

SENATE BILL 698

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3lr1613
CF HB 807

By: **Senator Augustine**

Introduced and read first time: February 6, 2023

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Consumer Protection – Online and Biometric Data Privacy**

3 FOR the purpose of regulating the manner in which a controller or a processor in possession
4 of a consumer's personal data may process the consumer's personal data; authorizing
5 a consumer to exercise certain rights in regards to the consumer's personal data;
6 requiring a controller of personal data to establish a method for a consumer to
7 exercise certain rights in regards to the consumer's personal data; requiring a
8 controller to comply with a request by a consumer to exercise a certain right in a
9 certain manner, except under certain circumstances; authorizing a consumer to
10 designate an authorized agent to act on the consumer's behalf to opt out of the
11 processing of the consumer's personal data; requiring a controller to provide a
12 consumer with a certain privacy notice; requiring a controller that uses a processor
13 to process the personal data of consumers to enter into a contract with the processor
14 that governs the processor's data processing procedures; requiring a controller to
15 conduct and document a data protection assessment for consumer data processing
16 activities that present a heightened risk of harm to a consumer; regulating the use
17 of biometric data, including requiring controllers in possession of biometric data to
18 develop a policy, made available to the public, establishing a retention schedule and
19 destruction guidelines for biometric data; authorizing an individual alleging a
20 violation of this Act to bring a civil action against the offending controller under
21 certain circumstances; making a violation of this Act an unfair, abusive, or deceptive
22 trade practice that is subject to enforcement and penalties under the Maryland
23 Consumer Protection Act; establishing the Task Force to Study Online Data Privacy;
24 and generally relating to online and biometric data privacy.

25 BY repealing and reenacting, with amendments,
26 Article – Commercial Law
27 Section 13–301(14)(xxxv) and 13–408
28 Annotated Code of Maryland
29 (2013 Replacement Volume and 2022 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY repealing and reenacting, without amendments,
2 Article – Commercial Law
3 Section 13–301(14)(xxxvi)
4 Annotated Code of Maryland
5 (2013 Replacement Volume and 2022 Supplement)

6 BY adding to
7 Article – Commercial Law
8 Section 13–301(xxxvii); and 14–4501 through 14–4512 to be under the new subtitle
9 “Subtitle 45. Online and Biometric Data Privacy Act”
10 Annotated Code of Maryland
11 (2013 Replacement Volume and 2022 Supplement)

12 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
13 That the Laws of Maryland read as follows:

14 **Article – Commercial Law**

15 13–301.

16 Unfair, abusive, or deceptive trade practices include any:

17 (14) Violation of a provision of:

18 (xxxv) Section 11–210 of the Education Article; [or]

19 (xxxvi) Title 14, Subtitle 44 of this article; or

20 **(XXXVII) TITLE 14, SUBTITLE 45 OF THIS ARTICLE; OR**

21 13–408.

22 (a) In addition to any action by the Division or Attorney General authorized by
23 this title and any other action otherwise authorized by law, any person may bring an action
24 to recover for injury or loss sustained by [him] **THE PERSON** as the result of a practice
25 prohibited by this title.

26 (b) Any person who brings an action to recover for injury or loss under this section
27 and who is awarded damages may also seek, and the court may award, reasonable
28 attorney’s fees.

29 (c) If it appears to the satisfaction of the court, at any time, that an action is
30 brought in bad faith or is of a frivolous nature, the court may order the offending party to
31 pay to the other party reasonable attorney’s fees.

1 (d) Notwithstanding any other provision of this section, a person may not bring
2 an action under this section to recover for injuries sustained as a result of the professional
3 services provided by a health care provider, as defined in § 3-2A-01 of the Courts Article.

4 **SUBTITLE 45. ONLINE AND BIOMETRIC DATA PRIVACY ACT.**

5 **14-4501.**

6 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
7 INDICATED.

8 (B) “AFFILIATE” MEANS A PERSON THAT:

9 (1) SHARES COMMON BRANDING WITH ANOTHER PERSON; OR

10 (2) CONTROLS, IS CONTROLLED BY, OR IS UNDER COMMON CONTROL
11 WITH ANOTHER PERSON.

12 (C) “AUTHENTICATE” MEANS TO USE REASONABLE MEANS TO DETERMINE
13 THAT A REQUEST TO EXERCISE A CONSUMER RIGHT IN ACCORDANCE WITH §
14 14-4504 OF THIS SUBTITLE IS BEING MADE BY, OR ON BEHALF OF, AN INDIVIDUAL
15 WHO IS ENTITLED TO EXERCISE THE CONSUMER RIGHT.

16 (D) (1) “BIOMETRIC DATA” MEANS DATA GENERATED BY AUTOMATIC
17 MEASUREMENTS OF THE BIOLOGICAL CHARACTERISTICS OF A CONSUMER THAT ARE
18 USED TO IDENTIFY A SPECIFIC CONSUMER.

19 (2) “BIOMETRIC DATA” INCLUDES:

20 (I) A FINGERPRINT;

21 (II) A VOICE PRINT;

22 (III) EYE RETINAS OR IRISES;

23 (IV) BIOMETRIC SCANS CREATED FROM PHYSICAL OR DIGITAL
24 PHOTOGRAPHS; AND

25 (V) ANY OTHER UNIQUE BIOLOGICAL PATTERNS OR
26 CHARACTERISTICS.

27 (3) “BIOMETRIC DATA” DOES NOT INCLUDE:

28 (I) A PHYSICAL OR DIGITAL PHOTOGRAPH;

1 (II) A VIDEO OR AN AUDIO RECORDING; OR

2 (III) INFORMATION COLLECTED, USED, OR STORED FOR HEALTH
3 CARE TREATMENT, PAYMENT, OR OPERATIONS UNDER THE FEDERAL HEALTH
4 INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996.

5 (E) "BUSINESS ASSOCIATE" HAS THE MEANING STATED IN THE FEDERAL
6 HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996.

7 (F) "CHILD" HAS THE MEANING STATED IN THE FEDERAL CHILDREN'S
8 ONLINE PRIVACY PROTECTION ACT OF 1998.

9 (G) "CONFIDENTIAL DATA" MEANS INFORMATION THAT CAN BE USED TO
10 UNIQUELY IDENTIFY A CONSUMER OR A CONSUMER'S ACCOUNT OR PROPERTY,
11 INCLUDING:

12 (1) A GENETIC MARKER;

13 (2) GENETIC TESTING INFORMATION;

14 (3) A UNIQUE IDENTIFIER NUMBER TO LOCATE AN ACCOUNT OR
15 PROPERTY;

16 (4) AN ACCOUNT NUMBER;

17 (5) A PERSONAL IDENTIFICATION NUMBER;

18 (6) A PASSCODE;

19 (7) A DRIVER'S LICENSE NUMBER; AND

20 (8) A SOCIAL SECURITY NUMBER.

21 (H) (1) "CONSENT" MEANS A SPECIFIC, DISCRETE, FREELY GIVEN,
22 UNAMBIGUOUS, AND INFORMED AGREEMENT GIVEN BY A CONSUMER WHO IS NOT
23 UNDER ANY DURESS OR UNDUE INFLUENCE FROM A CONTROLLER OR PROCESSOR
24 TO ALLOW THE PROCESSING OF THE CONSUMER'S PERSONAL DATA FOR A
25 PARTICULAR PURPOSE.

26 (2) "CONSENT" INCLUDES:

27 (I) A WRITTEN STATEMENT;

1 (II) A WRITTEN STATEMENT BY ELECTRONIC MEANS;

2 (III) IN THE CONTEXT OF EMPLOYMENT, A RELEASE EXECUTED
3 BY AN EMPLOYEE AS A CONDITION OF EMPLOYMENT; AND

4 (IV) ANY OTHER UNAMBIGUOUS AFFIRMATIVE ACTION.

5 (3) "CONSENT" DOES NOT INCLUDE:

6 (I) ACCEPTANCE OF A GENERAL OR BROAD TERMS OF USE OR
7 SIMILAR DOCUMENT THAT CONTAINS DESCRIPTIONS OF PERSONAL DATA
8 PROCESSING ALONG WITH OTHER UNRELATED INFORMATION;

9 (II) HOVERING OVER, MUTING, PAUSING, OR CLOSING A PIECE
10 OF CONTENT; OR

11 (III) AGREEMENT OBTAINED THROUGH THE USE OF DARK
12 PATTERNS.

