

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

| | | |
|-----------------------|---------------|-------|
| ADOPTED | <u> </u> | (Y/N) |
| ADOPTED AS AMENDED | <u> </u> | (Y/N) |
| ADOPTED W/O OBJECTION | <u> </u> | (Y/N) |
| FAILED TO ADOPT | <u> </u> | (Y/N) |
| WITHDRAWN | <u> </u> | (Y/N) |
| OTHER | <u> </u> | |

1 Committee/Subcommittee hearing bill: Commerce Committee
 2 Representative McFarland offered the following:

Amendment (with title amendment)

5 Remove everything after the enacting clause and insert:
 6 Section 1. Section 501.173, Florida Statutes, is created
 7 to read:

8 501.173 Consumer data privacy.-

9 (1) APPLICABILITY.-This section does not apply to:

10 (a) Personal information collected and transmitted that is
 11 necessary for the sole purpose of sharing such personal
 12 information with a financial service provider solely to
 13 facilitate short term, transactional payment processing for the
 14 purchase of products or services.

15 (b) Personal information collected, used, retained, sold,
 16 shared, or disclosed as deidentified personal information or

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- 17 aggregate consumer information.
- 18 (c) Compliance with federal, state, or local laws.
- 19 (d) Compliance with a civil, criminal, or regulatory
20 inquiry, investigation, subpoena, or summons by federal, state,
21 or local authorities.
- 22 (e) Cooperation with law enforcement agencies concerning
23 conduct or activity that the controller, processor, or third
24 party reasonably and in good faith believes may violate federal,
25 state, or local law.
- 26 (f) Exercising or defending legal claims.
- 27 (g) Personal information obtained through the controller's
28 direct interactions with the consumer, if collected in
29 accordance with the provisions of this section, that is used by
30 the controller or the processor that the controller directly
31 contracts with for advertising or marketing services to
32 advertise or market products or services that are produced or
33 offered directly by the controller. Such information may not be
34 sold, shared, or disclosed unless otherwise authorized under
35 this section.
- 36 (h) Personal information of a person acting in the role of
37 a job applicant, employee, owner, director, officer, contractor,
38 volunteer, or intern of a controller, that is collected by a
39 controller, to the extent the personal information is collected
40 and used solely within the context of the person's role or
41 former role with the controller.

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42 (i) Protected health information for purposes of the
43 federal Health Insurance Portability and Accountability Act of
44 1996 and related regulations, and patient identifying
45 information for purposes of 42 C.F.R. part 2, established
46 pursuant to 42 U.S.C. s. 290dd-2.

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

60 (k) Identifiable private information collected for
61 purposes of research as defined in 45 C.F.R. s. 164.501
62 conducted in accordance with the Federal Policy for the
63 Protection of Human Subjects for purposes of 45 C.F.R. part 46,
64 the good clinical practice guidelines issued by the
65 International Council for Harmonisation of Technical
66 Requirements for Pharmaceuticals for Human Use, or the

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67 Protection for Human Subjects for purposes of 21 C.F.R. parts 50
68 and 56, or personal information that is used or shared in
69 research conducted in accordance with one or more of these
70 standards.

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

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

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

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

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

91 (q) A financial institution as defined in the Gramm-Leach-

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

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

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

106 (t) Information collected as part of public or peer-
107 reviewed scientific or statistical research in the public
108 interest and that adheres to all other applicable ethics and
109 privacy laws, if the consumer has provided informed consent.
110 Research with personal information must be subjected by the
111 controller conducting the research to additional security
112 controls that limit access to the research data to only those
113 individuals necessary to carry out the research purpose and
114 subsequently deidentified.

115 (u) Personal information disclosed for the purpose of
116 responding to an alert of a present risk of harm to a person or

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117 property or prosecuting those responsible for that activity.

