

Amendment No.

CHAMBER ACTION

Senate

House

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Representative McFarland offered the following:

**Amendment (with title amendment)**

Remove everything after the enacting clause and insert:

Section 1. Section 501.173, Florida Statutes, is created to read:

501.173 Consumer data privacy.-

(1) APPLICABILITY.-This section applies to any entity that meets the definition of controller, processor, or third party, and that buys, sells, or shares personal information of Florida consumers. This section does not apply to entities that do not buy, sell, or share personal information of Florida consumers

801573

Approved For Filing: 2/25/2022 3:55:59 PM

Amendment No.

13 and such entities do not have to comply with this section. This  
14 section also does not apply to:

15 (a) Personal information collected and transmitted that is  
16 necessary for the sole purpose of sharing such personal  
17 information with a financial service provider solely to  
18 facilitate short term, transactional payment processing for the  
19 purchase of products or services.

20 (b) Personal information collected, used, retained, sold,  
21 shared, or disclosed as deidentified personal information or  
22 aggregate consumer information.

23 (c) Compliance with federal, state, or local laws.

24 (d) Compliance with a civil, criminal, or regulatory  
25 inquiry, investigation, subpoena, or summons by federal, state,  
26 or local authorities.

27 (e) Cooperation with law enforcement agencies concerning  
28 conduct or activity that the controller, processor, or third  
29 party reasonably and in good faith believes may violate federal,  
30 state, or local law.

31 (f) Exercising or defending legal claims.

32 (g) Personal information collected through the  
33 controller's direct interactions with the consumer, if collected  
34 in accordance with the provisions of this section, that is used  
35 by the controller or the processor that the controller directly  
36 contracts with for advertising or marketing services to  
37 advertise or market products or services that are produced or

801573

Approved For Filing: 2/25/2022 3:55:59 PM

Amendment No.

38 offered directly by the controller. Such information may not be  
39 sold, shared, or disclosed unless otherwise authorized under  
40 this section.

41 (h) Personal information of a person acting in the role of  
42 a job applicant, employee, owner, director, officer, contractor,  
43 volunteer, or intern of a controller, that is collected by a  
44 controller, to the extent the personal information is collected  
45 and used solely within the context of the person's role or  
46 former role with the controller.

47 (i) Protected health information for purposes of the  
48 federal Health Insurance Portability and Accountability Act of  
49 1996 and related regulations, and patient identifying  
50 information for purposes of 42 C.F.R. part 2, established  
51 pursuant to 42 U.S.C. s. 290dd-2.

52 (j) A covered entity or business associate governed by the  
53 privacy, security, and breach notification rules issued by the  
54 United States Department of Health and Human Services in 45  
55 C.F.R. parts 160 and 164, or a program or a qualified service  
56 program as defined in 42 C.F.R. part 2, to the extent the  
57 covered entity, business associate, or program maintains  
58 personal information in the same manner as medical information  
59 or protected health information as described in paragraph (i),  
60 and as long as the covered entity, business associate, or  
61 program does not use personal information for targeted  
62 advertising with third parties and does not sell or share

801573

Approved For Filing: 2/25/2022 3:55:59 PM

Amendment No.

63 personal information to a third party unless such sale or  
64 sharing is covered by an exception under this section.

65 (k) Identifiable private information collected for  
66 purposes of research as defined in 45 C.F.R. s. 164.501  
67 conducted in accordance with the Federal Policy for the  
68 Protection of Human Subjects for purposes of 45 C.F.R. part 46,  
69 the good clinical practice guidelines issued by the  
70 International Council for Harmonisation of Technical  
71 Requirements for Pharmaceuticals for Human Use, or the  
72 Protection for Human Subjects for purposes of 21 C.F.R. parts 50  
73 and 56, or personal information that is used or shared in  
74 research conducted in accordance with one or more of these  
75 standards.

76 (l) Information and documents created for purposes of the  
77 federal Health Care Quality Improvement Act of 1986 and related  
78 regulations, or patient safety work product for purposes of 42  
79 C.F.R. part 3, established pursuant to 42 U.S.C. s. 299b-21  
80 through 299b-26.

81 (m) Information that is deidentified in accordance with 45  
82 C.F.R. part 164 and derived from individually identifiable  
83 health information as described in the Health Insurance  
84 Portability and Accountability Act of 1996, or identifiable  
85 personal information, consistent with the Federal Policy for the  
86 Protection of Human Subjects or the human subject protection  
87 requirements of the United States Food and Drug Administration.

801573

Approved For Filing: 2/25/2022 3:55:59 PM

Amendment No.

88 (n) Information used only for public health activities and  
89 purposes as described in 45 C.F.R. s. 164.512.

90 (o) Personal information collected, processed, sold, or  
91 disclosed pursuant to the federal Fair Credit Reporting Act, 15  
92 U.S.C. s. 1681 and implementing regulations.

93 (p) Nonpublic personal information collected, processed,  
94 sold, or disclosed pursuant to the Gramm-Leach-Bliley Act, 15  
95 U.S.C. s. 6801 et seq., and implementing regulations.

96 (q) A financial institution as defined in the Gramm-Leach-  
97 Bliley Act, 15 U.S.C. s. 6801 et seq., to the extent the  
98 financial institution maintains personal information in the same  
99 manner as nonpublic personal information as described in  
100 paragraph (p), and as long as such financial institution does  
101 not use personal information for targeted advertising with third  
102 parties and does not sell or share personal information to a  
103 third party unless such sale or sharing is covered by an  
104 exception under this section.

