

SENATE BILL NO. 116

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-SECOND LEGISLATURE - FIRST SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 3/31/21

Referred: Labor & Commerce, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act establishing the Consumer Data Privacy Act; establishing data broker**
2 **registration requirements; making a violation of the Consumer Data Privacy Act an**
3 **unfair or deceptive trade practice; and providing for an effective date."**

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 *** Section 1.** AS 44.33.020(a) is amended by adding a new paragraph to read:

6 (45) establish and maintain a data broker registry.

7 *** Sec. 2.** AS 45 is amended by adding a new chapter to read:

8 **Chapter 49. Consumer Data Privacy Act.**

9 **Article 1. Collection, Sale, or Disclosure of Consumer Personal Information.**

10 **Sec. 45.49.010. Notice of collection, sale, or disclosure of personal**
11 **information.** (a) A business that collects personal information from a consumer shall
12 notify the consumer before collecting the information. Notification to the consumer
13 must indicate the categories of personal information that will be collected, the specific
14 purposes for which each category of personal information will be used, and the

consumer's right to opt out of the sale of the consumer's personal information and use of the consumer's precise geolocation data under AS 45.49.050. A business may not collect an additional category of personal information or use the collected personal information for an additional purpose without first notifying the consumer in accordance with this section.

(b) A business shall maintain, and update at least once every 12 months, in the business's online privacy policies and in any state-specific description of consumers' privacy rights, or on the business's Internet website if the business does not maintain those policies, the following information:

- (1) a description of a consumer's rights under this chapter;
- (2) all the designated methods of the business by which a consumer can request access to or deletion of information as provided under this chapter;
- (3) a list of the categories of consumer personal information that the business collected, sold, or disclosed for a business or commercial purpose in the preceding 12 months, and a designation of that information as collected, sold, or disclosed for a business or commercial purpose; or, if the business did not collect, sell, or disclose any consumer personal information for a business or commercial purpose, a disclosure of that fact;
- (4) the categories of sources from which the consumer personal information was collected;
- (5) a description of the business or commercial purpose for which each category of consumer personal information was collected, sold, or disclosed;
- (6) the categories of third parties to which the business sold or disclosed consumer personal information;
- (7) a description of a consumer's right to request specific pieces of the consumer's personal information that the business collected;
- (8) a statement that information collected to verify a consumer's disclosure or deletion request shall only be used as provided in AS 45.49.060(d) and (e)(1).

(c) In addition to the requirements of (b) of this section, a business shall include on its Internet website

(1) a clear and conspicuous link to an Internet webpage titled "Do Not Collect or Sell My Personal Information" that enables a consumer to exercise the consumer's rights under this chapter; a business may not require a consumer create an account to access this Internet webpage or to opt out under this section; the link must be included

(A) on the homepage of the business's Internet website;

(B) in the business's online privacy policies if the business has online privacy policies; and

(C) in any state-specific description of consumers' privacy rights; and

(2) a description of a consumer's rights under this chapter.

(d) A business may comply with (c) of this section by including the required content on a separate and additional Internet webpage that is dedicated to state consumers. A business shall include on an Internet webpage dedicated to state consumers the content required under (b) and (c) of this section and reasonably ensure that state consumers are directed to the alternative Internet website.

(e) A business subject to this chapter shall provide training to individuals responsible for handling consumer questions or requests under this chapter, including training in how to direct a consumer to exercise the consumer's rights under this chapter.

Sec. 45.49.015. Personal information; notification upon receipt. (a) When a person receives personal information for a business or commercial purpose that a business originally collected from a consumer, the person shall notify the business that the person possesses the personal information and provide the person's contact information. The person shall provide updated contact information to the business if the person's contact information changes.

(b) A person who receives personal information that a business originally collected from a consumer, and who discloses the personal information to another person for a business or commercial purpose, shall notify the business that originally collected the information not later than 10 days after the disclosure. The notification must include the contact information of the person to whom the personal information

1 was disclosed.

2 (c) A person who receives personal information that a business originally
3 collected from a consumer shall either deidentify the personal information or maintain
4 the personal information in such a way that the person can readily comply with a
5 disclosure or deletion request under this chapter.

6 (d) A business that collects or has collected personal information from a
7 consumer shall maintain records of each person to whom the business discloses the
8 personal information. The business shall also maintain all records provided to the
9 business under (a) and (b) of this section.

10 (e) A person may not disclose personal information that a business collected
11 from a consumer unless the personal information is disclosed in accordance with a
12 contract that requires the recipient to comply with a deletion request issued under this
13 chapter.

14 **Sec. 45.49.020. Right to request disclosure of collected personal**
15 **information.** (a) A consumer may request a business that collects or collected the
16 consumer's personal information disclose to the consumer

17 (1) the categories and specific pieces of personal information that the
18 business collects or collected within the five years preceding the date of the request;

19 (2) the sources from which the business collects or collected each
20 category of personal information; and

21 (3) the business or commercial purpose for the collection of each
22 category of personal information.

23 (b) A business shall respond to a verified consumer request under this section
24 as required by AS 45.49.060.

25 **Sec. 45.49.030. Right to request deletion of personal information.** (a) A
26 consumer may request a business delete any of the consumer's personal information
27 collected by the business from the consumer within the five years preceding the date
28 of the request.

29 (b) Upon receipt of a verified consumer request under this section, a business
30 shall delete the information identified in the request from the business's records.

