S-5084

1   Amend Senate File 2351 as follows:

2   1. By striking everything after the enacting clause and
3 inserting:

4   <Section 1. NEW SECTION. **715D.1 Definitions.**

5   As used in this chapter, unless the context otherwise
6 requires:

7   1. *"Breach of security"* means the same as provided in
8 section 715C.1.

9   2. *"Controller"* means a person who, separately or in
10 combination with another person, determines the purpose and
11 methodology of the processing of personal data.

12   3. *"Custodian"* means a partnership, corporation, limited
13 liability company, unincorporated association, or other
14 business or nonprofit entity that possesses personal data.
15 *"Custodian"* does not include any of the following:

16   *a.* The state or a political subdivision of the state.

17   *b.* A partnership, corporation, limited liability company,
18 unincorporated association, or other business entity which is
19 located in the state, which is operated for profit and under
20 a single management, and which has either fewer than twenty
21 employees or an annual gross income of less than four million
22 dollars computed as the average of the three preceding fiscal
23 years.

24   4. *"Deidentified data"* means data that cannot reasonably be
25 used to infer information about, or otherwise be linked to, an
26 identified or identifiable individual or a device associated
27 with an individual, provided that the controller or processor
28 who possesses the data does all of the following:

29   *a.* Takes reasonable measures to ensure that the data cannot
30 be associated with an individual.

31   *b.* Commits to maintain and use the data only in a
32 deidentified fashion and does not attempt to reidentify the
33 data.

34   *c.* Contractually obligates recipients of the data to comply
35 with all provisions of this chapter.

1   5. *"Geolocation data"* means information that can be used to
2 identify the physical location of an electronic device.
3   6. *"Minor"* means an individual who is less than eighteen
4 years of age.
5   7. *"Personal data"* means any information that is linked or
6 reasonably able to be linked to an identified or identifiable
7 individual. *"Personal data"* does not include deidentified
8 data, data that is lawfully obtained from publicly available
9 sources, or data that is obtained from federal, state, or local
10 government records lawfully made available to the general
11 public.
12   8. *"Processor"* means a person who processes personal data on
13 behalf of a controller.
14   9. *"Sensitive data"* means any of the following types of
15 personal data:
16   *a.* Data revealing an individual's racial or ethnic origin,
17 religious beliefs, mental condition, physical condition, or
18 sexual orientation.
19   *b.* A minor's personal data.
20   *c.* An individual's geolocation data.
21   *d.* An individual's first name or first initial and last
22 name in combination with any one or more of the following data
23 elements that relate to the individual if any of the data
24 elements are not encrypted, redacted, or otherwise altered by
25 any method or technology in such a manner that the name or
26 data elements are unreadable, or are encrypted, redacted, or
27 otherwise altered by any method or technology but the keys to
28 unencrypt, unredact, or otherwise read the data elements have
29 been obtained through a breach of security:
30   (1) Social security number.
31   (2) Driver's license number or other unique identification
32 number created or collected by a government body.
33   (3) Financial account number, credit card number, or debit
34 card number in combination with any required expiration date,
35 security code, access code, or password that would permit

1 access to an individual's financial account.

2 (4) Unique electronic identifier or routing code, in
3 combination with any required security code, access code, or
4 password that would permit access to an individual's financial
5 account.

6 (5) Unique genetic or biometric data, such as a fingerprint,
7 retina or iris image, or other unique physical representation
8 or digital representation of genetic or biometric data.

9 (6) Data pertaining to the ownership or acquisition of a
10 firearm.

11 Sec. 2. NEW SECTION. **715D.2 Personal data rights.**

12 1. An individual may request any of the following from a
13 controller or a processor:

14 *a.* A determination regarding whether the controller or
15 processor possesses the individual's personal data.

16 *b.* Copies of the individual's personal data that is in the
17 possession of the controller or processor.

18 *c.* Correction of the individual's personal data that is
19 in the possession of the controller or processor and that the
20 individual indicates in the request is incorrect.

21 *d.* Cessation of the controller or processor's sale of the
22 individual's personal data.

23 *e.* Cessation of the controller or processor's use of the
24 individual's personal data for purposes of targeted advertising
25 or profiling in furtherance of decisions that may result in
26 the denial of consequential services or support, such as
27 financial or lending services, housing, insurance, education
28 enrollment, criminal justice, employment opportunities, health
29 care services, and access to basic necessities, such as food
30 and water.

31 2. Within forty-five days after the receipt of a request
32 made pursuant to subsection 1, the controller or processor
33 shall provide the information or take the action requested by
34 an individual.

35 3. Notwithstanding subsection 1 or 2, a controller or

1 processor is not required to provide the information or take

2 the action requested by an individual if the controller or

3 processor is unable to authenticate the individual's request

4 using commercially reasonable efforts. The controller or

5 processor may request additional information that is reasonably

6 necessary to authenticate such a request.