105 (r) Personal information collected, processed, sold, or  
106 disclosed pursuant to the federal Driver's Privacy Protection  
107 Act of 1994, 18 U.S.C. s. 2721 et seq.

108 (s) Education information covered by the Family  
109 Educational Rights and Privacy Act, 20 U.S.C. s. 1232(g) and 34  
110 C.F.R. part 99.

111 (t) Information collected as part of public or peer-  
112 reviewed scientific or statistical research in the public

801573

Approved For Filing: 2/25/2022 3:55:59 PM

Amendment No.

113 interest and that adheres to all other applicable ethics and  
 114 privacy laws, if the consumer has provided informed consent.  
 115 Research with personal information must be subjected by the  
 116 controller conducting the research to additional security  
 117 controls that limit access to the research data to only those  
 118 individuals necessary to carry out the research purpose and  
 119 subsequently deidentified.

120 (u) Personal information disclosed for the purpose of  
 121 responding to an alert of a present risk of harm to a person or  
 122 property or prosecuting those responsible for that activity.

123 (v) Personal information that is disclosed when a consumer  
 124 uses or directs a controller to intentionally disclose  
 125 information to a third party or uses the controller to  
 126 intentionally interact with a third party. An intentional  
 127 interaction occurs when the consumer intends to interact with  
 128 the third party, by one or more deliberate interactions.

129 Hovering over, muting, pausing, or closing a given piece of  
 130 content does not constitute a consumer's intent to interact with  
 131 a third party.

132 (w) An identifier used for a consumer who has opted out of  
 133 the sale or sharing of the consumer's personal information for  
 134 the sole purpose of alerting processors and third parties that  
 135 the consumer has opted out of the sale or sharing of the  
 136 consumer's personal information.

137 (x) Personal information transferred by a controller to a

801573

Approved For Filing: 2/25/2022 3:55:59 PM

Amendment No.

138 third party as an asset that is part of a merger, acquisition,  
139 bankruptcy, or other transaction in which the third party  
140 assumes control of all or part of the controller, provided that  
141 information is used or shared consistently with this section. If  
142 a third party materially alters how it uses or shares the  
143 personal information of a consumer in a manner that is  
144 materially inconsistent with the commitments or promises made at  
145 the time of collection, it shall provide prior notice of the new  
146 or changed practice to the consumer. The notice must be  
147 sufficiently prominent and robust to ensure that consumers can  
148 easily exercise choices consistent with this section.

149 (y) Personal information necessary to fulfill the terms of  
150 a written warranty when such warranty was purchased by the  
151 consumer or the product that is warranted was purchased by the  
152 consumer. Such information may not be sold or shared unless  
153 otherwise authorized under this section.

154 (z) Personal information necessary for a product recall  
155 for a product purchased or owned by the consumer conducted in  
156 accordance with federal law. Such information may not be sold or  
157 shared unless otherwise authorized under this section.

158 (aa) Personal information processed solely for the purpose  
159 of independently measuring or reporting advertising or content  
160 performance, reach, or frequency pursuant to a contract with a  
161 controller that collected personal information in accordance  
162 with this section. Such information may not be sold or shared

801573

Approved For Filing: 2/25/2022 3:55:59 PM

Amendment No.

163 unless otherwise authorized under this section.

164 (2) DEFINITIONS.—As used in this section, the term:

165 (a) "Aggregate consumer information" means information  
166 that relates to a group or category of consumers, from which the  
167 identity of an individual consumer has been removed and is not  
168 reasonably capable of being directly or indirectly associated or  
169 linked with, any consumer, household, or device. The term does  
170 not include personal information that has been deidentified.

171 (b) "Biometric information" means an individual's  
172 physiological, biological, or behavioral characteristics that  
173 can be used, singly or in combination with each other or with  
174 other identifying data, to establish individual identity. The  
175 term includes, but is not limited to, imagery of the iris,  
176 retina, fingerprint, face, hand, palm, vein patterns, and voice  
177 recordings, from which an identifier template, such as a  
178 faceprint, a minutiae template, or a voiceprint, can be  
179 extracted, and keystroke patterns or rhythms, gait patterns or  
180 rhythms, and sleep, health, or exercise data that contain  
181 identifying information.

182 (c) "Collect" means to buy, rent, gather, obtain, receive,  
183 or access any personal information pertaining to a consumer by  
184 any means. The term includes, but is not limited to, actively or  
185 passively receiving information from the consumer or by  
186 observing the consumer's behavior or actions.

187 (d) "Consumer" means a natural person who resides in or is

801573

Approved For Filing: 2/25/2022 3:55:59 PM

Amendment No.

188 domiciled in this state, however identified, including by any  
189 unique identifier, who is acting in a personal capacity or  
190 household context. The term does not include a natural person  
191 acting on behalf of a legal entity in a commercial or employment  
192 context.

193 (e) "Controller" means:

194 1. A sole proprietorship, partnership, limited liability  
195 company, corporation, association, or legal entity that meets  
196 the following requirements:

197 a. Is organized or operated for the profit or financial  
198 benefit of its shareholders or owners;

199 b. Does business in this state;

200 c. Collects personal information about consumers, or is  
201 the entity on behalf of which such information is collected;

202 d. Determines the purposes and means of processing  
203 personal information about consumers alone or jointly with  
204 others; and

205 e. Satisfies at least two of the following thresholds:

206 (I) Has global annual gross revenues in excess of \$50  
207 million, as adjusted in January of every odd-numbered year to  
208 reflect any increase in the Consumer Price Index.