13 (I) "CONTROL" MEANS:

14 (1) OWNERSHIP OF, OR THE POWER TO VOTE, MORE THAN 50% OF
15 THE OUTSTANDING SHARES OF ANY CLASS OF VOTING SECURITY OF A COMPANY;

16 (2) CONTROL IN ANY MANNER OVER THE ELECTION OF A MAJORITY
17 OF THE DIRECTORS OF A COMPANY OR OF INDIVIDUALS EXERCISING A SIMILAR
18 FUNCTION; OR

19 (3) THE POWER TO EXERCISE CONTROLLING INFLUENCE OVER THE
20 MANAGEMENT OF A COMPANY.

21 (J) (1) "CONSUMER" MEANS AN INDIVIDUAL WHO IS A RESIDENT OF THE
22 STATE.

23 (2) "CONSUMER" DOES NOT INCLUDE AN INDIVIDUAL ACTING:

24 (I) IN A COMMERCIAL OR EMPLOYMENT CONTEXT; OR

25 (II) AS AN EMPLOYEE, AN OWNER, A DIRECTOR, AN OFFICER, OR
26 A CONTRACTOR OF A COMPANY, A PARTNERSHIP, A SOLE PROPRIETORSHIP, A
27 NONPROFIT ORGANIZATION, OR ANY GOVERNMENT AGENCY WHOSE
28 COMMUNICATIONS OR TRANSACTIONS WITH A CONTROLLER OCCUR ONLY WITHIN

1 THE CONTEXT OF THE INDIVIDUAL'S ROLE WITH THE COMPANY, PARTNERSHIP,
2 SOLE PROPRIETORSHIP, NONPROFIT ORGANIZATION, OR GOVERNMENT AGENCY.

3 (K) "CONTROLLER" MEANS A PERSON THAT, ALONE OR JOINTLY WITH
4 OTHERS, DETERMINES THE PURPOSE AND MEANS OF PROCESSING PERSONAL DATA.

5 (L) "COVERED ENTITY" HAS THE MEANING STATED IN THE FEDERAL
6 HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996.

7 (M) (1) "DARK PATTERN" MEANS A USER INTERFACE DESIGNED TO
8 SUBVERT OR IMPAIR, OR MANIPULATE WITH THE SUBSTANTIAL EFFECT OF
9 SUBVERTING OR IMPAIRING, USER AUTONOMY, DECISION MAKING, OR CHOICE.

10 (2) "DARK PATTERN" INCLUDES ANY PRACTICE THE FEDERAL
11 TRADE COMMISSION REFERS TO AS A "DARK PATTERN".

12 (N) "DECISIONS THAT PRODUCE LEGAL OR SIMILARLY SIGNIFICANT
13 EFFECTS CONCERNING THE CONSUMER" MEANS DECISIONS MADE BY A
14 CONTROLLER THAT RESULT IN THE PROVISION OR DENIAL BY THE CONTROLLER OF:

15 (1) FINANCIAL OR LENDING SERVICES;

16 (2) HOUSING;

17 (3) INSURANCE;

18 (4) EDUCATION ENROLLMENT OR OPPORTUNITY;

19 (5) CRIMINAL JUSTICE;

20 (6) EMPLOYMENT OPPORTUNITIES;

21 (7) HEALTH CARE SERVICES; OR

22 (8) ACCESS TO ESSENTIAL GOODS OR SERVICES.

23 (O) "DE-IDENTIFIED DATA" MEANS DATA THAT CANNOT REASONABLY BE
24 USED TO INFER INFORMATION ABOUT, OR OTHERWISE BE LINKED TO:

25 (1) AN IDENTIFIED OR IDENTIFIABLE INDIVIDUAL; OR

26 (2) A DEVICE LINKED TO AN IDENTIFIED OR IDENTIFIABLE
27 INDIVIDUAL.

1 (P) “IDENTIFIED OR IDENTIFIABLE INDIVIDUAL” MEANS A CONSUMER WHO
2 CAN READILY BE IDENTIFIED, EITHER DIRECTLY OR INDIRECTLY.

3 (Q) (1) “PERSONAL DATA” MEANS ANY INFORMATION THAT IS LINKED OR
4 CAN BE REASONABLY LINKED TO AN IDENTIFIED OR IDENTIFIABLE INDIVIDUAL.

5 (2) “PERSONAL DATA” DOES NOT INCLUDE:

6 (I) DE-IDENTIFIED DATA; OR

7 (II) PUBLICLY AVAILABLE INFORMATION.

8 (R) (1) “PRECISE GEOLOCATION DATA” MEANS INFORMATION DERIVED
9 FROM TECHNOLOGY THAT CAN PRECISELY AND ACCURATELY IDENTIFY THE
10 SPECIFIC LOCATION OF A CONSUMER WITHIN A RADIUS OF 1,750 FEET.

11 (2) “PRECISE GEOLOCATION DATA” INCLUDES GLOBAL POSITIONING
12 SYSTEM LEVEL LATITUDE AND LONGITUDE COORDINATES OR OTHER SIMILAR
13 MECHANISMS.

14 (3) “PRECISE GEOLOCATION DATA” DOES NOT INCLUDE:

15 (I) THE CONTENT OF COMMUNICATIONS DATA GENERATED BY
16 OR CONNECTED TO AN ADVANCED UTILITY METERING INFRASTRUCTURE SYSTEM;
17 OR

18 (II) EQUIPMENT USED BY A UTILITY COMPANY.

19 (S) (1) “PROCESS” MEANS AN OPERATION PERFORMED BY MANUAL OR
20 AUTOMATED MEANS ON PERSONAL DATA.

21 (2) “PROCESS” INCLUDES COLLECTING, USING, STORING,
22 DISCLOSING, ANALYZING, DELETING, OR MODIFYING PERSONAL DATA.

23 (T) “PROCESSOR” MEANS A PERSON THAT PROCESSES, STORES, OR
24 OTHERWISE USES PERSONAL DATA ON BEHALF OF A CONTROLLER.

25 (U) “PROFILING” MEANS AUTOMATED PROCESSING PERFORMED ON
26 PERSONAL DATA TO EVALUATE, ANALYZE, OR PREDICT PERSONAL ASPECTS
27 RELATED TO AN IDENTIFIED OR IDENTIFIABLE INDIVIDUAL’S ECONOMIC SITUATION,
28 HEALTH, PERSONAL PREFERENCES, INTERESTS, RELIABILITY, BEHAVIOR,
29 LOCATION, OR MOVEMENTS.

1 (V) "PROTECTED HEALTH INFORMATION" HAS THE MEANING STATED IN
2 THE FEDERAL HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF
3 1996.

4 (W) "PUBLICLY AVAILABLE INFORMATION" MEANS INFORMATION THAT:

5 (1) IS LAWFULLY MADE AVAILABLE THROUGH:

6 (I) FEDERAL, STATE, OR LOCAL GOVERNMENT RECORDS; OR

7 (II) WIDELY DISTRIBUTED MEDIA; AND

8 (2) A CONTROLLER HAS A REASONABLE BASIS TO BELIEVE A
9 CONSUMER HAS LAWFULLY MADE AVAILABLE TO THE GENERAL PUBLIC.

10 (X) (1) "SALE OF PERSONAL DATA" MEANS THE EXCHANGE OF PERSONAL
11 DATA BY A CONTROLLER TO A THIRD PARTY FOR MONETARY OR OTHER VALUABLE
12 CONSIDERATION.

