
A BILL FOR AN ACT

RELATING TO CONSUMER PRIVACY.

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

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

4 **"CHAPTER**

5 **HAWAII CONSUMER PRIVACY ACT**

6 **PART I. GENERAL PROVISIONS**

7 § -1 **Short title.** This chapter shall be known as and
8 may be cited as the Hawaii Consumer Privacy Act.

9 § -2 **Definitions.** For purposes of this chapter:

10 "Advertising and marketing" means a communication by a
11 business or a person acting on the business's behalf in any
12 medium intended to induce a consumer to obtain goods, services,
13 or employment.

14 "Aggregate consumer information" means information that
15 relates to a group or category of consumers, from which
16 individual consumer identities have been removed, that is not
17 linked or reasonably linkable to any consumer or household,



1 including via a device. "Aggregate consumer information" does
2 not include individual consumer records that have been
3 deidentified.

4 "Biometric information" means an individual's
5 physiological, biological, or behavioral characteristics,
6 including information pertaining to an individual's
7 deoxyribonucleic acid, that is used or is intended to be used
8 alone or in combination with each other or with other
9 identifying data, to establish individual identity. "Biometric
10 information" includes imagery of the iris, retina, fingerprint,
11 face, hand, palm, vein patterns, and voice recordings, from
12 which an identifier template, such as a faceprint, a minutiae
13 template, or a voiceprint, can be extracted, and keystroke
14 patterns or rhythms, gait patterns or rhythms, and sleep,
15 health, or exercise data that contain identifying information.

16 "Business" means:

17 (1) A sole proprietorship, partnership, limited liability
18 company, corporation, association, or other legal
19 entity that is organized or operated for the profit or
20 financial benefit of its shareholders or other owners,
21 that collects consumers' personal information, or on



1 the behalf of which this information is collected and
2 that alone, or jointly with others, determines the
3 purposes and means of the processing of consumers'
4 personal information, that does business in the State,
5 and that satisfies one or more of the following
6 thresholds:

7 (A) Had annual gross revenues in excess of
8 \$25,000,000 in the preceding calendar year, which
9 amount shall be adjusted for changes in the
10 Consumer Price Index pursuant to
11 section -63(a)(5);

12 (B) Alone or in combination, annually buys, sells, or
13 shares the personal information of one hundred
14 thousand or more consumers or households; or

15 (C) Derives fifty per cent or more of its annual
16 revenues from selling or sharing consumers'
17 personal information;

18 (2) Any entity that controls or is controlled by a
19 business that shares common branding with the business
20 and with whom the business shares consumers' personal
21 information.



1 For purposes of this paragraph:

2 "Control" or "controlled" means ownership of, or
3 the power to vote, more than fifty per cent of the
4 outstanding shares of any class of voting security of
5 a business; control in any manner over the election of
6 a majority of the directors, or of individuals
7 exercising similar functions; or the power to exercise
8 a controlling influence over the management of a
9 company;

10 (3) A joint venture or partnership composed of businesses
11 in which each business has at least a forty per cent
12 interest. For purposes of this chapter, the joint
13 venture or partnership and each business that composes
14 the joint venture or partnership shall separately be
15 considered a single business, except that personal
16 information in the possession of each business and
17 disclosed to the joint venture or partnership shall
18 not be shared with the other business; or

19 (4) A person that does business in the State, is not
20 covered by paragraph (1), (2), or (3), and voluntarily



1 certifies to the department that it is in compliance
2 with, and agrees to be bound by, this chapter.

3 "Business purpose" means the use of personal information
4 for the business's operational purposes, or other notified
5 purposes, or for the service provider or contractor's
6 operational purposes, as defined by rules adopted pursuant to
7 section -63(a)(11); provided that the use of personal
8 information shall be reasonably necessary and proportionate to
9 achieve the purpose for which the personal information was
10 collected or processed or for another purpose that is compatible
11 with the context in which the personal information was
12 collected. "Business purposes" includes:

13 (1) Auditing related to counting ad impressions to unique
14 visitors, verifying positioning and quality of ad
15 impressions, and auditing compliance with this
16 specification and other standards;

17 (2) Helping ensure security and integrity to the extent
18 the use of a consumer's personal information is
19 reasonably necessary and proportionate for these
20 purposes;



- 1 (3) Debugging to identify and repair errors that impair
2 existing intended functionality;
- 3 (4) Short-term, transient use, including but not limited
4 to nonpersonalized advertising shown as part of a
5 consumer's current interaction with the business;
6 provided that the consumer's personal information
7 shall not be disclosed to another third party and
8 shall not be used to build a profile about the
9 consumer or otherwise alter the consumer's experience
10 outside the current interaction with the business;
- 11 (5) Performing services on behalf of the business,
12 including maintaining or servicing accounts, providing
13 customer service, processing or fulfilling orders and
14 transactions, verifying customer information,
15 processing payments, providing financing, providing
16 analytic services, providing storage, or providing
17 similar services on behalf of the business;
- 18 (6) Providing advertising and marketing services, except
19 for cross-context behavioral advertising, to the
20 consumer; provided that for the purpose of advertising
21 and marketing, a service provider or contractor shall



1 not combine the personal information of opted-out
2 consumers that the service provider or contractor
3 receives from, or on behalf of, the business with
4 personal information that the service provider or
5 contractor receives from, or on behalf of, another
6 person or persons or collects from its own interaction
7 with consumers;

8 (7) Undertaking internal research for technological
9 development and demonstration; and

10 (8) Undertaking activities to verify or maintain the
11 quality or safety of a service or device that is
12 owned, manufactured, manufactured for, or controlled
13 by the business, and to improve, upgrade, or enhance
14 the service or device that is owned, manufactured,
15 manufactured for, or controlled by the business.

16 "Categories of personal information" means the enumerated
17 categories set forth in the definitions of "personal
18 information" and "sensitive personal information" and those
19 included by rules adopted pursuant to section -63(a)(1).

20 "Collects", "collected", or "collection" means buying,
21 renting, gathering, obtaining, receiving, or accessing any



1 personal information pertaining to a consumer by any means.

2 "Collects", "collected", or "collection" includes receiving
3 information from the consumer, either actively or passively, or
4 by observing the consumer's behavior.

5 "Commercial purpose" means advancing a person's commercial
6 or economic interests, such as by inducing another person to
7 buy, rent, lease, join, subscribe to, provide, or exchange
8 products, goods, property, information, or services, or enabling
9 or effecting, directly or indirectly, a commercial transaction.

10 "Common branding" means a shared name, servicemark, or
11 trademark that the average consumer would understand that two or
12 more entities are commonly owned.

13 "Consent" means any freely given, specific, informed, and
14 unambiguous indication of a consumer's wishes by which the
15 consumer, or the consumer's legal guardian, a person who has
16 power of attorney, or a person acting as a conservator for the
17 consumer, including by a statement or by a clear affirmative
18 action, signifies agreement to the processing of personal
19 information relating to the consumer for a narrowly defined
20 particular purpose. "Consent" does not include:



(1) Acceptance of a general or broad terms of use, or similar document, that contains descriptions of personal information processing along with other, unrelated information;

(2) Hovering over, muting, pausing, or closing a given piece of content; or

(3) Agreement obtained through use of dark patterns.

"Consumer" means a natural person who is a resident, as defined in section 235-1, however identified, including by any unique identifier.

"Contractor" means a person to whom a business makes available a consumer's personal information for a business purpose, pursuant to a written contract with the business.

"Cross-context behavioral advertising" means the targeting of advertising to a consumer based on the consumer's personal information obtained from the consumer's activity across businesses, distinctly-branded websites, applications, or services, other than a business, distinctly-branded website, application, or service with which the consumer intentionally interacts.



1 "Dark pattern" means a user interface designed or
2 manipulated with the substantial effect of subverting or
3 impairing user autonomy, decisionmaking, or choice, as further
4 defined by rules.

5 "Deidentified" means information that cannot reasonably be
6 used to infer information about, or otherwise be linked to, a
7 particular consumer; provided that the business that possesses
8 the information:

- 9 (1) Takes reasonable measures to ensure that the
10 information cannot be associated with a consumer or
11 household;
- 12 (2) Publicly commits to maintain and use the information
13 in deidentified form and not attempt to reidentify the
14 information, except that the business may attempt to
15 reidentify the information solely for the purpose of
16 determining whether its deidentification processes
17 satisfy the requirements of this definition; and
- 18 (3) Contractually obligates any recipients of the
19 information to comply with all provisions of this
20 definition.



1 "Department" means the department of commerce and consumer
2 affairs.

3 "Designated methods for submitting requests" means a
4 mailing address, electric mail address, internet web page,
5 internet web portal, toll-free telephone number, or other
6 applicable contact information, whereby consumers may submit a
7 request or direction under this chapter, and any new, consumer-
8 friendly means of contacting a business.

9 "Device" means any physical object that is capable of
10 connecting to the Internet, directly or indirectly, or to
11 another device.

12 "Director" means the director of commerce and consumer
13 affairs.

14 "Homepage" means the introductory page of an internet
15 website and any internet web page where personal information is
16 collected. In the case of an online service, such as a mobile
17 application, "homepage" means the application's platform page or
18 download page; a link within the application, such as from the
19 application configuration; about, information, or settings page;
20 and any other location that allows consumers to review the



1 notices required by this chapter, including but not limited to
2 before downloading the application.

3 "Household" means a group, however identified, of consumers
4 who cohabitate with one another at the same residential address
5 and share use of common devices or services.

6 "Infer" or "inference" means the derivation of information,
7 data, assumptions, or conclusions from facts, evidence, or
8 another source of information or data.

9 "Intentionally interacts" means when a consumer intends to
10 interact with a person, or disclose personal information to a
11 person, via one or more deliberate interactions, including
12 visiting the person's website or purchasing a good or service
13 from the person. "Intentionally interacts" does not include
14 hovering over, muting, pausing, or closing a given piece of
15 content.

16 "Nonpersonalized advertising" means advertising and
17 marketing that is based solely on a consumer's personal
18 information derived from the consumer's current interaction with
19 the business with the exception of the consumer's precise
20 geolocation.



1 "Personal information" means information that identifies,
2 relates to, describes, is reasonably capable of being associated
3 with, or could reasonably be linked, directly or indirectly,
4 with a particular consumer or household. "Personal information"
5 includes but is not limited to:

6 (1) Identifiers such as a real name, alias, mailing
7 address, unique personal identifier, online
8 identifier, Internet Protocol address, electronic mail
9 address, account name, social security number,
10 driver's license number or state identification card
11 number, passport number, or other similar identifiers;

12 (2) Signature, physical characteristics or description,
13 telephone number, insurance policy number, bank
14 account number, credit card number, debit card number,
15 or any other financial information, medical
16 information, or health insurance information;

17 (3) Characteristics of protected classifications under
18 state or federal law;

19 (4) Commercial information, including records of personal
20 property; products or services purchased, obtained, or



1 considered; or other purchasing or consuming histories
2 or tendencies;
3 (5) Biometric information;
4 (6) Internet or other electronic network activity
5 information, including but not limited to browsing
6 history, search history, and information regarding a
7 consumer's interaction with an internet website
8 application, or advertisement;
9 (7) Geolocation data;
10 (8) Audio, electronic, visual, thermal, olfactory, or
11 similar information;
12 (9) Professional or employment-related information;
13 (10) Education information that is not publicly available
14 personally identifiable information as defined in
15 title 34 Code of Federal Regulations section 99.3,
16 pursuant to the Family Educational Rights and Privacy
17 Act (20 U.S.C. 1232g);
18 (11) Inferences drawn from any personal information to
19 create a profile about a consumer reflecting the
20 consumer's preferences, characteristics, psychological



1 trends, predispositions, behavior, attitudes,
2 intelligence, abilities, and aptitudes; and

3 (12) Sensitive personal information.

