



2019 SENATE BILL 851

February 20, 2020 - Introduced by Senators LARSON, CARPENTER and L. TAYLOR, cosponsored by Representatives BROSTOFF, ANDERSON, CABRERA, SINICKI, STUBBS and SHANKLAND. Referred to Committee on Government Operations, Technology and Consumer Protection.

- 1 **AN ACT** *to create* 134.985 of the statutes; **relating to:** the privacy of consumer
2 data, granting rule-making authority, and providing a penalty.

Analysis by the Legislative Reference Bureau

Generally, this bill establishes requirements for businesses related to personal information collected about consumers. The bill's requirements apply to "businesses," which is defined in the bill to mean a sole proprietorship, limited liability company, corporation, association, or other entity operated for profit that satisfies all of the following: 1) collects consumers' personal information or alone or jointly with others determines the purposes and means of the processing of personal information; 2) does business in this state; and 3) either has annual gross revenues exceeding \$25,000,000; buys, receives, sells, or shares the personal information of 50,000 or more consumers annually; or derives 50 percent or more of its annual revenues from selling consumers' personal information. The bill defines "personal information" as information that identifies, relates to, describes, or is capable of being associated or linked with a particular consumer or household other than certain information that is lawfully made available from federal, state, or local government records.

The bill requires a business to disclose certain information to consumers if the business has an online privacy policy or a Wisconsin-specific description of consumers' privacy rights, including the following: 1) information about how a consumer can make a request for a copy of the personal information collected about the consumer; 2) the categories of personal information collected by the business in the past twelve months; 3) the categories of sources from which the business collected

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personal information in the past twelve months; 4) the business's purposes for collecting consumers' personal information; and 5) if the business sells consumers' personal information, the purpose for selling the personal information. If the business has an Internet site but not an online privacy policy or a Wisconsin-specific description of consumers' privacy rights, the business must disclose the above information on the Internet site.

Under the bill, a consumer may request a business to disclose certain information if the business collects personal information about the consumer, including the following: 1) the categories of personal information about the consumer collected by the business in the past twelve months; 2) the categories of sources from which the business collected personal information about the consumer in the past twelve months; 3) the purposes for collecting the personal information about the consumer; 4) if the business has sold the consumer's personal information in the past twelve months, the purpose for selling the personal information; and 5) the specific pieces of personal information about the consumer that the business collected in the past twelve months. In addition, the business must deliver this information within 45 days or within 90 days if the longer duration is reasonably necessary and the business notifies the consumer about the delay within 45 days. The business must disclose the information in a portable and readily useable format. A consumer may request this information twice in a twelve-month period.

A consumer may request a business that sells the consumer's personal information to disclose certain information, including the categories of personal information collected about the consumer in the past twelve months, the categories of personal information about the consumer that the business sold in the past twelve months, and the categories of personal information about the consumer sold to each third party in the past twelve months. The business must disclose the information in a portable and readily useable format and within 45 days or within 90 days if the longer duration is reasonably necessary.

The bill also requires a business, before collecting a consumer's personal information, to inform the consumer about the categories of personal information that the business will collect and the purpose for which the business will use the personal information collected. Under the bill, in order for a business to sell a consumer's personal information, certain requirements apply, including the following: 1) if the business has an Internet site, it must provide a link titled "Do Not Sell My Personal Information" that enables consumers to object to the selling of the consumer's personal information; 2) if the business has an online privacy policy, the business must include the link described above in that policy; 3) a business may not sell the personal information if a consumer is 16 or older and the consumer directs the business not to sell the consumer's personal information; 4) a business may sell the personal information of a consumer aged 13 to 16 only if the consumer affirmatively authorizes selling the personal information; 5) a business may sell the personal information of a consumer under the age of 13 only if the consumer's parent or guardian affirmatively authorizes it; and 6) a third party must notify a consumer before selling the consumer's personal information. A business must also implement reasonable security procedures to protect the personal information of consumers.