31 (c) A business that receives a deletion request under (b) of this section shall

1 direct all persons to whom a business disclosed records under AS 45.49.015 to delete
 2 the personal information and provide a written statement verifying that the information
 3 has been deleted within 45 days of the consumer's deletion request. A person shall
 4 comply with a directive under this subsection. The business shall immediately provide
 5 written notification to the attorney general and the consumer of a person who fails to
 6 provide written verification of compliance.

7 (d) A person is not required to delete personal information under (c) of this
 8 section if the information must be maintained to

9 (1) complete the transaction for which the personal information was
 10 collected;

11 (2) provide a good or service requested or reasonably anticipated
 12 within an ongoing business relationship with the consumer;

13 (3) fulfill the terms of a written warranty or product recall conducted in
 14 accordance with federal law;

15 (4) perform a contract between the business and consumer;

16 (5) detect security incidents; protect against malicious, deceptive,
 17 fraudulent, or illegal activity; or prosecute those responsible for that activity;

18 (6) identify and repair errors that impair existing, intended
 19 functionality of a product or service;

20 (7) exercise a right provided for by law, including the right under the
 21 First Amendment of the United States Constitution to freedom of expression, or ensure
 22 the right of another consumer to exercise that consumer's right to freedom of
 23 expression;

24 (8) comply with a search warrant, subpoena, or court order;

25 (9) engage in public or peer-reviewed scientific, historical, or
 26 statistical research in the public interest that adheres to all other applicable ethics and
 27 privacy laws, if

28 (A) the deletion of information is likely to seriously impair or
 29 render impossible the achievement of the research; and

30 (B) the consumer has provided informed consent to the
 31 research;

1 (10) enable solely internal uses that are reasonably aligned with the
 2 consumer's expectations, based on the consumer's relationship with the business; or

3 (11) comply with a legal obligation.

4 **Sec. 45.49.040. Right to request disclosure of personal information sold or**
 5 **disclosed for a business or commercial purpose.** (a) A consumer may request that a
 6 business that sold or disclosed the consumer's personal information within the last five
 7 years for a business or commercial purpose disclose to the consumer

8 (1) the third parties subject to AS 45.49.015 in possession of the
 9 consumer's personal information;

10 (2) the categories of personal information or specific pieces of personal
 11 information that were sold or disclosed to each third party for a business or
 12 commercial purpose;

13 (3) for the third parties to which the business directly disclosed the
 14 consumer's personal information for a business or commercial purpose, the business or
 15 commercial purpose for disclosing each category of personal information.

16 (b) A business shall respond to a verified consumer request under this section
 17 as required by AS 45.49.060.

18 **Sec. 45.49.050. Right to opt out or for a minor to opt in.** (a) A consumer
 19 may, at any time, request that a business not sell the consumer's personal information
 20 or not sell particular categories of the consumer's personal information.

21 (b) A business shall limit the use and disclosure of a consumer's precise
 22 geolocation data to that necessary to provide goods or services that a consumer
 23 requests and reasonably expects, or goods and services the business reasonably
 24 expects the consumer will request. A business may use a consumer's precise
 25 geolocation data for other purposes if the consumer consents to the use. A consumer
 26 who consents to the use of the consumer's precise geolocation data for other purposes
 27 may, at any time, request that the business stop using the data for other purposes. In
 28 this subsection, "consents" means the consumer agrees in writing, in an agreement
 29 separate from any other user agreement, to the business's use of the consumer's precise
 30 geolocation data for other purposes.

31 (c) A business shall respond to a verified consumer request under this section

1 as required by AS 45.49.060, unless the consumer subsequently provides a clear and
 2 explicit renunciation of the request. For one year after receiving a request under (a) or
 3 (b) of this section, a business may not contact the consumer to request that the
 4 consumer renounce the request.

5 (d) If a business has actual knowledge that a consumer is under 18 years of
 6 age, the business may not disclose the consumer's personal information for a business
 7 or commercial purpose, or use the consumer's precise geolocation data for a purpose
 8 other than to provide goods or services that the consumers reasonably requests and
 9 expects. A business that recklessly disregards a reasonable likelihood that a consumer
 10 is under 18 years of age is considered to have actual knowledge of the consumer's age.
 11 A parent or guardian with legal custody of a consumer who is at least 13 years of age
 12 but under 18 years of age may authorize the sale or disclosure of the consumer's
 13 personal information or the use of the consumer's precise geolocation data for any
 14 purpose.

15 (e) A business subject to this section may only use the personal information
 16 collected from a consumer's request under this section to comply with the request,
 17 unless otherwise authorized by the consumer or by law.

18 **Sec. 45.49.060. Disclosure or deletion request; process.** (a) A business shall
 19 respond to a verified consumer request under AS 45.49.020 or 45.49.040 by

20 (1) providing the requested information electronically to the consumer
 21 in a portable and, to the extent technically feasible, readily useable format that allows
 22 the consumer to transmit the information to another entity without hindrance;

23 (2) if the information provided under (1) of this subsection is not in a
 24 human-readable format, providing the requested information to the consumer in a
 25 human-readable format; in this paragraph, "human-readable" means a format that is
 26 easily readable to the consumer; and

27 (3) at the consumer's request, providing the requested information by
 28 mail.

29 (b) A business subject to this chapter shall designate at least two methods for a
 30 consumer to submit a request under AS 45.49.020 - 45.49.050, including, at a
 31 minimum, a toll-free telephone number and an electronic mail address. If a business

1 maintains an Internet website, the website must include an option to submit requests
 2 under AS 45.49.020 - 45.49.050 on a public facing page. A designated method for
 3 submitting requests may include a mailing address, electronic mail address, Internet
 4 website, Internet web portal, toll-free telephone number, other applicable contact
 5 information, or any new, consumer-friendly means of contacting a business as
 6 determined by regulation.

