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SENATE BILL 176

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

Michael Padilla

AN ACT

RELATING TO CONSUMER PROTECTION; ENACTING THE CONSUMER INFORMATION PRIVACY ACT; PROVIDING DEFINITIONS; ESTABLISHING CONSUMER RIGHTS; ESTABLISHING OBLIGATIONS FOR BUSINESSES THAT COLLECT OR USE PERSONAL CONSUMER INFORMATION; PROVIDING FOR PROMULGATION OF RULES; ESTABLISHING CIVIL CAUSES OF ACTION; PROVIDING PENALTIES; ESTABLISHING THE CONSUMER PRIVACY FUND; PROVIDING FOR DISTRIBUTIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be cited as the "Consumer Information Privacy Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Consumer Information Privacy Act:

A. "aggregate consumer information" means information that relates to a group or category of consumers,

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1 from which individual consumer identities have been removed,
2 that is not linked or reasonably linkable to any consumer or
3 household, including via a device. "Aggregate consumer
4 information" does not mean one or more individual consumer
5 records that have been de-identified;

6 B. "biometric information" means an individual's
7 physiological, biological or behavioral characteristics that
8 can be used singly or in combination with each other or with
9 other identifying data to establish individual identity.

10 Biometric information includes:

11 (1) imagery of the iris, retina, fingerprint,
12 face, hand, palm, vein patterns and voice recordings from which
13 an identifier template can be extracted;

14 (2) keystroke patterns or rhythms or gait
15 patterns or rhythms;

16 (3) sleep, health or exercise data that
17 contain identifying information; or

18 (4) such other types of information
19 established by the office of the attorney general by rule;

20 C. "business" means:

21 (1) a corporation, joint venture, limited
22 liability company, partnership, limited partnership, limited
23 liability partnership, real estate investment trust or sole
24 proprietor; or

25 (2) any entity that controls or is controlled

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1 by a business as defined in Paragraph (1) of this subsection
2 that shares common branding with the business;

3 D. "business purpose" means the use of personal
4 information for a business's or a service provider's
5 operational purposes, or other notified purposes, that is
6 reasonably necessary and proportionate to achieve the
7 operational purpose for which the personal information is
8 collected or processed. "Business purpose" includes:

9 (1) auditing related to a current interaction
10 with a consumer and concurrent transactions, including counting
11 ad impressions to unique visitors, verifying positioning and
12 quality of ad impressions and auditing compliance with this
13 specification and other standards;

14 (2) detecting security incidents and
15 protecting against malicious, deceptive, fraudulent or illegal
16 activity and legal actions taken against those responsible for
17 that activity;

18 (3) debugging to identify and repair errors
19 that impair existing intended functionality;

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

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1 (5) performing services on behalf of a
2 business or service provider, including maintaining or
3 servicing accounts, providing customer service, processing or
4 fulfilling orders and transactions, verifying customer
5 information, processing payments, providing financing,
6 providing advertising or marketing services, providing analytic
7 services or providing similar services on behalf of the
8 business or service provider;

9 (6) undertaking internal research for
10 technological development and demonstration;

11 (7) undertaking activities to verify or
12 maintain the quality or safety of a service or device that is
13 owned by, manufactured by, manufactured for or controlled by a
14 business and to improve, upgrade or enhance the service or
15 device that is owned by, manufactured by, manufactured for or
16 controlled by the business; or

17 (8) other purposes established by the office
18 of the attorney general by rule;

19 E. "collect" means to buy, rent, gather, obtain,
20 receive or access any personal information pertaining to a
21 consumer by any means;

22 F. "commercial purpose" means to advance a person's
23 commercial or economic interests, such as by inducing another
24 person to buy, rent, lease, join, subscribe to, provide or
25 exchange products, goods, property, information or services or

1 enabling or effecting, directly or indirectly, a commercial
2 transaction;

3 G. "common branding" means a shared name, service
4 mark or trademark;

5 H. "control" means equity ownership in a business
6 entity that represents at least fifty percent of the total
7 voting power of that business entity or has a value equal to at
8 least fifty percent of the total equity of that business
9 entity;

