

# ALASKA STATE LEGISLATURE

## House Labor & Commerce Committee



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2.3.2022

### Sectional Analysis: CSHB 159 ver G

**Section 1. AS 44.33.020(a)** is amended to require the Department of Commerce, Community and Economic Development to establish and maintain a data broker registry under AS 45.48.900.

**Section 2. AS 45.48.430(b)** is amended to clarify that the prohibition of disclosure of sensitive personal information under the Alaska Personal Information Protection Act is exempt if authorized by AS 45.48.800-945.

**Section 3. AS 45.48.450(b)** is amended to make a conforming change with Sec 2 of this bill. This will allow disclosure of sensitive personal information to a contractor under the Alaska Personal Protection Act, except as provided for under AS 45.48.800-945. Unauthorized disclosure or use of this information would be prohibited.

**Section 4. AS 45.48** is amended to include Article 6A, the Consumer Personal information Privacy Act. There are established the following sections:

**AS 45.48.800 (a):** Notice before collection; disclosure of information; other notices: This sets out the mandate that a business collecting consumer information must notify the consumer before collection, indicate the categories of information, specific business purposes for each category of information, the consumer's right to not have it be sold, shared or disclosed, and the limitations on the use of geolocation data. The business is prohibited from collecting additional categories for additional purposes without first notifying the consumer.

**AS 45.48.800 (b):** the business is required to maintain and update their online privacy policies or state on their websites:

- 1) The consumer's rights.
- 2) The designated methods for consumers to request access to their information or deletion of it.
- 3) the list of categories of personal information collected, sold, or disclosed in preceding 12 months, commercial purpose, OR if they did none of this, a statement of that fact.
- 4) Categories of sources of information from which businesses would have collected such information.

- 5) Description of business or commercial purpose for each category of personal information that was collected, sold, or disclosed.
- 6) Categories of third parties to whom businesses sold or disclosed personal information.
- 7) Consumer's right to request such information.
- 8) Statement that information used to verify a consumer's disclosure or deletion request will only be used for that purpose.

**AS 45.48.800 (c):** This section requires that in addition to (b), a business should include on the following information on their website or their privacy policy:

- 1) Clear and conspicuous opt-out of collection or sale of personal information.
- 2) Description of consumer's rights under this chapter.

**AS 45.48.800 (d):** This section states that a business may comply with (c) of this section with a separate consumer-oriented page.

**AS 45.48.800 (e):** This section states that a business should include on an internet page the content required under (b) and (c) of this section.

**AS 45.48.800 (f):** this section defines "home page" for this section.

**AS 45.48.805: (a)** This section states defines limits on use, processing, collection and retention of consumer personal information. Businesses shall limit their collection and sharing of personal information with third parties to what is reasonably necessary to provide services requested by a consumer, or which they have consented to. Security and fraud prevention are also allowable uses under this section. They are not required to retain information for one time transactions if the business does not sell or disclose the information. Retention should be reasonably related to the service requested or consented to, or security and fraud prevention. Information retained for security and fraud should not be used for operational purposes.

**AS 45.48.810:** This section states that when a person or business receives consumer personal information for a business purpose that another business collected from a consumer, that person should notify the business and provide their contact information. This provides the chain of possession for consumer personal data. They are required to disclose to the business that collected the information if they share this information with another business. This information should be de-identified by the business or the business should be prepared to readily comply with a disclosure or deletion request from the consumer.

**AS 45.48.815:** This section states that businesses which collects or has collected a consumer's personal information shall maintain records of whom they disclose that information. They should retain records under AS 45.48.810(a) and (b).

**AS 45.48.820:** This section states that a consumer has the right to request from a business that collected their personal information, what information the businesses have collected,

their sources and purposes. It also establishes how the business should comply with that request.

**AS 45.48.825:** This section states that a consumer has the right to request their information be deleted and provides for how businesses should comply with that request, and what information is exempt from such a request.

**AS 45.48.830:** This section states that a consumer has the right to request from a business that collected their personal information, a list of whom it has shared or disclosed their information, a list of categories or types of personal information that were sold and disclosed, the business purpose of that activity and establishes how a business should comply with such a request.

**AS 45.48.835:** This section states that a consumer has the right to request a business which has collected their personal information not sell, share, or disclose that information. It establishes the use of a global privacy control, defines the global privacy control and requires that businesses must treat that control as a valid request from the consumer. It establishes how a consumer may authorize another person to make this request and how a business should comply with this request.

**AS 45.48.840:** This section states a business may only use a consumer's geolocation data with the consumer's consent. A consumer may request a business stop the use of their geolocation data at any time. It establishes the permissible means of gaining this consent, indicates that consent for use of a consumer's geolocation data by a business should be separate from a general user agreement, and limits a business' use of this information to that reasonably necessary for the original purpose the consumer consented to its use, or reasonably related to the original business purpose.

**AS 45.48.845:** This section establishes the parameters for the treatment of individuals under 18 years of age. Notwithstanding the rest of this chapter, when a business has actual knowledge that a consumer is under 18 years of age, they may not disclose that consumer's personal information for business purposes, use their precise geolocation data for anything other than what the consumer reasonably requests and expects, nor may they sell or share the consumer's personal information without consent.

- 1) When a consumer is at least 13, they may give consent.
- 2) When a consumer is under 13, their parent must give consent.

This section further establishes that the reckless disregard of a reasonable likelihood that a consumer is under 18 is considered to have actual knowledge of the consumer's age.