209 (II) Annually buys, sells, or shares the personal  
210 information of 50,000 or more consumers, households, and devices  
211 for the purpose of targeted advertising in conjunction with  
212 third parties. The 50,000 total only includes personal

801573

Approved For Filing: 2/25/2022 3:55:59 PM

Amendment No.

213 information that is bought, sold, or shared within the previous  
214 12 months.

215 (III) Derives 50 percent or more of its global annual  
216 revenues from selling or sharing personal information about  
217 consumers.

218 2. Any entity that controls or is controlled by a  
219 controller. As used in this subparagraph, the term "control"  
220 means:

221 a. Ownership of, or the power to vote, more than 50  
222 percent of the outstanding shares of any class of voting  
223 security of a controller;

224 b. Control in any manner over the election of a majority  
225 of the directors, or of individuals exercising similar  
226 functions; or

227 c. The power to exercise a controlling influence over the  
228 management of a company.

229 (f) "Deidentified" means information that cannot  
230 reasonably be used to infer information about or otherwise be  
231 linked to a particular consumer, provided that the controller  
232 that possesses the information:

233 1. Takes reasonable measures to ensure that the  
234 information cannot be associated with a specific consumer;

235 2. Maintains and uses the information in deidentified form  
236 and not to attempt to reidentify the information, except that  
237 the controller may attempt to reidentify the information solely

801573

Approved For Filing: 2/25/2022 3:55:59 PM

Amendment No.

238 for the purpose of determining whether its deidentification  
239 processes satisfy the requirements of this paragraph; and

240 3. Contractually obligates any recipients of the  
241 information to comply with all the provisions of this paragraph  
242 to avoid reidentifying such information.

243 (g) "Department" means the Department of Legal Affairs.

244 (h) "Device" means a physical object associated with a  
245 consumer or household capable of directly or indirectly  
246 connecting to the Internet.

247 (i) "Genetic information" means an individual's  
248 deoxyribonucleic acid (DNA).

249 (j) "Homepage" means the introductory page of an Internet  
250 website and any Internet webpage where personal information is  
251 collected. In the case of a mobile application, the homepage is  
252 the application's platform page or download page, a link within  
253 the application, such as the "About" or "Information"  
254 application configurations, or settings page, and any other  
255 location that allows consumers to review the notice required by  
256 subsection (7), including, but not limited to, before  
257 downloading the application.

258 (k) "Household" means a natural person or a group of  
259 people in this state who reside at the same address, share a  
260 common device or the same service provided by a controller, and  
261 are identified by a controller as sharing the same group account  
262 or unique identifier.

801573

Approved For Filing: 2/25/2022 3:55:59 PM

Amendment No.

263       (l) "Personal information" means information that is  
264 linked or reasonably linkable to an identified or identifiable  
265 consumer or household, including biometric information, genetic  
266 information, and unique identifiers to the consumer. The term  
267 does not include consumer information that is:

268       1. Consumer employment contact information, including a  
269 position name or title, employment qualifications, emergency  
270 contact information, business telephone number, business  
271 electronic mail address, employee benefit information, and  
272 similar information used solely in an employment context.

273       2. Deidentified or aggregate consumer information.

274       3. Publicly and lawfully available information reasonably  
275 believed to be made available to the general public:

276       a. From federal, state, or local government records.

277       b. By a widely distributed media source.

278       c. By the consumer or by someone to whom the consumer  
279 disclosed the information unless the consumer has purposely and  
280 effectively restricted the information to a certain audience on  
281 a private account.

282       (m) "Processing" means any operation or set of operations  
283 that are performed on personal information or on sets of  
284 personal information, whether or not by automated means.

285       (n) "Processor" means a sole proprietorship, partnership,  
286 limited liability company, corporation, association, or other  
287 legal entity that is organized or operated for the profit or

801573

Approved For Filing: 2/25/2022 3:55:59 PM

Amendment No.

288 financial benefit of its shareholders or other owners, that  
289 processes information on behalf of a controller and to which the  
290 controller discloses a consumer's personal information pursuant  
291 to a written contract, provided that the contract prohibits the  
292 entity receiving the information from retaining, using, or  
293 disclosing the personal information for any purpose other than  
294 for the specific purpose of performing the services specified in  
295 the contract for the controller, as permitted by this section.

296 (o) "Sell" means to sell, rent, release, disclose,  
297 disseminate, make available, transfer, or otherwise communicate  
298 orally, in writing, or by electronic or other means, a  
299 consumer's personal information by a controller to another  
300 controller or a third party for monetary or other valuable  
301 consideration.

302 (p) "Share" means to share, rent, release, disclose,  
303 disseminate, make available, transfer, or access a consumer's  
304 personal information for advertising or marketing. The term  
305 includes:

306 1. Allowing a third party to advertise or market to a  
307 consumer based on a consumer's personal information without  
308 disclosure of the personal information to the third party.

309 2. Monetary transactions, nonmonetary transactions, and  
310 transactions for other valuable consideration between a  
311 controller and a third party for advertising or marketing.

312 (q) "Targeted advertising" means marketing to a consumer

801573

Approved For Filing: 2/25/2022 3:55:59 PM

Amendment No.

313 or displaying an advertisement to a consumer when the  
314 advertisement is selected based on personal information used to  
315 predict such consumer's preferences or interests.

316 (r) "Third party" means a person who is not the controller  
317 or the processor.