118 (v) Personal information that is disclosed when a consumer
119 uses or directs a controller to intentionally disclose
120 information to a third party or uses the controller to
121 intentionally interact with a third party. An intentional
122 interaction occurs when the consumer intends to interact with
123 the third party, by one or more deliberate interactions.
124 Hovering over, muting, pausing, or closing a given piece of
125 content does not constitute a consumer's intent to interact with
126 a third party.

127 (w) An identifier used for a consumer who has opted out of
128 the sale or sharing of the consumer's personal information for
129 the sole purpose of alerting processors and third parties that
130 the consumer has opted out of the sale or sharing of the
131 consumer's personal information.

132 (x) Personal information transferred by a controller to a
133 third party as an asset that is part of a merger, acquisition,
134 bankruptcy, or other transaction in which the third party
135 assumes control of all or part of the controller, provided that
136 information is used or shared consistently with this section. If
137 a third party materially alters how it uses or shares the
138 personal information of a consumer in a manner that is
139 materially inconsistent with the commitments or promises made at
140 the time of collection, it shall provide prior notice of the new
141 or changed practice to the consumer. The notice must be

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142 sufficiently prominent and robust to ensure that consumers can
143 easily exercise choices consistent with this section.

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

145 (a) "Aggregate consumer information" means information
146 that relates to a group or category of consumers, from which the
147 identity of an individual consumer has been removed and is not
148 reasonably capable of being directly or indirectly associated or
149 linked with, any consumer, household, or device. The term does
150 not include personal information that has been deidentified.

151 (b) "Biometric information" means an individual's
152 physiological, biological, or behavioral characteristics,
153 including an individual's deoxyribonucleic acid (DNA), that can
154 be used, singly or in combination with each other or with other
155 identifying data, to establish individual identity. The term
156 includes, but is not limited to, imagery of the iris, retina,
157 fingerprint, face, hand, palm, vein patterns, and voice
158 recordings, from which an identifier template, such as a
159 faceprint, a minutiae template, or a voiceprint, can be
160 extracted, and keystroke patterns or rhythms, gait patterns or
161 rhythms, and sleep, health, or exercise data that contain
162 identifying information.

163 (c) "Collect" means to buy, rent, gather, obtain, receive,
164 or access any personal information pertaining to a consumer by
165 any means. The term includes, but is not limited to, actively or
166 passively receiving information from the consumer or by

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167 observing the consumer's behavior or actions.

168 (d) "Consumer" means a natural person who resides in or is
169 domiciled in this state, however identified, including by any
170 unique identifier, who is acting in a personal capacity or
171 household context. The term does not include a natural person
172 acting on behalf of a legal entity in a commercial or employment
173 context.

174 (e) "Controller" means:

175 1. A sole proprietorship, partnership, limited liability
176 company, corporation, association, or legal entity that meets
177 the following requirements:

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

180 b. Does business in this state;

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

183 d. Determines the purposes and means of processing
184 personal information about consumers alone or jointly with
185 others; and

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

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

190 (II) Annually buys, receives, sells, or shares the
191 personal information of 50,000 or more consumers, households,

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192 and devices for the purpose of targeted advertising in
193 conjunction with third parties or for a purpose that is not
194 listed under subsection (1).

195 (III) Derives 50 percent or more of its global annual
196 revenues from selling or sharing personal information about
197 consumers.

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

201 a. Ownership of, or the power to vote, more than 50
202 percent of the outstanding shares of any class of voting
203 security of a controller;

204 b. Control in any manner over the election of a majority
205 of the directors, or of individuals exercising similar
206 functions; or

207 c. The power to exercise a controlling influence over the
208 management of a company.

209 (f) "Deidentified" means information that cannot
210 reasonably be used to infer information about or otherwise be
211 linked to a particular consumer, provided that the controller
212 that possesses the information:

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

215 2. Maintains and uses the information in deidentified form
216 and not to attempt to reidentify the information, except that

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217 the controller may attempt to reidentify the information solely
218 for the purpose of determining whether its deidentification
219 processes satisfy the requirements of this paragraph; and

220 3. Contractually obligates any recipients of the
221 information to comply with all the provisions of this paragraph
222 to avoid reidentifying such information.