7 (c) A person may not charge a consumer a fee for performing a duty required
 8 by this chapter.

9 (d) A person may only use the information provided by a consumer in a
 10 request made under AS 45.49.020 - 45.49.050 to identify the consumer and comply
 11 with the request.

12 (e) In response to a request made under AS 45.49.020 - 45.49.050, a business
 13 shall

14 (1) promptly determine whether the request is a verified consumer
 15 request as defined in AS 45.49.290; to make a determination under this paragraph, a
 16 business

17 (A) may require reasonable authentication considering the
 18 nature of the personal information requested;

19 (B) may not require that a consumer create an account with the
 20 business; however, if the consumer maintains an account with the business, the
 21 business may require the consumer submit the request through the account;

22 (2) identify in writing the personal information subject to a disclosure
 23 request; the information disclosed must

24 (A) encompass the 12-month period preceding the request, or
 25 another applicable period designated by the consumer;

26 (B) be designated by the most relevant category of personal
 27 information as defined in AS 45.49.290;

28 (C) clearly separate information requested under AS 45.49.020
 29 and 45.49.040(a)(1) - (3);

30 (3) disclose and deliver the identified information in a verified
 31 disclosure request in writing not later than 45 days after receipt of the request;

1 (4) not later than 45 days after receipt of a verified deletion request,
2 comply with AS 45.49.030, and provide confirmation of compliance to the consumer.

3 (f) The time to respond to a disclosure or deletion request under (e)(3) and (4)
4 of this section may be extended once for an additional 45 days when reasonably
5 necessary. If the time to respond is extended, the business must notify the consumer of
6 the extension.

7 (g) A business may disclose or provide confirmation of deletion of
8 information to the consumer by mail, through the consumer's account with the
9 business, or electronically at the consumer's request if the consumer does not have an
10 account with the business.

11 (h) Notwithstanding any other requirement in this section, if a consumer's
12 requests are manifestly unfounded or excessive, in particular because of the requests'
13 repetitive character, a business may either charge a reasonable fee, taking into account
14 the administrative costs of complying with the consumer's request, or refuse to act on
15 the request. The business shall notify the consumer of a decision to charge a fee or to
16 deny a request within the timeline provided under (f) of this section. The notification
17 must completely explain the business's reason for finding the request excessive or
18 unfounded, including all pertinent facts. The business shall bear the burden of proving
19 that a consumer's request is manifestly unfounded or excessive.

20 (i) A business is not required to respond to a disclosure or deletion request
21 under AS 45.49.020 - 45.49.040 if the consumer making the request has made two
22 verified consumer requests in the previous 365 days.

23 (j) A business is not required under this section to retain personal information
24 collected for a single, one-time transaction, if the business does not sell or disclose the
25 information.

26 (k) A business is not required under this section to reidentify or otherwise link
27 any data that, in the ordinary course of business, is not maintained in a manner that
28 would be considered personal information.

29 (l) A business is not required to provide or delete information under this
30 section if the business cannot verify the consumer request as provided under (e) of this
31 section.

1 **Sec. 45.49.070. Third-party disclosure of personal information.** (a) A third
 2 party may not disclose personal information to another person if the personal
 3 information was originally collected in violation of AS 45.49.010 or 45.49.050. A
 4 third party that reasonably inquires into whether personal information was collected in
 5 violation of AS 45.49.010 or 45.49.050, and reasonably concludes that information
 6 was not obtained in violation of AS 45.49.010 or 45.49.050 may not be held liable for
 7 a violation under this section.

8 (b) A third party may not disclose a consumer's personal information for a
 9 business or commercial purpose unless the third party receives written confirmation
 10 from the business that originally collected the personal information that the
 11 information was collected in compliance with AS 45.49.010 and 45.49.050.

12 **Sec. 45.49.080 Service provider obligations.** (a) A service provider may not

13 (1) retain, use, or disclose personal information received from a
 14 business for any purpose other than to perform the services specified in a written
 15 contract with the business;

16 (2) combine personal information received from a business with
 17 personal information the service provider receives from other sources, unless
 18 otherwise provided in regulations adopted by the attorney general;

19 (3) disclose personal information received from a business to any other
 20 person without first

21 (A) receiving written consent of the business to disclose the
 22 personal information to the other person; and

23 (B) entering into a written contract with the other person that
 24 prohibits the other person from engaging in conduct prohibited under this
 25 section.

26 (b) A person who receives personal information from a service provider may
 27 not disclose the personal information to any other person.

28 **Sec. 45.49.090. Exemptions.** (a) This chapter does not apply to

29 (1) protected health information that is collected by a covered entity or
 30 business associate governed by the privacy, security, and breach notification rules
 31 issued by the United States Department of Health and Human Services in 45 C.F.R.

