



**SECTIONAL ANALYSIS:
CONSUMER DATA PRIVACY ACT**

March 31, 2021

Section 1. Adds a new duty to the list of responsibilities of the commissioner of the Department of Commerce, Community, and Economic Development to establish and maintain a data broker registry.

Section 2. Establishes the Consumer Data Privacy Act as AS 45.49. Since this section of the bill lays out a new chapter, the following information is organized by the articles established in the new chapter and their respective statutory sections.

Article 1. Collection, sale, or disclosure of consumer personal information.

Sec. 45.49.010. Notice of collection, sale, or disclosure of personal information.

This section requires that a business notify a consumer before collecting personal information. “Business” is defined in the definition section of this Act as including only businesses that either have annual gross revenues of \$25 million or more, buy or disclose the personal information of 100,000 or more households, or that engage in the sale of personal information. Notifications under this section must include the categories of information collected, the purpose for collecting that personal information, and the right of a consumer to opt-out, established below. This information, and other detailed information relating to the personal information collected, must be maintained and updated by a business as part of the business’ online privacy policy and consumer privacy rights, or on the business’ website if the business does not maintain an online privacy policy. Businesses subject to this section are charged with training customer service staff in answering questions about consumer rights.

Sec. 45.49.015. Personal information; notification upon receipt.

This section requires that a person who receives personal information that was originally collected by a business, as defined by this chapter, for a business or commercial purpose notify the business of the person’s possession and provide their contact information. The person must also deidentify the personal information or maintain it in such a way that it could be deleted or disclosed upon request. If this person

discloses the personal information to another person for business or commercial purposes, they must also inform the business that initially collected the personal information of the disclosure within 10 days and have a contract that requires the subsequent recipient to comply with a deletion request under this chapter. Finally, the business that initially collected the personal information must maintain records of each person to receive the collected personal information.

Sec. 45.49.020. Right to request disclosure of collected personal information.

Under this section, a consumer has the right to request that a business that collected the person's personal information within the last five years disclose the type of information collected, the sources from which the information was collected, and the business or commercial purpose for collecting the information. A business is required to respond to a verified consumer request in accordance with AS 45.49.060, discussed below.

Sec. 45.49.030. Right to request deletion of personal information.

If a consumer's personal information is collected by a business, the consumer may request that the business delete any information collected by the business from the consumer within the five years preceding the date for the request. The business is required to delete the information identified in the request from that business' records and must direct all persons who received the information to delete it, as well. Recipients of the collected information must provide the originating business with a written statement that the information was deleted within 45 days of the request. If this statement is not provided, the business must immediately notify the attorney general and consumer.

Recipients may be able to retain the information if it is required to complete a transaction or contract, provide a requested good or service within an ongoing relationship with the consumer, fulfill the terms of a warranty or recall, identify and repair errors that impair certain products or services, exercise a legal right, comply with a legal obligation or court order, engage in certain types of public research studies, or enable specifically internal uses of the information aligned with the consumer's expectations.

Sec. 45.49.040. Right to request disclosure of personal information sold or disclosed for a business or commercial purpose.

This section gives a consumer the right to request disclosures from a business that sold or disclosed the consumer's personal information for a business or commercial purpose within the last five years. The consumer may request disclosure of the persons who received the personal information for a business or commercial purpose, the categories of information, and the business or commercial purpose for disclosure. A

business is required to respond to a verified consumer request in accordance with AS 45.49.060, discussed below.

Sec. 45.49.050. Right to opt out or for a minor to opt in.

This section provides that a consumer may request that a business not sell the consumer's personal information or specific categories of personal information. A business may not contact a consumer asking the consumer to renounce this request for a year after the request is made. This section also requires that a business limit the use or disclosure of a consumer's precise geolocation data to that which is necessary to provide goods or services the customer reasonably expects or goods or services the business reasonably expects the customer will request. A business may use precise geolocation data for other purposes if the consumer gives consent in writing.

This section also requires that a business not disclose personal information or precise geolocation data if the business has actual knowledge, or recklessly disregards the likelihood, that the consumer is under 18 years of age. A parent or legal guardian may authorize the sale or disclosure of personal information of a consumer who is at least 13, but under 18, years of age.

Sec. 45.49.060. Disclosure or deletion request; process.