10 I. "de-identified" means information that cannot
11 reasonably identify, relate to, describe, be capable of being
12 associated with or be linked, directly or indirectly, to a
13 particular consumer;

14 J. "designated methods for submitting requests"
15 means a United States mailing address, an email address, an
16 internet web page, internet web portal, a toll-free telephone
17 number or other contact information established by the office
18 of the attorney general by rule whereby consumers may submit a
19 request or direction under the Consumer Information Privacy
20 Act;

21 K. "device" means any physical object that is
22 capable of connecting to the internet, directly or indirectly,
23 or to another device;

24 L. "family" means a custodial parent or guardian
25 and any minor children over which the parent or guardian has

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1 custody;

2 M. "health insurance information" means a
3 consumer's insurance policy number, subscriber identification
4 number, any unique identifier used by a health insurer to
5 identify a consumer or any information in a consumer's
6 application and claims history, including any appeals records,
7 if the information is linked or reasonably linkable to a
8 consumer or household, including via a device, by a business or
9 service provider;

10 N. "homepage" means a location that allows
11 consumers to review a notice required of a business pursuant to
12 the Consumer Information Privacy Act, including:

13 (1) an introductory page of an internet
14 website or an internet web page where personal information is
15 collected;

16 (2) a platform page or download page for an
17 online service or mobile application;

18 (3) a link within a mobile application; or

19 (4) another location established by the office
20 of the attorney general by rule;

21 O. "identifier template" means a face print, a
22 fingerprint minutiae template, a voice print or other template
23 as established by the office of the attorney general by rule;

24 P. "incident" means a breach of security that
25 results in the unauthorized access, exfiltration, theft or

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1 disclosure of personal information of a consumer;

2 Q. "inference" means the derivation of information,
3 data, assumptions or conclusions from facts, evidence or
4 another source of information or data;

5 R. "opt out" means a directive by a consumer not to
6 sell the consumer's personal information;

7 S. "person" means an individual, proprietorship,
8 firm, partnership, joint venture, syndicate, business trust,
9 company, corporation, limited liability company, association,
10 committee or any organization or group of persons acting in
11 concert;

12 T. "personal information" means information, other
13 than publicly available information, from federal, state or
14 local government records that identifies, describes or could
15 reasonably be linked with a particular consumer or household,
16 including:

17 (1) a real name, alias, postal address, unique
18 personal identifier, online identifier, internet protocol
19 address, email address, account name, bank account number,
20 credit card number, debit card number, driver's license or
21 state identification card number, insurance policy number,
22 social security number, passport number or telephone number;

23 (2) any information that identifies, describes
24 or is capable of being associated with a particular individual,
25 including a signature, physical characteristic or description,

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1 education, employment, employment history, financial
2 information, medical information or health insurance
3 information;

4 (3) characteristics of protected
5 classifications under state or federal law;

6 (4) commercial information, including records
7 of personal property, purchases of products or services or
8 histories of purchases;

9 (5) biometric information;

10 (6) internet or other electronic network
11 activity information, including browsing history, search
12 history and information regarding a consumer's interaction with
13 an internet website, application or advertisement;

14 (7) geolocation data;

15 (8) audio, electronic, visual, thermal,
16 olfactory or similar information;

17 (9) inferences drawn from any of the
18 information identified in this subsection to create a profile
19 about a consumer that reflects the consumer's preferences,
20 characteristics, psychological trends, predispositions,
21 behavior, attitudes, intelligence, abilities or aptitudes; or

22 (10) other types of information established by
23 the office of the attorney general by rule;

24 U. "probabilistic identifier" means the
25 identification of a consumer or a device to a degree of

1 certainty that is more probable than not based on any
2 categories of personal information included in, or similar to,
3 the categories enumerated in Subsection S of this section;

4 V. "processing" means any operation or set of
5 operations that are performed on personal data or on sets of
6 personal data, whether or not by automated means;