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The bill also requires that if a consumer requests that a business delete the personal information that the business has collected about the consumer, the business must delete that personal information. The bill provides certain exceptions to that requirement, including the cases in which it is necessary for the business to maintain the personal information to do any of the following: 1) complete a transaction or contract with a consumer; 2) detect security incidents; 3) identify errors; 4) exercise free speech or ensure the right of another consumer to exercise free speech; 5) comply with a legal obligation; or 6) otherwise use the personal information internally in a lawful manner.

The bill provides that a business may not discriminate against a consumer because the consumer requests information about the business's collection or sale of personal information, requests the business not to sell the consumer's personal information, or requests that the business delete the consumer's personal information. Under the bill, a business is allowed to charge a consumer a different price or provide a different level of services if the difference is reasonably related to the value provided to the consumer by the consumer's personal data, and a business may offer financial incentives to a consumer for collecting the consumer's personal information, subject to certain requirements described in the bill.

The bill requires the Department of Justice to promulgate various rules to implement the bill's requirements. The bill also authorizes businesses to request advice from the attorney general on how to comply with the bill's requirements and requires the attorney general to respond to those requests.

Additionally, a provision in a contract is void and unenforceable if it would waive or limit one or more of the bill's requirements. The bill also provides a consumer with a private cause of action against a business if the business does not implement reasonable security procedures to protect the consumer's personal information and the personal information is subject to unauthorized access. A business, service provider, or person that violates the bill is subject to a forfeiture of up to \$2,500 for each violation and a forfeiture of up to \$7,500 for each intentional violation.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 1 **SECTION 1.** 134.985 of the statutes is created to read:
- 2 **134.985 Consumer data. (1) DEFINITIONS.** In this section:
- 3 (a) "Aggregate consumer information" means information that relates to a
- 4 group or category of consumers, from which individual consumer identities have

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1 been removed, and that is not linked or reasonably linkable to any consumer or
2 household.

3 (b) "Biometric information" means an individual's physiological, biological, or
4 behavioral characteristics, including deoxyribonucleic acid, that can be used singly
5 or in combination with each other or with other identifying data to establish
6 individual identity. "Biometric information" includes imagery of the iris, retina,
7 fingerprint, face, hand, palm, vein patterns, voice recordings, keystroke patterns or
8 rhythms, gait patterns or rhythms, and sleep, health, or exercise data that contain
9 identifying information.

10 (c) "Business" means any of the following:

11 1. A sole proprietorship, partnership, limited liability company, corporation,
12 association, or other legal entity that is organized or operated for the profit or
13 financial benefit of its shareholders or other owners, that collects consumers'
14 personal information or, on the behalf of consumers, alone or jointly with others
15 determines the purposes and means of the processing of consumers' personal
16 information, that does business in this state, and that satisfies any of the following:

17 a. Has annual gross revenues exceeding \$25,000,000.

18 b. Annually, alone or jointly with others buys, receives for commercial
19 purposes, sells, or shares for commercial purposes the personal information of 50,000
20 or more consumers, households, or devices.

21 c. Derives 50 percent or more of its annual revenues from selling consumers'
22 personal information.

23 2. An entity that controls or is controlled by an entity described in subd. 1. and
24 that shares a name, service mark, or trademark with that entity.

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1 (d) “Business purpose” means a use of personal information for a business’s or
2 a service provider’s operational purposes or other notified purposes that is
3 reasonably necessary and proportionate to achieving the operational purpose for
4 which the personal information was collected or processed or for another operational
5 purpose that is compatible with the context in which the personal information was
6 collected.

7 (e) “Collect” means to gather, obtain, receive, buy, rent, or access personal
8 information pertaining to a consumer by any means, including by receiving
9 information from the consumer or by observing the consumer’s behavior.

10 (f) “Consumer” means an individual who is a resident of this state.

11 (g) “Deidentified” means information to which all of the following apply:

12 1. The information does not reasonably identify, relate to, or describe a
13 consumer and is not capable of being associated with or linked to an individual
14 consumer.

15 2. Technical safeguards and business processes implemented by the person
16 possessing the information prohibit identifying an individual consumer to whom the
17 information pertains.

18 (h) “Device” means an object that is capable of directly or indirectly connecting
19 to the Internet or to another device.