4 "Personal information" does not include publicly available
5 information or lawfully obtained, truthful information that is a
6 matter of public concern; consumer information that is
7 deidentified; or aggregate consumer information.

8 "Precise geolocation" means any data that is derived from a
9 device and that is used or intended to be used to locate a
10 consumer within a geographic area that is equal to or less than
11 the area of a circle with a radius of 1,850 feet, except as
12 prescribed by rules.

13 "Probabilistic identifier" means the identification of a
14 consumer or a consumer's device to a degree of certainty of more
15 probable than not based on any categories of personal
16 information included in, or similar to, the categories
17 enumerated in the definition of personal information.

18 "Processing" means any operation or set of operations that
19 are performed on personal information or on sets of personal
20 information, whether or not by automated means.



1 "Profiling" means any form of automated processing of
2 personal information, as further defined by rules pursuant to
3 section -63(a)(16), to evaluate certain personal aspects
4 relating to a natural person and in particular to analyze or
5 predict aspects concerning that natural person's performance at
6 work, economic situation, health, personal preferences,
7 interests, reliability, behavior, location, or movements.

8 "Pseudonymize" means the processing of personal information
9 in a manner that renders the personal information no longer
10 attributable to a specific consumer without the use of
11 additional information; provided that the additional information
12 is kept separately and is subject to technical and
13 organizational measures to ensure that the personal information
14 is not attributed to an identified or identifiable consumer.

15 "Publicly available" means:

- 16 (1) Information that is lawfully made available from
17 federal, state, or local government records, or
18 information that a business has a reasonable basis to
19 believe is lawfully made available to the general
20 public by the consumer or from widely distributed
21 media, or by the consumer; or



(2) Information made available by a person to whom the consumer has disclosed the information if the consumer has not restricted the information to a specific audience.

"Publicly available" does not mean biometric information collected by a business about a consumer without the consumer's knowledge.

"Research" means scientific analysis, systematic study, and observation, including basic research or applied research, that is designed to develop or contribute to public or scientific knowledge and that adheres or otherwise conforms to all other applicable ethics and privacy laws, including but not limited to studies conducted in the public interest in the area of public health.

"Security and integrity" means the ability of:

(1) Networks or information systems to detect security incidents that compromise the availability, authenticity, integrity, and confidentiality of stored or transmitted personal information;

(2) Businesses to detect security incidents; resist malicious, deceptive, fraudulent, or illegal actions;



1 and help prosecute those responsible for those
2 actions; and

3 (3) Businesses to ensure the physical safety of natural
4 persons.

5 "Sell", "selling", "sale", or "sold", means selling,
6 renting, releasing, disclosing, disseminating, making available,
7 transferring, or otherwise communicating orally, in writing, or
8 by electronic or other means, a consumer's personal information
9 by a business to a third party for monetary or other valuable
10 consideration. For purposes of this chapter, a business does
11 not sell personal information when:

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

15 (2) The business uses or shares an identifier for a
16 consumer who has opted out of the sale of the
17 consumer's personal information or limited the use of
18 the consumer's sensitive personal information for the
19 purposes of alerting persons that the consumer has
20 opted out of the sale of the consumer's personal



1 information or limited the use of the consumer's
2 sensitive personal information; or

- 3 (3) The business transfers to a third party the personal
4 information of a consumer as an asset that is part of
5 a merger, acquisition, bankruptcy, or other
6 transaction in which the third party assumes control
7 of all or part of the business; provided that
8 information is used or shared consistently with this
9 chapter.

10 "Sensitive personal information" means:

- 11 (1) Personal information that reveals:

12 (A) A consumer's social security, driver's license,
13 state identification card, or passport number;

14 (B) A consumer's account log-in, financial account,
15 debit card, or credit card number in combination
16 with any required security or access code,
17 password, or credentials allowing access to an
18 account;

19 (C) A consumer's precise geolocation;

20 (D) A consumer's racial or ethnic origin, religious
21 or philosophical beliefs, or union membership;



(E) The contents of a consumer's mail, electronic mail, and text messages unless the business is the intended recipient of the communication; or

(F) A consumer's genetic data;

(2) The processing of biometric information for the purpose of uniquely identifying a consumer;

(3) Personal information collected and analyzed concerning a consumer's health; and

(4) Personal information collected and analyzed concerning a consumer's sex life or sexual orientation.

"Sensitive personal information" does not include publicly available information.

"Service" or "services" means work, labor, and other related activities, including services furnished in connection with the sale or repair of goods.

"Service provider" means a person that processes personal information on behalf of a business and that receives from or on behalf of the business consumer's personal information for a business purpose pursuant to a written contract.

"Share", "shared", or "sharing" means sharing, renting, releasing, disclosing, disseminating, making available,



1 transferring, or otherwise communicating orally, in writing, or
2 by electronic or other means, a consumer's personal information
3 by a business to a third party for cross-context behavioral
4 advertising, whether or not for monetary or other valuable
5 consideration, including transactions between a business and a
6 third party for cross-context behavioral advertising for the
7 benefit of a business in which no money is exchanged. For
8 purposes of this chapter, a business does not share personal
9 information when:

- 10 (1) A consumer uses or directs the business to
11 intentionally disclose personal information or
12 intentionally interact with one or more third parties;
13 (2) The business uses or shares an identifier for a
14 consumer who has opted out of the sharing of the
15 consumer's personal information or limited the use of
16 the consumer's sensitive personal information for the
17 purposes of alerting persons that the consumer has
18 opted out of the sharing of the consumer's personal
19 information or limited the use of the consumer's
20 sensitive personal information; or



1 (3) The business transfers to a third party the personal
2 information of a consumer as an asset that is part of
3 a merger, acquisition, bankruptcy, or other
4 transaction in which the third party assumes control
5 of all or part of the business; provided that
6 information is used or shared consistently with this
7 chapter.

8 "Third party" means a person who is not any of the
9 following:

10 (1) The business with whom a consumer intentionally
11 interacts and that collects personal information from
12 the consumer as part of the consumer's current
13 interaction with the business under this chapter;

14 (2) A service provider to the business; or

15 (3) A contractor.

16 "Unique identifier" or "unique personal identifier" means a
17 persistent identifier that can be used to recognize a consumer,
18 family, or device that is linked to a consumer or family, over
19 time and across different services, including but not limited to
20 a device identifier; an Internet Protocol address; cookies,
21 beacons, pixel tags, mobile ad identifiers, or similar



1 technology; customer number, unique pseudonym, or user alias;
2 telephone numbers; or other forms of persistent or probabilistic
3 identifiers that can be used to identify a particular consumer
4 or device that is linked to a consumer or family. For purposes
5 of this definition, "family" means a custodial parent or
6 guardian and any children under eighteen years of age over which
7 the parent or guardian has custody.

8 "Verifiable consumer request" means a request that is made
9 by a consumer, by a consumer on behalf of the consumer's minor
10 child, by a natural person or a person registered with the
11 department, authorized by the consumer to act on the consumer's
12 behalf, or by a person who has power of attorney or is acting as
13 a conservator for the consumer, and that the business can
14 verify, using commercially reasonable methods, pursuant to rules
15 adopted pursuant to section -63(a)(7) to be the consumer
16 about whom the business has collected personal information. A
17 business is not obligated to provide information to the consumer
18 pursuant to sections -21 and -44, to delete personal
19 information pursuant to section -41, or to correct inaccurate
20 personal information pursuant to section -42, if the business
21 cannot verify, pursuant to this definition and rules adopted



1 pursuant to section -63(a)(7), that the consumer making the
2 request is the consumer about whom the business has collected
3 personal information or is a person authorized by the consumer
4 to act on such consumer's behalf.

5 § -3 **Exemptions.** (a) The obligations imposed on
6 businesses by this chapter shall not restrict a business's
7 ability to:

8 (1) Comply with federal, state, or local laws or comply
9 with a court order or subpoena to provide personal
10 information;

11 (2) Comply with a civil, criminal, or regulatory inquiry,
12 investigation, subpoena, or summons by federal, state,
13 or county authorities. Law enforcement agencies,
14 including any county police department, the department
15 of public safety, or any state or county public body
16 that employs law enforcement officers may direct a
17 business pursuant to a law enforcement agency-approved
18 investigation with an active case number not to delete
19 a consumer's personal information, and upon receipt of
20 that direction, a business shall not delete that
21 personal information for ninety days in order to allow



1 the law enforcement agency to obtain a court-issued
2 subpoena, order, or warrant to obtain a consumer's
3 personal information. For good cause and only to the
4 extent necessary for investigatory purposes, a law
5 enforcement agency may direct a business not to delete
6 the consumer's personal information for additional
7 ninety-day periods. A business that has received
8 direction from a law enforcement agency not to delete
9 the personal information of a consumer who has
10 requested deletion of the consumer's personal
11 information shall not use the consumer's personal
12 information for any purpose other than retaining the
13 personal information to produce to law enforcement
14 agencies in response to a court-issued subpoena,
15 order, or warrant unless the consumer's deletion
16 request is subject to an exemption from deletion under
17 this chapter;

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



- 1 (4) Cooperate with a government agency request for
- 2 emergency access to a consumer's personal information
- 3 if a natural person is at risk or danger of death or
- 4 serious physical injury; provided that:
- 5 (A) The request is approved by a high-ranking agency
- 6 officer for emergency access to a consumer's
- 7 personal information;
- 8 (B) The request is based on the agency's good faith
- 9 determination that it has a lawful basis to
- 10 access the personal information on a nonemergency
- 11 basis; and
- 12 (C) The agency agrees to petition a court for an
- 13 appropriate order within three days and destroy
- 14 the information if that order is not granted;
- 15 (5) Exercise or defend legal claims;
- 16 (6) Collect, use, retain, sell, share, or disclose
- 17 consumers' personal information that is deidentified
- 18 or aggregate consumer information; and
- 19 (7) Collect, sell, or share a consumer's personal
- 20 information if every aspect of that commercial conduct
- 21 takes place wholly outside of the State. For purposes



1 of this paragraph, commercial conduct takes place
2 wholly outside of the State if the business collected
3 that information while the consumer was outside of the
4 State, no part of the sale of the consumer's personal
5 information occurred in the State, and no personal
6 information collected while the consumer was in the
7 State is sold. This paragraph shall not prohibit a
8 business from storing, including on a device, personal
9 information about a consumer when the consumer is in
10 the State and then collecting that personal
11 information when the consumer and stored personal
12 information is outside of the State.

13 (b) The obligations imposed on businesses by
14 sections -25, -27, -43, -44, and -45 shall not
15 apply where compliance by the business with this chapter would
16 violate an evidentiary privilege under Hawaii law and shall not
17 prevent a business from providing the personal information of a
18 consumer to a person covered by an evidentiary privilege under
19 Hawaii law as part of a privileged communication.

20 (c) This chapter shall not apply to an activity involving
21 the collection, maintenance, disclosure, sale, communication, or



1 use of any personal information bearing on a consumer's credit
2 worthiness, credit standing, credit capacity, character, general
3 reputation, personal characteristics, or mode of living by a
4 consumer reporting agency by a furnisher of information who
5 provides information for use in a consumer report and by a user
6 of a consumer report, as those terms are defined and described
7 in the federal Fair Credit Reporting Act, title 15 United States
8 Code sections 1681 to 1681x, as amended.

9 This subsection shall apply only to the extent that the
10 activity involving the collection, maintenance, disclosure,
11 sale, communication or use of the personal information by that
12 agency, furnisher, or user is subject to regulation under the
13 Fair Credit Reporting Act and the personal information is not
14 collected, maintained, used, communicated, disclosed, or sold
15 except as authorized by the Fair Credit Reporting Act.