318 (s) "Verifiable consumer request" means a request related  
319 to personal information that is made by a consumer, by a parent  
320 or guardian on behalf of a consumer who is a minor child, or by  
321 a person authorized by the consumer to act on the consumer's  
322 behalf, in a form that is reasonably and readily accessible to  
323 consumers and that the controller can reasonably verify to be  
324 the consumer, pursuant to rules adopted by the department.

325 (3) CONSUMER DATA COLLECTION REQUIREMENTS AND  
326 RESPONSIBILITIES.-

327 (a) A controller that collects personal information about  
328 consumers shall maintain an up-to-date online privacy policy and  
329 make such policy available from its homepage. The online privacy  
330 policy must include the following information:

331 1. Any Florida-specific consumer privacy rights.

332 2. A list of the types and categories of personal  
333 information the controller collects, sells, or shares, or has  
334 collected, sold, or shared, about consumers.

335 3. The consumer's right to request deletion or correction  
336 of certain personal information.

337 4. The consumer's right to opt-out of the sale or sharing

801573

Approved For Filing: 2/25/2022 3:55:59 PM

Amendment No.

338 to third parties.

339 (b) A controller that collects personal information from  
340 the consumer shall, at or before the point of collection,  
341 inform, or direct the processor to inform, consumers of the  
342 categories of personal information to be collected and the  
343 purposes for which the categories of personal information will  
344 be used.

345 (c) A controller may not collect additional categories of  
346 personal information or use personal information collected for  
347 additional purposes without providing the consumer with notice  
348 consistent with this section.

349 (d) A controller that collects a consumer's personal  
350 information shall implement and maintain reasonable security  
351 procedures and practices appropriate to the nature of the  
352 personal information to protect the personal information from  
353 unauthorized or illegal access, destruction, use, modification,  
354 or disclosure.

355 (e) A controller shall adopt and implement a retention  
356 schedule that prohibits the use or retention of personal  
357 information not subject to an exemption by the controller or  
358 processor after the satisfaction of the initial purpose for  
359 which such information was collected or obtained, after the  
360 expiration or termination of the contract pursuant to which the  
361 information was collected or obtained, or 3 years after the  
362 consumer's last interaction with the controller. This paragraph

801573

Approved For Filing: 2/25/2022 3:55:59 PM

Amendment No.

363 does not apply to personal information reasonably used or  
364 retained to do any of the following:

365 1. Fulfill the terms of a written warranty or product  
366 recall conducted in accordance with federal law.

367 2. Provide a good or service requested by the consumer, or  
368 reasonably anticipate the request of such good or service within  
369 the context of a controller's ongoing business relationship with  
370 the consumer.

371 3. Detect security threats or incidents; protect against  
372 malicious, deceptive, fraudulent, unauthorized, or illegal  
373 activity or access; or prosecute those responsible for such  
374 activity or access.

375 4. Debug to identify and repair errors that impair  
376 existing intended functionality.

377 5. Engage in public or peer-reviewed scientific,  
378 historical, or statistical research in the public interest that  
379 adheres to all other applicable ethics and privacy laws when the  
380 controller's deletion of the information is likely to render  
381 impossible or seriously impair the achievement of such research,  
382 if the consumer has provided informed consent.

383 6. Enable solely internal uses that are reasonably aligned  
384 with the expectations of the consumer based on the consumer's  
385 relationship with the controller or that are compatible with the  
386 context in which the consumer provided the information.

387 7. Comply with a legal obligation, including any state or

801573

Approved For Filing: 2/25/2022 3:55:59 PM

Amendment No.

388 federal retention laws.

389 8. As reasonably needed to protect the controller's  
390 interests against existing disputes, legal action, or  
391 governmental investigations.

392 9. Assure the physical security of persons or property.

393 (4) CONSUMER RIGHT TO REQUEST COPY OF PERSONAL DATA  
394 COLLECTED, SOLD, OR SHARED.—

395 (a) A consumer has the right to request that a controller  
396 that collects, sells, or shares personal information about the  
397 consumer to disclose the following to the consumer:

398 1. The specific pieces of personal information that have  
399 been collected about the consumer.

400 2. The categories of sources from which the consumer's  
401 personal information was collected.

402 3. The specific pieces of personal information about the  
403 consumer that were sold or shared.

404 4. The third parties to which the personal information  
405 about the consumer was sold or shared.

406 5. The categories of personal information about the  
407 consumer that were disclosed to a processor.

408 (b) A controller that collects, sells, or shares personal  
409 information about a consumer shall disclose the information  
410 specified in paragraph (a) to the consumer upon receipt of a  
411 verifiable consumer request.

412 (c) This subsection does not require a controller to

801573

Approved For Filing: 2/25/2022 3:55:59 PM

Amendment No.

413 retain, reidentify, or otherwise link any data that, in the  
414 ordinary course of business is not maintained in a manner that  
415 would be considered personal information.

416 (d) The controller shall deliver the information required  
417 or act on the request in this subsection to a consumer free of  
418 charge within 45 calendar days after receiving a verifiable  
419 consumer request. The response period may be extended once by 45  
420 additional calendar days when reasonably necessary, provided the  
421 controller informs the consumer of any such extension within the  
422 initial 45-day response period and the reason for the extension.  
423 The information must be delivered in a readily usable format. A  
424 controller is not obligated to provide information to the  
425 consumer if the consumer or a person authorized to act on the  
426 consumer's behalf does not provide verification of identity or  
427 verification of authorization to act with the permission of the  
428 consumer.

429 (e) A controller may provide personal information to a  
430 consumer at any time, but is not required to provide personal  
431 information to a consumer more than twice in a 12-month period.

432 (f) This subsection does not apply to personal information  
433 relating solely to households.