7 W. "research" means scientific, systematic study
8 and observation, including basic research or applied research
9 that is in the public interest and that adheres to all other
10 applicable ethics and privacy laws or studies conducted in the
11 public interest in the area of public health;

12 X. "sell" means to sell, rent, release, disclose,
13 disseminate, make available, transfer or otherwise communicate
14 orally, in writing, electronically or by other means a
15 consumer's personal information for monetary or other valuable
16 consideration;

17 Y. "service" means work, labor or service,
18 including service furnished in connection with the sale or
19 repair of a good;

20 Z. "service provider" means a business that
21 processes information;

22 AA. "sole proprietor" means a single individual who
23 owns all the assets of a business, is solely liable for its
24 debts and employs in the business no person other than that
25 person's self;

1 BB. "third party" means a third party as that term
2 is commonly used in business transactions, including:

3 (1) a business that collects personal
4 information from consumers; or

5 (2) a person to which a business discloses a
6 consumer's personal information for a business purpose pursuant
7 to a written contract that:

8 (a) prohibits the person receiving the
9 personal information to sell, retain, use or disclose the
10 personal information for any purpose other than the services
11 specified in the contract; and

12 (b) includes a certification made by the
13 person receiving the personal information that the person
14 understands the restrictions in Subparagraph (a) of this
15 paragraph and will comply with them;

16 CC. "unique identifier" means a persistent
17 identifier that can be used to recognize a consumer, a family
18 or a device that is linked to a consumer or family, over time
19 and across different services, including a device identifier;
20 an internet protocol address; cookies, beacons, pixel tags,
21 mobile ad identifiers or similar technology; a customer's
22 number, unique pseudonym or user alias; telephone numbers; or
23 other forms of persistent or probabilistic identifiers that can
24 be used to identify a particular consumer or device;

25 DD. "verifiable consumer request" means a request

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1 that is made by a consumer or a person authorized to act on the
2 consumer's behalf and that a business can reasonably verify
3 pursuant to rules established by the office of the attorney
4 general; and

5 EE. "willfully disregard" means to purposefully or
6 recklessly ignore information available to a business about a
7 consumer's likely age.

8 SECTION 3. [NEW MATERIAL] CONSUMER RIGHTS REGARDING
9 PERSONAL INFORMATION.--

10 A. A consumer has the right to request that a
11 business provide to the consumer the following information:

12 (1) the categories of personal information
13 about that consumer that the business has disclosed, collected
14 or sold for a business purpose;

15 (2) the categories of sources from which
16 personal information is collected;

17 (3) the business or commercial purpose for
18 disclosing, collecting or selling personal information;

19 (4) the categories of third parties with which
20 the business shares or sells personal information and the
21 categories of personal information for each third party to
22 which the personal information has been sold; and

23 (5) the specific pieces of personal
24 information the business has collected about that consumer.

25 B. A consumer has the right to request that a

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1 business delete any personal information about the consumer
2 that the business has collected from the consumer.

3 C. This section does not require a business to:

4 (1) retain any personal information about a
5 consumer collected for a one-time transaction if, in the
6 ordinary course of business, that information about the
7 consumer is not retained; or

8 (2) re-identify or otherwise link any data
9 that, in the ordinary course of business, are not maintained in
10 a manner that would be considered personal information.

11 D. A consumer has the right at any time to:

12 (1) opt out of the sale of the consumer's
13 personal information;

14 (2) authorize in a manner established by the
15 office of the attorney general by rule another person to opt
16 out on the consumer's behalf; or

17 (3) revoke a decision to opt out.

18 E. A third party shall not sell personal
19 information about a consumer that has been sold to a third
20 party by a business unless the consumer has received explicit
21 notice and is provided an opportunity to exercise the right to
22 opt out pursuant to Subsection D of this section.