13 (2) "SALE OF PERSONAL DATA" DOES NOT INCLUDE:

14 (I) THE DISCLOSURE OF PERSONAL DATA TO A PROCESSOR
15 THAT PROCESSES PERSONAL DATA ON BEHALF OF A CONTROLLER;

16 (II) THE DISCLOSURE OF PERSONAL DATA TO A THIRD PARTY
17 FOR PURPOSES OF PROVIDING A PRODUCT OR SERVICE REQUESTED BY THE
18 CONSUMER;

19 (III) THE DISCLOSURE OR TRANSFER OF PERSONAL DATA TO AN
20 AFFILIATE OF THE CONTROLLER;

21 (IV) THE DISCLOSURE OF PERSONAL DATA WHERE THE
22 CONSUMER:

23 1. DIRECTS THE CONTROLLER TO DISCLOSE THE
24 PERSONAL DATA; OR

25 2. INTENTIONALLY USES THE CONTROLLER TO
26 INTERACT WITH A THIRD PARTY;

27 (V) THE DISCLOSURE OF PERSONAL DATA THAT THE
28 CONSUMER:

1 1. **INTENTIONALLY MADE AVAILABLE TO THE GENERAL**
2 **PUBLIC THROUGH A CHANNEL OF MASS MEDIA; AND**

3 2. **DID NOT RESTRICT TO A SPECIFIC AUDIENCE; OR**

4 **(VI) THE DISCLOSURE OR TRANSFER OF PERSONAL DATA TO A**
5 **THIRD PARTY AS AN ASSET THAT IS PART OF AN ACTUAL OR PROPOSED MERGER,**
6 **ACQUISITION, BANKRUPTCY, OR OTHER TRANSACTION WHERE THE THIRD PARTY**
7 **ASSUMES CONTROL OF ALL OR PART OF THE CONTROLLER’S ASSETS.**

8 **(Y) “SENSITIVE DATA” MEANS PERSONAL DATA OF A CONSUMER, THAT**
9 **INCLUDES:**

10 **(1) DATA REVEALING:**

11 **(I) RACIAL OR ETHNIC ORIGIN;**

12 **(II) RELIGIOUS BELIEFS;**

13 **(III) MENTAL OR PHYSICAL HEALTH CONDITION OR DIAGNOSES;**

14 **(IV) SEX LIFE;**

15 **(V) SEXUAL ORIENTATION; OR**

16 **(VI) CITIZENSHIP OR IMMIGRATION STATUS;**

17 **(2) GENETIC OR BIOMETRIC DATA FOR THE PURPOSE OF UNIQUELY**
18 **IDENTIFYING A CONSUMER;**

19 **(3) PERSONAL DATA COLLECTED FROM A KNOWN CHILD; OR**

20 **(4) PRECISE GEOLOCATION DATA.**

21 **(Z) (1) “TARGETED ADVERTISING” MEANS DISPLAYING**
22 **ADVERTISEMENTS TO A CONSUMER WHERE THE ADVERTISEMENT IS SELECTED**
23 **BASED ON PERSONAL DATA OBTAINED OR INFERRED FROM THE CONSUMER’S**
24 **ACTIVITIES OVER TIME AND ACROSS NONAFFILIATED WEBSITES OR ONLINE**
25 **APPLICATIONS IN ORDER TO PREDICT THE CONSUMER’S PREFERENCES OR**
26 **INTERESTS.**

27 **(2) “TARGETED ADVERTISING” DOES NOT INCLUDE:**

1 (I) ADVERTISEMENTS BASED ON ACTIVITIES WITHIN A
2 CONTROLLER'S OWN WEBSITES OR ONLINE APPLICATIONS;

3 (II) ADVERTISEMENTS BASED ON THE CONTEXT OF A
4 CONSUMER'S SEARCH QUERY OR VISIT TO A WEBSITE OR ONLINE APPLICATION;

5 (III) ADVERTISEMENTS DIRECTED TO A CONSUMER IN
6 RESPONSE TO THE CONSUMER'S REQUEST FOR INFORMATION OR FEEDBACK; OR

7 (IV) PROCESSING PERSONAL DATA SOLELY TO MEASURE OR
8 REPORT ADVERTISING FREQUENCY, PERFORMANCE, OR REACH.

9 (AA) "THIRD PARTY" MEANS A PERSON OTHER THAN A CONSUMER, A
10 CONTROLLER, A PROCESSOR, OR AN AFFILIATE OF THE CONTROLLER OR
11 PROCESSOR.

12 (BB) (1) "TRADE SECRET" MEANS INFORMATION THAT:

13 (I) DERIVES INDEPENDENT ECONOMIC VALUE, ACTUAL OR
14 POTENTIAL, FROM NOT BEING GENERALLY KNOWN TO, AND NOT BEING READILY
15 ASCERTAINABLE BY PROPER MEANS BY, OTHER PERSONS WHO COULD OBTAIN
16 ECONOMIC VALUE FROM THE INFORMATION'S DISCLOSURE OR USE; AND

17 (II) IS THE SUBJECT OF EFFORTS THAT ARE REASONABLE
18 UNDER THE CIRCUMSTANCES TO MAINTAIN THE SECRECY OF THE INFORMATION.

19 (2) "TRADE SECRET" INCLUDES A FORMULA, PATTERN,
20 COMPILATION, PROGRAM, DEVICE, METHOD, TECHNIQUE, OR PROCESS.

21 14-4502.

22 THIS SUBTITLE APPLIES TO A PERSON THAT:

23 (1) CONDUCTS BUSINESS IN THE STATE; OR

24 (2) (I) PRODUCES SERVICES OR PRODUCTS THAT ARE TARGETED
25 TO RESIDENTS OF THE STATE; AND

26 (II) DURING THE IMMEDIATELY PRECEDING CALENDAR YEAR:

27 1. CONTROLLED OR PROCESSED THE PERSONAL DATA
28 OF AT LEAST 100,000 CONSUMERS; OR

1 **2. CONTROLLED OR PROCESSED THE PERSONAL DATA**
2 **OF AT LEAST 25,000 CONSUMERS AND DERIVED MORE THAN 25% OF ITS GROSS**
3 **REVENUE FROM THE SALE OF PERSONAL DATA.**

4 **14-4503.**

5 **(A) THIS SUBTITLE DOES NOT APPLY TO:**

6 **(1) A POLITICAL SUBDIVISION OR A UNIT OF A POLITICAL**
7 **SUBDIVISION OF THE STATE;**

8 **(2) A STATE COURT, CLERK OF THE COURT, JUDGE, OR**
9 **COMMISSIONER;**

10 **(3) A NATIONAL SECURITIES ASSOCIATION THAT IS REGISTERED**
11 **UNDER 15 U.S.C. § 780-3 OF THE FEDERAL SECURITIES EXCHANGE ACT OF 1934;**

12 **(4) A COVERED ENTITY OR BUSINESS ASSOCIATE;**

13 **(5) A PERSON THAT CONTROLS OR PROCESSES PERSONAL DATA**
14 **SOLELY FOR THE PURPOSE OF COMPLETING A PAYMENT TRANSACTION; OR**

15 **(6) AN ENTITY, OR AN AFFILIATE OF AN ENTITY, SUBJECT TO AND IN**
16 **COMPLIANCE WITH THE FEDERAL GRAMM-LEACH-BLILEY ACT.**

17 **(B) THE FOLLOWING INFORMATION AND DATA IS EXEMPT FROM THIS**
18 **SUBTITLE:**

19 **(1) PROTECTED HEALTH INFORMATION UNDER THE FEDERAL**
20 **HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996;**

21 **(2) PATIENT-IDENTIFYING INFORMATION FOR PURPOSES OF 42**
22 **U.S.C. § 290DD-2;**

23 **(3) IDENTIFIABLE PRIVATE INFORMATION THAT IS USED FOR**
24 **PURPOSES OF THE FEDERAL POLICY FOR THE PROTECTION OF HUMAN SUBJECTS**
25 **UNDER 45 C.F.R. 46;**

26 **(4) IDENTIFIABLE PRIVATE INFORMATION THAT IS OTHERWISE**
27 **INFORMATION COLLECTED AS PART OF HUMAN SUBJECTS RESEARCH IN**
28 **ACCORDANCE WITH THE GOOD CLINICAL PRACTICE GUIDELINES ISSUED BY THE**

1 INTERNATIONAL COUNCIL FOR HARMONISATION OF TECHNICAL REQUIREMENTS
2 FOR PHARMACEUTICALS FOR HUMAN USE;

3 (5) INFORMATION COLLECTED AS PART OF A CLINICAL TRIAL
4 SUBJECT TO THE FEDERAL POLICY FOR THE PROTECTION OF HUMAN SUBJECTS,
5 ALSO KNOWN AS THE COMMON RULE, IN ACCORDANCE WITH GOOD CLINICAL
6 PRACTICE GUIDELINES ISSUED BY THE INTERNATIONAL COUNCIL FOR
7 HARMONISATION OF TECHNICAL REQUIREMENTS FOR PHARMACEUTICALS FOR
8 HUMAN USE OR IN ACCORDANCE WITH THE HUMAN SUBJECT PROTECTION
9 REQUIREMENTS OF THE U.S. FOOD AND DRUG ADMINISTRATION;