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

224 (h) "Device" means a physical object associated with a
225 consumer or household capable of directly or indirectly
226 connecting to the Internet.

227 (i) "Homepage" means the introductory page of an Internet
228 website and any Internet webpage where personal information is
229 collected. In the case of a mobile application, the homepage is
230 the application's platform page or download page, a link within
231 the application, such as the "About" or "Information"
232 application configurations, or settings page, and any other
233 location that allows consumers to review the notice required by
234 subsection (7), including, but not limited to, before
235 downloading the application.

236 (j) "Household" means a natural person or a group of
237 people in this state who reside at the same address, share a
238 common device or the same service provided by a controller, and
239 are identified by a controller as sharing the same group account
240 or unique identifier.

241 (k) "Personal information" means information that is

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242 linked or reasonably linkable to an identified or identifiable
243 consumer or household, including biometric information and
244 unique identifiers to the consumer. The term does not include
245 consumer information that is:

246 1. Consumer employment contact information, including a
247 position name or title, employment qualifications, emergency
248 contact information, business telephone number, business
249 electronic mail address, employee benefit information, and
250 similar information used solely in an employment context.

251 2. Deidentified or aggregate consumer information.

252 3. Publicly and lawfully available information reasonably
253 believed to be made available to the public in a lawful manner
254 and without legal restrictions:

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

256 b. By a widely distributed media source.

257 c. By the consumer or by someone to whom the consumer
258 disclosed the information unless the consumer has purposely and
259 effectively restricted the information to a certain audience on
260 a private account.

261 (l) "Processing" means any operation or set of operations
262 that are performed on personal information or on sets of
263 personal information, whether or not by automated means.

264 (m) "Processor" means a sole proprietorship, partnership,
265 limited liability company, corporation, association, or other
266 legal entity that is organized or operated for the profit or

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267 financial benefit of its shareholders or other owners, that
268 processes information on behalf of a controller and to which the
269 controller discloses a consumer's personal information pursuant
270 to a written contract, provided that the contract prohibits the
271 entity receiving the information from retaining, using, or
272 disclosing the personal information for any purpose other than
273 for the specific purpose of performing the services specified in
274 the contract for the controller, as permitted by this section.

275 (n) "Sell" means to sell, rent, release, disclose,
276 disseminate, make available, transfer, or otherwise communicate
277 orally, in writing, or by electronic or other means, a
278 consumer's personal information by a controller to another
279 controller or a third party for monetary or other valuable
280 consideration.

281 (o) "Share" means to share, rent, release, disclose,
282 disseminate, make available, transfer, or access a consumer's
283 personal information for advertising or marketing. The term
284 includes:

285 1. Allowing a third party to use or advertise or market to
286 a consumer based on a consumer's personal information without
287 disclosure of the personal information to the third party.

288 2. Monetary transactions, nonmonetary transactions, and
289 transactions for other valuable consideration between a
290 controller and a third party for advertising or marketing for
291 the benefit of a controller.

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292 (p) "Targeted advertising" means marketing to a consumer
293 or displaying an advertisement to a consumer when the
294 advertisement is selected based on personal information used to
295 predict such consumer's preferences or interests.

296 (q) "Third party" means a person who is not a controller
297 or processor.

298 (r) "Verifiable consumer request" means a request related
299 to personal information that is made by a consumer, by a parent
300 or guardian on behalf of a consumer who is a minor child, or by
301 a person authorized by the consumer to act on the consumer's
302 behalf, in a form that is reasonably and readily accessible to
303 consumers and that the controller can reasonably verify to be
304 the consumer, pursuant to rules adopted by the department.

305 (3) CONSUMER DATA COLLECTION REQUIREMENTS AND
306 RESPONSIBILITIES.-

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

311 1. Any Florida-specific consumer privacy rights.