23 SECTION 4. [NEW MATERIAL] BUSINESS REQUIREMENTS--
24 OBLIGATIONS TO CONSUMERS--RESTRICTIONS ON USE OR SALE OF
25 PERSONAL INFORMATION.--

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1 A. At the time of or before collection of personal
2 information, a business that collects a consumer's personal
3 information shall provide notice to the consumer regarding:

4 (1) the categories of personal information to
5 be collected and the purposes for which the categories of
6 personal information will be used;

7 (2) whether the information might be sold and
8 that the consumer has a right to opt out of the sale of the
9 consumer's personal information; and

10 (3) at least two designated methods for
11 submitting verifiable consumer requests for information
12 required to be disclosed pursuant the Consumer Information
13 Privacy Act, including a toll-free telephone number and a
14 website address if the business maintains a website; provided
15 that a business shall not require a consumer to create an
16 account with the business to make a verifiable consumer
17 request.

18 B. Within forty-five days of receiving a verifiable
19 consumer request regarding use or sale of the consumer's
20 personal information pursuant to Section 3 of the Consumer
21 Information Privacy Act, a business shall disclose and deliver
22 the requested information free of charge to the consumer;
23 provided that:

24 (1) the time to provide the required
25 information may be extended once by an additional forty-five

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1 days when reasonably necessary if the consumer is provided
2 notice of the extension within the first forty-five-day period;

3 (2) if the business does not take action on a
4 verifiable consumer request, the business shall inform the
5 consumer within the time period permitted for response pursuant
6 to this section of the reasons for not taking action and any
7 rights the consumer may have to appeal the decision to the
8 business;

9 (3) if a verifiable consumer request is
10 manifestly unfounded or excessive, in particular because of its
11 repetitive character, a business may either charge a reasonable
12 fee, taking into account the administrative costs of providing
13 the information or communication or taking the action
14 requested, or the business may refuse to act on the request and
15 notify the consumer of the reason for refusing the request;
16 provided that the business shall bear the burden of
17 demonstrating that any verifiable consumer request is
18 manifestly unfounded or excessive;

19 (4) the information covers the twelve-month
20 period preceding the business's receipt of the verifiable
21 consumer request;

22 (5) identify the information by the categories
23 specified to the consumer pursuant to Paragraph (1) of
24 Subsection A of this section and specify the disposition of
25 each category of personal information, including whether it was

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1 collected, sold or used for a business purpose;

2 (6) at the option of the consumer, the
3 response to the verifiable consumer request may be delivered by
4 mail or electronically; provided that electronically delivered
5 information shall be provided, to the extent technically
6 feasible and as established by the office of the attorney
7 general by rule, in a format that allows the consumer to
8 transmit the information to another entity without hindrance;
9 and

10 (7) unless contractually obligated, a business
11 is not required to provide personal information to a consumer
12 more than twice in a twelve-month period.

13 C. The information disclosed and delivered to a
14 consumer making a request pursuant to Subsection B of this
15 section shall include the:

16 (1) categories of personal information it has
17 collected about that consumer;

18 (2) categories of sources from which the
19 personal information is collected;

20 (3) business purpose or commercial purpose for
21 collecting or selling personal information;

22 (4) categories of third parties with whom the
23 business shares personal information; and

24 (5) specific pieces of personal information
25 the business has collected about that consumer.

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1 D. A business that receives a verifiable consumer
2 request to delete the consumer's personal information shall
3 delete the consumer's personal information from its records and
4 direct any service providers to delete the consumer's personal
5 information from their records, except if it is necessary for
6 the business or service provider to maintain the consumer's
7 personal information to:

8 (1) complete the transaction for which the
9 personal information was collected, provide a good or service
10 that is requested by the consumer, or that is reasonably
11 anticipated within the context of a business's ongoing business
12 relationship with the consumer, or otherwise perform a contract
13 between the business and the consumer;

14 (2) detect security incidents and protect
15 against malicious, deceptive, fraudulent or illegal activity or
16 prosecute those responsible for that activity;

17 (3) debug to identify and repair errors that
18 impair existing intended functionality;

19 (4) exercise free speech, ensure the right of
20 another consumer to exercise the consumer's right of free
21 speech or exercise another right provided for by law;

22 (5) enable solely internal uses that are
23 reasonably aligned with the expectations of the consumer based
24 on the consumer's relationship with the business; or

25 (6) comply with a legal obligation.