20 (i) 1. “Personal information” means information that identifies, relates to,
21 describes, or is capable of being associated or linked with a particular consumer or
22 household. “Personal information” includes all of the following that identify, relate
23 to, describe, or are capable of being associated or linked with a particular individual
24 consumer or household:

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1 a. Identifiers such as a real name, alias, postal address, unique personal
2 identifier, online identifier, Internet Protocol address, e-mail address, account
3 name, social security number, driver's license number, or passport number.

4 b. A signature, telephone number, state identification card number, insurance
5 policy number, employment history, bank account number, credit card number, or
6 debit card number or medical information or health insurance information.

7 c. Characteristics of protected classifications under state or federal law.

8 d. Commercial information such as records of personal property, records of
9 products or services purchased, obtained, or considered, or other purchasing or
10 consuming histories or tendencies.

11 e. Biometric information.

12 f. Internet or other electronic network activity information, including browsing
13 history, search history, and information regarding a consumer's interaction with an
14 Internet site, application, or advertisement.

15 g. Geolocation data.

16 h. Audio, electronic, visual, thermal, olfactory, or similar information.

17 i. Professional or employment-related information.

18 j. Education information that is not publicly available personally identifiable
19 information under the federal Family Educational Rights and Privacy Act, 20 USC
20 1232g.

21 k. Inferences drawn from personal information that create a profile about a
22 consumer reflecting the consumer's preferences, characteristics, psychological
23 trends, predispositions, behavior, attitudes, intelligence, abilities, and aptitudes.

24 2. "Personal information" does not include information that is lawfully made
25 available from federal, state, or local government records if the information is used

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1 for a purpose that is compatible with the purpose for which the information is
2 maintained and made available.

3 (j) "Sell" means to transfer, disseminate, disclose, release, rent, make available,
4 or otherwise communicate for monetary or other valuable consideration.

5 (k) "Service provider" means a sole proprietorship, partnership, limited
6 liability company, corporation, association, or other legal entity that is organized or
7 operated for the profit of its shareholders or other owners and that processes
8 information on behalf of a business and to which the business discloses a consumer's
9 personal information for a business purpose pursuant to a written contract that
10 prohibits the recipient of the information from retaining, using, or disclosing the
11 information for any purpose other than for the specific purpose of performing the
12 services specified in the contract.

13 (L) "Third party" means a person that is not any of the following:

- 14 1. A business that collects personal information from consumers.
- 15 2. A person to whom a business discloses a consumer's personal information
16 for a business purpose pursuant to a written contract that prohibits the person
17 receiving the personal information from selling, retaining, using, or disclosing the
18 personal information for any purpose other than for the specific purpose of
19 performing the services specified in the contract.

20 (m) "Verifiable consumer request" means a request, received by a business that
21 has collected personal information about a consumer, that the business can
22 reasonably verify to be from the consumer or the consumer's authorized
23 representative or, if the consumer is under 13 years of age, the consumer's parent or
24 guardian.

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1 **(2) REQUIRED NOTICES.** (a) If a business has an online privacy policy or a
2 Wisconsin-specific description of consumers' privacy rights, the business shall
3 disclose all of the following information in the policy or description in a form that is
4 reasonably accessible to consumers:

5 1. The right of a consumer to request a disclosure under sub. (3) (a) and (c) and
6 one or more methods that a consumer is able to use to make a request.

7 2. The categories of consumers' personal information collected in the preceding
8 12 months.

9 3. The categories of sources from which consumers' personal information was
10 collected in the preceding 12 months.

11 4. The business or commercial purposes for collecting consumers' personal
12 information.

13 5. If the business has sold consumers' personal information in the preceding
14 12 months, the business or commercial purposes for selling the personal information.

15 6. If the business has shared consumers' personal information with a 3rd party
16 in the preceding 12 months, the categories of 3rd parties with whom the business has
17 shared personal information.

18 7. A list of the categories of consumers' personal information sold, if the
19 business has sold consumers' personal information in the preceding 12 months, or
20 if the business has not sold consumers' personal information in the preceding 12
21 months, a disclosure of that fact.