This section lays out the process for a business to respond to a verified consumer request. A business is required to designate at least two methods to submit a request, at minimum through a toll-free telephone number and electronic mail address. Information contained in a request may only be used to identify the personal information and comply with the request. If the request is for disclosure of information under AS 45.49.020 or 45.49.040, the business must provide the information in a readable, electronic format or by mail, if requested. For all requests made under AS 45.49.020 – 45.49.050, a business must follow the outlined process to determine if the request is verified, identify applicable information, disclose and deliver the information, and, if there is a request to delete information, provide confirmation of compliance. A business has 45 days to respond under this section, but may take an additional 45 days when reasonably necessary if the business notifies the consumer.

This section prohibits a person from charging a fee for performing an obligation under this chapter. However, if a consumer's requests are manifestly unfounded or excessive, a business may charge a reasonable fee or refuse to act on a request. If either of these actions are taken, the business must notify the consumer of the decision within 45 days of receipt of the request with a complete explanation of the business' reason for finding the request or requests excessive or unfounded. If the consumer has made two

verified requests within the previous 365 days, the business is not required to respond to a request to delete or disclose information.

This section provides certain exceptions, as well. A business that does not sell or disclose information is not required to retain information collected in a single, one-time transaction. If a business does not maintain data in a manner that would be considered “personal information” under this chapter, the business does not need to reidentify or link data. Finally, if the business cannot verify the consumer request, it is not required to disclose or delete information under this section.

Sec. 45.49.070. Third-party disclosure of personal information.

Under this section, a third-party is prohibited from disclosing personal information if it was originally collected in violation of AS 45.49.010 or 45.49.050. If the third-party reasonably concludes after an inquiry that the information was not obtained in violation of these sections, they may not be held liable for a violation. A third-party must have written confirmation from the original collector that the information was legally collected before disclosing the information for a business or commercial purpose.

Sec. 45.49.080. Service provider obligations.

This section prohibits service providers from taking certain actions with respect to personal information. First, information received from a business may only be retained, used, or disclosed for the specific services contracted. Second, information from one business may not be combined with that from other sources unless provided for in regulation. Finally, information may not be disclosed unless there is written consent from the business or the recipient and service provider sign a written contract prohibiting the recipient from engaging in conduct prohibited to the service provider. A person who receives personal information from a service provider cannot disclose that personal information to any other person.

Sec. 45.49.090. Exemptions.

In addition to the restrictions inherent in this chapter’s definitions of terms such as “business,” “person,” and “consumer,” there are a number of exceptions. Those exceptions are as follows:

- protected health information collected by a covered entity or business associate governed by the Health Insurance Portability and Accountability Act (HIPAA);
- covered entities under HIPAA that maintain patient information or protected health information;
- information collected as part of certain clinical trials;

- vehicle or ownership information shared between a motor vehicle dealer and manufacturer, or in anticipation of a repair covered by warranty or recall;
- collection or sales that occur wholly outside of the state;
- certain activities subject to or information collected or disclosed under federal laws or regulations;
- a business may be exempted from collecting information until January 1, 2024, if
 - the information is related to a person's job application; service as an employee; business ownership; service as a licensed dentist, physician, or psychologist; or work as a contractor; and
 - applies if the information is used solely in the context for which it was collected, is emergency contact information used for that purpose, or is retained to administer benefits;
- information contained in communications between the business and consumer if the consumer is a person acting on behalf of a business or agency and the transaction is within the context of the business relationship;
- compliance would violate an evidentiary privilege;
- personal information is provided as part of a privileged communication;
- the right or obligation would adversely affect another consumer's rights or infringe on certain noncommercial activity;

Some of the above categories may still provide for a right to file a claim under AS 45.49.120, duty to maintain reasonable security measures, discussed below. A person may also disclose information, notwithstanding this chapter, in order to comply with federal, state, or local law; comply with a legal inquiry, investigation, or subpoena; cooperate with law enforcement; exercise or defend legal claims; or as relates to deidentified or aggregated information. Additionally, if component parts of a transaction are separated in order to avoid compliance with this chapter, they may be considered together to determine compliance.

Article 2. Activities and penalties regarding personal information.

Sec. 45.49.100. Retaliation prohibited.