16 (d) This chapter shall not apply to personal information
17 collected, processed, sold, or disclosed subject to the federal
18 Gramm-Leach-Bliley Act, title 15 United States Code
19 sections 6801 to 6809, as amended, and its implementing
20 regulations, or the federal Farm Credit Act of 1971, title 12



1 United States Code section 2001, et seq., as amended, and its
2 implementing regulations.

3 (e) This chapter shall not apply to personal information
4 collected, processed, sold, or disclosed pursuant to the
5 Driver's Privacy Protection Act of 1994, title 18 United States
6 Code section 2721, et seq., as amended.

7 (f) Sections -41 and -45 shall not apply to a
8 commercial credit reporting agency's collection, processing,
9 sale, or disclosure of business controller information to the
10 extent the commercial credit reporting agency uses the business
11 controller information solely to identify the relationship of a
12 consumer to a business that the consumer owns or contact the
13 consumer only in the consumer's role as the owner, director,
14 officer, or management employee of the business.

15 For purposes of this subsection:

16 "Business controller information" means the name of the
17 owner, director, officer, or management employee of a business
18 and the contact information, including a business title, for the
19 owner, director, officer, or management employee.



1 "Commercial credit reporting agency" means any person who,
2 for monetary fees, dues, or on a cooperative nonprofit basis,
3 provides commercial credit reports to third parties.

4 "Director" means a natural person designated in the
5 articles of incorporation of a business as director, or elected
6 by the incorporators and natural persons designated, elected, or
7 appointed by any other name or title to act as directors, and
8 their successors.

9 "Management employee" means a natural person whose name and
10 contact information is reported to or collected by a commercial
11 credit reporting agency as the primary manager of a business and
12 used solely within the context of the natural person's role as
13 the primary manager of the business.

14 "Officer" means a natural person elected or appointed by
15 the board of directors of a business to manage the daily
16 operations of a corporation, including a chief executive
17 officer, president, secretary, or treasurer.

18 "Owner" means a natural person that meets one of the
19 following:



(1) Has ownership of, or the power to vote, more than
fifty per cent of the outstanding shares of any class
of voting security of a business;

(2) Has control in any manner over the election of a
majority of the directors or of individuals exercising
similar functions; or

(3) Has the power to exercise a controlling influence over
the management of a company.

(g) The obligations imposed on businesses in
sections -41, -42, -43, and -44 shall not apply to
household data.

(h) This chapter shall not be construed to require a
business to comply with a verifiable consumer request to delete
a consumer's personal information under section -41 to the
extent the verifiable consumer request applies to a student's
grades, educational scores, or educational test results that the
business holds on behalf of the department of education or a
public charter school at which the student is currently
enrolled.

This chapter does not require, in response to a request
pursuant to section -43, that a business disclose on



1 educational standardized assessment or educational assessment or
2 a consumer's specific responses to the educational standardized
3 assessment or educational assessment if consumer access,
4 possession, or control would jeopardize the validity and
5 reliability of that educational standardized assessment or
6 educational assessment by providing an advantage to the consumer
7 who submitted a verifiable consumer request or to another
8 natural person.

9 If a business does not comply with a request submitted
10 pursuant to section -41 or -43, it shall notify the
11 consumer that it is acting pursuant to this subsection.

12 For purposes of this subsection, "educational standardized
13 assessment or educational assessment" means a standardized or
14 nonstandardized quiz, test, or other assessment used to evaluate
15 students in or for entry to kindergarten and grades one to
16 twelve, inclusive, schools, postsecondary institutions,
17 vocational programs, and postgraduate programs that are
18 accredited by an accrediting agency or organization recognized
19 by the State or the United States Department of Education, as
20 well as certification and licensure examinations used to
21 determine competency and eligibility to receive certification or



1 licensure from a government agency or government certification
2 body.

3 (i) Section -41 and -45 shall not apply to a
4 business's use, disclosure, or sale of particular pieces of a
5 consumer's personal information if the consumer has consented to
6 the business's use, disclosure, or sale of that information to
7 produce a physical item, including a school yearbook containing
8 the consumer's photograph, if:

9 (1) The business has incurred significant expense in
10 reliance on the consumer's consent;

11 (2) Compliance with the consumer's request to opt out of
12 the sale of the consumer's personal information or to
13 delete the consumer's personal information would not
14 be commercially reasonable; or

15 (3) The business complies with the consumer's request as
16 soon as it is commercially reasonable to do so.

17 § -4 **Further exemptions; federal law.** (a) This chapter
18 shall not apply to any of the following:

19 (1) Protected health information that is collected by a
20 covered entity or business associate governed by the
21 privacy, security, and breach notification rules



1 issued by the United States Department of Health and
2 Human Services, title 45 Code of Federal Regulations
3 parts 160 and 164, established pursuant to the federal
4 Health Insurance Portability and Accountability Act
5 of 1996 (Public Law 104-191) and the federal Health
6 Information Technology for Economic and Clinical
7 Health Act, Title XIII of the federal American
8 Recovery and Reinvestment Act of 2009 (Public
9 Law 111-5);

10 (2) A covered entity or business associate of a covered
11 entity governed by the privacy, security, and data
12 breach notification rules issued by the United States
13 Department of Health and Human Services, title 45 Code
14 of Federal Regulations parts 160 and 164, established
15 pursuant to the Health Insurance Portability and
16 Accountability Act and the Health Information
17 Technology for Economic and Clinical Health Act, to
18 the extent that the covered entity or business
19 associate maintains, uses, and discloses patient
20 information in the same manner as protected health
21 information as described in paragraph (1);



(3) Information that meets the following conditions:

(A) It is deidentified in accordance with the requirements for deidentification set forth in title 45 Code of Federal Regulations section 164.514; and

(B) It is derived from patient information that was originally collected, created, transmitted, or maintained by an entity regulated by the Health Insurance Portability and Accountability Act or the Federal Policy for the Protection of Human Subjects, also known as the Common Rule;

provided that information that meets these conditions and is subsequently reidentified shall no longer be eligible for the exemption under this paragraph and shall be subject to applicable federal and state data privacy and security laws, including but not limited to the Health Insurance Portability and Accountability Act and this chapter;

(4) Information that is collected, used, or disclosed in research, as defined in title 45 Code of Federal Regulations section 164.501, including but not limited



1 to a clinical trial, and that is conducted in
2 accordance with applicable ethics, confidentiality,
3 privacy, and security rules of title 45 Code of
4 Federal Regulations part 164; the Federal Policy for
5 the Protection of Human Subjects, also known as the
6 Common Rule; good clinical practice guidelines issued
7 by the International Council for Harmonisation; or
8 human subject protection requirements of the United
9 States Food and Drug Administration.

10 (b) For purposes of this section:

11 "Business associate" has the same meaning as defined in
12 title 45 Code of Federal Regulations section 160.103.

13 "Covered entity" has the same meaning as defined in
14 title 45 Code of Federal Regulations section 160.103.

15 "Identifiable private information" has the same meaning as
16 defined in title 45 Code of Federal Regulations section 46.102.

17 "Individually identifiable health information" has the same
18 meaning as defined in title 45 Code of Federal Regulations
19 section 106.103.



1 "Patient information" means identifiable private
2 information, protected health information, individually
3 identifiable health information, or medical information.

4 "Protected health information" has the same meaning as
5 defined in title 45 Code of Federal Regulations section 160.103.

6 § -5 **Reidentification.** (a) A business or other person
7 shall not reidentify or attempt to reidentify information that
8 has met the requirements of section -4(a)(3), except for one
9 or more of the following purposes:

10 (1) Treatment, payment, or health care operations
11 conducted by a covered entity or business associate
12 acting on behalf of, and at the written direction of,
13 the covered entity. For purposes of this paragraph,
14 "treatment", "payment", "health care operations",
15 "covered entity", and "business associate" have the
16 same meaning as defined in title 45 Code of Federal
17 Regulations section 164.501;

18 (2) Public health activities and purposes as described in
19 title 45 Code of Federal Regulations section 164.512;

20 (3) Research, as defined in title 45 Code of Federal
21 Regulations section 164.501, that is conducted in



1 accordance with title 45 Code of Federal Regulations
2 part 46, the Federal Policy for the Protection of
3 Human Subjects, also known as the Common Rule;

4 (4) Pursuant to a contract where the lawful holder of the
5 deidentified information that meets the requirements
6 of section -4(a)(3) expressly engages a person or
7 entity to attempt to reidentify the deidentified
8 information in order to conduct testing, analysis, or
9 validation of deidentification, or related statistical
10 techniques, if the contract bans any other use or
11 disclosure of the reidentified information and
12 requires the return or destruction of the information
13 that was reidentified upon completion of the contract;
14 or

15 (5) If otherwise required by law.

16 (b) In accordance with section -4(a)(3), information
17 reidentified pursuant this section shall be subject to
18 applicable federal and state data privacy and security laws,
19 including but not limited to the Health Insurance Portability
20 and Accountability Act and this chapter.



1 (c) Any contract for the sale or license of deidentified
2 information that meets the requirements of section -4(a)(3),
3 where one of the parties is a person residing or doing business
4 in the State, shall include the following, or substantially
5 similar, provisions:

6 (1) A statement that the deidentified information being
7 sold or licensed includes deidentified patient
8 information;

9 (2) A statement that reidentification and attempted
10 reidentification of the deidentified information by
11 the purchaser or licensee of the information is
12 prohibited pursuant to this section; and

13 (3) A requirement that, unless otherwise required by law,
14 the purchaser or licensee of the deidentified
15 information may not further disclose the deidentified
16 information to any third party unless the third party
17 is contractually bound by the same or stricter
18 restrictions and conditions.

19 (d) For purposes of this section, "reidentify" means the
20 process of reversal of deidentification techniques, including
21 but not limited to the addition of specific pieces of



1 information or data elements that can, individually or in
2 combination, be used to uniquely identify an individual or usage
3 of any statistical method, contrivance, computer software, or
4 other means that have the effect of associating deidentified
5 information with a specific identifiable individual.

6 § -6 Effect on rights and freedoms. The rights afforded
7 to consumers and the obligations imposed on businesses in this
8 chapter shall not adversely affect the rights and freedoms of
9 other natural persons. A verifiable consumer request to delete
10 a consumer's personal information pursuant to section -41, to
11 correct inaccurate personal information pursuant to
12 section -42, or for specific pieces of personal information
13 pursuant to section -43, shall not extend to personal
14 information about the consumer that belongs to, or the business
15 maintains on behalf of, another natural person. A business may
16 rely on representations made in a verifiable consumer request as
17 to rights with respect to personal information and shall be
18 under no legal requirement to seek out other persons that may
19 have or claim to have rights to personal information, and a
20 business shall be under no legal obligation under this chapter
21 or any other provision of law to take any action under this



1 chapter in the event of a dispute between or among persons
2 claiming rights to personal information in the business's
3 possession.

4 **§ -7 Conflicting provisions.** This chapter is intended
5 to further the constitutional right of privacy and to supplement
6 existing laws relating to consumers' personal information. The
7 provisions of this chapter apply to the collection and sale of
8 all personal information collected by a business from consumers
9 and are not limited to information collected electronically or
10 over the Internet. Wherever possible, law relating to
11 consumers' personal information should be construed to harmonize
12 with the provisions of this chapter, but in the event of a
13 conflict between other laws and the provisions of this chapter,
14 the provisions of the law that afford the greatest protection
15 for the right of privacy for consumers shall control.

16 **§ -8 Liberal construction.** This chapter shall be
17 liberally construed to effectuate its purpose.