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1 E. A business that collects a consumer's personal
2 information shall provide the following information in its
3 online privacy policy, description of consumers' privacy rights
4 or its internet website and update that information at least
5 once every twelve months:

6 (1) a description of consumers' rights
7 pursuant to the Consumer Information Privacy Act and two or
8 more designated methods for submitting information requests,
9 including a toll-free telephone number and a website address if
10 the business maintains a website;

11 (2) a list of the categories of personal
12 information it has collected about consumers in the preceding
13 twelve months;

14 (3) a list of the categories of personal
15 information it has sold about consumers in the preceding twelve
16 months; and

17 (4) a list of the categories of personal
18 information it has disclosed about consumers for business
19 purposes in the preceding twelve months.

20 F. A business that sells consumers' personal
21 information to third parties shall:

22 (1) provide a clear and conspicuous link to an
23 internet web page titled "Do Not Sell My Personal Information"
24 that enables a consumer or a person authorized by the consumer
25 to opt out of the sale of the consumer's personal information

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1 on either:

2 (a) its internet homepage that it makes
3 available to the public generally; or

4 (b) a homepage that is dedicated to New
5 Mexico consumers if the business takes reasonable steps that
6 New Mexico consumers are directed to the homepage for New
7 Mexico consumers and not the homepage made available to the
8 public generally;

9 (2) include a description of consumers' rights
10 pursuant to the Consumer Information Privacy Act, along with a
11 separate link to the "Do Not Sell My Personal Information"
12 internet web page in:

13 (a) its online privacy policy or
14 policies if the business has an online privacy policy or
15 policies; and

16 (b) any New Mexico-specific description
17 of consumers' privacy rights;

18 (3) not sell personal information collected by
19 the business about consumers who have exercised their right to
20 opt out of the sale of their personal information;

21 (4) wait for at least twelve months before
22 requesting that a consumer who has opted out of the sale of the
23 consumer's personal information authorize the sale of the
24 consumer's personal information;

25 (5) use any personal information collected

1 from a consumer in connection with the submission of that
2 consumer's opt-out request solely for the purposes of complying
3 with the opt-out request; and

4 (6) require a consumer to create an account to
5 direct the business not to sell the consumer's personal
6 information.

7 G. A business shall not sell a consumer's personal
8 information if the business has:

9 (1) received direction from a consumer not to
10 sell the consumer's personal information; or

11 (2) actual knowledge that the consumer is a
12 minor, unless the consumer's parent or legal guardian has
13 affirmatively authorized the sale of the consumer's personal
14 information; provided that if a business has information that
15 reasonably establishes that a consumer is a minor and the
16 business willfully disregards that information, the business
17 shall be deemed to have actual knowledge of the consumer's age.

18 H. A business that discloses personal information
19 to a service provider shall not be liable under the Consumer
20 Information Privacy Act if the service provider receiving the
21 personal information uses it in violation of the restrictions
22 set forth in that act; provided that at the time of disclosing
23 the personal information, the business did not have actual
24 knowledge, or reason to believe, that the service provider
25 intended to commit such a violation. A service provider shall

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1 likewise not be liable under the Consumer Information Privacy
2 Act for the obligations of a business for which it provides
3 services as set forth in that act.

4 I. A business that collects a consumer's personal
5 information shall ensure that:

6 (1) all individuals responsible for handling
7 consumer inquiries about the business's privacy practices or
8 the business's compliance with the Consumer Information Privacy
9 Act are informed of all the requirements and how to direct
10 consumers to exercise their rights under that act; and

11 (2) personal information collected from the
12 consumer in connection with the business's verification of a
13 consumer request be used solely for the purposes of
14 verification.