As the subject suggests, this section prohibits a business from retaliating against a consumer that exercises their rights under this chapter and lists examples of activities that may be considered retaliation. A business may, however, provide a different rate or quality if it is reasonably related to the value provided to the business by the consumer's data. A business may also provide consumers with a financial incentive for collection, sale, or retention of information, so long as the business notifies the consumer of the incentives and obtains consent before entering a customer into a financial incentive program. Financial incentive practices may not be unjust, unreasonable, coercive, or usurious.

Sec. 45.49.110. Transfer of information in a merger or acquisition.

This section authorizes a business to transfer personal information to a third-party as part of a merger or acquisition of all or part of the business. If the new owner decides to change the policy for use or sharing of the personal information in a material way, they must notify the consumer before making the change and ensure that existing customers can easily exercise their rights under this chapter. The new owner may not make material, retroactive privacy policy or other changes in a manner that violates state law.

Sec. 45.49.120. Duty to maintain reasonable security measures.

Under this section, a business that owns, licenses, or maintains personal information has to implement and maintain reasonable security procedures to protect the information from unauthorized access, destruction, use, modification, or disclosure.

Sec. 45.49.130. Violations.

This section makes a violation of this chapter a violation of the Unfair Trade Practices and Consumer Protection Act under AS 45.50.471 – 45.50.561. This section also creates a presumption that a consumer whose personal information is subjected to unauthorized activity has suffered a loss of \$1 or an amount proven at trial. The number of violations may be counted by each action or omission, each person affected, or each day the activity continues, whichever is greater. Funds recovered as a result of an action under this section may be appropriated to the consumer privacy account created in AS 45.49.140, below, for the Department of Law to offset costs incurred in connection with enforcing this chapter.

Sec. 45.49.140. Consumer privacy account.

This section establishes the consumer privacy account to receive any funds collected in an action under this chapter that are appropriated by the legislature.

Article 3. Data Broker Registry.

Sec. 45.49.200. Data broker registration.

This section requires that each business that meets the definition of a “data broker” annually register with and pay applicable fees to the Department of Commerce, Community, and Economic Development and include contact and primary website address, as well as the webpage designated to meet the notification requirement under AS 45.49.010(c) or (d).

Sec. 45.49.210. Data broker registry publicly displayed.

This section requires that the Department of Commerce, Community, and Economic Development publish the list of data brokers and required registration information on the department's website.

The Act establishes as Article 4 miscellaneous provisions.

Sec. 45.49.250. Regulations.

Under this section, the attorney general is authorized to adopt regulations to implement this chapter. The attorney general is required to adopt regulations relating to:

- specific exemptions; internet webpage requirements;
- updates, as necessary, of the categories of personal information and unique identifiers in response to technological changes; accessibility requirements relating to language and disabilities; and
- processes for a consumer to authorize a representative to exercise a right under this chapter.

The attorney general may adopt additional regulations to further the purposes of this chapter, including regulations to establish a procedure to comply with verified consumer requests relating to a household or allowing service providers to combine personal information for certain purposes.

Sec. 45.49.260. Provisions not waivable.

This section renders unenforceable and void any consumer waiver of provisions of this chapter. A consumer may still decline to take actions under this chapter to request information, opt out of collection, or authorize sales after opting out.

Sec. 45.49.270. Liberal construction.

This chapter is intended to be remedy a current concern and should be liberally interpreted to meet the intent of the chapter.

Article 5. General provisions.

Sec. 45.49.290. Definitions. The act adds definitions for

- “aggregated consumer information,”
- “business” and “business purpose,”

- “categories of personal information, sources, and third parties;
- “collect,”
- “commercial purpose,”
- “consumer,”
- “data broker,”
- “disclose,”
- “deidentified,”
- “device,”
- “homepage,”
- “Internet webpage,”
- “person,”
- “personal information,”
- “processing,”
- “precise geolocations data,”
- “research,”
- “sale, sell, or sold,”
- “service provider,”
- “third party”
- “unique identifier”
- “verified consumer request.”

Sec. 45.49.295. Short title. Provides that this chapter can be cited as the Consumer Data Privacy Act.

Section 3 of the bill adds a violation of the Consumer Data Privacy Act to the list of violations of the Unfair Trade Practices and Consumer Protection Act under AS 45.40.471.

Section 4 is a regulations transition section, **section 5** makes that section effective immediately.

Section 6 makes the bill effective January 1, 2023.