18 **PART II. BUSINESS OBLIGATIONS**

19 **§ -21 Businesses; duties.** (a) A business that controls
20 the collection of a consumer's personal information shall, at or



1 before the point of collection, inform consumers of the
2 following:

3 (1) The categories of personal information to be
4 collected, the purposes for which the categories of
5 personal information are collected or used, and
6 whether that information is sold or shared. A
7 business shall not collect additional categories of
8 personal information or use personal information
9 collected for additional purposes that are
10 incompatible with the disclosed purpose for which the
11 personal information was collected without providing
12 the consumer with notice consistent with this section;

13 (2) If the business collects sensitive personal
14 information, the categories of sensitive personal
15 information to be collected, the purposes for which
16 the categories of sensitive personal information are
17 collected or used, and whether that information is
18 sold or shared. A business shall not collect
19 additional categories of sensitive personal
20 information or use sensitive personal information
21 collected for additional purposes that are



1 incompatible with the disclosed purpose for which the
2 sensitive personal information was collected without
3 providing the consumer with notice consistent with
4 this section; and

5 (3) The length of time the business intends to retain each
6 category of personal information, including sensitive
7 personal information, or if that is not possible, the
8 criteria used to determine the period of retention;
9 provided that a business shall not retain a consumer's
10 personal information or sensitive personal information
11 for each disclosed purpose for which the personal
12 information or sensitive personal information was
13 collected for longer than is reasonably necessary for
14 that disclosed purpose.

15 (b) A business that, acting as a third party, controls the
16 collection of personal information about a consumer may satisfy
17 its obligation under subsection (a) by providing the required
18 information prominently and conspicuously on the homepage of its
19 internet website. In addition, if a business acting as a third
20 party controls the collection of personal information about a
21 consumer on its premises, including in a vehicle, then the



1 business shall, at or before the point of collection, inform
2 consumers as to the categories of personal information to be
3 collected and the purposes for which the categories of personal
4 information are used, and whether that personal information is
5 sold, in a clear and conspicuous manner at the location.

6 § -22 **Businesses; necessary and proportionate.** A
7 business's collection, use, retention, and sharing of a
8 consumer's personal information shall be reasonably necessary
9 and proportionate to achieve the purposes for which the personal
10 information was collected or processed, or for another disclosed
11 purpose that is compatible with the context in which the
12 personal information was collected, and not further processed in
13 a manner that is incompatible with those purposes.

14 § -23 **Businesses; financial incentives allowable.** (a)
15 A business may offer financial incentives, including payments to
16 consumers as compensation, for the collection of personal
17 information, the sale or sharing of personal information, or the
18 retention of personal information. A business may also offer a
19 different price, rate, level, or quality of goods or services to
20 the consumer if that difference is reasonably related to the



1 value provided to the business by the consumer's personal
2 information.

3 (b) A business that offers any financial incentives
4 pursuant to this section shall notify consumers of the financial
5 incentives pursuant to section -25.

6 (c) A business may enter a consumer into a financial
7 incentive program only if the consumer gives the business prior
8 opt-in consent pursuant to section -25 that clearly describes
9 the material terms of the financial incentive program, and which
10 may be revoked by the consumer at any time. If a consumer
11 refuses to provide opt-in consent, then the business shall wait
12 for at least twelve months before next requesting that the
13 consumer provide opt-in consent, or as prescribed by rules
14 adopted pursuant to section -63.

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

17 **§ -24 Businesses; service provider; contractor; third**
18 **parties; written contracts; required agreement provisions;**

19 **liability.** (a) A business that collects a consumer's personal
20 information and sells that personal information to, or shares it
21 with, a third party or discloses the personal information to a



1 service provider or contractor for a business purpose shall
2 enter into an agreement with the third party, service provider,
3 or contractor that:

4 (1) Specifies that the personal information is sold or
5 disclosed by the business only for limited and
6 specified purposes;

7 (2) Obligates the third party, service provider, or
8 contractor to comply with applicable obligations under
9 this chapter and obligates those persons to provide
10 the same level of privacy protection as is required by
11 this chapter;

12 (3) Grants the business rights to take reasonable and
13 appropriate steps to help ensure that the third party,
14 service provider, or contractor uses the personal
15 information transferred in a manner consistent with
16 the business's obligations under this chapter;

17 (4) Requires the third party, service provider, or
18 contractor to notify the business if it makes a
19 determination that it can no longer meet its
20 obligations under this chapter; and



1 (5) Grants the business the right, upon notice, including
2 under paragraph (4), to take reasonable and
3 appropriate steps to stop and remediate unauthorized
4 use of personal information.

5 (b) A business that collects a consumer's personal
6 information and that discloses it to a contractor for a business
7 purpose shall enter into a contract with the contractor that:

8 (1) Prohibits the contractor from:

9 (A) Selling or sharing the personal information;

10 (B) Retaining, using, or disclosing the personal
11 information for any purpose other than for the
12 business purposes specified in the contract,
13 including retaining, using, or disclosing the
14 personal information for a commercial purpose
15 other than the business purposes specified in the
16 contract, or as otherwise permitted by this
17 chapter;

18 (C) Retaining, using, or disclosing the personal
19 information outside of the direct business
20 relationship between the contractor and the
21 business; and



1 (D) Combining the personal information that the
2 contractor receives pursuant to a written
3 contract with the business with personal
4 information that it receives from or on behalf of
5 another person, or collects from its own
6 interaction with the consumer; provided that the
7 contractor may combine personal information to
8 perform any business purpose as defined in rules
9 adopted pursuant to section -63(a)(10), except
10 as provided for in paragraph (6) of the
11 definition of business purpose;

12 (2) Includes a certification made by the contractor that
13 the contractor understands and will comply with the
14 restrictions in paragraph (1); and

15 (3) Permits, subject to agreement with the contractor, the
16 business to monitor the contractor's compliance with
17 the contract through various measures, including but
18 not limited to ongoing manual reviews and automated
19 scans and regular assessments, audits, or other
20 technical and operational testing at least once every
21 twelve months.



1 (c) A business that collects a consumer's personal
2 information and that discloses it to a service provider for a
3 business purpose shall enter into a contract with the service
4 provider that prohibits the service provider from:

5 (1) Selling or sharing the personal information;
6 (2) Retaining, using, or disclosing the personal
7 information for any purpose other than for the
8 business purposes specified in the contract for the
9 business, including retaining, using, or disclosing
10 the personal information for a commercial purpose
11 other than the business purposes specified in the
12 contract with the business, or as otherwise permitted
13 by this chapter;

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

18 (4) Combining the personal information that the service
19 provider receives from, or on behalf of, the business
20 with personal information that it receives from, or on
21 behalf of, another person or persons, or collects from



1 its own interaction with the consumer; provided that
2 the service provider may combine personal information
3 to perform any business purpose as defined in rules
4 adopted pursuant to section -63(a)(10), except as
5 provided for in paragraph (6) of the definition of
6 "business purpose". The contract may, subject to
7 agreement with the service provider, permit the
8 business to monitor the service provider's compliance
9 with the contract through various measures, including
10 but not limited to ongoing manual reviews and
11 automated scans and regular assessments, audits, or
12 other technical and operational testing at least once
13 every twelve months.

14 (d) A business that discloses personal information to a
15 service provider or contractor in compliance with this chapter
16 shall not be liable under this chapter if the service provider
17 or contractor receiving the personal information uses it in
18 violation of the restrictions set forth in this chapter;
19 provided that at the time of disclosing the personal
20 information, the business did not have actual knowledge, or
21 reason to believe, that the service provider or contractor



1 intended to commit such a violation. A service provider or
2 contractor shall not be liable under this chapter for the
3 obligations of a business for which it provides services as set
4 forth in this chapter; provided that the service provider or
5 contractor shall be liable for its own violations of this
6 chapter.

7 (e) A business that discloses personal information of a
8 consumer, with the exception of consumers who have exercised
9 their right to opt out of the sale or sharing of their personal
10 information, consumers who have limited the use or disclosure of
11 their sensitive personal information, and minor consumers who
12 have not opted in to the collection or sale of their personal
13 information, to a third party pursuant to a written contract
14 that requires the third party to provide the same level of
15 protection of the consumer's rights under this chapter as
16 provided by the business shall not be liable under this chapter
17 if the third party receiving the personal information uses it in
18 violation of the restrictions set forth in this chapter;
19 provided that at the time of disclosing the personal
20 information, the business did not have actual knowledge, or



1 reason to believe, that the third party intended to commit such
2 a violation.

3 (f) If a contractor engages any other person to assist the
4 contractor in processing personal information for a business
5 purpose on behalf of the business, or if any other person
6 engaged by the contractor engages another person to assist in
7 processing personal information for that business purpose, the
8 contractor shall notify the business of that engagement, which
9 shall be pursuant to a written contract binding the other person
10 to observe all the requirements set forth in subsection (b).

11 (g) If a service provider engages any other person to
12 assist the service provider in processing personal information
13 for a business purpose on behalf of the business, or if any
14 other person engaged by the service provider engages another
15 person to assist in processing personal information for that
16 business purpose, the service provider shall notify the business
17 of that engagement, which shall be pursuant to a written
18 contract binding the other person to observe all the
19 requirements set forth subsection (c).

20 (h) If a third party materially alters how it uses or
21 shares the personal information of a consumer in a manner that



1 is materially inconsistent with the promises made at the time of
2 collection, the third party shall provide prior notice of the
3 new or changed practice to the consumer. The notice shall be
4 sufficiently prominent and robust to ensure that existing
5 consumers can easily exercise their choices consistently with
6 this chapter. This subsection shall not be construed to
7 authorize a business to make material, retroactive privacy
8 policy changes or make other changes in their privacy policy in
9 a manner that would violate section 480-2.

10 (i) This chapter shall not be construed to require a
11 business, service provider, or contractor to:

12 (1) Reidentify or otherwise link information that, in the
13 ordinary course of business, is not maintained in a
14 manner that would be considered personal information;

15 (2) Retain any personal information about a consumer if,
16 in the ordinary course of business, that information
17 about the consumer would not be retained; or

18 (3) Maintain information in identifiable, linkable, or
19 associable form, or collect, obtain, retain, or access
20 any data or technology, in order to be capable of



1 linking or associating a verifiable consumer request
2 with personal information.

3 § -25 **Businesses; methods for submitting requests;**
4 **disclosure.** (a) In order to comply with sections -21,
5 -41, -42, -43, , -44, and -47, a business shall,
6 in a form that is reasonably accessible to consumers:

7 (1) Make available to consumers two or more designated
8 methods for submitting requests for deletion or
9 correction pursuant to sections -41 and -42,
10 respectively, or requests for information required to
11 be disclosed pursuant to sections -43 and -44,
12 including, at a minimum, a toll-free telephone number.
13 A business that operates exclusively online and has a
14 direct relationship with a consumer from whom it
15 collects personal information shall only be required
16 to provide an email address for submitting requests
17 for requests for deletion or correction pursuant to
18 sections -41 and -42, respectively, or for
19 information required to be disclosed pursuant to
20 sections -43 and -44;



- 1 (2) If the business maintains an internet website, make
2 the internet website available to consumers to submit
3 requests for deletion or correction pursuant to
4 sections -41 and -42, respectively, or requests
5 for information required to be disclosed pursuant to
6 sections -43 and -44;
- 7 (3) Disclose and deliver the required information to a
8 consumer free of charge, correct inaccurate personal
9 information, or delete a consumer's personal
10 information, based on the consumer's request, within
11 forty-five days of receiving a verifiable consumer
12 request from the consumer. The business shall
13 promptly take steps to determine whether the request
14 is a verifiable consumer request, but this shall not
15 extend the business's duty to disclose and deliver the
16 information, correct inaccurate personal information,
17 or delete personal information within forty-five days
18 of receipt of the consumer's request. The time period
19 to provide the required information, correct
20 inaccurate personal information, or delete personal
21 information may be extended once by an additional