312 2. A list of the types and categories of personal
313 information the controller collects, sells, or shares, or has
314 collected, sold, or shared, about consumers.

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

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317 4. The consumer's right to opt-out of the sale or sharing
318 to third parties.

319 (b) A controller that collects personal information shall,
320 at or before the point of collection, inform, or direct the
321 processor to inform, consumers of the categories of personal
322 information to be collected and the purposes for which the
323 categories of personal information will be used.

324 (c) A controller may not collect additional categories of
325 personal information or use personal information collected for
326 additional purposes without providing the consumer with notice
327 consistent with this section.

328 (d) A controller that collects a consumer's personal
329 information shall implement and maintain reasonable security
330 procedures and practices appropriate to the nature of the
331 personal information to protect the personal information from
332 unauthorized or illegal access, destruction, use, modification,
333 or disclosure.

334 (e) A controller shall adopt and implement a retention
335 schedule that prohibits the use or retention of personal
336 information not subject to an exemption by the controller or
337 processor after the satisfaction of the initial purpose for
338 which such information was collected or obtained, after the
339 expiration or termination of the contract pursuant to which the
340 information was collected or obtained, or 3 years after the
341 consumer's last interaction with the controller. This paragraph

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

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

346 2. Provide a good or service requested by the consumer, or
347 reasonably anticipate the request of such good or service within
348 the context of a controller's ongoing business relationship with
349 the consumer.

350 3. Detect security threats or incidents; protect against
351 malicious, deceptive, fraudulent, unauthorized, or illegal
352 activity or access; or prosecute those responsible for such
353 activity or access.

354 4. Debug to identify and repair errors that impair
355 existing intended functionality.

356 5. Engage in public or peer-reviewed scientific,
357 historical, or statistical research in the public interest that
358 adheres to all other applicable ethics and privacy laws when the
359 controller's deletion of the information is likely to render
360 impossible or seriously impair the achievement of such research,
361 if the consumer has provided informed consent.

362 6. Enable solely internal uses that are reasonably aligned
363 with the expectations of the consumer based on the consumer's
364 relationship with the controller or that are compatible with the
365 context in which the consumer provided the information.

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

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367 federal retention laws.

368 8. As reasonably needed to protect the controller's
369 interests against existing disputes, legal action, or
370 governmental investigations.

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

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

374 (a) A consumer has the right to request that a controller
375 that collects, sells, or shares personal information about the
376 consumer to disclose the following to the consumer:

377 1. The specific pieces of personal information that have
378 been collected about the consumer.

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

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

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

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

387 (b) A controller that collects, sells, or shares personal
388 information about a consumer shall disclose the information
389 specified in paragraph (a) to the consumer upon receipt of a
390 verifiable consumer request.

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

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

395 (d) The controller shall deliver the information required
396 or act on the request in this subsection to a consumer free of
397 charge within 45 calendar days after receiving a verifiable
398 consumer request. The response period may be extended once by 45
399 additional calendar days when reasonably necessary, provided the
400 controller informs the consumer of any such extension within the
401 initial 45-day response period and the reason for the extension.
402 The information must be delivered in a readily usable format. A
403 controller is not obligated to provide information to the
404 consumer if the consumer or a person authorized to act on the
405 consumer's behalf does not provide verification of identity or
406 verification of authorization to act with the permission of the
407 consumer.

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

411 (f) This subsection does not apply to personal information
412 relating solely to households.

413 (5) RIGHT TO HAVE PERSONAL INFORMATION DELETED OR
414 CORRECTED.—

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

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417 controller has collected from the consumer.

418 1. A controller that receives a verifiable consumer
419 request to delete the consumer's personal information shall
420 delete the consumer's personal information from its records and
421 direct any processors to delete such information within 90
422 calendar days of receipt of the verifiable consumer request.