22 8. A list of the categories of consumers' personal information disclosed for a
23 business purpose, if the business has disclosed consumers' personal information for
24 a business purpose in the preceding 12 months, or if the business has not disclosed

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1 consumers' personal information for a business purpose in the preceding 12 months,
2 a disclosure of that fact.

3 (b) If a business does not have an online privacy policy or a Wisconsin-specific
4 description of consumers' privacy rights under par. (a) and the business has an
5 Internet site, the business shall disclose the information listed in par. (a) 1. to 8. on
6 its Internet site in a form that is reasonably accessible to consumers.

7 (c) A business that makes a disclosure under par. (a) or (b) shall update the
8 information in the disclosure at least once every 12 months.

9 **(3) DISCLOSURE OF INFORMATION COLLECTED.** (a) 1. Upon receiving a verifiable
10 consumer request from a consumer, a business that has collected personal
11 information about that consumer shall promptly disclose and deliver free of charge
12 to the consumer all of the following:

13 a. The categories of personal information it has collected about the consumer
14 in the preceding 12 months.

15 b. The categories of sources from which the consumer's personal information
16 was collected in the preceding 12 months.

17 c. The business or commercial purposes for collecting the consumer's personal
18 information.

19 d. If the business has sold the consumer's personal information in the preceding
20 12 months, the business or commercial purposes for selling the personal information.

21 e. If the business has shared the consumer's personal information with 3rd
22 parties in the preceding 12 months, the categories of 3rd parties with whom the
23 business has shared personal information.

24 f. The specific pieces of personal information that the business has collected
25 about the consumer in the preceding 12 months.

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1 2. A business may disclose and deliver personal information to a consumer
2 under this paragraph only after receiving a verifiable consumer request from the
3 consumer.

4 3. A business shall make available to consumers 2 or more methods for
5 submitting verifiable consumer requests for a disclosure under this paragraph
6 including, at a minimum, a toll-free telephone number and, if the business
7 maintains an Internet site, an Internet address.

8 4. a. Except as provided in subd. 4. b., a business shall deliver the disclosure
9 required under this paragraph within 45 days of receiving a verifiable consumer
10 request from a consumer. A business shall promptly take steps to determine whether
11 a request received is a verifiable consumer request. The time that a business spends
12 determining whether a request is a verifiable consumer request is included in the
13 45-day deadline under this subd. 4. a.

14 b. A business may deliver the disclosure required under this paragraph within
15 90 days after receiving a verifiable consumer request if reasonably necessary and if
16 the business notifies the consumer of the delayed delivery before the time period
17 under subd. 4. a. expires.

18 5. A business shall deliver personal information under this paragraph in
19 writing and through the consumer's account with the business, if the consumer
20 maintains an account with the business. If the consumer does not maintain an
21 account with the business, the business shall deliver personal information under this
22 paragraph by mail or electronically, at the choice of the consumer. If the business
23 provides personal information under this paragraph electronically, the business
24 shall provide the information in a portable and, to the extent technically feasible, a

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1 readily useable format that allows the consumer to transmit the information to
2 another entity without hindrance.

3 6. A business may not require a consumer to create an account in order to
4 submit a verifiable consumer request for a disclosure of personal information
5 required under this paragraph.

6 7. A business is not required to provide personal information to a consumer
7 under this paragraph more than 2 times in a 12-month period.

8 (b) Paragraph (a) does not require any of the following:

9 1. That a business retain any personal information collected for a single,
10 onetime transaction, if the personal information is not sold or retained by the
11 business.

12 2. That a business reidentify or otherwise link information that is not
13 maintained in a manner that would be considered personal information.

14 (c) 1. Upon receiving a verifiable consumer request from a consumer, a business
15 that has sold or disclosed for a business purpose personal information about that
16 consumer shall disclose to the consumer the following information:

17 a. If the business has collected personal information in the preceding 12
18 months, the categories of personal information that the business collected about the
19 consumer.

20 b. If the business sold the consumer's personal information in the preceding 12
21 months, the categories of the personal information that the business sold.

22 c. If the business sold the consumer's personal information in the preceding 12
23 months, for each 3rd party to whom the business sold the personal information, the
24 categories of personal information that the business sold to the 3rd party.