1 Part 160 and 164, established under the Health Insurance Portability and
 2 Accountability Act of 1996 (P.L. 104 - 191) and the Health Information Technology
 3 for Economic and Clinical Health Act (P.L. 111 - 5); in this paragraph, "protected
 4 health information" has the meaning given in 45 C.F.R. 160.103;

5 (2) a covered entity governed by the privacy, security, and breach
 6 notification rules issued by the United States Department of Health and Human
 7 Services in 45 C.F.R. Part 160 and 164, established under the Health Insurance
 8 Portability and Accountability Act of 1996 (P.L. 104 - 191), to the extent the provider
 9 or covered entity maintains patient information in the same manner as medical
 10 information or protected health information as described in (1) of this subsection;

11 (3) information collected as part of a clinical trial subject to the Federal
 12 Policy for the Protection of Human Subjects, also known as the Common Rule, under
 13 good clinical practice guidelines issued by the International Council for
 14 Harmonisation of Technical Requirements for Pharmaceuticals for Human Use, or
 15 human subject protection requirements of the United States Food and Drug
 16 Administration;

17 (4) vehicle or ownership information retained or shared between a new
 18 motor vehicle dealer and the motor vehicle manufacturer, if the information is shared
 19 for the purpose of or in anticipation of effectuating a vehicle repair covered by a
 20 vehicle warranty or recall conducted under 49 U.S.C. 30118 - 30120, provided that the
 21 new motor vehicle dealer or vehicle manufacturer does not sell, share, or use the
 22 information for any other purpose.

23 (b) Notwithstanding other provisions of this chapter, a person may disclose a
 24 consumer's personal information to

25 (1) comply with federal, state, or local law;

26 (2) comply with a civil, criminal, or regulatory inquiry or an
 27 investigation, subpoena, or summons by federal, state, or local authorities;

28 (3) cooperate with law enforcement agencies concerning conduct or
 29 activity that the person reasonably and in good faith believes may violate federal,
 30 state, or local law;

31 (4) exercise or defend legal claims;

1 (5) collect, use, retain, sell, or disclose, deidentified or aggregated
2 consumer information.

3 (c) Notwithstanding other provisions of this chapter, a business may collect or
4 sell a consumer's personal information if the commercial conduct takes place wholly
5 outside the state. For the purpose of this subsection, commercial conduct takes place
6 wholly outside the state if

7 (1) the business collected the information while the consumer was
8 outside the state; this does not include the storage of personal information, including
9 on a personal device, while the consumer is in the state and collection when the
10 consumer and stored information subsequently leave the state;

11 (2) no part of the sale of the consumer's personal information occurred
12 in the state; and

13 (3) no personal information collected while the consumer was in the
14 state was sold.

15 (d) Excluding the right to file an action for a violation of AS 45.49.120, this
16 chapter does not apply to

17 (1) an activity that is subject to 15 U.S.C. 1681 (Fair Credit Reporting
18 Act) that involves the collection, maintenance, disclosure, sale, communication, or use
19 of any personal information bearing on a consumer's credit worthiness, credit
20 standing, credit capacity, character, general reputation, personal characteristics, or
21 mode of living by a consumer reporting agency; a furnisher of information, who
22 provides information for use in a consumer report, or by a user of a consumer report,
23 to the extent the information is used as authorized under 15 U.S.C. 1681 (Fair Credit
24 Reporting Act);

25 (2) personal information collected, processed, sold, or disclosed under
26 15 U.S.C. 6801 - 6827 (Gramm-Leach-Bliley Act) and related regulations or under 18
27 U.S.C. 2721 et seq. (Driver's Privacy Protection Act of 1994) and related regulations.

28 (e) Excluding the requirements of AS 45.49.010(a) and the right to file an
29 action for a violation of AS 45.49.120, information collected by a business is exempt
30 from this chapter until January 1, 2024, if the information

31 (1) is collected through a person's

1 (A) job application to the business;

2 (B) service as an employee, officer, or director of the business;

3 (C) ownership of the business;

4 (D) service as a dentist licensed under AS 08.36, physician
5 licensed under AS 08.64, or a psychologist licensed under AS 08.86; or

6 (E) work as a contractor for the business; and

7 (2) consists only of

8 (A) personal information used solely within the context for
9 which it was collected;

10 (B) emergency contact information used solely for the purpose
11 of having an emergency contact on file; or

12 (C) personal information retained solely to administer benefits.

13 (f) Except for AS 45.49.050 and 45.49.120, personal information contained in
14 written or verbal communication or a transaction between a business and a consumer
15 is exempt from this chapter if

16 (1) the consumer is a natural person acting as an employee, owner,
17 director, officer, or contractor of a company, partnership, sole proprietorship,
18 nonprofit, or government agency; and

19 (2) the communication or transaction occurs solely within the context
20 of the business's exercising due diligence regarding a product or service, or to receive
21 a product or service from or provide a product or service to the company, partnership,
22 sole proprietorship, nonprofit, or government agency.

23 (g) A requirement under this chapter does not apply if

24 (1) compliance with the requirement would violate an evidentiary
25 privilege under state law;

26 (2) the business provides personal information as part of privileged
27 communication to a person covered by an evidentiary privilege;

28 (3) the right or obligation would adversely affect a right of another
29 consumer;

30 (4) the right or obligation would infringe on the noncommercial
31 activity of a person or entity exercising rights under art. I, sec. 5, Constitution of the

1 State of Alaska.

2 (h) If a series of steps or transactions are component parts of a single
3 transaction, intended from the beginning to avoid the reach of this chapter, including a
4 business's disclosure of information to a third party to avoid the definition of "sell" in
5 AS 45.49.290, the steps or transactions may not be considered separate for the
6 purposes of determining compliance with, an exception to, or a violation of this
7 chapter.