423 2. A controller or a processor acting pursuant to its
424 contract with the controller may not be required to comply with
425 a consumer's request to delete the consumer's personal
426 information if it is reasonably necessary for the controller or
427 processor to maintain the consumer's personal information to do
428 any of the following:

429 a. Complete the transaction for which the personal
430 information was collected.

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

433 c. Provide a good or service requested by the consumer, or
434 reasonably anticipate the request of such good or service within
435 the context of a controller's ongoing business relationship with
436 the consumer, or otherwise perform a contract between the
437 controller and the consumer.

438 d. Detect security threats or incidents; protect against
439 malicious, deceptive, fraudulent, unauthorized, or illegal
440 activity or access; or prosecute those responsible for such
441 activity or access.

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442 e. Debug to identify and repair errors that impair
443 existing intended functionality.

444 f. Engage in public or peer-reviewed scientific,
445 historical, or statistical research in the public interest that
446 adheres to all other applicable ethics and privacy laws when the
447 controller's deletion of the information is likely to render
448 impossible or seriously impair the achievement of such research,
449 if the consumer has provided informed consent.

450 g. Enable solely internal uses that are reasonably aligned
451 with the expectations of the consumer based on the consumer's
452 relationship with the controller or that are compatible with the
453 context in which the consumer provided the information.

454 h. Comply with a legal obligation, including any state or
455 federal retention laws.

456 i. As reasonably needed to protect the controller's
457 interests against existing disputes, legal action, or
458 governmental investigations.

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

460 (b) A consumer has the right to make a request to correct
461 inaccurate personal information to a controller that maintains
462 inaccurate personal information about the consumer. A controller
463 that receives a verifiable consumer request to correct
464 inaccurate personal information shall use commercially
465 reasonable efforts to correct the inaccurate personal
466 information as directed by the consumer and direct any

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467 processors to correct such information within 90 calendar days
468 after receipt of the verifiable consumer request. If a
469 controller maintains a self-service mechanism to allow a
470 consumer to correct certain personal information, the controller
471 may require the consumer to correct their own personal
472 information through such mechanism. A controller or a processor
473 acting pursuant to its contract with the controller may not be
474 required to comply with a consumer's request to correct the
475 consumer's personal information if it is reasonably necessary
476 for the controller or processor to maintain the consumer's
477 personal information to do any of the following:

- 478 1. Complete the transaction for which the personal
479 information was collected.
- 480 2. Fulfill the terms of a written warranty or product
481 recall conducted in accordance with federal law.
- 482 3. Detect security threats or incidents; protect against
483 malicious, deceptive, fraudulent, unauthorized, or illegal
484 activity or access; or prosecute those responsible for such
485 activity or access.
- 486 4. Debug to identify and repair errors that impair
487 existing intended functionality.
- 488 5. Enable solely internal uses that are reasonably aligned
489 with the expectations of the consumer based on the consumer's
490 relationship with the controller or that are compatible with the
491 context in which the consumer provided the information.

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492 6. Comply with a legal obligation, including any state or
493 federal retention laws.

494 7. As reasonably needed to protect the controller's
495 interests against existing disputes, legal action, or
496 governmental investigations.

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

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

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

504 (b) Notwithstanding paragraph (a), a controller may not
505 sell or share the personal information of a minor consumer if
506 the controller has actual knowledge that the consumer is not 18
507 years of age or older. However, if a consumer who is between 13
508 and 18 years of age, or if the parent or guardian of a consumer
509 who is 12 years of age or younger, has affirmatively authorized
510 the sale or sharing of such consumer's personal information,
511 then a controller may sell or share such information in
512 accordance with this section. A controller that willfully
513 disregards the consumer's age is deemed to have actual knowledge
514 of the consumer's age. A controller that complies with the
515 verifiable parental consent requirements of the Children's
516 Online Privacy Protection Act, 15 U.S.C. s. 6501 et seq., shall

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517 be deemed compliant with any obligation to obtain parental
518 consent.