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1 d. If the business disclosed the consumer's personal information for a business
2 purpose in the preceding 12 months, the categories of the personal information that
3 the business disclosed.

4 2. A business shall identify the information required to be disclosed under
5 subd. 1. c. separately from the information required to be disclosed under subd. 1. d.

6 3. A business shall make available to consumers 2 or more methods for
7 submitting verifiable consumer requests for a disclosure under this paragraph
8 including, at a minimum, a toll-free telephone number and, if the business
9 maintains an Internet site, an Internet address.

10 4. a. Except as provided in subd. 4. b., a business shall deliver the disclosure
11 required under this paragraph within 45 days of receiving a verifiable consumer
12 request from a consumer. A business shall promptly take steps to determine whether
13 a request received is a verifiable consumer request. The time that a business spends
14 determining whether a request received is a verifiable consumer request is included
15 in the 45-day deadline under this subd. 4. a.

16 b. A business may deliver the disclosure required under this paragraph within
17 90 days after receiving a verifiable consumer request if reasonably necessary and if
18 the business notifies the consumer of the delayed delivery before the time period
19 under subd. 4. a. expires.

20 5. A business shall deliver personal information under this paragraph in
21 writing and through the consumer's account with the business, if the consumer
22 maintains an account with the business. If the consumer does not maintain an
23 account with the business, the business shall deliver personal information under this
24 paragraph by mail or electronically, at the choice of the consumer. If the business
25 provides information under this paragraph electronically, the business shall provide

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1 the information in a portable and, to the extent technically feasible, a readily useable
2 format that allows the consumer to transmit the information to another entity
3 without hindrance.

4 6. A business may not require a consumer to create an account in order to
5 submit a verifiable consumer request for a disclosure of personal information
6 required under this paragraph.

7 **(4) SELLING OR COLLECTING INFORMATION.** (a) A business may not collect a
8 consumer's personal information or use the personal information for a particular
9 purpose unless the business informs the consumer, at or before the point of collecting
10 the information, about all of the following:

11 1. That the business will collect that category of personal information about the
12 consumer.

13 2. The purpose for which the business will use the category of personal
14 information collected.

15 (b) 1. A business may not sell a consumer's personal information to 3rd parties
16 unless the business satisfies all of the following:

17 a. If the business has an Internet site, the business provides a clear and
18 conspicuous link on the homepage of the Internet site, titled "Do Not Sell My
19 Personal Information," to an Internet page that enables a consumer or person
20 authorized by the consumer to object to the sale of the consumer's personal
21 information.

22 b. The business includes a statement explaining that a consumer may object
23 to the sale of the consumer's personal information and a link to the Internet page
24 required under subd. 1. a. in its online privacy policy or policies, if the business has

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1 an online privacy policy or policies, and any Wisconsin-specific description of
2 consumers' privacy rights.

3 c. The business ensures that each individual responsible for handling
4 consumer inquiries about the business's privacy practices or compliance with this
5 section is informed of the requirements in this subdivision and par. (c) and of how to
6 direct consumers to object to the sale of their personal information under par. (c).

7 2. Subdivision 1. does not require a business to provide the link described in
8 subd. 1. a. on the homepage of an Internet site that the business makes available to
9 the public generally, if all of the following apply:

10 a. The business maintains a separate and additional Internet site that the
11 business dedicates to consumers.

12 b. The Internet site under subd. 2. a. satisfies the requirements under subd.
13 1. a.

14 c. The business takes reasonable steps to ensure that consumers in this state
15 are directed to the Internet site under subd. 2. a. and not the homepage of the
16 Internet site made available to the public generally.

17 (c) 1. a. A business may not sell personal information that the business collects
18 about a consumer to a 3rd party if the consumer is 16 years of age or older and the
19 consumer directs the business not to sell the consumer's personal information,
20 unless the consumer subsequently provides express authorization for the business
21 to sell the personal information.

22 b. A consumer may authorize another person to, as provided in subd. 1. a.,
23 direct a business not to sell the consumer's personal information. A representative
24 authorized under this subd. 1. b. may not subsequently provide express

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1 authorization on behalf of the consumer for the business to sell the consumer's
2 personal information.