1 forty-five days when reasonably necessary; provided
2 that the consumer is provided notice of the extension
3 within the first forty-five-day period. The
4 disclosure of the required information shall be made
5 in writing and delivered through the consumer's
6 account with the business, if the consumer maintains
7 an account with the business, or by mail or
8 electronically at the consumer's option if the
9 consumer does not maintain an account with the
10 business, in a readily useable format that allows the
11 consumer to transmit this information from one entity
12 to another entity without hindrance. The business may
13 require authentication of the consumer that is
14 reasonable in light of the nature of the personal
15 information requested, but shall not require the
16 consumer to create an account with the business in
17 order to make a verifiable consumer request; provided
18 that if the consumer has an account with the business,
19 the business may require the consumer to use that
20 account to submit a verifiable consumer request;



1 (4) Disclose required information for the twelve-month
2 period preceding the business's receipt of the
3 verifiable consumer request; provided that upon the
4 adoption of a rule pursuant to section -63(a)(9), a
5 consumer may request that the business disclose the
6 required information beyond the twelve-month period,
7 and the business shall be required to provide that
8 information unless doing so proves impossible or would
9 involve a disproportionate effort. Nothing in this
10 paragraph shall require a business to keep personal
11 information for any length of time;

12 (5) If a business receives a verifiable consumer request
13 pursuant to section -43 or -44, disclose any
14 personal information it has collected about a
15 consumer, directly or indirectly, including through or
16 by a service provider or contractor, to the consumer.
17 A service provider or contractor shall not be required
18 to comply with a verifiable consumer request received
19 directly from a consumer or a consumer's authorized
20 agent, pursuant to section -43 or -44, to the
21 extent that the service provider or contractor has



1 collected personal information about the consumer in
2 its role as a service provider or contractor. A
3 service provider or contractor shall provide
4 assistance to a business with which it has a
5 contractual relationship with respect to the
6 business's response to a verifiable consumer request,
7 including but not limited to providing the business
8 the consumer's personal information in the service
9 provider's or contractor's possession, which the
10 service provider or contractor obtained as a result of
11 providing services to the business, and by correcting
12 inaccurate information or by enabling the business to
13 do the same. A service provider or contractor that
14 collects personal information pursuant to a written
15 contract with a business shall be required to assist
16 the business through appropriate technical and
17 organizational measures in complying with the
18 requirements of sections -24(a), -26, and
19 -28, taking into account the nature of the
20 processing;



1 (6) For purposes of section -43(b):

2 (A) To identify the consumer, associate the
3 information provided by the consumer in the
4 verifiable consumer request to any personal
5 information previously collected by the business
6 about the consumer;

7 (B) Identify by categories the personal information
8 collected about the consumer for the applicable
9 period of time by reference to the enumerated
10 categories that most closely describe the
11 personal information collected; the categories of
12 sources from which the consumer's personal
13 information was collected; the business purpose
14 or commercial purpose for collecting, selling, or
15 sharing the consumer's personal information; and
16 the categories of third parties to whom the
17 business discloses the consumer's personal
18 information; and

19 (C) Provide the specific pieces of personal
20 information obtained from the consumer in a
21 format that is easily understandable to the



1 average consumer, and to the extent technically
2 feasible, in a structured, commonly used,
3 machine-readable format that may also be
4 transmitted to another entity at the consumer's
5 request without hindrance.

6 For purposes of this subparagraph, "specific
7 pieces of personal information" does not include
8 data generated to help ensure security and
9 integrity or as prescribed by rule;

10 (7) For purposes of section -44(b):

11 (A) Identify the consumer and associate the
12 information provided by the consumer in the
13 verifiable consumer request to any personal
14 information previously collected by the business
15 about the consumer;

16 (B) Identify by categories the personal information
17 of the consumer that the business sold or shared
18 during the applicable period of time by reference
19 to categories of personal information that most
20 closely describes the personal information, and
21 provide the categories of third parties to whom



1 the consumer's personal information was sold or
2 shared during the applicable period of time by
3 reference to the categories of personal
4 information that most closely describe the
5 personal information sold or shared. The
6 business shall disclose the information in a list
7 that is separate from a list generated for the
8 purposes of subparagraph (C); and

9 (C) Identify by category or categories the personal
10 information of the consumer that the business
11 disclosed for a business purpose during the
12 applicable period of time by reference to the
13 categories of personal information that most
14 closely describes the personal information, and
15 provide the categories of persons to whom the
16 consumer's personal information was disclosed for
17 a business purpose during the applicable period
18 of time by reference to the categories of
19 personal information that most closely describes
20 the personal information disclosed. The business
21 shall disclose the information in a list that is



1 separate from a list generated for the purposes
2 of subparagraph (B);

3 (8) Disclose the following information in its online
4 privacy policy or policies if the business has an
5 online privacy policy and in any Hawaii-specific
6 description of consumers' privacy rights, or if the
7 business does not maintain those policies, on its
8 internet website, and update that information at least
9 once every twelve months:

10 (A) A description of a consumer's rights pursuant to
11 sections -21, -41, -42, -43, -44,
12 and -47, and two or more designated methods
13 for submitting requests, except as provided in
14 subsection (a)(1);

15 (B) For purposes of section -43(c):

16 (i) A list of the categories of personal
17 information the business has collected about
18 consumers in the preceding twelve months by
19 reference to the categories of personal
20 information that most closely describe the
21 personal information collected;



- 1 (ii) The categories of sources from which
- 2 consumers' personal information is
- 3 collected;
- 4 (iii) The business purpose or commercial purpose
- 5 for collecting, selling, or sharing
- 6 consumers' personal information; and
- 7 (iv) The categories of third parties to whom the
- 8 business discloses consumers' personal
- 9 information;
- 10 (C) For purposes of sections -44(c)(1) and
- 11 -44(c)(2), two separate lists:
- 12 (i) A list of the categories of personal
- 13 information the business has sold or shared
- 14 about consumers in the preceding twelve
- 15 months by reference to the categories of
- 16 personal information that most closely
- 17 describe the personal information sold or
- 18 shared, or if the business has not sold or
- 19 shared consumers' personal information in
- 20 the preceding twelve months, the business



1 shall prominently disclose that fact in its
2 privacy policy; and

3 (ii) A list of the categories of personal
4 information the business has disclosed about
5 consumers for a business purpose in the
6 preceding twelve months by reference to the
7 categories of personal information that most
8 closely describes the personal information
9 disclosed, or if the business has not
10 disclosed consumers' personal information
11 for a business purpose in the preceding
12 twelve months, the business shall disclose
13 that fact;

14 (9) Ensure that all individuals responsible for handling
15 consumer inquiries about the business's privacy
16 practices or the business's compliance with this
17 chapter are informed of all requirements in
18 sections -21, -41, -42, -43, -44,
19 -47, and this section, and how to direct consumers
20 to exercise their rights under those sections; and



1 (10) Use any personal information collected from the
2 consumer in connection with the business's
3 verification of the consumer's request solely for the
4 purposes of verification and shall not further
5 disclose the personal information, retain it longer
6 than necessary for purposes of verification, or use it
7 for unrelated purposes.

8 (b) A business shall not be obligated to provide the
9 information required by sections -43 and -44 to the same
10 consumer more than twice in a twelve-month period.

11 (c) Notwithstanding a business's obligations to respond to
12 and honor consumer rights requests pursuant to this chapter:

13 (1) A time period for a business to respond to a consumer
14 for any verifiable consumer request may be extended by
15 up to a total of ninety days where necessary, taking
16 into account the complexity and number of the
17 requests. The business shall inform the consumer of
18 any such extension within forty-five days of receipt
19 of the request, together with the reasons for the
20 delay;



1 (2) If the business does not take action on the request of
2 the consumer, the business shall inform the consumer,
3 without delay and at the latest within the time period
4 permitted for response by this subsection, of the
5 reasons for not taking action and any rights the
6 consumer may have to appeal the decision to the
7 business; and

8 (3) If requests from a consumer are manifestly unfounded
9 or excessive, in particular because of their
10 repetitive character, a business may either charge a
11 reasonable fee, taking into account the administrative
12 costs of providing the information or communication or
13 taking the action requested, or refuse to act on the
14 request and notify the consumer of the reason for
15 refusing the request. The business shall bear the
16 burden of demonstrating that any verifiable consumer
17 request is manifestly unfounded or excessive.

18 § -26 **Businesses; security procedures.** A business that
19 collects a consumer's personal information shall implement
20 reasonable security procedures and practices appropriate to the
21 nature of the personal information to protect the personal



1 information from unauthorized or illegal access, destruction,
2 use, modification, or disclosure.

3 § -27 Businesses; methods of limiting sale, sharing, and
4 use of personal information and use of sensitive personal
5 information. (a) A business that sells or shares consumers'
6 personal information or uses or discloses consumers' sensitive
7 personal information for purposes other than those authorized by
8 section -46(a) shall, in a form that is reasonably accessible
9 to consumers:

10 (1) Provide a clear and conspicuous link on the business's
11 internet homepage, titled "Do Not Sell or Share My
12 Personal Information", to an internet web page that
13 enables a consumer, or a person authorized by the
14 consumer, to opt-out of the sale or sharing of the
15 consumer's personal information;

16 (2) Provide a clear and conspicuous link on the business's
17 internet homepage, titled "Limit the Use of My
18 Sensitive Personal Information", that enables a
19 consumer, or a person authorized by the consumer, to
20 limit the use or disclosure of the consumer's



1 sensitive personal information to those uses

2 authorized by section -46(a);

3 (3) At the business's discretion, utilize a single,
4 clearly labeled link on the business's internet
5 homepage, in lieu of complying with paragraphs (1) and
6 (2), if that link easily allows a consumer to opt out
7 of the sale or sharing of the consumer's personal
8 information and limit the use or disclosure of the
9 consumer's sensitive personal information; and

10 (4) In the event that a business responds to opt-out
11 requests received pursuant to paragraph (1), (2), or
12 (3) by informing the consumer of a charge for the use
13 of any product or service, present the terms of any
14 financial incentive offered pursuant to section -23
15 for the retention, use, sale, or sharing of the
16 consumer's personal information.

17 (b) A business shall not be required to comply with
18 subsection (a) if the business allows a consumer to opt out of
19 the sale or sharing of the consumer's personal information and
20 limit the use of the consumer's sensitive personal information
21 through an opt-out preference signal sent with the consumer's



1 consent by a platform, technology, or mechanism, based on
2 technical specifications set forth in rules adopted pursuant to
3 section -63(a)(22), to the business indicating the consumer's
4 intent to opt out of the business's sale or sharing of the
5 consumer's personal information or limit the use or disclosure
6 of the consumer's sensitive personal information, or both.

7 (c) A business that allows a consumer to opt out of the
8 sale or sharing of the consumer's personal information and limit
9 the use of the consumer's sensitive personal information
10 pursuant to subsection (b) may provide a link to a web page that
11 enables the consumer to consent to the business ignoring the
12 opt-out preference signal with respect to that business's sale
13 or sharing of the consumer's personal information or the use of
14 the consumer's sensitive personal information for additional
15 purposes; provided that:

16 (1) The consent web page also allows the consumer or a
17 person authorized by the consumer to revoke the
18 consent as easily as the consent is affirmatively
19 provided;

20 (2) The link to the web page does not degrade the
21 consumer's experience on the web page the consumer



1 intends to visit and has a similar look, feel, and
2 size relative to other links on the same web page; and

3 (3) The consent web page complies with technical
4 specifications set forth in rules adopted pursuant to
5 section -63(a)(22).

6 (d) A business that complies with subsection (a) shall not
7 be required to comply with subsection (b), but may elect whether
8 to comply with either subsection (a) or subsection (b).

9 (e) A business that is subject to this section shall not
10 require a consumer to create an account or provide additional
11 information beyond what is necessary in order to direct the
12 business not to sell or share the consumer's personal
13 information or to limit use or disclosure of the consumer's
14 sensitive personal information.