15 SECTION 5. [NEW MATERIAL] OPT-OUT USE--OFFERS OF SERVICE
16 AND INCENTIVES--RESTRICTIONS.--

17 A. A business shall not discriminate against a
18 consumer because the consumer exercised any of the consumer's
19 rights under the Consumer Information Privacy Act by:

20 (1) denying goods or services to the consumer;

21 (2) charging different prices or rates for
22 goods or services, including through the use of discounts or
23 other benefits or imposing penalties;

24 (3) providing a different level or quality of
25 goods or services to the consumer, if the consumer exercises

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1 the consumer's rights under the Consumer Information Privacy
2 Act; or

3 (4) suggesting that the consumer will receive
4 a different price or rate for goods or services or a different
5 level or quality of goods or services unless the difference is
6 identified to the consumer as reasonably related to the value
7 derived from the consumer's data.

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

16 C. A business that offers any financial incentives
17 pursuant to this section shall notify consumers of the
18 financial incentives pursuant to Section 4 of the Consumer
19 Information Privacy Act.

20 D. A business may enter a consumer into a financial
21 incentive program only if the consumer has signed a consent
22 form that clearly describes the material terms of the financial
23 incentive program and that it may be revoked by the consumer at
24 any time.

25 E. A business shall not use financial incentive

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1 practices that are unjust, unreasonable, coercive or usurious
2 in nature.

3 SECTION 6. [NEW MATERIAL] REQUIREMENTS TO TRAIN
4 EMPLOYEES--LIMITS ON USE OF VERIFICATION INFORMATION.--A

5 business that collects a consumer's personal information shall
6 ensure that:

7 A. all individuals responsible for handling
8 consumer inquiries about the business's privacy practices or
9 the business's compliance with the Consumer Information Privacy
10 Act are informed of all the requirements and how to direct
11 consumers to exercise their rights under that act; and

12 B. personal information collected from the consumer
13 in connection with the business's verification of a consumer
14 request be used solely for the purposes of verification.

15 SECTION 7. [NEW MATERIAL] CONSUMER INFORMATION PRIVACY
16 ACT--LIMITATIONS ON SCOPE.--

17 A. The obligations imposed on businesses by the
18 Consumer Information Privacy Act shall not restrict a
19 business's ability to:

20 (1) comply with federal, state or local laws;

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

24 (3) cooperate with law enforcement agencies
25 concerning conduct or activity that the business, service

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1 provider or third party reasonably and in good faith believes
2 may violate federal, state or local law;

3 (4) exercise or defend legal claims;

4 (5) collect, use, retain, sell or disclose
5 consumer information that is de-identified or is in aggregate
6 consumer information; or

7 (6) collect or sell a consumer's personal
8 information if every aspect of the business's commercial
9 conduct takes place wholly outside of the state. For purposes
10 of the Consumer Information Privacy Act, commercial conduct
11 takes place wholly outside of the state if the business
12 collected that information while the consumer was outside of
13 the state, no part of the sale of the consumer's personal
14 information occurred in the state and no personal information
15 collected while the consumer was in the state is sold. This
16 paragraph shall not permit a business to store, including on a
17 device, personal information about a consumer when the consumer
18 is in New Mexico and then collecting that personal information
19 when the consumer and stored personal information is outside of
20 the state.

21 B. The obligations imposed on businesses by the
22 Consumer Information Privacy Act shall not apply where
23 compliance would violate an evidentiary privilege under New
24 Mexico law and shall not prevent a business from providing the
25 personal information of a consumer to a person covered by an

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1 evidentiary privilege under New Mexico law as part of a
2 privileged communication.

3 C. The Consumer Information Privacy Act shall not
4 apply to information that is collected or used pursuant to
5 state or federal law if the application is in conflict with
6 that law. The office of the attorney general may promulgate
7 rules to clarify when the application of the Consumer
8 Information Privacy Act is in conflict with state or federal
9 law.

10 D. The Consumer Information Privacy Act shall not
11 be construed to require a business to re-identify or otherwise
12 link information that is not maintained in a manner that would
13 be considered personal information.