3 2. A business may not sell personal information that the business collects about
4 a consumer to a 3rd party if the business has actual knowledge that the consumer
5 is under 16 years of age unless any of the following applies:

6 a. The consumer is at least 13 years of age and under 16 years of age and the
7 consumer affirmatively authorizes the business to sell the consumer's personal
8 information.

9 b. The consumer is under 13 years of age and the consumer's parent or guardian
10 affirmatively authorizes the business to sell the consumer's personal information.

11 3. A business that willfully disregards the age of a consumer is considered to
12 have actual knowledge of the consumer's age.

13 4. A business may not request authorization from a consumer or the consumer's
14 parent or guardian to sell the consumer's personal information within 12 months of
15 the most recent occasion that the consumer, parent, or guardian directed the
16 business not to sell the personal information or denied the business's request for
17 authorization to sell the personal information.

18 5. A business that collects the personal information of a consumer in connection
19 with receiving a direction under subd. 1. to not sell the consumer's personal
20 information may use the personal information only for the purposes of implementing
21 the consumer's direction not to sell the personal information.

22 (d) 1. A 3rd party may not sell personal information about a consumer that has
23 been sold to the 3rd party by a business unless the 3rd party provides explicit notice
24 to the consumer that the consumer's personal information has been sold to the 3rd

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1 party and that the 3rd party intends to sell the information and the 3rd party
2 satisfies par. (b) 1. a. to c.

3 2. A 3rd party may not sell information about a consumer that has been sold
4 to the 3rd party by a business if the consumer directs the 3rd party not to sell the
5 consumer's personal information, unless the consumer subsequently provides
6 express authorization for the 3rd party to sell the personal information.

7 (e) A business may not require a consumer to create an account in order to direct
8 the business not to sell the consumer's personal information under par. (c).

9 (f) A business shall, to protect the personal information of consumers,
10 implement and maintain reasonable security procedures and practices appropriate
11 to the nature of the personal information.

12 **(5) DELETION OF INFORMATION.** (a) Except as provided in par. (b), a business that
13 receives a verifiable consumer request from a consumer to delete the consumer's
14 personal information shall delete the personal information that the business has
15 collected from the consumer from its records and direct any of the business's service
16 providers to delete the consumer's personal information from their records.

17 (b) A business or its service provider is not required to delete a consumer's
18 personal information if it is necessary for the business or its service provider to
19 maintain the consumer's personal information for any of the following purposes:

20 1. To complete the transaction for which the personal information was
21 collected, to provide a good or service requested by the consumer or reasonably
22 anticipated to be requested by the consumer within the context of the business's
23 ongoing relationship with the consumer, or to otherwise perform a contract between
24 the business and the consumer.

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1 2. To detect security incidents, to protect against malicious, deceptive,
2 fraudulent, or illegal activity, or to prosecute a person responsible for that activity.

3 3. To debug to identify and repair errors that impair existing or intended
4 functionality.

5 4. To exercise free speech, to ensure the right of another consumer to exercise
6 free speech, or to exercise another right provided by law.

7 5. If the consumer provides informed consent, to engage in public or
8 peer-reviewed scientific, historical, or statistical research in the public interest that
9 adheres to all other applicable ethics and privacy laws, if the business's deletion of
10 the personal information is likely to render impossible or seriously impair the
11 achievement of that research.

12 6. To enable solely internal uses that are reasonably aligned with the
13 expectations of the consumer based on the consumer's relationship with the
14 business.

15 7. To comply with a legal obligation.

16 8. To otherwise use the consumer's personal information internally in a lawful
17 manner that is compatible with the context in which the consumer provided the
18 information.

19 **(6) DISCRIMINATION PROHIBITED.** (a) 1. A business may not discriminate against
20 a consumer because the consumer makes a verifiable consumer request under sub.
21 (3) (a) or (c) or (5) or because under sub. (4) (c) the personal information of the
22 consumer was not permitted to be sold by the business, including by doing any of the
23 following:

24 a. Denying goods or services to the consumer.

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1 b. Charging different prices or rates for goods or services, including through the
2 use of discounts or other benefits or imposing penalties.