10 (6) INFORMATION AND DOCUMENTS CREATED FOR PURPOSES OF THE
11 FEDERAL HEALTH CARE QUALITY IMPROVEMENT ACT OF 1986;

12 (7) PATIENT SAFETY WORK PRODUCT FOR PURPOSES OF THE
13 FEDERAL PATIENT SAFETY AND QUALITY IMPROVEMENT ACT OF 2005;

14 (8) INFORMATION DERIVED FROM ANY OF THE HEALTH CARE
15 RELATED INFORMATION LISTED IN THIS SUBSECTION THAT IS DE-IDENTIFIED IN
16 ACCORDANCE WITH THE REQUIREMENTS FOR DE-IDENTIFICATION IN ACCORDANCE
17 WITH THE FEDERAL HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT
18 OF 1996;

19 (9) INFORMATION ORIGINATING FROM AND INTERMINGLED TO BE
20 INDISTINGUISHABLE FROM, OR INFORMATION TREATED IN THE SAME MANNER AS,
21 INFORMATION EXEMPT UNDER THIS SUBSECTION THAT IS MAINTAINED BY A
22 COVERED ENTITY OR BUSINESS ASSOCIATE, PROGRAM, OR QUALIFIED SERVICE
23 ORGANIZATION, AS SPECIFIED IN 42 U.S.C. § 290DD-2;

24 (10) INFORMATION USED FOR PUBLIC HEALTH ACTIVITIES AND
25 PURPOSES AS AUTHORIZED BY THE FEDERAL HEALTH INSURANCE PORTABILITY
26 AND ACCOUNTABILITY ACT OF 1996, COMMUNITY HEALTH ACTIVITIES, AND
27 POPULATION HEALTH ACTIVITIES;

28 (11) THE COLLECTION, MAINTENANCE, DISCLOSURE, SALE,
29 COMMUNICATION, OR USE OF PERSONAL INFORMATION BEARING ON A CONSUMER'S
30 CREDITWORTHINESS, CREDIT STANDING, CREDIT CAPACITY, CHARACTER, GENERAL
31 REPUTATION, PERSONAL CHARACTERISTICS, OR MODE OF LIVING TO OR FROM A
32 CONSUMER REPORTING AGENCY IF USE OF THE INFORMATION IS LIMITED BY AND
33 AUTHORIZED UNDER THE FEDERAL FAIR CREDIT REPORTING ACT;

34 (12) PERSONAL DATA COLLECTED, PROCESSED, SOLD, OR DISCLOSED
35 IN COMPLIANCE WITH THE FEDERAL DRIVER'S PRIVACY PROTECTION ACT OF 1994;

1 **(13) PERSONAL DATA REGULATED BY THE FEDERAL FAMILY**
2 **EDUCATIONAL RIGHTS AND PRIVACY ACT;**

3 **(14) PERSONAL DATA COLLECTED, PROCESSED, SOLD, OR DISCLOSED**
4 **IN COMPLIANCE WITH THE FEDERAL FARM CREDIT ACT;**

5 **(15) DATA PROCESSED OR MAINTAINED:**

6 **(I) IN THE COURSE OF AN INDIVIDUAL APPLYING TO,**
7 **EMPLOYED BY, OR ACTING AS AN AGENT OR INDEPENDENT CONTRACTOR OF A**
8 **CONTROLLER, PROCESSOR, OR THIRD PARTY, TO THE EXTENT THAT THE DATA IS**
9 **COLLECTED AND USED WITHIN THE CONTEXT OF THE ROLE;**

10 **(II) AS THE EMERGENCY CONTACT INFORMATION OF A**
11 **CONSUMER USED FOR EMERGENCY CONTACT PURPOSES; OR**

12 **(III) THAT IS NECESSARY TO RETAIN TO ADMINISTER BENEFITS**
13 **FOR ANOTHER INDIVIDUAL RELATING TO THE CONSUMER WHO IS THE SUBJECT OF**
14 **THE INFORMATION UNDER ITEM (I) OF THIS ITEM AND USED FOR THE PURPOSES OF**
15 **ADMINISTERING THE BENEFITS; AND**

16 **(16) PERSONAL DATA COLLECTED, PROCESSED, SOLD, OR DISCLOSED**
17 **IN RELATION TO PRICE, ROUTE, OR SERVICE BY AN AIR CARRIER SUBJECT TO THE**
18 **FEDERAL AIRLINE DEREGULATION ACT TO THE EXTENT THIS SUBTITLE IS**
19 **PREEMPTED BY THE FEDERAL AIRLINE DEREGULATION ACT.**

20 **14-4504.**

21 **(A) A CONSUMER MAY EXERCISE THE FOLLOWING RIGHTS IN RELATION TO**
22 **THE CONSUMER'S PERSONAL DATA:**

23 **(1) CONFIRM WHETHER A CONTROLLER IS PROCESSING THE**
24 **CONSUMER'S PERSONAL DATA;**

25 **(2) IF A CONTROLLER IS PROCESSING A CONSUMER'S PERSONAL**
26 **DATA, ACCESS THE PERSONAL DATA;**

27 **(3) CORRECT INACCURACIES IN THE CONSUMER'S PERSONAL DATA;**

28 **(4) DELETE PERSONAL DATA PROVIDED BY, OR OBTAINED ABOUT,**
29 **THE CONSUMER;**

1 **(5) IF THE PROCESSING OF PERSONAL DATA IS DONE BY AUTOMATIC**
2 **MEANS, OBTAIN A COPY OF THE CONSUMER'S PERSONAL DATA PROCESSED BY THE**
3 **CONTROLLER IN A PORTABLE AND, TO THE EXTENT TECHNICALLY FEASIBLE,**
4 **READILY USABLE FORMAT THAT ALLOWS THE CONSUMER TO EASILY TRANSMIT THE**
5 **DATA TO ANOTHER CONTROLLER; AND**

6 **(6) OPT OUT OF THE PROCESSING OF PERSONAL DATA FOR PURPOSES**
7 **OF:**

8 **(I) TARGETED ADVERTISING;**

9 **(II) EXCEPT AS PROVIDED IN § 14-4507(D) OF THIS SUBTITLE,**
10 **THE SALE OF PERSONAL DATA; OR**

11 **(III) PROFILING IN FURTHERANCE OF SOLELY AUTOMATED**
12 **DECISIONS THAT PRODUCE LEGAL OR SIMILARLY SIGNIFICANT EFFECTS**
13 **CONCERNING THE CONSUMER.**

14 **(B) A CONTROLLER SHALL ESTABLISH A SECURE AND RELIABLE METHOD**
15 **FOR A CONSUMER TO EXERCISE A CONSUMER RIGHT UNDER THIS SECTION.**

16 **(C) (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBTITLE, A**
17 **CONTROLLER SHALL COMPLY WITH A REQUEST BY A CONSUMER TO EXERCISE A**
18 **CONSUMER RIGHT LISTED IN THIS SECTION.**

19 **(2) (I) A CONTROLLER SHALL RESPOND TO A CONSUMER REQUEST**
20 **NOT LATER THAN 45 DAYS AFTER THE CONTROLLER RECEIVES THE CONSUMER**
21 **REQUEST.**

22 **(II) A CONTROLLER MAY EXTEND THE RESPONSE PERIOD BY AN**
23 **ADDITIONAL 45 DAYS IF:**

24 **1. IT IS NECESSARY TO COMPLETE THE REQUEST BASED**
25 **ON THE COMPLEXITY AND NUMBER OF THE CONSUMER'S REQUESTS; AND**

26 **2. THE CONTROLLER INFORMS THE CONSUMER OF THE**
27 **EXTENSION AND THE REASON FOR THE EXTENSION WITHIN THE INITIAL 45-DAY**
28 **RESPONSE PERIOD.**

29 **(3) (I) IF A CONTROLLER DOES NOT TAKE ACTION REGARDING A**
30 **CONSUMER'S REQUEST, THE CONTROLLER SHALL:**

1 1. NOTIFY THE CONSUMER THAT THE CONTROLLER
2 WILL NOT TAKE ACTION ON THE REQUEST; AND

3 2. PROVIDE THE CONSUMER WITH:

4 A. THE JUSTIFICATION FOR DECLINING TO TAKE
5 ACTION; AND

6 B. INSTRUCTIONS FOR HOW TO APPEAL THE DECISION.

7 (II) THE NOTIFICATION REQUIRED IN SUBPARAGRAPH (I) OF
8 THIS PARAGRAPH SHALL BE:

9 1. SENT TO THE CONSUMER NOT LATER THAN 45 DAYS
10 AFTER THE CONTROLLER RECEIVES THE CONSUMER'S REQUEST; AND

11 2. IN WRITING.