434 (5) RIGHT TO HAVE PERSONAL INFORMATION DELETED OR  
435 CORRECTED.—

436 (a) A consumer has the right to request that a controller  
437 delete any personal information about the consumer which the

801573

Approved For Filing: 2/25/2022 3:55:59 PM

Amendment No.

438 controller has collected.

439 1. A controller that receives a verifiable consumer  
440 request to delete the consumer's personal information shall  
441 delete the consumer's personal information from its records and  
442 direct any processors to delete such information within 90  
443 calendar days of receipt of the verifiable consumer request.

444 2. A controller or a processor acting pursuant to its  
445 contract with the controller may not be required to comply with  
446 a consumer's request to delete the consumer's personal  
447 information if it is reasonably necessary for the controller or  
448 processor to maintain the consumer's personal information to do  
449 any of the following:

450 a. Complete the transaction for which the personal  
451 information was collected.

452 b. Fulfill the terms of a written warranty or product  
453 recall conducted in accordance with federal law.

454 c. Provide a good or service requested by the consumer, or  
455 reasonably anticipate the request of such good or service within  
456 the context of a controller's ongoing business relationship with  
457 the consumer, or otherwise perform a contract between the  
458 controller and the consumer.

459 d. Detect security threats or incidents; protect against  
460 malicious, deceptive, fraudulent, unauthorized, or illegal  
461 activity or access; or prosecute those responsible for such  
462 activity or access.

801573

Approved For Filing: 2/25/2022 3:55:59 PM

Amendment No.

463 e. Debug to identify and repair errors that impair  
464 existing intended functionality.

465 f. Engage in public or peer-reviewed scientific,  
466 historical, or statistical research in the public interest that  
467 adheres to all other applicable ethics and privacy laws when the  
468 controller's deletion of the information is likely to render  
469 impossible or seriously impair the achievement of such research,  
470 if the consumer has provided informed consent.

471 g. Enable solely internal uses that are reasonably aligned  
472 with the expectations of the consumer based on the consumer's  
473 relationship with the controller or that are compatible with the  
474 context in which the consumer provided the information.

475 h. Comply with a legal obligation, including any state or  
476 federal retention laws.

477 i. As reasonably needed to protect the controller's  
478 interests against existing disputes, legal action, or  
479 governmental investigations.

480 j. Assure the physical security of persons or property.

481 (b) A consumer has the right to make a request to correct  
482 inaccurate personal information to a controller that maintains  
483 inaccurate personal information about the consumer. A controller  
484 that receives a verifiable consumer request to correct  
485 inaccurate personal information shall use commercially  
486 reasonable efforts to correct the inaccurate personal  
487 information as directed by the consumer and direct any

801573

Approved For Filing: 2/25/2022 3:55:59 PM

Amendment No.

488 processors to correct such information within 90 calendar days  
 489 after receipt of the verifiable consumer request. If a  
 490 controller maintains a self-service mechanism to allow a  
 491 consumer to correct certain personal information, the controller  
 492 may require the consumer to correct their own personal  
 493 information through such mechanism. A controller or a processor  
 494 acting pursuant to its contract with the controller may not be  
 495 required to comply with a consumer's request to correct the  
 496 consumer's personal information if it is reasonably necessary  
 497 for the controller or processor to maintain the consumer's  
 498 personal information to do any of the following:

- 499 1. Complete the transaction for which the personal  
 500 information was collected.
- 501 2. Fulfill the terms of a written warranty or product  
 502 recall conducted in accordance with federal law.
- 503 3. Detect security threats or incidents; protect against  
 504 malicious, deceptive, fraudulent, unauthorized, or illegal  
 505 activity or access; or prosecute those responsible for such  
 506 activity or access.
- 507 4. Debug to identify and repair errors that impair  
 508 existing intended functionality.
- 509 5. Enable solely internal uses that are reasonably aligned  
 510 with the expectations of the consumer based on the consumer's  
 511 relationship with the controller or that are compatible with the  
 512 context in which the consumer provided the information.

801573

Approved For Filing: 2/25/2022 3:55:59 PM

Amendment No.

513 6. Comply with a legal obligation, including any state or  
514 federal retention laws.

515 7. As reasonably needed to protect the controller's  
516 interests against existing disputes, legal action, or  
517 governmental investigations.

518 8. Assure the physical security of persons or property.

519 (6) RIGHT TO OPT-OUT OF THE SALE OR SHARING OF PERSONAL  
520 INFORMATION.—

521 (a) A consumer has the right at any time to direct a  
522 controller not to sell or share the consumer's personal  
523 information to a third party. This right may be referred to as  
524 the right to opt-out.

525 (b) Notwithstanding paragraph (a), a controller may not  
526 sell or share the personal information of a minor consumer if  
527 the controller has actual knowledge that the consumer is not 18  
528 years of age or older. However, if a consumer who is between 13  
529 and 18 years of age, or if the parent or guardian of a consumer  
530 who is 12 years of age or younger, has affirmatively authorized  
531 the sale or sharing of such consumer's personal information,  
532 then a controller may sell or share such information in  
533 accordance with this section. A controller that willfully  
534 disregards the consumer's age is deemed to have actual knowledge  
535 of the consumer's age. A controller that complies with the  
536 verifiable parental consent requirements of the Children's  
537 Online Privacy Protection Act, 15 U.S.C. s. 6501 et seq., shall

801573

Approved For Filing: 2/25/2022 3:55:59 PM

Amendment No.

538 be deemed compliant with any obligation to obtain parental  
539 consent.