14 E. The rights afforded to a consumer and the
15 obligations imposed on a business in the Consumer Information
16 Privacy Act shall not adversely affect the rights and freedoms
17 of other consumers.

18 SECTION 8. [NEW MATERIAL] CIVIL CAUSE OF ACTION--
19 PROCEDURES--DAMAGES.--

20 A. Any consumer whose non-encrypted or non-redacted
21 personal information is subject to an unauthorized access and
22 exfiltration, theft or disclosure as a result of a business's
23 violation of the duty to implement and maintain reasonable
24 security procedures and practices appropriate to the nature of
25 the information to protect the personal information may file a

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1 civil action:

2 (1) to recover actual damages;

3 (2) for injunctive or declaratory relief;

4 (3) to recover statutory damages of up to
5 seven hundred and fifty dollars (\$750) per single occurrence
6 pursuant to Subsection B of this section; or

7 (4) any other relief the court deems proper.

8 B. A civil action for statutory damages pursuant to
9 this section may be filed by a consumer provided that:

10 (1) before filing the action, the consumer has
11 provided the business thirty days written notice identifying
12 the specific provisions of the Consumer Information Privacy Act
13 the consumer alleges have been or are being violated; and

14 (2) within thirty days of receiving the notice
15 from the consumer the business has not cured the violation and
16 provided the consumer a written statement that the violation
17 has been cured and that no further violations shall occur.

18 C. If a business continues to violate the Consumer
19 Information Privacy Act in breach of an express written
20 statement provided to the consumer under this section, the
21 consumer may initiate an action against the business to enforce
22 the written statement and may pursue statutory damages for each
23 breach of the express written statement as well as any other
24 violation of the Consumer Information Privacy Act that
25 postdates the written statement.

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1 D. A consumer who has filed an action for statutory
2 damages pursuant to this section shall notify the office of the
3 attorney general within thirty days that the action has been
4 filed and the consumer may proceed with the action if:

5 (1) within thirty days of providing notice to
6 the office of the attorney general, the office of the attorney
7 general has not replied to the consumer stating its own intent
8 to initiate a civil action for violation of the Consumer
9 Information Privacy Act against the business; or

10 (2) within six months, the office of the
11 attorney general has not filed an action against the business
12 for violation of the Consumer Information Privacy Act pursuant
13 to this section.

14 E. Nothing in this section shall be interpreted to
15 serve as the basis for a private right of action under any
16 other law, and this section shall not relieve any party from
17 any duties or obligations imposed under other state or federal
18 law.

19 **SECTION 9. [NEW MATERIAL] CIVIL PENALTY--DISTRIBUTION OF**
20 **PROCEEDS.--**

21 A. Any business or third party may seek the opinion
22 of the office of the attorney general for guidance on how to
23 comply with the provisions of the Consumer Information Privacy
24 Act or cure a violation of that act.

25 B. A business shall be in violation of the Consumer

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1 Information Privacy Act if it fails to cure any alleged
2 violation within thirty days after being notified of alleged
3 noncompliance. Any business, service provider or other person
4 that violates that act shall be liable for a civil penalty in
5 an action brought by the office of the attorney general.

6 C. Any person, business or service provider that
7 intentionally violates the Consumer Information Privacy Act may
8 be liable for a civil penalty of up to ten thousand dollars
9 (\$10,000) for each violation.

10 D. Any civil penalty assessed for a violation of
11 the Consumer Information Privacy Act or the proceeds of any
12 settlement of an action brought pursuant to this section shall
13 be allocated as follows:

14 (1) twenty percent to the consumer privacy
15 fund; and

16 (2) eighty percent to the general fund.

17 SECTION 10. [NEW MATERIAL] CONSUMER PRIVACY FUND

18 CREATED--DISTRIBUTION.--

19 A. The "consumer privacy fund" is created in the
20 state treasury as a nonreverting fund and shall be administered
21 by the office of the attorney general. The fund consists of
22 distributions to the fund from the proceeds of civil actions
23 filed by the office of the attorney general pursuant to Section
24 8 of the Consumer Information Privacy Act, gifts, grants,
25 donations and appropriations to the fund. Subject to

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1 appropriation by the legislature, money in the fund shall be
2 available for distribution to the office of the attorney
3 general and administrative office of the courts as provided in
4 this section.