15 (f) A business that is subject to this section shall:

16 (1) Include a description of a consumer's rights pursuant
17 to sections -45 and -46, along with separate
18 links to the "Do Not Sell or Share My Personal
19 Information" internet web page and the "Limit the Use
20 of My Sensitive Personal Information" internet web
21 page, if applicable; a single link to both choices; or



1 a statement that the business responds to and abides
2 by opt-out preference signals sent by a platform,
3 technology, or mechanism in accordance with
4 subsection (b), in:

5 (A) Its online privacy policy, if any; and

6 (B) Any Hawaii-specific description of consumers'
7 privacy rights;

8 (2) Ensure that all individuals responsible for handling
9 consumer inquiries about the business's privacy
10 practices or the business's compliance with this
11 chapter are informed of all requirements in
12 sections -45 and -46 and this section and how to
13 direct consumers to exercise their rights under those
14 sections;

15 (3) For a consumer who exercises the consumer's right to
16 opt-out of the sale or sharing of the consumer's
17 personal information or limit the use or disclosure of
18 the consumer's sensitive personal information, refrain
19 from selling or sharing the consumer's personal
20 information or using or disclosing the consumer's
21 sensitive personal information and wait for at least



1 twelve months before requesting that the consumer
2 authorize the sale or sharing of the consumer's
3 personal information or the use and disclosure of the
4 consumer's sensitive personal information for
5 additional purposes, or as authorized by rule;

6 (4) For a consumer under sixteen years of age who does not
7 consent to the sale or sharing of the consumer's
8 personal information, refrain from selling or sharing
9 the personal information of that consumer and wait for
10 at least twelve months before requesting the
11 consumer's consent again, or as authorized by rule or
12 until the consumer attains sixteen years of age; and

13 (5) Use any personal information collected from the
14 consumer in connection with the submission of the
15 consumer's opt-out request solely for the purposes of
16 complying with the opt-out request.

17 (g) Nothing in this chapter shall be construed to require
18 a business to comply with this chapter by including the required
19 links and text on the homepage that the business makes available
20 to the public generally, if the business maintains a separate
21 and additional homepage that is dedicated to Hawaii consumers



1 and includes the required links and text, and the business takes
2 reasonable steps to ensure that Hawaii consumers are directed to
3 the homepage for Hawaii consumers and not the homepage made
4 available to the public generally.

5 (h) A consumer may authorize another person to opt-out of
6 the sale or sharing of the consumer's personal information and
7 to limit the use of the consumer's sensitive personal
8 information on the consumer's behalf, including through an opt-
9 out preference signal pursuant to subsection (b). A business
10 shall comply with an opt-out request received from a person
11 authorized by the consumer to act on the consumer's behalf,
12 pursuant to rules adopted by the director regardless of whether
13 the business has elected to comply with subsection (a) or (b).
14 A business that elects to comply with subsection (a) may respond
15 to the consumer's opt-out consistent with section -47.

16 (i) If a business communicates a consumer's opt-out
17 request to any person authorized by the business to collect
18 personal information, the person shall thereafter only use that
19 consumer's personal information for a business purpose specified
20 by the business, or as otherwise permitted by this chapter, and
21 shall be prohibited from:



1 (1) Selling or sharing the personal information; and

2 (2) Retaining, using, or disclosing that consumer's
3 personal information:

4 (A) For any purpose other than for the specific
5 purpose of performing the services offered to the
6 business;

7 (B) Outside of the direct business relationship
8 between the person and the business; and

9 (C) For a commercial purpose other than providing the
10 services to the business.

11 (j) A business that communicates a consumer's opt-out
12 request to a person pursuant to subsection (i) shall not be
13 liable under this chapter if the person receiving the opt-out
14 request violates the restrictions set forth in this chapter;
15 provided that at the time of communicating the opt-out request,
16 the business did not have actual knowledge, or reason to
17 believe, that the person intended to commit such a violation.

18 Any provision of a contract or agreement of any kind that
19 purports to waive or limit in any way this subsection shall be
20 void and unenforceable.



1 § -28 **Businesses; construction; trade secrets.** Nothing
2 in this part shall require a business to disclose trade secrets,
3 as specified in rules adopted pursuant to section -63(a)(3).

4 § -29 **Waiver; limitation; void and unenforceable.** Any
5 provision of a contract or agreement of any kind, including a
6 representative action waiver, that purports to waive or limit in
7 any way rights under this chapter, including but not limited to
8 any right to a remedy or means of enforcement, shall be deemed
9 contrary to public policy and shall be void and unenforceable.

10 This section shall not prevent a consumer from declining to
11 request information from a business, declining to opt out of a
12 business's sale of the consumer's personal information, or
13 authorizing a business to sell or share the consumer's personal
14 information after previously opting out.

15 § -30 **Research.** Research with personal information that
16 may have been collected from a consumer in the course of the
17 consumer's interactions with a business's service or device for
18 other purposes shall be:

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



- 1 (2) Subsequently pseudonymized and deidentified, or
2 deidentified and in the aggregate, such that the
3 information cannot reasonably identify, relate to,
4 describe, be capable of being associated with, or be
5 linked, directly or indirectly, to a particular
6 consumer, by a business;
- 7 (3) Subject to technical safeguards that prohibit
8 reidentification of the consumer to whom the
9 information may pertain, other than as needed to
10 support the research;
- 11 (4) Subject to business processes that specifically
12 prohibit reidentification of the information, other
13 than as needed to support the research;
- 14 (5) Made subject to business processes to prevent
15 inadvertent release of deidentified information;
- 16 (6) Protected from any reidentification attempts;
- 17 (7) Used solely for research purposes that are compatible
18 with the context in which the personal information was
19 collected; and
- 20 (8) Subjected by the business conducting the research to
21 additional security controls that limit access to the



1 research data to only those individuals as are
2 necessary to carry out the research purpose.

3 **PART III. CONSUMER RIGHTS**

4 **§ -41 Consumers; right to delete personal information.**

5 (a) A consumer shall have the right to request that a business
6 delete any personal information about the consumer that the
7 business has collected from the consumer.

8 (b) A business that collects personal information about
9 consumers shall disclose, pursuant to section -25, the
10 consumer's rights to request the deletion of the consumer's
11 personal information.

12 (c) A business that receives a verifiable consumer request
13 from a consumer to delete the consumer's personal information
14 pursuant to subsection (a) shall delete the consumer's personal
15 information from its records, notify any service providers or
16 contractors to delete the consumer's personal information from
17 their records, and notify all third parties to whom the business
18 has sold or shared the personal information to delete the
19 consumer's personal information unless this proves impossible or
20 involves disproportionate effort.



1 (d) The business may maintain a confidential record of
2 deletion requests solely for the purpose of preventing the
3 personal information of a consumer who has submitted a deletion
4 request from being sold, for compliance with laws, or for other
5 purposes, solely to the extent permissible under this chapter.

6 (e) A service provider or contractor shall cooperate with
7 the business in responding to a verifiable consumer request, and
8 at the direction of the business, shall delete the consumer's
9 personal information, or enable the business to delete the
10 consumer's personal information, and shall notify any of its own
11 service providers or contractors to delete personal information
12 about the consumer collected, used, processed, or retained by
13 the service provider or contractor. The service provider or
14 contractor shall notify any service providers, contractors, or
15 third parties who may have accessed personal information from or
16 through the service provider or contractor, unless the
17 information was accessed at the direction of the business, to
18 delete the consumer's personal information unless this proves
19 impossible or involves disproportionate effort. A service
20 provider or contractor shall not be required to comply with a
21 deletion request submitted by the consumer directly to the



1 service provider or contractor to the extent that the service
2 provider or contractor has collected, used, processed, or
3 retained the consumer's personal information in its role as a
4 service provider or contractor to the business.

5 (f) A business, or a service provider or contractor acting
6 pursuant to its contract with the business, another service
7 provider, or another contractor, shall not be required to comply
8 with a deletion request submitted by the consumer if it is
9 reasonably necessary for the business, service provider, or
10 contractor to maintain the consumer's personal information in
11 order to:

- 12 (1) Complete the transaction for which the personal
13 information was collected; fulfill the terms of a
14 written warranty or product recall conducted in
15 accordance with federal law; provide a good or service
16 requested by the consumer, or reasonably anticipated
17 by the consumer within the context of a business's
18 ongoing business relationship with the consumer; or
19 otherwise perform a contract between the business and
20 the consumer;



- 1 (2) Help ensure security and integrity to the extent the
2 use of the consumer's personal information is
3 reasonably necessary and proportionate for those
4 purposes;
- 5 (3) Debug to identify and repair errors that impair
6 existing intended functionality;
- 7 (4) Exercise free speech, ensure the right of another
8 consumer to exercise that consumer's right of free
9 speech, or exercise another right provided for by law;
- 10 (5) Engage in public or peer-reviewed scientific,
11 historical, or statistical research that conforms or
12 adheres to all other applicable ethics and privacy
13 laws, when the business's deletion of the information
14 is likely to render impossible or seriously impair the
15 ability to complete such research, if the consumer has
16 provided informed consent;
- 17 (6) Enable solely internal uses that are reasonably
18 aligned with the expectations of the consumer based on
19 the consumer's relationship with the business and
20 compatible with the context in which the consumer
21 provided the personal information; and



1 (7) Comply with a legal obligation.

2 § -42 Consumers; right to correct inaccurate personal
3 information. (a) A consumer shall have the right to request
4 that a business correct inaccurate personal information about
5 the consumer that is maintained by the business, taking into
6 account the nature of the personal information and the purposes
7 of the processing of the personal information.

8 (b) A business that collects personal information about
9 consumers shall disclose, pursuant to section -25, the
10 consumer's right to request correction of inaccurate personal
11 information.

12 (c) A business that receives a verifiable consumer request
13 to correct inaccurate personal information shall use
14 commercially reasonable efforts to correct the inaccurate
15 personal information as directed by the consumer, pursuant to
16 section -25 and rules adopted pursuant to
17 section -63(a)(8).

18 § -43 Consumers; right to know what personal information
19 is collected; right to access personal information. (a) A
20 consumer shall have the right to request that a business that



1 collects personal information about the consumer disclose to the
2 consumer the following:

3 (1) The categories of personal information the business
4 has collected about that consumer;

5 (2) The categories of sources from which the personal
6 information is collected;

7 (3) The business purpose or commercial purpose for
8 collecting, selling, or sharing personal information;

9 (4) The categories of third parties to whom the business
10 discloses personal information; and

11 (5) The specific pieces of personal information the
12 business has collected about that consumer.

13 (b) A business that collects personal information about a
14 consumer shall disclose to the consumer, pursuant to
15 section -25(a)(6), the information specified in subsection
16 (a) upon receipt of a verifiable consumer request from the
17 consumer; provided that a business shall be deemed to be in
18 compliance with subsection (a)(1) through (4) to the extent that
19 the categories of information and the business purpose or
20 commercial purpose for collecting, selling, or sharing personal
21 information the business would be required to disclose to the



1 consumer pursuant to subsection (a)(1) through (4) is the same
2 as the information the business has disclosed pursuant to
3 subsection (c)(1) through (4).

4 (c) A business that collects personal information about
5 consumers shall disclose, pursuant to section -25(a)(8)(B):

6 (1) The categories of personal information the business
7 has collected about consumers;

8 (2) The categories of sources from which the personal
9 information is collected;

10 (3) The business purpose or commercial purpose for
11 collecting, selling, or sharing personal information;

12 (4) The categories of third parties to whom the business
13 discloses personal information; and

14 (5) That a consumer has the right to request the specific
15 pieces of personal information the business has
16 collected about that consumer.

17 (d) Personal information shall not be considered to have
18 been disclosed by a business when a consumer instructs a
19 business to transfer the consumer's personal information from
20 one business to another in the context of switching services.