519 (c) A controller that has received direction prohibiting
520 the sale or sharing of the consumer's personal information is
521 prohibited from selling or sharing the consumer's personal
522 information beginning 48 hours after receipt of such direction,
523 unless the consumer subsequently provides express authorization
524 for the sale or sharing of the consumer's personal information.

525 (7) FORM TO OPT-OUT OF SALE OR SHARING OF PERSONAL
526 INFORMATION.—

527 (a) A controller shall:

528 1. In a form that is reasonably accessible to consumers,
529 provide a clear and conspicuous link on the controller's
530 Internet homepage, entitled "Do Not Sell or Share My Personal
531 Information," to an Internet webpage that enables a consumer, or
532 a person authorized by the consumer, to opt-out of the sale or
533 sharing of the consumer's personal information. A controller may
534 not require a consumer to create an account in order to direct
535 the controller not to sell the consumer's personal information.
536 A controller may accept a request to opt-out received through a
537 user-enabled global privacy control, such as a browser plug-in
538 or privacy setting, device setting, or other mechanism, which
539 communicates or signals the consumer's choice to opt out.

540 2. For consumers who opted-out of the sale or sharing of
541 their personal information, respect the consumer's decision to

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542 opt-out for at least 12 months before requesting that the
543 consumer authorize the sale or sharing of the consumer's
544 personal information.

545 3. Use any personal information collected from the
546 consumer in connection with the submission of the consumer's
547 opt-out request solely for the purposes of complying with the
548 opt-out request.

549 (b) A consumer may authorize another person to opt-out of
550 the sale or sharing of the consumer's personal information on
551 the consumer's behalf pursuant to rules adopted by the
552 department.

553 (8) ACTIONS RELATED TO CONSUMERS WHO EXERCISE PRIVACY
554 RIGHTS.—

555 (a) A controller may charge a consumer who exercised any
556 of the consumer's rights under this section a different price or
557 rate, or provide a different level or quality of goods or
558 services to the consumer, only if that difference is reasonably
559 related to the value provided to the controller by the
560 consumer's data or is related to a consumer's voluntary
561 participation in a financial incentive program, including a bona
562 fide loyalty, rewards, premium features, discounts, or club card
563 program offered by the controller.

564 (b) A controller may offer financial incentives, including
565 payments to consumers as compensation, for the collection,
566 sharing, sale, or deletion of personal information if the

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567 consumer gives the controller prior consent that clearly
568 describes the material terms of the financial incentive program.
569 The consent may be revoked by the consumer at any time.

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

572 (9) CONTRACTS AND ROLES.—

573 (a) Any contract or agreement between a controller and a
574 processor must:

575 1. Prohibit the processor from selling, sharing,
576 retaining, using, or disclosing the personal information for any
577 purpose that violates this section;

578 2. Govern the processor's personal information processing
579 procedures with respect to processing performed on behalf of the
580 controller, including processing instructions, the nature and
581 purpose of processing, the type of information subject to
582 processing, the duration of processing, and the rights and
583 obligations of both the controller and processor;

584 3. Require the processor to return or delete all personal
585 information under the contract to the controller as requested by
586 the controller at the end of the provision of services, unless
587 retention of the information is required by law; and

588 4. Upon request of the controller, require the processor
589 to make available to the controller all personal information in
590 its possession under the contract or agreement.

591 (b) Determining whether a person is acting as a controller

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592 or processor with respect to a specific processing of data is a
593 fact-based determination that depends upon the context in which
594 personal information is to be processed. The contract between a
595 controller and processor must reflect their respective roles and
596 relationships related to handling personal information. A
597 processor that continues to adhere to a controller's
598 instructions with respect to a specific processing of personal
599 information remains a processor.

600 (c) A third party may not sell or share personal
601 information about a consumer that has been sold or shared to the
602 third party by a controller unless the consumer has received
603 explicit notice from the third party and is provided an
604 opportunity to opt-out by the third party.