540 (c) A controller that has received direction from a  
541 consumer opting-out of the sale or sharing of the consumer's  
542 personal information is prohibited from selling or sharing the  
543 consumer's personal information beginning 4 calendar days after  
544 receipt of such direction, unless the consumer subsequently  
545 provides express authorization for the sale or sharing of the  
546 consumer's personal information.

547 (7) FORM TO OPT-OUT OF SALE OR SHARING OF PERSONAL  
548 INFORMATION.-

549 (a) A controller shall:

550 1. In a form that is reasonably accessible to consumers,  
551 provide a clear and conspicuous link on the controller's  
552 Internet homepage, entitled "Do Not Sell or Share My Personal  
553 Information," to an Internet webpage that enables a consumer, or  
554 a person authorized by the consumer, to opt-out of the sale or  
555 sharing of the consumer's personal information. A controller may  
556 not require a consumer to create an account in order to direct  
557 the controller not to sell or share the consumer's personal  
558 information. A controller may accept a request to opt-out  
559 received through a user-enabled global privacy control, such as  
560 a browser plug-in or privacy setting, device setting, or other  
561 mechanism, which communicates or signals the consumer's choice  
562 to opt out.

801573

Approved For Filing: 2/25/2022 3:55:59 PM

Amendment No.

563 2. For consumers who opted-out of the sale or sharing of  
564 their personal information, respect the consumer's decision to  
565 opt-out for at least 12 months before requesting that the  
566 consumer authorize the sale or sharing of the consumer's  
567 personal information.

568 3. Use any personal information collected from the  
569 consumer in connection with the submission of the consumer's  
570 opt-out request solely for the purposes of complying with the  
571 opt-out request.

572 (b) A consumer may authorize another person to opt-out of  
573 the sale or sharing of the consumer's personal information on  
574 the consumer's behalf pursuant to rules adopted by the  
575 department.

576 (8) ACTIONS RELATED TO CONSUMERS WHO EXERCISE PRIVACY  
577 RIGHTS.—

578 (a) A controller may charge a consumer who exercised any  
579 of the consumer's rights under this section a different price or  
580 rate, or provide a different level or quality of goods or  
581 services to the consumer, only if that difference is reasonably  
582 related to the value provided to the controller by the  
583 consumer's data or is related to a consumer's voluntary  
584 participation in a financial incentive program, including a bona  
585 fide loyalty, rewards, premium features, discounts, or club card  
586 program offered by the controller.

587 (b) A controller may offer financial incentives, including

801573

Approved For Filing: 2/25/2022 3:55:59 PM

Amendment No.

588 payments to consumers as compensation, for the collection,  
589 sharing, sale, or deletion of personal information if the  
590 consumer gives the controller prior consent that clearly  
591 describes the material terms of the financial incentive program.  
592 The consent may be revoked by the consumer at any time.

593 (c) A controller may not use financial incentive practices  
594 that are unjust, unreasonable, coercive, or usurious in nature.

595 (9) CONTRACTS AND ROLES.-

596 (a) Any contract or agreement between a controller and a  
597 processor must:

598 1. Prohibit the processor from selling, sharing,  
599 retaining, using, or disclosing the personal information for any  
600 purpose that violates this section;

601 2. Govern the processor's personal information processing  
602 procedures with respect to processing performed on behalf of the  
603 controller, including processing instructions, the nature and  
604 purpose of processing, the type of information subject to  
605 processing, the duration of processing, and the rights and  
606 obligations of both the controller and processor;

607 3. Require the processor to return or delete all personal  
608 information under the contract to the controller as requested by  
609 the controller at the end of the provision of services, unless  
610 retention of the information is required by law; and

611 4. Upon request of the controller, require the processor  
612 to make available to the controller all personal information in

801573

Approved For Filing: 2/25/2022 3:55:59 PM

Amendment No.

613 its possession under the contract or agreement.

614 (b) Determining whether a person is acting as a controller  
615 or processor with respect to a specific processing of data is a  
616 fact-based determination that depends upon the context in which  
617 personal information is to be processed. The contract between a  
618 controller and processor must reflect their respective roles and  
619 relationships related to handling personal information. A  
620 processor that continues to adhere to a controller's  
621 instructions with respect to a specific processing of personal  
622 information remains a processor.

623 (c) A third party may not sell or share personal  
624 information about a consumer that has been sold or shared to the  
625 third party by a controller unless the consumer has received  
626 explicit notice from the third party and is provided an  
627 opportunity to opt-out by the third party.

628 (d) A processor or third party must require any  
629 subcontractor to meet the same obligations of such processor or  
630 third party with respect to personal information.

631 (e) A processor or third party or any subcontractor  
632 thereof who violates any of the restrictions imposed upon it  
633 under this section is liable or responsible for any failure to  
634 comply with this section.

635 (f) Any provision of a contract or agreement of any kind  
636 that waives or limits in any way a consumer's rights under this  
637 section, including, but not limited to, any right to a remedy or

801573

Approved For Filing: 2/25/2022 3:55:59 PM

Amendment No.

638 means of enforcement, is deemed contrary to public policy and is  
639 void and unenforceable. This section does not prevent a consumer  
640 from declining to exercise the consumer's rights under this  
641 section.