1 § -44 Consumers; right to know what personal information
2 is sold or shared and to whom. (a) A consumer shall have the
3 right to request that a business that sells or shares the
4 consumer's personal information, or that discloses the personal
5 information for a business purpose, disclose to that consumer:

6 (1) The categories of personal information the business
7 collected about the consumer;

8 (2) The categories of personal information about the
9 consumer that the business sold or shared and the
10 categories of third parties to whom the personal
11 information was sold or shared, by category or
12 categories of personal information for each category
13 of third parties to whom the personal information was
14 sold or shared; and

15 (3) The categories of personal information about the
16 consumer that the business disclosed for a business
17 purpose and the categories of persons to whom the
18 categories of personal information were disclosed for
19 a business purpose.

20 (b) A business that sells or shares personal information
21 about a consumer, or that discloses a consumer's personal



1 information for a business purpose, shall disclose, pursuant to
2 section -25(a)(7), the information specified in subsection
3 (a) to the consumer upon receipt of a verifiable consumer
4 request from the consumer.

5 (c) A business that sells or shares consumers' personal
6 information, or that discloses consumers' personal information
7 for a business purpose, shall disclose, pursuant to
8 section -25(a)(8)(C):

9 (1) The category or categories of consumers' personal
10 information the business has sold or shared; provided
11 that if the business has not sold or shared consumers'
12 personal information, the business shall disclose that
13 fact; and

14 (2) The category or categories of consumers' personal
15 information the business has disclosed for a business
16 purpose; provided that if the business has not
17 disclosed consumers' personal information for a
18 business purpose, the business shall disclose that
19 fact.

20 (d) A third party shall not sell or share personal
21 information about a consumer that has been sold to, or shared



1 with, the third party by a business unless the consumer has
2 received explicit notice and is provided an opportunity to
3 exercise the right to opt out pursuant to section -45.

4 **§ -45 Consumers; right to opt out of sale or sharing of**
5 **personal information.** (a) A consumer shall have the right, at
6 any time, to direct a business that sells or shares personal
7 information about the consumer to third parties not to sell or
8 share the consumer's personal information. This right may be
9 referred to as the right to opt out of sale or sharing.

10 (b) A business that sells consumers' personal information
11 to, or shares personal information with, third parties shall
12 provide notice to consumers, pursuant to section -27(b), that
13 this personal information may be sold or shared and that
14 consumers have the right to opt out of the sale or sharing of
15 their personal information.

16 (c) Notwithstanding subsection (a), a business shall not
17 sell or share a consumer's personal information if the business
18 has actual knowledge that the consumer is less than sixteen
19 years of age, unless the consumer, in the case of consumers at
20 least thirteen years of age and less than sixteen years of age,
21 or the consumer's parent or guardian, in the case of consumers



1 who are less than thirteen years of age, has affirmatively
2 authorized the sale or sharing of the consumer's personal
3 information. A business that willfully disregards the
4 consumer's age shall be deemed to have had actual knowledge of
5 the consumer's age.

6 (d) A business that has received direction from a consumer
7 not to sell or share the consumer's personal information or, in
8 the case of a minor consumer's personal information has not
9 received consent to sell or share the minor consumer's personal
10 information, shall be prohibited, pursuant to
11 section -27(f)(3), from selling or sharing the consumer's
12 personal information after the business's receipt of the
13 consumer's direction, unless the consumer subsequently provides
14 consent for the sale or sharing of the consumer's personal
15 information.

16 (e) This section shall not apply to vehicle information or
17 ownership information retained or shared between a new motor
18 vehicle dealer and the vehicle's manufacturer, if the vehicle
19 information or ownership information is shared for the purpose
20 of effectuating, or in anticipation of effectuating, a vehicle
21 repair covered by a vehicle warranty or a recall conducted



1 pursuant to title 49 United States Code sections 30118 through
2 30120; provided that the new motor vehicle dealer or vehicle
3 manufacturer with which that vehicle information or ownership
4 information is shared shall not sell, share, or use that
5 information for any other purpose.

6 For purposes of this subsection:

7 "Ownership information" means the name of the registered
8 owner and the contact information for the owner.

9 "Vehicle information" means the vehicle identification
10 number, make, model, year, and odometer reading.

11 **§ -46 Consumers; right to limit use and disclosure of**
12 **sensitive personal information.** (a) A consumer shall have the
13 right, at any time, to direct a business that collects sensitive
14 personal information about the consumer to limit the business's
15 use of the consumer's sensitive personal information to the use
16 that is necessary to perform the services or provide the goods
17 reasonably expected by an average consumer who requests those
18 goods or services, or perform the services set forth in
19 paragraphs (2), (4), (5), and (8) of the definition of business
20 purpose and as authorized by rules adopted pursuant to
21 section -63(a)(21). A business that uses or discloses a



1 consumer's sensitive personal information for purposes other
2 than those specified in this subsection shall provide notice to
3 consumers, pursuant to section -27(a), that this sensitive
4 personal information may be used, or disclosed to a service
5 provider or contractor, for additional, specified purposes and
6 that consumers have the right to limit the use or disclosure of
7 their sensitive personal information.

8 (b) A business that has received direction from a consumer
9 not to use or disclose the consumer's sensitive personal
10 information, except as authorized by subsection (a), shall be
11 prohibited, pursuant to section -27(f)(3), from using or
12 disclosing the consumer's sensitive personal information for any
13 other purpose after the business's receipt of the consumer's
14 direction, unless the consumer subsequently provides consent for
15 the use or disclosure of the consumer's sensitive personal
16 information for additional purposes.

17 (c) A service provider or contractor that assists a
18 business in performing the purposes authorized by subsection (a)
19 shall not use the consumer's sensitive personal information
20 after the service provider or contractor has received
21 instructions from the business, and to the extent the service



1 provider or contractor has actual knowledge that the personal
2 information is sensitive personal information, for any other
3 purpose. A service provider or contractor shall only be
4 required to limit the service provider's or contractor's use of
5 sensitive personal information received pursuant to a written
6 contract with the business in response to instructions from the
7 business and only with respect to its relationship with that
8 business.

9 (d) Sensitive personal information that is collected or
10 processed without the purpose of inferring characteristics about
11 a consumer shall not be subject to this section, as further
12 defined in rules adopted pursuant to section -63(a)(21), and
13 shall be treated as personal information for purposes of all
14 other sections of this chapter.

15 **§ -47 Consumers; right of no retaliation following opt**
16 **out or exercise of other rights.** (a) A business shall not
17 discriminate against a consumer because the consumer exercised
18 any of the consumer's rights under this chapter, including but
19 not limited to:

20 (1) Denying goods or services to the consumer;



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

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

(4) 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.

(b) Nothing in this section shall prohibit a business, pursuant to section -23, 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.

(c) This section shall not prohibit a business from offering loyalty, rewards, premium features, discounts, or club card programs consistent with this chapter.

PART IV. ADMINISTRATION AND ENFORCEMENT

§ -61 **Administrative enforcement.** (a) Any business, service provider, contractor, or other person that violates this



chapter shall be liable for an administrative fine of no more than:

(1) \$2,500 for each violation; or

(2) \$7,500 for each intentional violation involving the personal information of consumers for whom the business, service provider, contractor, or other person has actual knowledge are under sixteen years of age,

as adjusted pursuant to section -63(a)(5), in an

administrative enforcement action brought by the department.

(b) Any administrative fine assessed for a violation of this chapter, and the proceeds of any settlement of an action brought pursuant to subsection (a), shall be deposited in the compliance resolution fund established pursuant to section 26-9(o) with the intent to fully offset any costs incurred by the department in connection with this chapter.

§ -62 No private right of action. Nothing in this chapter shall be interpreted to serve as the basis for a private right of action under any other law. This section shall not be construed to relieve any party from any duties or obligations



1 imposed under other law or the United States Constitution or
2 Hawaii State Constitution.

3 § -63 **Rules.** (a) The department shall adopt rules
4 pursuant to chapter 91 to further the purposes of this chapter,
5 including but not limited to the following areas:

6 (1) Updating or adding categories of personal information
7 to those enumerated in the definitions of "personal
8 information" and "sensitive personal information" to
9 address changes in technology, data collection
10 practices, obstacles to implementation, and privacy
11 concerns;

12 (2) Updating as needed the definitions of "deidentified"
13 and "unique identifier" to address changes in
14 technology, data collection practices, obstacles to
15 implementation, and privacy concerns; provided that
16 the authority to update the definition of
17 "deidentified" shall not apply to deidentification
18 standards set forth in title 45 Code of Federal
19 Regulations section 164.514, where such information
20 previously was "protected health information" as
21 defined in title 45 Code of Federal Regulations



1 section 160.103; and adding, modifying, or deleting
2 categories to the definition of "designated methods
3 for submitting requests" to facilitate a consumer's
4 ability to obtain information from a business pursuant
5 to section -25;

6 (3) Establishing any exceptions necessary to comply with
7 state or federal law, including but not limited to
8 those relating to trade secrets and intellectual
9 property rights with the intention that trade secrets
10 shall not be disclosed in response to a verifiable
11 consumer request;

12 (4) Establishing rules and procedures:

13 (A) To facilitate and govern the submission of a
14 request by a consumer to opt-out of the sale or
15 sharing of personal information pursuant to
16 section -45 and limit the use of a consumer's
17 sensitive personal information pursuant to
18 section -46 to ensure that consumers have the
19 ability to exercise their choices without undue
20 burden and prevent business from engaging in
21 deceptive or harassing conduct, including



1 retaliation against consumers for exercising
2 their rights, while allowing businesses to inform
3 consumers of the consequences of their decision
4 to opt out of the sale or sharing of their
5 personal information or limit the use of their
6 sensitive personal information;

7 (B) To govern business compliance with a consumer's
8 opt-out request; and

9 (C) For the development and use of a recognizable and
10 uniform opt-out logo or button by all businesses
11 to promote consumer awareness of the opportunity
12 to opt-out of the sale of personal information;

13 (5) Adjusting the monetary thresholds, in January of every
14 odd-numbered year to reflect any increase in the
15 Consumer Price Index, in paragraph (1)(A) of the
16 definition of "business" and section -61(a);

17 (6) Establishing rules, procedures, and any exceptions
18 necessary to ensure that the notices and information
19 that businesses are required to provide pursuant to
20 this chapter are provided in a manner that may be
21 easily understood by the average consumer, are



1 accessible to consumers with disabilities, and are
2 available in the language primarily used to interact
3 with the consumer, including establishing rules and
4 guidelines regarding financial incentives;

- 5 (7) Establishing rules and procedures to further the
6 purposes of sections -41, -42, -43, and
7 -44 and facilitate a consumer's or the consumer's
8 authorized agent's ability to delete personal
9 information pursuant to section -41, correct
10 inaccurate personal information pursuant to
11 section -42, or obtain information pursuant to
12 section -25, with the goal of minimizing the
13 administrative burden on consumers, taking into
14 account available technology, security concerns, and
15 the burden on the business, to govern a business's
16 determination that a request for information received
17 from a consumer is a verifiable consumer request,
18 including treating a request submitted through a
19 password-protected account maintained by the consumer
20 with the business while the consumer is logged into
21 the account as a verifiable consumer request and



1 providing a mechanism for a consumer who does not
2 maintain an account with the business to request
3 information through the business's authentication of
4 the consumer's identity;

5 (8) Establishing how often, and under what circumstances,
6 a consumer may request a correction of inaccurate
7 personal information pursuant to section -42,
8 including standards governing:

9 (A) How a business responds to a request for
10 correction, including exceptions for requests to
11 which a response is impossible or would involve
12 disproportionate effort, and requests for
13 correction of accurate personal information;

14 (B) How concerns regarding the accuracy of the
15 personal information may be resolved;