12 (4) (I) EXCEPT AS PROVIDED IN THIS PARAGRAPH, A CONTROLLER
13 SHALL PROVIDE A CONSUMER, FREE OF CHARGE, WITH THE INFORMATION THE
14 CONSUMER REQUESTED.

15 (II) A CONTROLLER MAY NOT BE REQUIRED TO PROVIDE A
16 CONSUMER WITH THE INFORMATION REQUESTED MORE THAN TWICE DURING ANY
17 CONSECUTIVE 12-MONTH PERIOD.

18 (III) 1. IF REQUESTS FROM A CONSUMER ARE UNFOUNDED,
19 EXCESSIVE, OR REPETITIVE, A CONTROLLER MAY CHARGE THE CONSUMER A
20 REASONABLE FEE TO COVER THE ADMINISTRATIVE COSTS OF COMPLYING WITH THE
21 REQUEST.

22 2. THE CONTROLLER HAS THE BURDEN OF
23 DEMONSTRATING THE UNFOUNDED, EXCESSIVE, OR REPETITIVE NATURE OF THE
24 REQUEST.

25 (5) (I) IF A CONTROLLER IS UNABLE TO AUTHENTICATE A
26 REQUEST TO EXERCISE A CONSUMER RIGHT AFFORDED UNDER SUBSECTION (A)(1)
27 THROUGH (5) OF THIS SECTION USING COMMERCIALY REASONABLE EFFORTS, THE
28 CONTROLLER MAY NOT BE REQUIRED TO COMPLY WITH THE REQUEST.

29 (II) IF A CONTROLLER IS NOT ABLE TO AUTHENTICATE A
30 REQUEST USING COMMERCIALY REASONABLE EFFORTS, THE CONTROLLER SHALL
31 NOTIFY THE CONSUMER THAT THE CONTROLLER IS UNABLE TO AUTHENTICATE THE

1 REQUEST UNTIL THE CONSUMER PROVIDES ADDITIONAL INFORMATION
2 REASONABLY NECESSARY TO AUTHENTICATE THE CONSUMER AND THE
3 CONSUMER'S REQUEST.

4 (6) (I) A CONTROLLER IS NOT REQUIRED TO AUTHENTICATE AN
5 OPT-OUT REQUEST UNDER SUBSECTION (A)(6) OF THIS SECTION.

6 (II) A CONTROLLER MAY DENY AN OPT-OUT REQUEST UNDER
7 SUBSECTION (A)(6) OF THIS SECTION IF THE CONTROLLER HAS A GOOD FAITH,
8 REASONABLE, AND DOCUMENTED BELIEF THAT THE REQUEST IS FRAUDULENT.

9 (III) IF A CONTROLLER DENIES AN OPT-OUT REQUEST UNDER
10 SUBSECTION (A)(6) OF THIS SECTION BECAUSE THE CONTROLLER BELIEVES THE
11 REQUEST IS FRAUDULENT, THE CONTROLLER SHALL NOTIFY THE PERSON WHO
12 MADE THE REQUEST:

13 1. THAT THE CONTROLLER BELIEVES THE REQUEST IS
14 FRAUDULENT;

15 2. WHY THE CONTROLLER BELIEVES THE REQUEST IS
16 FRAUDULENT; AND

17 3. THAT THE CONTROLLER WILL NOT COMPLY WITH THE
18 REQUEST.

19 (7) A CONTROLLER THAT HAS OBTAINED PERSONAL DATA ABOUT A
20 CONSUMER FROM A SOURCE OTHER THAN THE CONSUMER IS IN COMPLIANCE WITH
21 A CONSUMER'S REQUEST TO DELETE THE DATA IN ACCORDANCE WITH SUBSECTION
22 (A)(4) OF THIS SECTION BY:

23 (I) RETAINING A RECORD OF THE DELETION REQUEST AND THE
24 MINIMUM DATA NECESSARY FOR THE PURPOSE OF ENSURING THE CONSUMER'S
25 PERSONAL DATA:

26 1. REMAINS DELETED FROM THE CONTROLLER'S
27 RECORDS; AND

28 2. IS NOT BEING USED FOR ANY OTHER PURPOSE; OR

29 (II) OPTING THE CONSUMER OUT OF THE PROCESSING OF THE
30 PERSONAL DATA FOR ANY PURPOSE EXCEPT FOR THOSE EXEMPTED BY THIS
31 SUBTITLE.

1 **(D) (1) A CONTROLLER SHALL ESTABLISH A PROCESS FOR A CONSUMER**
2 **TO APPEAL A DECISION MADE UNDER THIS SECTION.**

3 **(2) THE APPEAL PROCESS SHALL:**

4 **(I) BE CONSPICUOUSLY AVAILABLE TO A CONSUMER;**

5 **(II) BE SIMILAR TO THE PROCESS FOR SUBMITTING REQUESTS**
6 **TO INITIATE ACTION IN ACCORDANCE WITH THIS SECTION; AND**

7 **(III) ENSURE THAT A CONSUMER CAN APPEAL A DECISION**
8 **WITHIN A REASONABLE TIME AFTER THE CONSUMER RECEIVES THE DECISION.**

9 **(3) NOT LATER THAN 60 DAYS AFTER RECEIPT OF AN APPEAL, A**
10 **CONTROLLER SHALL INFORM THE CONSUMER IN WRITING OF ANY ACTION TAKEN OR**
11 **NOT TAKEN IN RESPONSE TO THE APPEAL, INCLUDING A WRITTEN EXPLANATION OF**
12 **THE REASONS FOR THE DECISION.**

13 **(4) IF AN APPEAL IS DENIED, THE CONTROLLER SHALL PROVIDE THE**
14 **CONSUMER WITH AN ONLINE MECHANISM, IF AVAILABLE, THROUGH WHICH THE**
15 **CONSUMER MAY CONTACT THE DIVISION TO SUBMIT A COMPLAINT.**

16 **(E) NOTHING IN THIS SUBTITLE MAY BE CONSTRUED TO REQUIRE A**
17 **CONTROLLER OR A PROCESSOR TO COMPLY WITH AN AUTHENTICATED CONSUMER**
18 **REQUEST IF THE CONTROLLER:**

19 **(1) IS NOT REASONABLY CAPABLE OF ASSOCIATING THE REQUEST**
20 **WITH THE PERSONAL DATA OR IT WOULD BE UNREASONABLY BURDENSOME FOR THE**
21 **CONTROLLER TO ASSOCIATE THE REQUEST WITH THE PERSONAL DATA;**

22 **(2) DOES NOT USE THE PERSONAL DATA TO RECOGNIZE OR RESPOND**
23 **TO THE CONSUMER WHO IS THE SUBJECT OF THE PERSONAL DATA OR ASSOCIATE**
24 **THE PERSONAL DATA WITH OTHER PERSONAL DATA ABOUT THE CONSUMER; AND**

25 **(3) EXCEPT AS OTHERWISE ALLOWED IN THIS SECTION, DOES NOT**
26 **SELL OR OTHERWISE VOLUNTARILY DISCLOSE THE PERSONAL DATA TO A THIRD**
27 **PARTY.**

28 **(F) NOTHING IN THIS SECTION MAY BE CONSTRUED TO REQUIRE A**
29 **CONTROLLER TO REVEAL A TRADE SECRET.**

30 **14-4505.**

1 (A) NOTHING IN THIS SUBTITLE MAY BE CONSTRUED TO PROHIBIT A
2 CONTROLLER OR PROCESSOR FROM:

3 (1) COMPLYING WITH FEDERAL, STATE, OR LOCAL LAWS;

4 (2) COMPLYING WITH A CIVIL, CRIMINAL, OR REGULATORY INQUIRY,
5 INVESTIGATION, SUBPOENA, OR SUMMONS BY A FEDERAL, STATE, OR LOCAL
6 AUTHORITY;

7 (3) COOPERATING WITH LAW ENFORCEMENT AGENCIES
8 CONCERNING CONDUCT OR ACTIVITY THAT THE CONTROLLER OR PROCESSOR
9 REASONABLY AND IN GOOD FAITH BELIEVES MAY VIOLATE A FEDERAL, STATE, OR
10 LOCAL LAW;