8 (i) In this section,

9 (1) "contractor" means a person who is not an employee of a business
10 but provides a service to the business under a written contract;

11 (2) "director" has the meaning given in AS 10.06.990;

12 (3) "motor vehicle manufacturer" means a person that meets the
13 definition of "motor vehicle manufacturer" in AS 21.59.290 or the definition of
14 "manufacturer" in AS 45.25.990;

15 (4) "new motor vehicle dealer" has the meaning given in
16 AS 45.25.990;

17 (5) "officer" means a person appointed or designated as an officer of a
18 corporation by or under applicable law or the corporation's articles of incorporation or
19 bylaws, or a person who performs for the corporation the functions usually performed
20 by an officer of a corporation;

21 (6) "owner" means an individual who

22 (A) owns, directly or indirectly, or has the power to vote more
23 than 50 percent of the outstanding shares of any class of voting security of a
24 business;

25 (B) controls, in any manner, the election of a majority of the
26 directors or of individuals exercising similar functions; or

27 (C) has the power to exercise a controlling influence over the
28 majority of the directors or of individuals exercising similar functions;

29 (7) "ownership information" means the name of each registered owner
30 and accompanying contact information;

31 (8) "vehicle information" means the vehicle identification number; the

vehicle's make, model, or year; or the vehicle's odometer reading.

Article 2. Activities and Penalties Relating to Personal Information.

Sec. 45.49.100. Retaliation prohibited. (a) A business may not retaliate against a consumer in response to a consumer exercising rights under this chapter.

Retaliation includes

- (1) denying goods or services;
- (2) charging different prices or rates for goods or services, including through the use of discounts or other benefits or imposing penalties;
- (3) providing a different level or quality of goods or services to a consumer;
- (4) suggesting that a consumer will receive a different price or rate for goods or services, or a different level or quality of goods or services.

(b) Notwithstanding (a) of this section, a business may charge a consumer a different rate or provide a different level or quality of goods or services to a consumer if the difference is reasonably related to the value provided to the business by the consumer's data.

(c) A business may offer a consumer a financial incentive for the collection, sale, or retention of personal information, including direct payments to a consumer as compensation. A business may also offer a different price, rate, level, or quality of goods or services to the consumer if the price or difference is directly related to the value provided to the business by the consumer's data. A business that offers a financial incentive under this subsection

- (1) shall notify consumers of the financial incentives;
- (2) shall obtain a consumer's consent before entering a consumer into a financial incentive program; to obtain a consumer's consent under this paragraph, the business shall provide the consumer access to a clear description of the material terms of the financial incentive program; the consumer may revoke consent at any time;
- (3) may not use financial incentive practices that are unjust, unreasonable, coercive, or usurious.

Sec. 45.49.110. Transfer of information in a merger or acquisition. A business may transfer a consumer's personal information to a third party as part of a

merger, acquisition, bankruptcy, or other transaction in which the third party assumes control of all or part of the business. If the third party decides to change how it uses or shares the consumer's personal information in a manner that is materially inconsistent with the promises made at the time of collection, the third party shall notify the consumer before the change. The notice must ensure that existing consumers can easily exercise consumers' rights under this chapter. A transfer does not authorize a business to make material, retroactive privacy policy changes or other changes in a manner that violates state law.

Sec. 45.49.120. Duty to maintain reasonable security measures. A business that owns, licenses, or maintains a consumer's personal information shall implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect the personal information from unauthorized access, destruction, use, modification, or disclosure.

Sec. 45.49.130. Violations. (a) A violation of this chapter is an unfair or deceptive act or practice under AS 45.50.471 - 45.50.561.

(b) In an action brought under AS 45.50.531(a), a consumer whose personal information is subjected to unauthorized access, destruction, use, modification, or disclosure has suffered an ascertainable loss of \$1 or of an amount proven at trial, whichever is greater.

(c) A person who violates this chapter commits the greater of

- (1) one violation for each action or omission that violates this chapter;
- (2) one violation for each person the violation affects; or
- (3) one violation for each day the violation continues.

(d) The legislature may appropriate funds recovered as a result of an action brought under this section to the consumer privacy account established in AS 45.49.140. The Department of Law may use money in the account, without further appropriation, to offset costs incurred by the department in connection with enforcing this chapter.

Sec. 45.49.140. Consumer privacy account. The consumer privacy account is established in the general fund. The legislature may appropriate funds to the consumer privacy account from any civil penalty collected in an action brought by the attorney

1 general under this chapter.

2 **Article 3. Data Broker Registry.**

3 **Sec. 45.49.200. Data broker registration.** (a) On or before January 31
4 following each year that a business meets the definition of data broker in
5 AS 45.49.290, the business shall register with the commissioner of commerce,
6 community, and economic development in accordance with this section.

7 (b) The data broker shall provide, on a form provided by the commissioner,
8 the following information:

- 9 (1) the name of the data broker;
- 10 (2) the data broker's primary physical and mailing addresses;
- 11 (3) the data broker's electronic mail address;
- 12 (4) the data broker's primary Internet website address; and
- 13 (5) the data broker's "Do Not Collect or Sell My Personal Information"
- 14 Internet website address as required under AS 45.49.010(c) or alternative Internet
- 15 webpage that meets the requirements of AS 45.49.010(d).

16 (c) The data broker shall pay a registration fee in an amount established by the
17 department in regulation.

18 **Sec. 45.49.210. Data broker registry publicly displayed.** The commissioner
19 of commerce, community, and economic development shall make the information
20 provided by data brokers available on the department's Internet website.