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

608 (e) A processor or third party or any subcontractor
609 thereof who violates any of the restrictions imposed upon it
610 under this section is liable or responsible for any failure to
611 comply with this section.

612 (f) Any provision of a contract or agreement of any kind
613 that waives or limits in any way a consumer's rights under this
614 section, including, but not limited to, any right to a remedy or
615 means of enforcement, is deemed contrary to public policy and is
616 void and unenforceable. This section does not prevent a consumer

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617 from declining to request information from a controller,
618 declining to opt-out of a controller's sale or sharing of the
619 consumer's personal information, or authorizing a controller to
620 sell or share the consumer's personal information after
621 previously opting out.

622 (10) CIVIL ACTIONS; PRIVATE RIGHT OF ACTION.-

623 (a) A Florida consumer may only bring a civil action
624 against a controller, processor, or third party pursuant to this
625 section for the following:

626 1. Failure to delete or correct the consumer's personal
627 information pursuant to this section after receiving a
628 verifiable consumer request or directions to delete or correct
629 from a controller unless the controller, processor, or third
630 party qualifies for an exception to the requirements to delete
631 or correct under this section.

632 2. Continuing to sell or share the consumer's personal
633 information after the consumer chooses to opt-out pursuant to
634 this section.

635 3. Selling or sharing the personal information of the
636 consumer age 18 or younger without obtaining consent as required
637 by this section.

638 (b) A court may grant the following relief to a Florida
639 consumer:

640 1. Statutory damages in an amount not less than \$100 and
641 not greater than \$750 per consumer per incident or actual

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642 damages, whichever is greater.

643 2. Injunctive or declaratory relief.

644 (c) Upon prevailing, the Florida consumer shall recover
645 reasonable attorney fees and costs.

646 (d) Any action under this subsection may only be brought
647 by or on behalf of a Florida consumer.

648 (e) Liability for a tort, contract claim, or consumer
649 protection claim which is unrelated to an action brought under
650 subsection (10) or subsection (11) does not arise solely from
651 the failure of a controller, processor, or third party to comply
652 with this section and evidence of such may only be used as the
653 basis to prove a cause of action under this subsection.

654 (f) In assessing the amount of statutory damages, the
655 court shall consider any one or more of the relevant
656 circumstances presented by any of the parties to the case,
657 including, but not limited to, the nature and seriousness of the
658 misconduct, the number of violations, the length of time over
659 which the misconduct occurred, and the defendant's assets,
660 liability, and net worth.

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

662 (a) Any violation of this section is an unfair and
663 deceptive trade practice actionable under part II of chapter 501
664 solely by the department against a controller, processor, or
665 person. If the department has reason to believe that any
666 controller, processor, or third party is in violation of this

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667 section, the department, as the enforcement authority, may bring
668 an action against such controller, processor, or third party for
669 an unfair or deceptive act or practice. For the purpose of
670 bringing an action pursuant to this section, ss. 501.211 and
671 501.212 do not apply. Civil penalties may be tripled if the
672 violation:

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

676 2. Is based on paragraph (10) (a).

677 (b) After the department has notified a controller,
678 processor, or third party in writing of an alleged violation,
679 the department may in its discretion grant a 45-day period to
680 cure the alleged violation. The 45-day cure period does not
681 apply to a violation of subparagraph (10)(a)1. The department
682 may consider the number and frequency of violations, the
683 substantial likelihood of injury to the public, and the safety
684 of persons or property when determining whether to grant 45
685 calendar days to cure and the issuance of a letter of guidance.
686 If the violation is cured to the satisfaction of the department
687 and proof of such cure is provided to the department, the
688 department in its discretion may issue a letter of guidance. If
689 the controller, processor, or third party fails to cure the
690 violation within 45 calendar days, the department may bring an
691 action against the controller, processor, or third party for the

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692 alleged violation.