642 (10) CIVIL ACTIONS; PRIVATE RIGHT OF ACTION.—

643 (a) A Florida consumer may only bring a civil action  
644 pursuant to this section against:

645 1. A controller, processor, or third party who has global  
646 annual gross revenues of at least \$50 million, but not more than  
647 \$500 million, as adjusted in January of every odd-numbered year  
648 to reflect any increase in the Consumer Price Index. Upon  
649 prevailing, the Florida consumer may be awarded relief described  
650 in paragraph (c), but may not be awarded attorney fees or costs.  
651 Any private claim solely based on this section against a  
652 controller, processor, or third party who has global annual  
653 gross revenues of less than \$50 million, is barred.

654 2. A controller, processor, or third party who has global  
655 annual gross revenues of more than \$500 million, as adjusted in  
656 January of every odd-numbered year to reflect any increase in  
657 the Consumer Price Index. Upon prevailing, the Florida consumer  
658 may be awarded relief described in paragraph (c), and shall  
659 recover reasonable attorney fees and costs.

660 (b) A Florida consumer may only bring a civil action  
661 pursuant to this section against a controller, processor, or  
662 third party who meets a threshold in paragraph (a) for the

801573

Approved For Filing: 2/25/2022 3:55:59 PM

Amendment No.

663 following actions:

664 1. Failure to delete or correct the consumer's personal  
665 information pursuant to this section after receiving a  
666 verifiable consumer request or directions to delete or correct  
667 from a controller unless the controller, processor, or third  
668 party qualifies for an exception to the requirements to delete  
669 or correct under this section.

670 2. Continuing to sell or share the consumer's personal  
671 information after the consumer chooses to opt-out pursuant to  
672 this section.

673 3. Selling or sharing the personal information of the  
674 consumer age 18 or younger without obtaining consent as required  
675 by this section.

676 (c) A court may grant the following relief to a Florida  
677 consumer:

678 1. Statutory damages in an amount not less than \$100 and  
679 not greater than \$750 per consumer per incident or actual  
680 damages, whichever is greater.

681 2. Injunctive or declaratory relief.

682 (d) Upon prevailing, a controller, processor, or third  
683 party may only be awarded attorney fees if the court finds that  
684 there was a complete absence of a justiciable issue of either  
685 law or fact raised by the consumer or if the court finds bad  
686 faith on the part of the consumer, including if the consumer is  
687 not a Florida consumer.

801573

Approved For Filing: 2/25/2022 3:55:59 PM

Amendment No.

688 (e) A consumer must commence a civil action for a claim  
689 under this section within 1 year after discovery of the  
690 violation.

691 (f) Any action under this subsection may only be brought  
692 by or on behalf of a Florida consumer.

693 (g) Liability for a tort, contract claim, or consumer  
694 protection claim which is unrelated to an action brought under  
695 this subsection or subsection (11) does not arise solely from  
696 the failure of a controller, processor, or third party to comply  
697 with this section and evidence of such may only be used as the  
698 basis to prove a cause of action under this subsection.

699 (h) In assessing the amount of statutory damages, the  
700 court shall consider any one or more of the relevant  
701 circumstances presented by any of the parties to the case,  
702 including, but not limited to, the nature and seriousness of the  
703 misconduct, the number of violations, the length of time over  
704 which the misconduct occurred, and the defendant's assets,  
705 liability, and net worth.

706 (11) ENFORCEMENT AND IMPLEMENTATION BY THE DEPARTMENT.—

707 (a) Any violation of this section is an unfair and  
708 deceptive trade practice actionable under part II of chapter 501  
709 solely by the department against a controller, processor, or  
710 person. If the department has reason to believe that any  
711 controller, processor, or third party is in violation of this  
712 section, the department, as the enforcement authority, may bring

801573

Approved For Filing: 2/25/2022 3:55:59 PM

Amendment No.

713 an action against such controller, processor, or third party for  
714 an unfair or deceptive act or practice. For the purpose of  
715 bringing an action pursuant to this section, ss. 501.211 and  
716 501.212 do not apply. Civil penalties may be tripled if the  
717 violation:

718 1. Involves a Florida consumer who the controller,  
719 processor, or third party has actual knowledge is 18 years of  
720 age or younger; or

721 2. Is based on paragraph (10) (b) .

722 (b) After the department has notified a controller,  
723 processor, or third party in writing of an alleged violation,  
724 the department may in its discretion grant a 45-day period to  
725 cure the alleged violation. The 45-day cure period does not  
726 apply to a violation of subparagraph (10) (b)1. The department  
727 may consider the number and frequency of violations, the  
728 substantial likelihood of injury to the public, and the safety  
729 of persons or property when determining whether to grant 45  
730 calendar days to cure and the issuance of a letter of guidance.  
731 If the violation is cured to the satisfaction of the department  
732 and proof of such cure is provided to the department, the  
733 department in its discretion may issue a letter of guidance. If  
734 the controller, processor, or third party fails to cure the  
735 violation within 45 calendar days, the department may bring an  
736 action against the controller, processor, or third party for the  
737 alleged violation.

801573

Approved For Filing: 2/25/2022 3:55:59 PM

Amendment No.

738 (c) Any action brought by the department may only be  
739 brought on behalf of a Florida consumer.

740 (d) By February 1 of each year, the department shall  
741 submit a report to the President of the Senate and the Speaker  
742 of the House of Representatives describing any actions taken by  
743 the department to enforce this section. The report shall include  
744 statistics and relevant information detailing:

745 1. The number of complaints received;

746 2. The number and type of enforcement actions taken and  
747 the outcomes of such actions;

748 3. The number of complaints resolved without the need for  
749 litigation; and

750 4. The status of the development and implementation of  
751 rules to implement this section.

752 (e) The department may adopt rules to implement this  
753 section, including standards for verifiable consumer requests,  
754 enforcement, data security, and authorized persons who may act  
755 on a consumer's behalf.