5 B. Money in the consumer privacy fund may be used
6 to offset costs incurred by the office of the attorney general
7 or the state courts in connection with actions brought to
8 enforce the Consumer Information Privacy Act and any costs
9 incurred by the office of the attorney general in carrying out
10 its duties under that act.

11 SECTION 11. [NEW MATERIAL] PROMULGATION OF RULES--REPORT
12 TO LEGISLATURE.--

13 A. By July 1, 2020, the office of the attorney
14 general shall promulgate rules to implement the Consumer
15 Information Privacy Act, including:

16 (1) making updates to the categories of
17 personal information subject to the act and the definition of
18 unique identifiers to address changes in technology, data
19 collection practices, obstacles to implementation and privacy
20 concerns;

21 (2) making updates to the definition of
22 designated methods for submitting requests to facilitate a
23 consumer's ability to obtain information from a business
24 pursuant to the Consumer Information Privacy Act;

25 (3) establishing exceptions necessary to

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1 comply with state or federal law including those relating to
2 trade secrets and intellectual property rights;

3 (4) facilitating and governing the submission
4 of a request by a consumer to opt out of the sale of personal
5 information pursuant to the Consumer Information Privacy Act;

6 (5) governing business compliance with a
7 consumer's opt-out request;

8 (6) developing and using a recognizable and
9 uniform opt-out logo or website link for use by all businesses
10 to promote consumer awareness of the opportunity to opt out of
11 the sale of personal information;

12 (7) ensuring that the notices and information
13 that businesses are required to provide pursuant to the
14 Consumer Information Privacy Act are provided in a manner that
15 may be easily understood by the average consumer, are
16 accessible to consumers with disabilities and are available in
17 the language primarily used to interact with the consumer;

18 (8) establishing guidelines regarding
19 financial incentive offerings;

20 (9) establishing rules and procedures
21 regarding submission of verifiable requests; or

22 (10) establishing other rules as the office of
23 the attorney general finds necessary to implement the Consumer
24 Information Privacy Act.

25 B. By July 1 of each year, the office of the

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1 attorney general shall review the rules promulgated pursuant to
2 the Consumer Information Privacy Act and update them by rule.

3 C. The office of the attorney general shall seek
4 broad public participation in the promulgation and annual
5 review of rules pursuant to the Consumer Information Privacy
6 Act.

7 D. Each year the office of the attorney general
8 shall provide a report to the relevant legislative interim
9 committee regarding the rules promulgated pursuant to the
10 Consumer Information Privacy Act and issues raised by
11 businesses and consumers about compliance and satisfaction with
12 that act.

13 SECTION 12. [NEW MATERIAL] ENCOMPASSING TRANSACTION--
14 WAIVER OF RIGHTS CONTRARY TO PUBLIC POLICY.--

15 A. If a court determines that a series of
16 transactions were component parts of a single transaction
17 intended from the beginning to be taken with the intention of
18 avoiding compliance with the Consumer Information Privacy Act,
19 the series of transactions shall be regarded as one
20 encompassing transaction.

21 B. A provision of a contract or agreement that
22 purports to waive or limit a consumer's rights pursuant to the
23 Consumer Information Privacy Act is contrary to public policy
24 and shall be void.

25 SECTION 13. SEVERABILITY.--If any part or application of

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1 the Consumer Information Privacy Act is held invalid, the
2 remainder or its application to other situations or persons
3 shall not be affected.

4 SECTION 14. EFFECTIVE DATES.--

5 A. The effective date of the provisions of Section
6 11 of this act is July 1, 2019.

7 B. The effective date of the provisions of Sections
8 1 through 10, 12 and 13 of this act is July 1, 2020.

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