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

695 (d) By February 1 of each year, the department shall
696 submit a report to the President of the Senate and the Speaker
697 of the House of Representatives describing any actions taken by
698 the department to enforce this section. The report shall include
699 statistics and relevant information detailing:

700 1. The number of complaints received;

701 2. The number and type of enforcement actions taken and
702 the outcomes of such actions;

703 3. The number of complaints resolved without the need for
704 litigation; and

705 4. The status of the development and implementation of
706 rules to implement this section.

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

711 (12) JURISDICTION.—For purposes of bringing an action in
712 accordance with subsections (10) and (11), any person who meets
713 the definition of controller as defined in this section that
714 collects, shares, or sells the personal information of Florida
715 consumers, is considered to be both engaged in substantial and
716 not isolated activities within this state and operating,

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717 conducting, engaging in, or carrying on a business, and doing
718 business in this state, and is therefore subject to the
719 jurisdiction of the courts of this state.

720 (13) PREEMPTION.—This section is a matter of statewide
721 concern and supersedes all rules, regulations, codes,
722 ordinances, and other laws adopted by a city, county, city and
723 county, municipality, or local agency regarding the collection,
724 processing, sharing, or sale of consumer personal information by
725 a controller or processor. The regulation of the collection,
726 processing, sharing, or sale of consumer personal information by
727 a controller or processor is preempted to the state.

728 Section 2. Paragraph (g) of subsection (1) of section
729 501.171, Florida Statutes, is amended to read:

730 501.171 Security of confidential personal information.—

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

732 (g)1. "Personal information" means either of the
733 following:

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

737 (I) A social security number;

738 (II) A driver license or identification card number,
739 passport number, military identification number, or other
740 similar number issued on a government document used to verify
741 identity;

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742 (III) A financial account number or credit or debit card
743 number, in combination with any required security code, access
744 code, or password that is necessary to permit access to an
745 individual's financial account;

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

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

752 (VI) An individual's biometric information as defined in
753 s. 501.173(2).

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

757 2. The term does not include information about an
758 individual that has been made publicly available by a federal,
759 state, or local governmental entity. The term also does not
760 include information that is encrypted, secured, or modified by
761 any other method or technology that removes elements that
762 personally identify an individual or that otherwise renders the
763 information unusable.

764 Section 3. This act shall take effect July 1, 2023.

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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

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792 of charge within a certain timeframe and in a certain
793 format upon receiving a verifiable consumer request;
794 specifying requirements for third parties with respect
795 to consumer information acquired or used; providing
796 construction; authorizing consumers to request
797 controllers to delete or correct personal information
798 the controllers have collected about the consumers;
799 providing exceptions; specifying requirements for
800 controllers to comply with deletion or correction
801 requests; authorizing consumers to opt out of third-
802 party disclosure of personal information collected by
803 a controller; prohibiting controllers from selling or
804 disclosing the personal information of consumers
805 younger than a certain age, except under certain
806 circumstances; prohibiting controllers from selling or
807 sharing a consumer's information if the consumer has
808 opted out of such disclosure; prohibiting controllers
809 from taking certain actions to retaliate against
810 consumers who exercise certain rights; providing
811 applicability; providing that a contract or agreement
812 that waives or limits certain consumer rights is void
813 and unenforceable; providing for civil actions and a
814 private right of action for consumers under certain
815 circumstances; providing civil remedies; authorizing
816 the Department of Legal Affairs to bring an action

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817 | under the Florida Unfair or Deceptive Trade Practices
818 | Act and to adopt rules; requiring the department to
819 | submit an annual report to the Legislature; providing
820 | report requirements; providing that controllers must
821 | have a specified timeframe to cure any violations;
822 | providing jurisdiction; declaring that the act is
823 | matter of statewide concern; preempting the
824 | collection, processing, sharing, and sale of consumer
825 | personal information to the state; amending s.
826 | 501.171, F.S.; revising the definition of "personal
827 | information"; providing an effective date.