16 (C) The steps a business may take to prevent fraud;
17 and

18 (D) If a business rejects a request to correct
19 personal information collected and analyzed
20 concerning a consumer's health, the right of a
21 consumer to provide a written addendum to the



1 business with respect to any item or statement
2 regarding any personal information that the
3 consumer believes to be incomplete or incorrect;
4 provided that the addendum shall be limited to
5 two hundred fifty words per alleged incomplete or
6 incorrect item and shall clearly indicate in
7 writing that the consumer requests the addendum
8 to be made a part of the consumer's record;

9 (9) Establishing the standard to govern a business's
10 determination, pursuant to section -25(a)(4), that
11 providing information beyond the twelve-month period
12 in a response to a verifiable consumer request is
13 impossible or would involve a disproportionate effort;

14 (10) Adopting rules further defining and adding to the
15 definition of business purpose, including other
16 notified purposes, for which businesses, service
17 providers, and contractors may use consumers' personal
18 information consistent with consumers' expectations,
19 and further defining the business purposes for which
20 service providers and contractors may combine
21 consumers' personal information obtained from



1 different sources, except as provided for in
2 paragraph (6) of the definition of "business purpose";

3 (11) Adopting rules identifying those business purposes,
4 including other notified purposes, for which service
5 providers and contractors may use consumers' personal
6 information received pursuant to a written contract
7 with a business, for the service provider or
8 contractor's own business purposes, with the goal of
9 maximizing consumer privacy;

10 (12) Adopting rules to further define "intentionally
11 interacts", with the goal of maximizing consumer
12 privacy;

13 (13) Adopting rules to further define "precise
14 geolocation", including if the size defined is not
15 sufficient to protect consumer privacy in sparsely
16 populated areas or when the personal information is
17 used for normal operational purposes, including
18 billing;

19 (14) Adopting rules to define the term "specific pieces of
20 information obtained from the consumer" with the goal
21 of maximizing a consumer's right to access relevant



1 personal information while minimizing the delivery of
2 information to a consumer that would not be useful to
3 the consumer, including system log information and
4 other technical data. For delivery of the most
5 sensitive personal information, the rules may require
6 a higher standard of authentication; provided that the
7 department shall monitor the impact of the higher
8 standard on the right of consumers to obtain their
9 personal information to ensure that the requirements
10 of verification do not result in the unreasonable
11 denial of verifiable consumer requests;

12 (15) Adopting rules requiring businesses whose processing
13 of consumers' personal information presents
14 significant risk to consumers' privacy or security,
15 to:

16 (A) Perform a cybersecurity audit on an annual basis,
17 including defining the scope of the audit and
18 establishing a process to ensure that audits are
19 thorough and independent. The factors to be
20 considered in determining when processing may
21 result in significant risk to the security of



1 personal information shall include the size and
2 complexity of the business and the nature and
3 scope of processing activities; and

4 (B) Submit to the department on a regular basis a
5 risk assessment with respect to the business's
6 processing of personal information, including
7 whether the processing involves sensitive
8 personal information, and identifying and
9 weighing the benefits resulting from the
10 processing to the business, the consumer, other
11 stakeholders, and the public, against the
12 potential risks to the rights of the consumer
13 associated with that processing, with the goal of
14 restricting or prohibiting the processing if the
15 risks to privacy of the consumer outweigh the
16 benefits resulting from processing to the
17 consumer, the business, other stakeholders, and
18 the public;

19 (16) Adopting rules governing access and opt-out rights
20 with respect to businesses' use of automated
21 decisionmaking technology, including profiling and



1 requiring businesses' response to access requests to
2 include meaningful information about the logic
3 involved in those decisionmaking processes, as well as
4 a description of the likely outcome of the process
5 with respect to the consumer;

6 (17) Adopting rules to further define a "law enforcement
7 agency-approved investigation" for purposes of the
8 exception in section -3(a)(2);

9 (18) Adopting rules to define the scope and process for the
10 exercise of the department's audit authority,
11 establish criteria for selection of persons to audit,
12 and protect consumers' personal information from
13 disclosure to an auditor in the absence of a court
14 order, warrant, or subpoena;

15 (19) Adopting rules to define the requirements and
16 technical specifications for an opt-out preference
17 signal sent by a platform, technology, or mechanism,
18 to indicate a consumer's intent to opt out of the sale
19 or sharing of the consumer's personal information and
20 limit the use or disclosure of the consumer's
21 sensitive personal information. The requirements and



1 specifications for the opt-out preference signal shall
2 be updated from time to time to reflect the means by
3 which consumers interact with businesses, and shall:

4 (A) Ensure that the manufacturer of a platform or
5 browser or device that sends the opt-out
6 preference signal cannot unfairly disadvantage
7 another business;

8 (B) Ensure that the opt-out preference signal is
9 consumer-friendly, clearly described, and easy to
10 use by an average consumer and does not require
11 that the consumer provide additional information
12 beyond what is necessary;

13 (C) Clearly represent a consumer's intent and be free
14 of defaults constraining or presupposing that
15 intent;

16 (D) Ensure that the opt-out preference signal does
17 not conflict with other commonly used privacy
18 settings or tools that consumers may employ;

19 (E) Provide a mechanism for the consumer to
20 selectively consent to a business's sale of the
21 consumer's personal information, or the use or



1 disclosure of the consumer's sensitive personal
2 information, without affecting the consumer's
3 preferences with respect to other businesses or
4 disabling the opt-out preference signal globally;
5 and

6 (F) State that in the case of a page or setting view
7 that the consumer accesses to set the opt-out
8 preference signal, the consumer should see up to
9 three choices, including:

10 (i) Global opt out from sale and sharing of
11 personal information, including a direction
12 to limit the use of sensitive personal
13 information;

14 (ii) Choice to "Limit the Use of My Sensitive
15 Personal Information."; and

16 (iii) Choice titled "Do Not Sell/Do Not Share My
17 Personal Information for Cross-Context
18 Behavioral Advertising.";

19 (20) Adopting rules to establish technical specifications
20 for an opt-out preference signal that allows the
21 consumer, or the consumer's parent or guardian, to



specify that the consumer is less than thirteen years of age or at least thirteen years of age and less than sixteen years of age;

(21) Adopting rules, with the goal of strengthening consumer privacy while considering the legitimate operational interests of businesses, to govern the use or disclosure of a consumer's sensitive personal information, notwithstanding the consumer's direction to limit the use or disclosure of the consumer's sensitive personal information, including:

(A) Determining any additional purposes for which a business may use or disclose a consumer's sensitive personal information;

(B) Determining the scope of activities permitted under paragraph (8) of the definition of "business purpose", as authorized by section -46(a), to ensure that the activities do not involve health-related research;

(C) Ensuring the functionality of the business's operations; and



1 (D) Ensuring that the exemption in section -46(d)
2 for sensitive personal information applies to
3 information that is collected or processed
4 incidentally, or without the purpose of inferring
5 characteristics about a consumer, while ensuring
6 that businesses do not use the exemption for the
7 purpose of evading consumers' rights to limit the
8 use and disclosure of their sensitive personal
9 information under section -46;

10 (22) Adopting rules to govern how a business that has
11 elected to comply with section -27(b) responds to
12 the opt-out preference signal and provides consumers
13 with the opportunity subsequently to consent to the
14 sale or sharing of their personal information or the
15 use and disclosure of their sensitive personal
16 information for purposes in addition to those
17 authorized by section -46(a). The rules shall:

18 (A) Strive to promote competition and consumer choice
19 and be technology neutral;

20 (B) Ensure that the business does not respond to an
21 opt-out preference signal by:



- 1 (i) Intentionally degrading the functionality of
- 2 the consumer experience;
- 3 (ii) Charging the consumer a fee in response to
- 4 the consumer's opt-out preferences;
- 5 (iii) Making any products or services not function
- 6 properly or fully for the consumer, as
- 7 compared to consumers who do not use the
- 8 opt-out preference signal;
- 9 (iv) Attempting to coerce the consumer to opt in
- 10 to the sale or sharing of the consumer's
- 11 personal information, or the use or
- 12 disclosure of the consumer's sensitive
- 13 personal information, by stating or implying
- 14 that the use of the opt-out preference
- 15 signal will adversely affect the consumer as
- 16 compared to consumers who do not use the
- 17 opt-out preference signal, including stating
- 18 or implying that the consumer will not be
- 19 able to use the business's products or
- 20 services or that those products or services
- 21 may not function properly or fully; and



(v) Displaying any notification or pop-up in response to the consumer's opt-out preference signal;

(C) Ensure that any link to a web page or its supporting content that allows the consumer to consent to opt in:

(i) Is not part of a popup, notice, banner, or other intrusive design that obscures any part of the web page the consumer intended to visit from full view or that interferes with or impedes in any way the consumer's experience visiting or browsing the web page or website the consumer intended to visit;

(ii) Does not require or imply that the consumer must click the link to receive full functionality of any products or services, including the website;

(iii) Does not make use of any dark patterns; and

(iv) Applies only to the business with which the consumer intends to interact; and



1 (D) Strive to curb coercive or deceptive practices in
2 response to an opt-out preference signal but
3 should not unduly restrict businesses that are
4 trying in good faith to comply with
5 section -27;

6 (23) Review existing insurance code provisions and rules
7 relating to consumer privacy, except those relating to
8 insurance rates or pricing, to determine whether any
9 provisions of the insurance code provide greater
10 protection to consumers than the provisions of this
11 chapter. Upon completing its review, the director
12 shall adopt a rules that applies only the more
13 protective provisions of this chapter to insurance
14 companies; and

15 (24) Harmonizing the rules governing opt-out mechanisms,
16 notices to consumers, and other operational mechanisms
17 in this chapter to promote clarity and the
18 functionality of this chapter for consumers.

19 (b) The director may adopt additional rules as necessary
20 to further the purposes of this chapter.



1 § -64 **Anti-avoidance.** A court or the department shall
2 disregard the intermediate steps or transactions for purposes of
3 effectuating the purposes of this chapter:

4 (1) If a series of steps or transactions were component
5 parts of a single transaction intended from the
6 beginning to be taken with the intention of avoiding
7 the reach of this chapter, including the disclosure of
8 information by a business to a third party in order to
9 avoid the definitions of "sell" or "share"; or

10 (2) If steps or transactions were taken to purposely avoid
11 the definitions of "sell" or "share" by eliminating
12 any monetary or other valuable consideration,
13 including by entering into contracts that do not
14 include an exchange for monetary or other valuable
15 consideration, but where a party is obtaining
16 something of value or use."

17 SECTION 2. The director of commerce and consumer affairs
18 shall not bring an enforcement action under section -61,
19 Hawaii Revised Statutes, added by section 1 of this Act, until
20 six months after the publication of the final rules adopted



1 pursuant to section -63, Hawaii Revised Statutes, added by
2 section 1 of this Act, or January 1, 2024, whichever is sooner.


3 SECTION 3. There is appropriated out of the general
4 revenues of the State of Hawaii the sum of \$ or so
5 much thereof as may be necessary for fiscal year 2022-2023 for
6 the purposes of this Act.

7 The sum appropriated shall be expended by the department of
8 commerce and consumer affairs for the purposes of this Act.

9 SECTION 4. This Act shall take effect on January 1, 2023;
10 provided that section 3 of this Act shall take effect on July, 1
11 2022.

12

INTRODUCED BY:


JAN 24 2022



H.B. NO. 2051

Report Title:

Hawaii Consumer Privacy Act; Business Obligations; Consumer Rights; Personal Information; Appropriation

Description:

Establishes the Hawaii consumer privacy act. Specifies various consumer rights with respect to the collection of personal information by businesses. Outlines the obligations on businesses with respect to the collection, disclosure, sharing, and selling of consumer personal information. Specifies the requirements for administration and enforcement by the department, including adoption of rules. Appropriates funds. Effective 1/1/2023.

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