3 c. Providing a different level or quality of goods or services to the consumer.

4 d. Suggesting that the consumer will receive a different price or rate for goods
5 or services or a different level or quality of goods or services.

6 2. This paragraph does not prohibit a business from charging a consumer a
7 different price or rate, or from providing a different level or quality of goods or
8 services to the consumer, if the difference is reasonably related to the value provided
9 to the consumer by the consumer's data.

10 (b) 1. A business may offer financial incentives, including payments to
11 consumers as compensation, for the collection of a consumer's personal information,
12 the sale of a consumer's personal information, or the deletion of a consumer's
13 personal information. A business may also offer a different price, rate, level, or
14 quality of goods or services to a consumer if that difference is directly related to the
15 value provided to the consumer by the consumer's data.

16 2. A business may enter a consumer into a financial incentive program
17 described in subd. 1. only if the consumer or the consumer's parent or guardian
18 affirmatively authorizes entry into the program after receiving a notice that clearly
19 describes the material terms of the program.

20 3. A consumer or a consumer's parent or guardian may revoke entry into a
21 financial incentive program described in subd. 1. at any time.

22 4. If a business offers a financial incentive program described in subd. 1., the
23 business shall include a description of the program on the Internet page described
24 in sub. (4) (b) 1. a. and in the policies described in sub. (4) (b) 1. b.

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1 5. A business may not use financial incentive practices that are unjust,
2 unreasonable, coercive, or usurious in nature.

3 **(7) GUIDANCE; RULES.** (a) A business or 3rd party may request advice from the
4 attorney general on how to comply with this section, and the attorney general shall
5 respond to the request.

6 (b) The department of justice shall promulgate rules to implement this section,
7 including the following:

8 1. Rules that specify additional categories of personal information to those
9 enumerated in sub. (1) (i) 1.

10 2. Rules that specify unique personal identifiers to address changes in
11 technology, changes in data collection, obstacles to implementing this section, and
12 privacy concerns.

13 3. Rules that specify additional methods for consumers to make requests and
14 businesses to provide disclosures under this section.

15 4. Rules that establish any exceptions necessary to comply with other state or
16 federal law, including exceptions relating to trade secrets and intellectual property
17 rights.

18 5. Rules that establish procedures for the following:

19 a. The submission of a direction under sub. (4) (c) 1. a.

20 b. Business compliance with a direction submitted under sub. (4) (c) 1. a.

21 c. The use of a recognizable and uniform logo or button by all businesses to
22 promote consumer awareness of the option to make a direction under sub. (4) (c) 1.
23 a.

24 6. Rules that ensure that the notices and information that business are
25 required to provide under this section are provided in a manner that may be easily

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1 understood by the average consumer, are accessible to consumers with disabilities,
2 and are available in the language primarily used to interact with the consumer.

3 7. Rules that facilitate a consumer's or, under sub. (4) (c) 1. b., a representative's
4 ability to make a request or submit a direction under this section, with the goal of
5 minimizing the administrative burden on consumers, taking into account available
6 technology, security concerns, and the burden on the business, to govern a business's
7 determination that a request by a consumer is a verifiable consumer request,
8 including by treating a request submitted through a password-protected account
9 maintained by the consumer with the business while the consumer is logged into the
10 account as a verifiable consumer request and providing a mechanism for a business
11 to authenticate the identity of a consumer who does not maintain an account with
12 the business and requests information or submits a direction under this section.

13 (c) The department of justice shall adjust the monetary threshold amount in
14 sub. (1) (c) 1. a. in January of every odd-numbered year by the percentage change
15 in the U.S. consumer price index for all urban consumers, U.S. city average, as
16 determined by the federal department of labor for the period since the last
17 adjustment under this paragraph.

18 **(8) CONTRACTS IN VIOLATION.** A provision in a contract or agreement that
19 purports to waive or limit a requirement under this section is void and
20 unenforceable.