**AS 45.48.850:** This section describes the process for which a business shall comply with a disclosure or deletion request from a consumer. They should provide the information to the consumer in a portable and readily usable format; render it easily readable by a human if it is not immediately human-readable; provide for at least two methods for which a consumer can submit a request. It requires that business comply with a consumer

request within 45 days, and if they cannot, request an extension and notify the consumer why.

**AS 45.48.855:** This section states that third parties may not disclose personal consumer information if that information was obtained in violation of this chapter. Third parties that reasonably inquire and reasonably conclude personal information was not obtained in violation of this chapter are not liable. It also establishes that a third party may not disclose a consumer's personal information unless the third party receives written confirmation from the business that collected the information it was compliant with AS 45.48.800 and 45.48.835.

**AS 45.48.860:** This section defines the duties and obligations of service providers under this chapter. They may not retain, use or disclose a consumer's personal information received from a business for anything other than services specified in a written contract; they may not combine the personal consumer information with other data obtained with other sources unless otherwise provided in regulation, nor disclose that information without first obtaining written consent of the business they obtained the information from, and the person they disclose the information to must have a written contract to prevent conduct prohibited in this chapter. The person who receives information from a service provider may not disclose the consumer personal information to any other person.

**AS 45.48.865:** This section establishes exemptions from AS 45.48.800-945. Broadly speaking there are exemptions for areas of law or commerce where there is federal pre-emption, where the information is necessary for the completion of a contract or delivery of a service, if the information is for the use of a business between an employer and employee, internal business affairs, or where they must comply with state, federal or local law enforcement, or legal privileges and activity.

**AS 45.48.870:** This section prohibits retaliation against a consumer for a request made against this chapter. It defines retaliation and establishes that a business may reasonably charge a different rate or provide a different quality of good or service based on a consumer request, or may provide a financial incentive to a consumer for a consumer's personal information.

**AS 45.48.875:** This section establishes the provisions for a consumer personal information in the event of a business merger, bankruptcy or other business change transaction. Businesses sharing such information with a third party to evaluate or consummate a merger or business change transaction must keep the personal information confidential and may not use it for any purpose other than evaluating or consummating the transaction. Any changes by third parties must include notice to consumers so that they may exercise their rights in this chapter. Any changes to privacy policies may not be retroactive, nor are they allowed if they constitute an unfair or deceptive trade practice.

**AS 45.48.880:** This section requires that a business that owns, licenses, or maintains a consumer's personal information must implement reasonable security measures.

**AS 45.48.885:** This section establishes that under this chapter, activity constituting a series of steps and or transactions are not severable and may not be used to evade the responsibilities, prohibitions or parameters of this chapter.

**AS 45.48.890:** This section establishes that violations of this chapter are unfair or deceptive trade practices act under AS 45.50.471-45.50.561; that each day of a violation constitutes a separate violation; establishes that under action brought under AS 45.45.531, each consumer whose personal information is subjected to unauthorized access, destruction, use, modification or disclosure has an ascertainable loss of \$1 or more proven at trial, whichever is greater, and provides for additional remedies under AS 45.48.010-090.

**AS 45.48.895:** This section establishes the Consumer Privacy Account. The fund shall consist of registration fees under AS 45.48.900 (b)(2), fees collected under AS 45.48.910, and civil penalties as a result of action brought by the attorney general under AS 45.48.800-945; it also describes the purpose of the account. The account is subject to appropriation by the legislature.

**AS 45.48.900:** This section establishes data broker registration, and the process by which a business should register. It establishes a fee to be paid into the Consumer Privacy Account established under AS 45.48.895.

**AS 45.48.905:** This section requires that the data broker registry be publicly displayed in by the Department of Commerce, Community and Economic Development.

**AS 45.48.910:** This section establishes that a business that registers as a data broker shall pay a fee to the department of law, and provides for a fee.

**AS 45.48.915:** This section requires the attorney general adopt regulations by AS 44.62 to enact, update, and enforce this chapter, comply with state and federal law, provide for notice and information and communication of consumer rights.

**AS 45.48.920:** This section defines who may consent for a consumer and by what right or relationship they may do so under this chapter.

**AS 45.48.925:** This section requires businesses subject to this chapter to provide training for consumer requests, including how to direct a consumer to exercise their rights under this chapter.

**AS 45.48.930:** This section establishes that a consumer's rights under this chapter, and their waiver of the provisions of this chapter, is not waivable, and such an act is unenforceable and void.

**AS 45.48.935:** This section establishes that the intent of this chapter is remedial and requires that its provisions be liberally construed.

**AS 45.48.940:** This section establishes definitions for this chapter.

**Section 5. AS 45.50.471(b)** is amended to state that violations of AS 45.48.800-945 is an unfair or deceptive act or practice.

**Section 6.** This section adds a new section to the uncodified law of the State of Alaska to state that this Act applies to contracts entered into on or after the effective date of Secs 1-6 of this Act.

**Section 7.** This section adds a new section to the uncodified law of the State of Alaska to create a transition period. Except for as provided in AS 45.48.800(a), and AS 45.48.880, personal information collected by a business is exempt from AS 45.48.800-945, until January 1<sup>st</sup>, 2024, if the consumer personal information is collected through a person's ownership of the business, activity as a dentist, physician , or psychologist licensed under their respective chapters.

**Sec 8.** This section adds a new section to the uncodified law of the State of Alaska to state the attorney general shall adopt regulations as authorized by AS 45.48.914 to implement the changes made in this act. They shall take effect under AS 44.62 but not before the effective date implemented by the regulation.

**Sec 9.** This section states that Section 8 of this act takes effect immediately under AS 01.10.070(c).

**Sec. 10.** This Section establishes that except as provided by Sec 9. Of this Act, this Act takes effect January 1<sup>st</sup>, 2023.