

Amendment - 1st Reading/2nd House-blue - Requested by: Katie Sullivan - (H) Energy, Technology and Federal Relations

- 2023

68th Legislature 2023

Drafter: Trevor Graff, 406-444-4975

SB0384.002.002

1 SENATE BILL NO. 384
2 INTRODUCED BY D. ZOLNIKOV, K. REGIER, E. BOLDMAN, S. MORIGEAU, K. BOGNER, K. SULLIVAN, K.
3 ZOLNIKOV, D. EMRICH
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE CONSUMER DATA PRIVACY ACT;
6 PROVIDING DEFINITIONS; ESTABLISHING APPLICABILITY; PROVIDING FOR CONSUMER RIGHTS TO
7 PERSONAL DATA; ESTABLISHING REQUIREMENTS AND LIMITATIONS FOR A CONTROLLER OF
8 PERSONAL DATA; ESTABLISHING REQUIREMENTS AND LIMITATIONS FOR A PROCESSOR OF
9 PERSONAL DATA; PROVIDING FOR DATA PROTECTION ASSESSMENTS; PROVIDING EXEMPTIONS
10 AND COMPLIANCE REQUIREMENTS; PROVIDING FOR ENFORCEMENT; AND PROVIDING EFFECTIVE
11 DATES A DELAYED EFFECTIVE DATE AND A TERMINATION DATE."
12

13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
14

15 NEW SECTION. Section 1. Short title. [Sections 1 through 12] may be cited as the "Consumer Data
16 Privacy Act".
17

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

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

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

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

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1 internet website or online application;

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

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

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

8 (27) "TRADE SECRET" HAS THE SAME MEANING AS PROVIDED IN 30-14-402.

9

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

13 (1) control or process the personal data of not less than ~~100,000~~ 50,000 consumers, excluding
14 personal data controlled or processed solely for the purpose of completing a payment transaction; or

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

17

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

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

21 (b) nonprofit organization;

22 (c) institution of higher education;

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

25 (e) financial institution or data subject to Title V of the Financial Services Modernization Act of
26 1999, 15 U.S.C. 6801, et seq.; or

27 (f) covered entity or business associate as defined in the privacy regulations of the federal Health

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1 believes the request is fraudulent, the controller shall send notice to the person who made the request
2 disclosing that the controller believes the request is fraudulent and that the controller may not comply with the
3 request.

4 (E) A CONTROLLER THAT HAS OBTAINED PERSONAL DATA ABOUT A CONSUMER FROM A SOURCE OTHER
5 THAN THE CONSUMER MUST BE DEEMED IN COMPLIANCE WITH THE CONSUMER'S REQUEST TO DELETE THE CONSUMER'S
6 DATA PURSUANT TO SUBSECTION (1)(C) BY:

7 (i) RETAINING A RECORD OF THE DELETION REQUEST AND THE MINIMUM DATA NECESSARY FOR THE
8 PURPOSE OF ENSURING THE CONSUMER'S PERSONAL DATA REMAINS DELETED FROM THE CONTROLLER'S RECORDS AND
9 NOT USING THE RETAINED DATA FOR ANY OTHER PURPOSE PURSUANT TO THE PROVISIONS OF [SECTIONS 1 THROUGH
10 12]; OR

11 (ii) OPTING THE CONSUMER OUT OF THE PROCESSING OF THE CONSUMER'S PERSONAL DATA FOR ANY
12 PURPOSE EXCEPT FOR THOSE EXEMPTED PURSUANT TO THE PROVISIONS OF [SECTIONS 1 THROUGH 12].

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

21 NEW SECTION. Section 6. Authorized agent. (1) A consumer may designate another person to
22 serve as the consumer's authorized agent and act on the consumer's behalf to opt out of the processing of the
23 consumer's personal data for one or more of the purposes specified in [section 5(1)(e)]. The consumer may
24 designate an authorized agent by way of a technology, including but not limited to an internet link or a browser
25 setting, browser extension, or global device setting indicating a consumer's intent to opt out of such processing.

26 (2) A controller shall comply with an opt-out request received from an authorized agent if the
27 controller is able to verify, with commercially reasonable effort, the identity of the consumer and the authorized

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1 agent's authority to act on the consumer's behalf.

2 (3) Opt-out methods must:

3 (a) provide a clear and conspicuous link on the controller's internet website to an internet web
4 page that enables a consumer, or an agent of the consumer, to opt out of the targeted advertising or sale of the
5 consumer's personal data; and

6 (b) by no later than January 1, 2025, allow a consumer to opt out of any processing of the
7 consumer's personal data through an opt-out preference signal sent with the consumer's consent, to the
8 controller by a platform, technology, or mechanism that:

9 (i) may not unfairly disadvantage another controller;

10 (ii) must make use of a default setting, but require the consumer to make an affirmative, freely
11 given and unambiguous choice to opt out of any processing of a customer's personal data pursuant to [sections
12 1 through 12];

13 (iii) must be consumer-friendly and easy to use by the average consumer;

14 (iv) must be consistent with any federal or state law or regulation; and

15 (v) must enable the controller to accurately determine whether the consumer is a resident of the
16 state and whether the consumer has made a legitimate request to opt out of any sale of a consumer's personal
17 data or targeted advertising.

18 (4) (a) If a consumer's decision to opt out of any processing of the consumer's personal data for
19 the purposes of targeted advertising, or any sale of personal data, through an opt-out preference signal sent in
20 accordance with the provisions of subsection (3) conflicts with the consumer's existing controller-specific
21 privacy setting or voluntary participation in a controller's bona fide loyalty, rewards, premium features,
22 discounts, or club card program, the controller shall comply with the consumer's opt-out preference signal but
23 may notify the consumer of the conflict and provide the choice to confirm controller-specific privacy settings or
24 participation in such a program.

25 (b) If a controller responds to consumer opt-out requests received in accordance with subsection
26 (3) by informing the consumer of a charge for the use of any product or service, the controller shall present the
27 terms of any financial incentive offered pursuant to subsection (3) for the retention, use, sale, or sharing of the

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1 consumer's personal data.

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

4 (a) limit the collection of personal data to what is adequate, relevant, and reasonably necessary in
5 relation to the purposes for which the personal data is processed, as disclosed to the consumer;

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

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

13 (2) A controller may not:

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

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

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

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

25 (e) discriminate against a consumer for exercising any of the consumer rights contained in
26 [sections 1 through 12], including denying goods or services, charging different prices or rates for goods or
27 services, or providing a different level of quality of goods or services to the consumer.

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1 harm to consumers relating to the collection, use, or retention of personal data.

2 (7) If a controller processes personal data pursuant to an exemption in this section, the controller
3 bears the burden of demonstrating that the processing qualifies for the exemption and complies with the
4 requirements in subsection (6).

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

7
8 **NEW SECTION. Section 12. Enforcement.** (1) (a) The attorney general shall, prior to initiating any
9 action for a violation of any provision of [sections 1 through 11], issue a notice of violation to the controller.

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

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

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

17
18 **NEW SECTION. Section 13. Codification instruction.** [Sections 1 through 12] are intended to be
19 codified as an integral part of Title 30, chapter 14, and the provisions of Title 30, chapter 14, apply to [sections
20 1 through 12].

21
22 **NEW SECTION. Section 14. Effective dates DATE.** (1) Except as provided in subsection (2), [this
23 [THIS act] is effective July 1, 2025 OCTOBER 1, 2024.

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

25

26 **NEW SECTION. Section 15. Termination.** [Section 12] terminates April 1, 2026.

27 - END -