing, as well as the way a consumer may exercise the right to opt out of the processing.

(5) A controller shall provide consumers with a reasonably accessible, clear, and meaningful privacy notice that includes:

- (a) the categories of personal data processed by the controller;
- (b) the purpose for processing personal data;
- (c) the categories of personal data that the controller shares with third parties, if any;
- (d) the categories of third parties, if any, with which the controller shares personal data; and
- (e) an active e-mail address or other mechanism that the consumer may use to contact the controller; and
- (f) how consumers may exercise their consumer rights, including how a consumer may appeal a controller's decision regarding the consumer's request.

(6) (a) A controller shall establish and describe in a privacy notice one or more secure and reliable means for consumers to submit a request to exercise their consumer rights pursuant to [sections 1 through 12] considering the ways in which consumers normally interact with the controller, the need for secure and reliable communication of consumer requests, and the ability of the controller to verify the identity of the consumer making the request.

(b) A controller may not require a consumer to create a new account to exercise consumer rights but may require a consumer to use an existing account.

**NEW SECTION. Section 8. Data processor -- allowances -- limitations.** (1) A processor shall adhere to the instructions of a controller and shall assist the controller in meeting the controller's obligations under [sections 1 through 12] to include:

- (a) considering the nature of processing and the information available to the processor by

**Amendment - 1st Reading-white - Requested by: Jason Ellsworth - (S) Business, Labor, and Economic Affairs**

- 2023

68th Legislature 2023

Drafter: Erin Sullivan, 406-444-3594

SB0384.001.001

(8) Processing personal data for the purposes expressly identified in this section may not solely make a legal entity a controller with respect to the processing.

**NEW SECTION. Section 12. Enforcement.** (1) (a) The attorney general shall, prior to initiating any action for a violation of any provision of [sections 1 through 11], issue a notice of violation to the controller.

(b) If the controller fails to correct the violation within 60 days of receipt of the notice of violation, the attorney general may bring an action pursuant to this section.

(c) If within the 60-day period the controller corrects the noticed violation and provides the attorney general an express written statement that the alleged violations have been corrected and that no such further violations will occur, no action must be initiated against the controller.

(2) Nothing in [sections 1 through 11] may be construed as providing the basis for or be subject to a private right of action for violations of [sections 1 through 11] or any other law.

**NEW SECTION. Section 13. Codification instruction.** [Sections 1 through 12] are intended to be codified as an integral part of Title 30, chapter 14, and the provisions of Title 30, chapter 14, apply to [sections 1 through 12].

**NEW SECTION. Section 14. Effective ~~dates~~ date.** ~~(1) Except as provided in subsection (2), [this~~  
~~[This act] is effective July 1, 2025 October 1, 2024.~~

~~(2) — [Sections 1 and 3 through 7] and this section are effective July 1, 2023.~~

- END -