21 **(9) PRIVATE CAUSE OF ACTION.** (a) 1. A consumer may initiate an action against
22 a business to enforce a written statement under subd. 2. and may pursue injunctive
23 or declaratory relief, damages in an amount not less than \$100 and not more than
24 \$750 per consumer per incident or actual damages, whichever is greater, or any other
25 relief the court deems proper if all of the following apply:

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1 a. The consumer, on an individual or class-wide basis, provides the business
2 with written notice identifying that the consumer's nonencrypted or nonredacted
3 personal information is subject to an unauthorized access and exfiltration, theft, or
4 disclosure as a result of the business's violation of sub. (4) (f).

5 b. The business continues to violate sub. (4) (f) more than 30 days after
6 receiving the written notice under subd. 1. a.

7 2. No action may be brought under subd. 1. if within 30 days of receiving a
8 written notice under subd. 1. a., a business cures the noticed violation of sub. (4) (f)
9 and provides the consumer that provided the written notice with an express written
10 statement that the violation has been cured.

11 3. In assessing the amount of damages under subd. 1., a court shall consider
12 the relevant circumstances presented by any of the parties to the case, including the
13 nature and seriousness of the misconduct, the number of violations, the persistence
14 of the misconduct, the length of time over which the misconduct occurred, the
15 willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and
16 net worth.

17 (b) A consumer may initiate an action against a business solely for actual
18 pecuniary damages suffered as a result of the business's violation of sub. (4) (f).

19 **(10) INAPPLICABILITY.** (a) This section does not do any of the following:

20 1. Restrict a business from complying with federal or state laws or local
21 ordinances.

22 2. Restrict a business from complying with a civil, criminal, or regulatory
23 inquiry, investigation, subpoena, or summons by federal, state, or local authorities.

24 3. Restrict a business, service provider, or 3rd party from cooperating with law
25 enforcement agencies concerning conduct or activity that the business, service

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1 provider, or 3rd party reasonably and in good faith believes might violate federal,
2 state, or local law.

3 4. Restrict a business from exercising or defending legal claims.

4 5. Restrict the collection, use, retention, sale, or disclosure of consumer
5 information that is deidentified or aggregate consumer information.

6 6. Restrict the collection or sale of a consumer's personal information if the
7 information is collected while the consumer was outside of this state, no part of any
8 sale of the consumer's personal information occurs in this state, and no personal
9 information collected from a consumer while the consumer is in this state is sold.

10 (b) This section does not apply to any of the following:

11 1. Medical information that is collected by a health care provider or entity and
12 covered by federal law.

13 2. Information collected as part of a clinical trial subject to the Federal Policy
14 for the Protection of Human Subjects while following standards developed by
15 international organizations of federal agencies.

16 3. Personal information sold to or from a consumer reporting agency, as defined
17 in s. 422.501 (1m), if the information is reported in or used to generate a consumer
18 report, as defined in s. 100.54 (1) (b), and the use of the information complies with
19 the federal Fair Credit Reporting Act, 15 USC 1681 et seq.

20 4. Personal information collected, processed, sold, or disclosed pursuant to the
21 federal Gramm-Leach-Bliley Act, Public Law 106-102.

22 5. Personal information collected, processed, sold, or disclosed pursuant to the
23 the federal Driver's Privacy Protection Act, 18 USC 2721 et seq.

24 **(11) VIOLATIONS; PENALTY.** (a) If a series of steps or transactions are component
25 parts of a single transaction intended from the beginning to be taken with the

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1 intention of avoiding the requirements of this section, including the disclosure of
2 information by a business to a 3rd party in order to avoid constituting a sale, a court
3 shall disregard the intermediate steps or transactions for purposes of this section.

4 (b) The department of justice may, if a business, service provider, or person
5 violates this section more than 30 days after receiving notification of the violation
6 from the department of justice, commence an action in the name of the state against
7 the business, service provider, or other person to recover a forfeiture to the state of
8 not more than \$2,500 for each violation or a forfeiture of not more than \$7,500 for
9 each intentional violation.

10 **SECTION 2. Initial applicability.**

11 (1) This act first applies to a contract that is entered into, renewed, or modified
12 on the effective date of this subsection.

13 **SECTION 3. Effective date.**

14 (1) This act takes effect on the first day of the 7th month beginning after
15 publication.

16 (END)