7   Sec. 3. <u>NEW SECTION</u>. **715D.3 Prohibitions on certain**

8 **practices of custodians.**

9   A custodian shall not do any of the following:

10   1. Collect or use an individual's sensitive data unless the

11 custodian first obtains the individual's consent to collect or

12 use the sensitive data. An individual may withdraw the consent

13 to collect or use the individual's sensitive data at any time

14 by providing notice to the custodian.

15   2. Process personal data in violation of state or federal

16 law that prohibits discrimination against consumers.

17   Sec. 4. <u>NEW SECTION</u>. **715D.4 Obligations of certain**

18 **custodians.**

19   A custodian possessing the personal data of one hundred

20 thousand or more individuals shall comply with all of the

21 following:

22   1. The custodian shall provide an accessible, clear, and

23 meaningful privacy notice that informs consumers and potential

24 consumers of all of the following:

25   *a.* The personal data the custodian collects.

26   *b.* How the custodian uses personal data in its possession.

27   *c.* Persons the custodian allows to access or view personal

28 data in the custodian's possession, and why the custodian

29 allows such persons to access or view the personal data.

30   *d.* The individual's rights under sections 715D.2 and 715D.3.

31   2. The custodian's collection and processing of personal

32 data shall be limited to the types and amounts of personal data

33 that are reasonably necessary in relation to the purpose for

34 which the personal data is collected or processed.

35   3. The custodian shall establish, implement, and maintain

1 reasonable administrative, technical, and physical data
2 security practices to protect the confidentiality, integrity,
3 and accessibility of personal data. The custodian's data
4 security practices shall be appropriate for the volume and
5 nature of the personal data the custodian possesses.
6   4. The custodian shall conduct and document a data
7 protection assessment addressing each of the following
8 activities involving personal data:
9   *a.* The custodian's processing of personal data for purposes
10 of targeted advertising.
11   *b.* The custodian's sale of personal data.
12   *c.* The custodian's processing of personal data for purposes
13 of profiling where such profiling presents a reasonably
14 foreseeable risk of unfair or deceptive treatment of consumers,
15 financial injury to consumers, reputational injury to
16 consumers, an intrusion upon the private affairs of consumers
17 that would be offensive to a reasonable person, or other
18 substantial injury.
19   *d.* The custodian's processing of sensitive data.
20   *e.* The custodian's processing activities involving personal
21 data that present a heightened risk of harm to consumers.
22   5. The custodian shall provide to the attorney general upon
23 request the data protection assessment prepared pursuant to
24 subsection 4.
25   Sec. 5. NEW SECTION. **715D.5 Limitations.**
26   This chapter shall not be construed to restrict or prevent
27 a controller, custodian, or processor from doing any of the
28 following:
29   1. Complying with any federal, state, or local law or
30 regulation.
31   2. Complying with a civil, criminal, or regulatory inquiry,
32 investigation, subpoena, or summons by a federal, state, or
33 local governmental authority.
34   3. Cooperating with law enforcement concerning conduct
35 or activity that the controller, custodian, or processor

1 reasonably believes may violate federal, state, or local laws
2 or regulations.
3   4. Investigating, preparing for, or defining legal claims.
4   Sec. 6. NEW SECTION. **715D.6 Enforcement.**
5   A violation of this chapter is an unlawful practice under
6 section 714.16, and all the remedies pursuant to section 714.16
7 are available for such an action.
8   Sec. 7. NEW SECTION. **715D.7 Remedies cumulative.**
9   The rights, remedies, and prohibitions contained in this
10 chapter shall be in addition to and cumulative of any other
11 right, remedy, or prohibition accorded by common law or state
12 or federal law. This chapter shall not be construed to deny,
13 abrogate, or impair any such common law or statutory right,
14 remedy, or prohibition.
15   Sec. 8. NEW SECTION. **715D.8 Application.**
16   This chapter shall not apply to any of the following:
17   1. A person who is subject to and complies with
18 regulations promulgated pursuant to Tit. V of the federal
19 Gramm-Leach-Bliley Act of 1999, 15 U.S.C. §6801 — 6809.
20   2. A person who is subject to and complies with regulations
21 promulgated pursuant to Tit. II, subtit. F of the federal
22 Health Insurance Portability and Accountability Act of 1996,
23 42 U.S.C. §1320d — 1320d-9, and Tit. XIII, subtit. D of the
24 federal Health Information Technology for Economic and Clinical
25 Health Act of 2009, 42 U.S.C. §17921 — 17954.>
26   2. Title page, by striking lines 1 and 2 and inserting <An
27 Act relating to personal data, including an individual's rights
28 with respect to personal data, the obligations of certain
29 persons with respect to personal data, and making penalties
30 applicable.>

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