756 (12) JURISDICTION.—For purposes of bringing an action in  
757 accordance with subsections (10) and (11), any person who meets  
758 the definition of controller as defined in this section that  
759 collects, shares, or sells the personal information of Florida  
760 consumers, is considered to be both engaged in substantial and  
761 not isolated activities within this state and operating,  
762 conducting, engaging in, or carrying on a business, and doing

801573

Approved For Filing: 2/25/2022 3:55:59 PM

Amendment No.

763 business in this state, and is therefore subject to the  
764 jurisdiction of the courts of this state.

765 (13) PREEMPTION.—This section is a matter of statewide  
766 concern and supersedes all rules, regulations, codes,  
767 ordinances, and other laws adopted by a city, county, city and  
768 county, municipality, or local agency regarding the collection,  
769 processing, sharing, or sale of consumer personal information by  
770 a controller or processor. The regulation of the collection,  
771 processing, sharing, or sale of consumer personal information by  
772 a controller or processor is preempted to the state.

773 Section 2. Paragraph (g) of subsection (1) of section  
774 501.171, Florida Statutes, is amended to read:

775 501.171 Security of confidential personal information.—

776 (1) DEFINITIONS.—As used in this section, the term:

777 (g)1. "Personal information" means either of the  
778 following:

779 a. An individual's first name or first initial and last  
780 name in combination with any one or more of the following data  
781 elements for that individual:

782 (I) A social security number;

783 (II) A driver license or identification card number,  
784 passport number, military identification number, or other  
785 similar number issued on a government document used to verify  
786 identity;

801573

Approved For Filing: 2/25/2022 3:55:59 PM

Amendment No.

787 (III) A financial account number or credit or debit card  
788 number, in combination with any required security code, access  
789 code, or password that is necessary to permit access to an  
790 individual's financial account;

791 (IV) Any information regarding an individual's medical  
792 history, mental or physical condition, or medical treatment or  
793 diagnosis by a health care professional; or

794 (V) An individual's health insurance policy number or  
795 subscriber identification number and any unique identifier used  
796 by a health insurer to identify the individual.

797 (VI) An individual's biometric information or genetic  
798 information as defined in s. 501.173(2).

799 b. A user name or e-mail address, in combination with a  
800 password or security question and answer that would permit  
801 access to an online account.

802 2. The term does not include information about an  
803 individual that has been made publicly available by a federal,  
804 state, or local governmental entity. The term also does not  
805 include information that is encrypted, secured, or modified by  
806 any other method or technology that removes elements that  
807 personally identify an individual or that otherwise renders the  
808 information unusable.

809 Section 3. This act shall take effect January 1, 2023.

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811 -----

801573

Approved For Filing: 2/25/2022 3:55:59 PM

Amendment No.

**T I T L E   A M E N D M E N T**

Remove everything before the enacting clause and insert:

A bill to be entitled

An act relating to consumer data privacy; creating s. 501.173, F.S.; providing applicability; providing definitions; requiring controllers that collect a consumer's personal data to disclose certain information regarding data collection and selling practices to the consumer at or before the point of collection; specifying that such information may be provided through a general privacy policy or through a notice informing the consumer that additional specific information will be provided upon a certain request; prohibiting controllers from collecting additional categories of personal information or using personal information for additional purposes without notifying the consumer; requiring controllers that collect personal information to implement reasonable security procedures and practices to protect the information; authorizing consumers to request controllers to disclose the specific personal information the controller has collected about the consumer; requiring controllers to make available two or more methods for consumers to request their personal information; requiring controllers to provide such information free

801573

Approved For Filing: 2/25/2022 3:55:59 PM

Amendment No.

837 of charge within a certain timeframe and in a certain  
838 format upon receiving a verifiable consumer request;  
839 specifying requirements for third parties with respect  
840 to consumer information acquired or used; providing  
841 construction; authorizing consumers to request  
842 controllers to delete or correct personal information  
843 the controllers have collected about the consumers;  
844 providing exceptions; specifying requirements for  
845 controllers to comply with deletion or correction  
846 requests; authorizing consumers to opt out of third-  
847 party disclosure of personal information collected by  
848 a controller; prohibiting controllers from selling or  
849 disclosing the personal information of consumers  
850 younger than a certain age, except under certain  
851 circumstances; prohibiting controllers from selling or  
852 sharing a consumer's information if the consumer has  
853 opted out of such disclosure; prohibiting controllers  
854 from taking certain actions to retaliate against  
855 consumers who exercise certain rights; providing  
856 applicability; providing that a contract or agreement  
857 that waives or limits certain consumer rights is void  
858 and unenforceable; providing for civil actions and a  
859 private right of action for consumers under certain  
860 circumstances; providing civil remedies; authorizing  
861 the Department of Legal Affairs to bring an action

801573

Approved For Filing: 2/25/2022 3:55:59 PM

Amendment No.

862 under the Florida Unfair or Deceptive Trade Practices  
863 Act and to adopt rules; requiring the department to  
864 submit an annual report to the Legislature; providing  
865 report requirements; providing that controllers must  
866 have a specified timeframe to cure any violations;  
867 providing jurisdiction; declaring that the act is  
868 matter of statewide concern; preempting the  
869 collection, processing, sharing, and sale of consumer  
870 personal information to the state; amending s.  
871 501.171, F.S.; revising the definition of "personal  
872 information"; providing an effective date.

801573

Approved For Filing: 2/25/2022 3:55:59 PM