21 **Article 4. Miscellaneous Provisions.**

22 **Sec. 45.49.250. Regulations.** (a) The attorney general, in accordance with
23 AS 44.62 (Administrative Procedure Act), shall adopt regulations that

- 24 (1) create specific exceptions required to comply with state or federal
- 25 law;
- 26 (2) govern the Internet webpage requirement of AS 45.49.010,
- 27 including
 - 28 (A) the use of a recognizable and uniform mark to identify the
 - 29 opportunity to exercise a right under this chapter;
 - 30 (B) the submission of a consumer request;
 - 31 (C) a business's compliance with a request under AS 45.49.050;

(3) update, as necessary, additional categories of personal information required to be disclosed in response to relevant changes in technology, data collection practices, privacy concerns, or obstacles to implementation;

(4) update, as necessary, the interpretation of unique identifiers in response to relevant changes in technology, data collection practices, privacy concerns, or obstacles to implementation;

(5) update, as necessary, the interpretation of designated methods for submitting requests to facilitate a consumer's ability to obtain information from a business;

(6) establish requirements to ensure that notices and information provided under AS 45.49.010 are in plain language, accessible to consumers with disabilities, and available in the language primarily used by the business to interact with the consumer, including with regard to financial incentive offerings;

(7) govern the process by which a business verifies a consumer request under AS 45.49.020 - 45.49.060, in a manner intended to minimize the administrative burden on the consumer and taking into account the available technology, security concerns, and the burden on the business;

(8) designate the process for a consumer to authorize a representative to exercise the rights provided under this chapter on the consumer's behalf.

(b) The attorney general may adopt regulations that

(1) establish rules and procedures for processing and complying with a verified consumer request for specific pieces of personal information relating to a household to address obstacles to implementation and privacy concerns;

(2) state that service providers may combine personal information for specified purposes;

(3) are necessary to further the purpose of this chapter.

Sec. 45.49.260. Provisions not waivable. A consumer's waiver of the provisions of this chapter is contrary to public policy and is unenforceable and void. This section does not prevent a consumer from

(1) declining to request information from a business;

(2) declining to opt out of a business's collection, sale, or disclosure of

1 the consumer's personal information; or

2 (3) authorizing a business to sell the consumer's personal information
3 after previously opting out.

4 **Sec. 45.49.270. Liberal construction.** The intent of this chapter is remedial
5 and its provisions shall be liberally construed.

6 **Article 5. General Provisions.**

7 **Sec. 45.49.290. Definitions.** In this chapter, unless the context indicates
8 otherwise,

9 (1) "aggregated consumer information" means information that relates
10 to a group or category of consumers from which individual consumer identities have
11 been removed, and that is not linked or reasonably linkable, including by a device, to
12 any consumer or household; "aggregated consumer information" does not include one
13 or more individual consumer records that have been deidentified;

14 (2) "business" means a sole proprietorship, partnership, limited
15 liability company, corporation, association, or other legal entity that is organized or
16 operated for the profit or financial benefit of its shareholders or other owners, and
17 collects or has collected consumers' personal information, or on the behalf of which
18 that information is collected, alone or jointly with others, determines the purposes and
19 means of processing consumers' personal information; to meet the definition of
20 "business" in this paragraph, the entity must do business in the state and

21 (A) satisfy one or more of the following thresholds:

22 (i) had annual gross revenues of \$25,000,000 or more in
23 the year 2022 or in any year thereafter;

24 (ii) in the most recent completed calendar year, alone or
25 in combination, bought or disclosed the personal information of
26 100,000 or more persons or households;

27 (iii) sold the personal information of a consumer,
28 household, or device in the last 365 days; or

29 (B) control or be controlled by a business that meets a
30 threshold in (A) of this paragraph and share common branding, such as a
31 shared name, service mark, or trademark, with the business; in this

1 subparagraph, control is shown if a business has

2 (i) ownership or the power to vote more than 50 percent
3 of the outstanding shares of any class of voting security of a business;

4 (ii) control, in any manner, of the election of a majority
5 of the directors or of individuals exercising similar functions; or

6 (iii) the power to exercise a controlling influence over
7 the majority of the directors or of individuals exercising similar
8 functions;

9 (3) "business purpose" means a use for an operational or other notified
10 purpose that is either reasonably necessary and proportionate to achieving the
11 operational purpose for which personal information was collected or processed, or in a
12 compatible context; "compatible context" includes

13 (A) auditing related to a current interaction with the consumer
14 and concurrent transactions, including counting ad impressions to unique
15 visitors, verifying positioning and quality of ad impressions, and auditing
16 compliance with this specification and other standards;

17 (B) detecting security incidents, protecting against malicious,
18 deceptive, fraudulent, or illegal activity, and prosecuting those responsible for
19 that activity;

20 (C) debugging to identify and repair errors that impair existing
21 intended functionality;

22 (D) short-term, transient use, provided that the personal
23 information is not disclosed to another third party and is not used to build a
24 profile about a consumer or alter an individual consumer's experience outside
25 the current interaction, including the contextual customization of ads shown as
26 part of the same interaction;

27 (E) performing services on behalf of the business or service
28 provider, including maintaining or servicing accounts, providing customer
29 service, processing or fulfilling orders and transactions, verifying customer
30 information, processing payments, providing financing, providing advertising
31 or marketing services, providing analytic services, or providing similar

1 services on behalf of the business or service provider;

2 (F) conducting internal research for technological development
3 and demonstration;

4 (G) performing activities to verify or maintain the quality or
5 safety of a service or device that is owned, manufactured, manufactured for, or
6 controlled by the business, and to improve, upgrade, or enhance the service or
7 device;