11 (4) INVESTIGATING, ESTABLISHING, EXERCISING, PREPARING FOR,
12 OR DEFENDING A LEGAL CLAIM;

13 (5) PROVIDING A PRODUCT OR SERVICE SPECIFICALLY REQUESTED
14 BY A CONSUMER;

15 (6) PERFORMING UNDER A CONTRACT TO WHICH A CONSUMER IS A
16 PARTY, INCLUDING FULFILLING THE TERMS OF A WRITTEN WARRANTY;

17 (7) TAKING STEPS AT THE REQUEST OF A CONSUMER BEFORE
18 ENTERING INTO A CONTRACT;

19 (8) TAKING IMMEDIATE STEPS TO PROTECT AN INTEREST THAT IS
20 ESSENTIAL FOR THE LIFE OR PHYSICAL SAFETY OF A CONSUMER OR ANOTHER
21 INDIVIDUAL;

22 (9) PREVENTING, DETECTING, PROTECTING AGAINST, OR
23 RESPONDING TO A SECURITY INCIDENT, IDENTITY THEFT, FRAUD, HARASSMENT,
24 MALICIOUS OR DECEPTIVE ACTIVITY, OR ANY ILLEGAL ACTIVITY;

25 (10) PRESERVING THE INTEGRITY OR SECURITY OF A SYSTEM, OR
26 INVESTIGATING, REPORTING, OR PROSECUTING A PERSON RESPONSIBLE FOR THE
27 ACTION;

28 (11) ENGAGING IN PUBLIC OR PEER-REVIEWED SCIENTIFIC OR
29 STATISTICAL RESEARCH IN THE PUBLIC INTEREST THAT:

30 (I) ADHERES TO ALL OTHER APPLICABLE ETHICS AND PRIVACY
31 LAWS; AND

1 **(II) IS APPROVED, MONITORED, AND GOVERNED BY AN**
2 **INSTITUTIONAL REVIEW BOARD, OR A SIMILAR INDEPENDENT OVERSIGHT ENTITY,**
3 **THAT DETERMINES WHETHER:**

4 **1. THE DELETION OF THE INFORMATION IS LIKELY TO**
5 **PROVIDE SUBSTANTIAL BENEFITS THAT DO NOT EXCLUSIVELY ACCRUE TO THE**
6 **CONTROLLER;**

7 **2. THE EXPECTED BENEFITS OF THE RESEARCH**
8 **OUTWEIGH THE PRIVACY RISKS; AND**

9 **3. THE CONTROLLER HAS IMPLEMENTED REASONABLE**
10 **SAFEGUARDS TO MITIGATE PRIVACY RISKS ASSOCIATED WITH RESEARCH,**
11 **INCLUDING ANY RISKS ASSOCIATED WITH RE-IDENTIFICATION;**

12 **(12) ASSISTING ANOTHER CONTROLLER, PROCESSOR, OR**
13 **THIRD PARTY WITH AN OBLIGATION UNDER THIS SUBTITLE; OR**

14 **(13) PROCESSING PERSONAL DATA FOR REASONS OF PUBLIC**
15 **INTEREST IN THE AREA OF PUBLIC HEALTH, COMMUNITY HEALTH, OR POPULATION**
16 **HEALTH, IF THE PROCESSING IS:**

17 **(i) SUBJECT TO SUITABLE AND SPECIFIC MEASURES TO**
18 **SAFEGUARD THE RIGHTS OF A CONSUMER WHOSE PERSONAL DATA IS BEING**
19 **PROCESSED; AND**

20 **(ii) UNDER THE RESPONSIBILITY OF A PROFESSIONAL SUBJECT**
21 **TO CONFIDENTIALITY OBLIGATIONS UNDER FEDERAL, STATE, OR LOCAL LAW.**

22 **(B) THE OBLIGATIONS IMPOSED ON CONTROLLERS OR PROCESSORS UNDER**
23 **THIS SUBTITLE MAY NOT RESTRICT A CONTROLLER'S OR PROCESSOR'S ABILITY TO**
24 **COLLECT, USE, OR RETAIN DATA FOR INTERNAL USE TO:**

25 **(1) EFFECTUATE A PRODUCT RECALL;**

26 **(2) IDENTIFY AND REPAIR TECHNICAL ERRORS THAT IMPAIR**
27 **EXISTING OR INTENDED FUNCTIONALITY; OR**

28 **(3) PERFORM INTERNAL OPERATIONS THAT ARE:**

1 **(I) REASONABLY ALIGNED WITH THE EXPECTATIONS OF THE**
2 **CONSUMER OR REASONABLY ANTICIPATED BASED ON THE CONSUMER’S EXISTING**
3 **RELATIONSHIP WITH THE CONTROLLER; OR**

4 **(II) OTHERWISE COMPATIBLE WITH PROCESSING DATA IN**
5 **FURTHERANCE OF THE PROVISION OF A PRODUCT OR SERVICE SPECIFICALLY**
6 **REQUESTED BY A CONSUMER OR THE PERFORMANCE OF A CONTRACT TO WHICH THE**
7 **CONSUMER IS A PARTY.**

8 **(C) (1) NOTHING IN THIS SUBTITLE MAY BE CONSTRUED TO PREVENT A**
9 **CONTROLLER OR PROCESSOR FROM PROVIDING PERSONAL DATA ABOUT A**
10 **CONSUMER TO A PERSON COVERED BY AN EVIDENTIARY PRIVILEGE UNDER THE**
11 **LAWS OF THE STATE AS PART OF A PRIVILEGED COMMUNICATION.**

12 **(2) AN OBLIGATION IMPOSED ON A CONTROLLER OR A PROCESSOR**
13 **UNDER THIS SUBTITLE DOES NOT APPLY WHERE COMPLIANCE BY THE CONTROLLER**
14 **OR PROCESSOR WITH THE SUBTITLE WOULD VIOLATE AN EVIDENTIARY PRIVILEGE**
15 **UNDER THE LAWS OF THE STATE.**

16 **(D) NOTHING IN THIS SUBTITLE MAY BE CONSTRUED TO:**

17 **(1) IMPOSE AN OBLIGATION ON A CONTROLLER OR A PROCESSOR**
18 **THAT ADVERSELY AFFECTS THE RIGHTS OR FREEDOMS OF ANY PERSON; OR**

19 **(2) APPLY TO A PERSON’S PROCESSING OF PERSONAL DATA IN THE**
20 **COURSE OF THE PERSON’S PERSONAL OR HOUSEHOLD ACTIVITIES.**

21 **(E) IF A CONTROLLER PROCESSES PERSONAL DATA IN ACCORDANCE WITH**
22 **AN EXEMPTION UNDER THIS SECTION, THE CONTROLLER SHALL DEMONSTRATE**
23 **THAT THE PROCESSING:**

24 **(1) QUALIFIES FOR AN EXEMPTION; AND**

25 **(2) COMPLIES WITH THE REQUIREMENTS IN SUBSECTION (F) OF THIS**
26 **SECTION.**

27 **(F) (1) PERSONAL DATA PROCESSED BY A CONTROLLER IN ACCORDANCE**
28 **WITH THIS SECTION MAY BE PROCESSED TO THE EXTENT THAT THE PROCESSING IS:**

29 **(I) REASONABLY NECESSARY AND PROPORTIONATE TO THE**
30 **PURPOSES LISTED IN THIS SECTION; AND**

1 **(II) ADEQUATE, RELEVANT, AND LIMITED TO WHAT IS**
2 **NECESSARY IN RELATION TO THE SPECIFIC PURPOSES LISTED IN THIS SECTION.**

3 **(2) PERSONAL DATA COLLECTED, USED, OR RETAINED IN**
4 **ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION SHALL:**

5 **(I) WHERE APPROPRIATE, TAKE INTO ACCOUNT THE NATURE**
6 **AND PURPOSE OF THE COLLECTION, USE, OR RETENTION; AND**

7 **(II) BE SUBJECT TO REASONABLE ADMINISTRATIVE,**
8 **TECHNICAL, AND PHYSICAL MEASURES TO:**

9 **1. PROTECT THE CONFIDENTIALITY, INTEGRITY, AND**
10 **ACCESSIBILITY OF THE PERSONAL DATA; AND**

11 **2. REDUCE REASONABLY FORESEEABLE RISKS OF HARM**
12 **TO CONSUMERS RELATING TO THE COLLECTION, USE, OR RETENTION OF PERSONAL**
13 **DATA.**