8 (4) "categories of personal information" includes any of the
9 enumerated categories of personal information as defined in this section, any
10 categories of personal information identified by a regulation adopted under this
11 chapter, and any additional categories of personal information not specifically
12 enumerated;

13 (5) "categories of sources" includes the consumer, advertising
14 networks, Internet service providers, data analytics providers, government entities,
15 operating systems and platforms, social networks, data brokers, other sources listed in
16 regulations adopted under this chapter; and other types or groupings of persons or
17 entities from which a business collects personal information about consumers,
18 described with enough particularity to provide consumers with a meaningful
19 understanding of the type of person or entity;

20 (6) "categories of third parties" includes advertising networks, internet
21 service providers, data analytics providers, government entities, operating systems and
22 platforms, social networks, data brokers, other sources listed in regulations adopted
23 under this chapter; and other types or groupings of third parties with whom the
24 business shares personal information, described with enough particularity to provide
25 consumers with a meaningful understanding of the type of third party;

26 (7) "collect" includes buying, renting, gathering, obtaining, receiving,
27 or accessing any personal information pertaining to a consumer by any means, actively
28 or passively receiving information from the consumer, or by observing the consumer's
29 behavior;

30 (8) "commercial purpose" includes marketing, advertising, and any
31 other purpose that advances a person's commercial or economic interests; "commercial

1 purpose" does not include the purpose of engaging in speech that state or federal
 2 courts have recognized as noncommercial speech, including political speech and
 3 journalism;

4 (9) "consumer" means a resident of the state, however identified,
 5 including by any unique identifier, who is physically present in the state with the
 6 intent to remain indefinitely in the state under the requirements of AS 01.10.055;

7 (10) "data broker" means a business as defined in (2) of this section
 8 that knowingly collects and sells to third parties the personal information of a
 9 consumer with whom the business does not have a direct relationship; "data broker"
 10 does not include a consumer reporting agency to the extent the agency is covered by
 11 15 U.S.C. 1681 et seq. (Fair Credit Reporting Act) or a financial institution to the
 12 extent the institution it is covered by the Gramm-Leach-Bliley Act (P.L. 106 - 102)
 13 and implementing regulations;

14 (11) "disclose" includes all forms of disclosure, including the
 15 disclosure of personal information related to a sale of personal information;

16 (12) "deidentified" means that the information cannot reasonably
 17 identify, relate to, describe, be capable of being associate with, or be directly or
 18 indirectly linked to an individual consumer, and the business

19 (A) has implemented technical safeguards that prohibit
 20 reidentification of the consumer to whom the information may pertain;

21 (B) has implemented business processes that specifically
 22 prohibit reidentification of the information;

23 (C) has implemented business processes to prevent inadvertent
 24 release of deidentified information; and

25 (D) makes no attempt to reidentify the information;

26 (13) "device" includes a computer and physical object that can

27 (A) read, write, or store information that is represented in
 28 numerical form;

29 (B) connect to the Internet, directly or indirectly, or to another
 30 device;

31 (14) "homepage" means

1 (A) the introductory page of an Internet website where personal
2 information is collected;

3 (B) in the case of a mobile application, "homepage" means the
4 application's platform page or download page, a link within the application,
5 and any other location that allows consumers to review the notice required by
6 AS 45.49.010;

7 (15) "Internet webpage" means a document accessible through the
8 Internet with a unique universal resource locator (URL) code;

9 (16) "person" means a natural person, proprietorship, corporation,
10 company, partnership, firm, association, and any other non-governmental organization
11 or group of persons acting in concert;

12 (17) "personal information"

13 (A) means information that identifies, relates to, describes, is
14 reasonably capable of being associated with, or could reasonably be linked,
15 directly or indirectly, with a particular consumer or household; in this
16 subparagraph, "information that identifies" includes

17 (i) a real name, alias, postal address, unique personal
18 identifier, online identifier, Internet protocol address, electronic mail
19 address, account name, social security number, driver's license number,
20 or passport number;

21 (ii) characteristics of protected classifications under
22 state or federal law;

23 (iii) any category of personal information as defined in
24 AS 45.48.090;

25 (iv) commercial information, including records of
26 personal property, products or services purchased, obtained, or
27 considered, or other purchasing or consuming histories or tendencies;

28 (v) biometric information, which includes an
29 individual's physiological, biological, or behavioral characteristics;
30 deoxyribonucleic acid, that can be used, singly or in combination with
31 other identifying data, to establish individual identity; imagery of the

1 retina, fingerprints, face, vein patterns, or voice recordings that can be
2 used as an identifier template; keystroke patterns or rhythms; or sleep,
3 health, or exercise data;

4 (vi) Internet or other electronic network activity
5 information, including browsing history, search history, and
6 information regarding a consumer's interaction with an Internet
7 website, application, or advertisement;

8 (vii) geolocation data, including precise geolocation
9 data;

10 (viii) audio, electronic, visual, thermal, olfactory, or
11 similar information;

12 (ix) professional or employment information;

13 (x) education information that is not publicly available,
14 personally identifiable information as defined in 20 U.S.C. 1232g; 34
15 C.F.R. Part 99 (Family Educational Rights and Privacy Act);

16 (xi) inferences drawn from any of the information
17 identified in this subparagraph to create a profile about a consumer
18 reflecting the consumer's preferences, characteristics, psychological
19 trends, predispositions, behavior, attitudes, intelligence, abilities, and
20 aptitudes;

21 (B) does not include publicly available information that is
22 lawfully made available from federal, state, or local government records;
23 biometric information as described in (A) of this paragraph, collected by a
24 business without a consumer's knowledge is not considered publicly available
25 information;

26 (C) does not include consumer information that is deidentified
27 or aggregated;

28 (18) "processing" means any operation or set of operations performed
29 on personal data or on sets of personal data, whether or not by automated means;

30 (19) "precise geolocation data" means any data that is derived from a
31 device that is used or intended to be used to locate a consumer within a geographic

1 area that is equal to or less than the area of a circle with a radius of 1,850 feet, except
2 as otherwise provided in regulations adopted under this chapter;

3 (20) "research" means scientific, systematic study and observation that
4 is in the public interest and that adheres to all other applicable ethics and privacy laws
5 or studies conducted in the public interest and is

6 (A) compatible with the business purpose for which the
7 personal information was collected;

8 (B) subsequently pseudonymized and deidentified, or
9 deidentified and in the aggregate, such that the information cannot reasonably
10 identify, relate to, describe, be capable of being associated with, or be linked,
11 directly or indirectly, to a particular consumer; personal information is
12 considered pseudonymized if the information is processed so that it is no
13 longer attributable to a specific consumer without the use of additional
14 information, and the additional information is kept separately and is subject to
15 technical and organizational measures to ensure that the personal information
16 is not attributed to an identified or identifiable consumer;

17 (C) subject to technical safeguards that prohibit reidentification
18 of the consumer to whom the information may pertain;

19 (D) subject to business processes that specifically prohibit
20 reidentification of the information;

21 (E) subject to business processes to prevent inadvertent release
22 of deidentified information;

23 (F) protected from any reidentification attempts;

24 (G) used solely for research purposes that are compatible with
25 the context in which the personal information was collected;

26 (H) not used for a commercial purpose; and

27 (I) subjected by the business conducting the research to
28 additional security controls that limit access to the research data to individuals
29 in the business as necessary to carry out the research purpose;

30 (21) "sale," "sell," or "sold" means selling, renting, releasing,
31 disclosing, disseminating, making available, transferring, or otherwise communicating

1 orally, in writing, or by electronic or other means, a consumer's personal information
 2 by the business to another business or a third party for monetary or other valuable
 3 consideration; "sale," "sell," or "sold" does not include

4 (A) a consumer using or directing a business to intentionally
 5 disclose personal information or using the business to intentionally interact
 6 with a third party, provided the third party does not also sell the personal
 7 information, unless that disclosure would be consistent with the provisions of
 8 this title; a consumer is not acting intentionally when hovering over, muting,
 9 pausing, or closing a given piece or content;

10 (B) a business's using or sharing an identifier for a consumer
 11 who has opted out of the sale of the consumer's personal information for the
 12 purpose of alerting third parties that the consumer has opted out;

13 (C) a business's using or sharing with a service provider a
 14 consumer's personal information that is necessary to perform a business
 15 purpose if

16 (i) the business has provided notice of the information
 17 being used or shared in its terms and conditions consistent with
 18 AS 45.49.010; and

19 (ii) the service provider does not further collect, sell, or
 20 use the consumer's personal information, except as necessary to
 21 perform the business purpose;

22 (D) a business transferring a consumer's personal information
 23 as an asset in a merger, acquisition, bankruptcy, or other transaction in which
 24 the third party assumes control of all or part of the business, provided that
 25 information is used or shared consistent with AS 45.49.020 and 45.49.040;

26 (22) "service provider" means a person that receives personal
 27 information from a business to be used solely for a business purpose, under a written
 28 contract that requires the service provider comply with AS 45.49.080;

29 (23) "third party" means any person, except

30 (A) the business that collected the personal information from
 31 the consumer; and

(B) a service provider contracting with the business that collected the personal information from the consumer;

(24) "unique identifier" or "unique personal identifier" includes a device identifier; an Internet protocol address; cookies, beacons, pixel tags, mobile ad identifiers, or similar technology; customer number, unique pseudonym, or user alias; telephone numbers, or other forms of persistent or probabilistic identifiers that can be used to identify a particular consumer or device; or other persistent identifier that can be used to recognize a consumer, a household, or a device that is linked to a consumer or household, over time and across different services; in this paragraph, "probabilistic identifier" means the identification of a consumer or a device to a degree of certainty of more probable than not based on any categories of personal information included in, or similar to, the categories of personal information as defined in this section;

(25) "verified consumer request" means a request that is made by a consumer, by a parent or legal guardian with legal custody of the consumer, or by a natural person or a person registered with the United States Secretary of State, authorized by the consumer to act on the consumer's behalf, and that the business can reasonably verify, in accordance with regulations adopted under this chapter, to be the consumer about whom the business has collected personal information.

Sec. 45.49.295. Short title. This chapter may be cited as the Consumer Data Privacy Act.

* **Sec. 3.** AS 45.50.471(b) is amended by adding a new paragraph to read:

(58) violating AS 45.49 (Consumer Data Privacy Act).

* **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to read:

TRANSITION: REGULATIONS. The Department of Law and the Department of Commerce, Community, and Economic Development may adopt regulations necessary to implement the changes made by this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the effective date of the law implemented by the regulation.

* **Sec. 5.** Section 4 of this Act takes effect immediately under AS 01.10.070(c).

* **Sec. 6.** Except as provided in sec. 5 of this Act, this Act takes effect January 1, 2023.