14 **14-4506.**

15 **(A) A CONSUMER MAY DESIGNATE AN AUTHORIZED AGENT TO ACT ON THE**
16 **CONSUMER'S BEHALF TO OPT OUT OF THE PROCESSING OF THE CONSUMER'S**
17 **PERSONAL DATA FOR THE PURPOSES SPECIFIED IN § 14-4504(A) OF THIS SUBTITLE.**

18 **(B) THE CONSUMER MAY DESIGNATE AN AUTHORIZED AGENT BY:**

19 **(1) AN INTERNET LINK OR A BROWSER SETTING ON A CONTROLLER'S**
20 **WEBSITE; OR**

21 **(2) A BROWSER EXTENSION OR GLOBAL DEVICE SETTING ON A**
22 **CONTROLLER'S WEBSITE INDICATING THE CONSUMER'S INTENT TO OPT OUT OF THE**
23 **PROCESSING.**

24 **(C) A CONTROLLER SHALL COMPLY WITH AN OPT-OUT REQUEST RECEIVED**
25 **FROM AN AUTHORIZED AGENT IF THE CONTROLLER IS ABLE TO VERIFY, USING**
26 **COMMERCIALY REASONABLE EFFORTS:**

27 **(1) THE IDENTITY OF THE CONSUMER; AND**

28 **(2) THE AUTHORIZED AGENT'S AUTHORITY TO ACT ON THE**
29 **CONSUMER'S BEHALF.**

1 **(D) THE FOLLOWING INDIVIDUALS MAY EXERCISE THE CONSUMER RIGHTS**
2 **SPECIFIED IN THIS SUBTITLE ON BEHALF OF ANOTHER INDIVIDUAL WITHOUT BEING**
3 **DESIGNATED AS AN AUTHORIZED AGENT UNDER SUBSECTION (A) OF THIS SECTION:**

4 **(1) THE PARENT OR LEGAL GUARDIAN OF A KNOWN CHILD;**

5 **(2) IF A CONSUMER IS SUBJECT TO A GUARDIANSHIP, A**
6 **CONSERVATORSHIP, OR ANY OTHER PROTECTIVE ARRANGEMENT, THE GUARDIAN**
7 **OR CONSERVATOR OF THE CONSUMER.**

8 **14-4507.**

9 **(A) A CONTROLLER MAY NOT:**

10 **(1) SELL, LEASE, OR TRADE A CONSUMER'S BIOMETRIC DATA;**

11 **(2) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBTITLE, UNLESS**
12 **THE CONTROLLER OBTAINS THE CONSUMER'S CONSENT, PROCESS PERSONAL DATA**
13 **FOR A PURPOSE THAT IS NEITHER REASONABLY NECESSARY TO, NOR COMPATIBLE**
14 **WITH, THE DISCLOSED PURPOSES FOR WHICH THE PERSONAL DATA IS PROCESSED,**
15 **AS DISCLOSED TO THE CONSUMER;**

16 **(3) PROCESS SENSITIVE DATA CONCERNING A CONSUMER WITHOUT**
17 **OBTAINING THE CONSUMER'S CONSENT;**

18 **(4) PROCESS SENSITIVE DATA OF A KNOWN CHILD WITHOUT**
19 **PROCESSING THE DATA IN ACCORDANCE WITH THE FEDERAL CHILDREN'S ONLINE**
20 **PRIVACY PROTECTION ACT OF 1998;**

21 **(5) PROCESS PERSONAL DATA IN VIOLATION OF FEDERAL, STATE, OR**
22 **LOCAL LAW THAT PROHIBITS UNLAWFUL DISCRIMINATION AGAINST A CONSUMER;**
23 **OR**

24 **(6) PROCESS THE PERSONAL DATA OF A CONSUMER THAT THE**
25 **PROCESSOR KNOWS IS AT LEAST 13 YEARS OLD AND UNDER THE AGE OF 16 YEARS**
26 **WITHOUT THE CONSUMER'S CONSENT FOR PURPOSES OF:**

27 **(I) TARGETED ADVERTISING; OR**

28 **(II) SELLING THE CONSUMER'S PERSONAL DATA.**

29 **(B) A CONTROLLER SHALL:**

1 **(1) LIMIT THE COLLECTION OF PERSONAL DATA TO WHAT IS:**

2 **(i) ADEQUATE, RELEVANT, AND REASONABLY NECESSARY TO**
3 **COLLECT FOR THE PURPOSES FOR WHICH THE DATA IS PROCESSED; AND**

4 **(ii) DISCLOSED TO THE CONSUMER;**

5 **(2) ESTABLISH, IMPLEMENT, AND MAINTAIN REASONABLE**
6 **ADMINISTRATIVE, TECHNICAL, AND PHYSICAL DATA SECURITY PRACTICES TO**
7 **PROTECT THE CONFIDENTIALITY, INTEGRITY, AND ACCESSIBILITY OF PERSONAL**
8 **DATA APPROPRIATE TO THE VOLUME AND NATURE OF THE PERSONAL DATA AT**
9 **ISSUE;**

10 **(3) PROVIDE AN EFFECTIVE MECHANISM FOR A CONSUMER TO**
11 **REVOKE THE CONSUMER'S CONSENT UNDER THIS SECTION THAT IS AT LEAST AS**
12 **EASY AS THE MECHANISM BY WHICH THE CONSUMER PROVIDED THE CONSUMER'S**
13 **CONSENT; AND**

14 **(4) IF CONSENT IS REVOKED, STOP PROCESSING THE DATA AS SOON**
15 **AS PRACTICABLE, BUT NOT LATER THAN 15 DAYS AFTER THE RECEIPT OF THE**
16 **REQUEST.**

17 **(c) A CONTROLLER IN POSSESSION OF BIOMETRIC DATA SHALL STORE,**
18 **TRANSMIT, AND PROTECT FROM DISCLOSURE ALL BIOMETRIC DATA:**

19 **(1) USING THE REASONABLE STANDARD OF CARE WITHIN THE**
20 **CONTROLLER'S INDUSTRY; AND**

21 **(2) IN A MANNER THAT IS AS PROTECTIVE AS OR MORE PROTECTIVE**
22 **THAN THE MANNER IN WHICH THE CONTROLLER STORES, TRANSMITS, AND**
23 **PROTECTS OTHER CONFIDENTIAL OR SENSITIVE DATA.**

24 **(d) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A**
25 **CONTROLLER THAT COLLECTS BIOMETRIC DATA MAY NOT COLLECT, USE, DISCLOSE,**
26 **REDISCLOSE, OR OTHERWISE DISSEMINATE A CONTROLLER'S BIOMETRIC DATA**
27 **UNLESS:**

28 **(i) THE CONTROLLER OR THE CONSUMER'S AUTHORIZED**
29 **AGENT GIVES CONSENT TO THE PARTICULAR CATEGORY OF COLLECTION, USE,**
30 **DISCLOSURE, REDISCLOSURE, OR DISSEMINATION; OR**

31 **(ii) THE DISCLOSURE OR REDISCLOSURE IS REQUIRED:**

1 1. **BY A VALID WARRANT OR SUBPOENA;**

2 2. **TO COMPLY WITH FEDERAL, STATE, OR LOCAL LAWS,**
3 **RULES, OR REGULATIONS; OR**

4 3. **TO COOPERATE WITH LAW ENFORCEMENT**
5 **CONCERNING CONDUCT OR ACTIVITY THAT THE PRIVATE ENTITY OR THE**
6 **PROCESSOR REASONABLY AND IN GOOD FAITH BELIEVES VIOLATES A FEDERAL,**
7 **STATE, OR LOCAL LAW, RULE, OR REGULATION.**

8 **(2) (I) A CONTROLLER MAY COLLECT, USE, DISCLOSE,**
9 **REDISCLOSE, OR OTHERWISE DISSEMINATE A CONSUMER'S BIOMETRIC DATA**
10 **WITHOUT COMPLYING WITH PARAGRAPH (1) OF THIS SUBSECTION IF THE**
11 **CONTROLLER:**

12 1. **COLLECTS, USES, DISCLOSES, REDISCLOSES, OR**
13 **OTHERWISE DISSEMINATES THE BIOMETRIC DATA FOR FRAUD PREVENTION OR**
14 **SECURITY PURPOSES; AND**

15 2. **SUBJECT TO SUBPARAGRAPH (III) OF THIS**
16 **PARAGRAPH:**

17 **A. FOR A CONTROLLER THAT COLLECTS BIOMETRIC**
18 **DATA AT A PHYSICAL PREMISES, POSTS CONSPICUOUS WRITTEN NOTICE OF THE**
19 **COLLECTION OF BIOMETRIC DATA AT EACH POINT OF ENTRY; AND**

20 **B. FOR A CONTROLLER THAT COLLECTS BIOMETRIC**
21 **DATA OF A CONSUMER DURING AN ONLINE ENCOUNTER WITH THE CONSUMER,**
22 **POSTS CONSPICUOUS WRITTEN NOTICE OF THE COLLECTION OF BIOMETRIC DATA**
23 **ON THE WEBSITE OF THE CONTROLLER.**

24 **(II) 1. THE COLLECTION, USE, DISCLOSURE,**
25 **REDISCLASURE, OR OTHER DISSEMINATION OF BIOMETRIC DATA UNDER THIS**
26 **SUBSECTION SHALL BE DIRECTLY TIED TO THE SERVICES BEING PROVIDED BY THE**
27 **CONTROLLER.**

28 2. **A CONTROLLER THAT COLLECTS, USES, DISCLOSES,**
29 **REDISCLOSES, OR OTHERWISE DISSEMINATES BIOMETRIC DATA UNDER THIS**
30 **SUBSECTION MAY COLLECT, USE, DISCLOSE, REDISCLOSE, OR OTHERWISE**
31 **DISSEMINATE ONLY WHAT IS STRICTLY NECESSARY FOR FRAUD PREVENTION AND**
32 **SECURITY PURPOSES.**

1 **(III) THE NOTICE REQUIRED IN SUBPARAGRAPH (I) OF THIS**
2 **PARAGRAPH SHALL INFORM CONSUMERS OF:**

3 **1. THE CATEGORIES OF BIOMETRIC DATA TO BE**
4 **COLLECTED; AND**

5 **2. THE PURPOSES FOR WHICH THE CATEGORIES OF**
6 **BIOMETRIC DATA WILL BE USED.**

7 **(E) A CONTROLLER MAY NOT DISCRIMINATE AGAINST A CONSUMER FOR**
8 **EXERCISING A CONSUMER RIGHT AFFORDED BY THIS SUBTITLE, INCLUDING:**

9 **(1) DENYING GOODS OR SERVICES;**

10 **(2) CHARGING DIFFERENT PRICES OR RATES FOR GOODS OR**
11 **SERVICES; OR**

12 **(3) PROVIDING A DIFFERENT LEVEL OF QUALITY OF GOODS OR**
13 **SERVICES.**

14 **(F) NOTHING IN SUBSECTION (E) OF THIS SECTION MAY BE CONSTRUED TO:**

15 **(1) REQUIRE A CONTROLLER TO PROVIDE A PRODUCT OR SERVICE**
16 **THAT REQUIRES THE PERSONAL DATA OF A CONSUMER WHICH THE CONTROLLER**
17 **DOES NOT COLLECT OR MAINTAIN; OR**

18 **(2) PROHIBIT A CONTROLLER FROM OFFERING A DIFFERENT PRICE,**
19 **RATE, LEVEL, QUALITY, OR SELECTION OF GOODS OR SERVICES TO A CONSUMER,**
20 **INCLUDING OFFERING GOODS OR SERVICES FOR NO FEE, IF THE OFFERING IS IN**
21 **CONNECTION WITH A CONSUMER'S VOLUNTARY PARTICIPATION IN A BONA FIDE**
22 **LOYALTY, REWARDS, PREMIUM FEATURES, DISCOUNTS, OR CLUB CARD PROGRAM.**

23 **(G) (1) IF A CONSUMER'S DECISION TO OPT OUT OF THE PROCESSING OF**
24 **THE CONSUMER'S PERSONAL DATA FOR THE PURPOSES OF TARGETED ADVERTISING**
25 **OR THE SALE OF PERSONAL DATA THROUGH AN OPT-OUT PREFERENCE SIGNAL**
26 **SENT IN ACCORDANCE WITH § 14-4508(B)(4)(II) OF THIS SUBTITLE CONFLICTS WITH**
27 **THE CONSUMER'S EXISTING CONTROLLER-SPECIFIC PRIVACY SETTING OR**
28 **VOLUNTARY PARTICIPATION IN A CONTROLLER'S BONA FIDE LOYALTY, REWARDS,**
29 **PREMIUM FEATURES, DISCOUNTS, OR CLUB CARD PROGRAM, THE CONTROLLER**
30 **SHALL COMPLY WITH THE CONSUMER'S OPT-OUT PREFERENCE SIGNAL.**

31 **(2) A CONTROLLER MAY:**

1 **(I) NOTIFY A CONSUMER OF THE CONFLICT BETWEEN AN**
2 **OPT-OUT PREFERENCE SIGNAL AND A CONTROLLER'S SPECIFIC PRIVACY SETTING;**
3 **AND**

4 **(II) PROVIDE TO THE CONSUMER THE CHOICE TO CONFIRM THE**
5 **CONTROLLER-SPECIFIC PRIVACY SETTING OR PARTICIPATION IN THE PROGRAM.**

6 **(H) IF A CONTROLLER RESPONDS TO A CONSUMER OPT-OUT REQUEST**
7 **RECEIVED IN ACCORDANCE WITH SUBSECTION (G) OF THIS SECTION BY INFORMING**
8 **THE CONSUMER OF A CHARGE FOR THE USE OF ANY PRODUCT OR SERVICE, THE**
9 **CONTROLLER SHALL PRESENT THE TERMS OF ANY FINANCIAL INCENTIVE OFFERED**
10 **IN ACCORDANCE WITH SUBSECTION (F) OF THIS SECTION FOR THE RETENTION, USE,**
11 **SALE, OR SHARING OF THE CONSUMER'S PERSONAL DATA.**

12 **(I) A CONTROLLER OR A PROCESSOR THAT COMPLIES WITH THE**
13 **VERIFIABLE PARENTAL CONSENT REQUIREMENTS OF THE FEDERAL CHILDREN'S**
14 **ONLINE PRIVACY PROTECTION ACT IS CONSIDERED TO BE COMPLIANT WITH ANY**
15 **OBLIGATION TO OBTAIN PARENTAL CONSENT IN ACCORDANCE WITH THIS SUBTITLE.**

16 **(J) IF A CONTROLLER SELLS PERSONAL DATA TO THIRD PARTIES OR**
17 **PROCESSES PERSONAL DATA FOR TARGETED ADVERTISING, THE CONTROLLER**
18 **SHALL CLEARLY AND CONSPICUOUSLY DISCLOSE:**

19 **(1) THE PROCESSING; AND**

20 **(2) THE MANNER IN WHICH A CONSUMER MAY EXERCISE THE RIGHT**
21 **TO OPT OUT OF THE PROCESSING.**

22 **14-4508.**

23 **(A) (1) A CONTROLLER SHALL PROVIDE A CONSUMER WITH A**
24 **REASONABLY ACCESSIBLE, CLEAR, AND MEANINGFUL PRIVACY NOTICE THAT**
25 **INCLUDES:**

26 **(I) FOR BIOMETRIC DATA PROCESSED BY THE CONTROLLER, A**
27 **WRITTEN POLICY ESTABLISHING A RETENTION SCHEDULE AND GUIDELINES FOR**
28 **PERMANENTLY DESTROYING BIOMETRIC DATA;**

29 **(II) THE CATEGORIES OF PERSONAL DATA PROCESSED BY THE**
30 **CONTROLLER;**

31 **(III) THE PURPOSES FOR PROCESSING PERSONAL DATA;**

1 (IV) HOW A CONSUMER MAY EXERCISE A CONSUMER RIGHT
2 UNDER THIS SUBTITLE, INCLUDING HOW A CONSUMER MAY APPEAL A
3 CONTROLLER'S DECISION WITH REGARD TO THE CONSUMER'S REQUEST;

4 (V) THE CATEGORIES OF THIRD PARTIES WITH WHICH THE
5 CONTROLLER SHARES PERSONAL DATA;

6 (VI) THE CATEGORIES OF PERSONAL DATA THAT THE
7 CONTROLLER SHARES WITH THIRD PARTIES; AND

8 (VII) AN ACTIVE E-MAIL ADDRESS OR OTHER ONLINE
9 MECHANISM THAT A CONSUMER MAY USE TO CONTACT THE CONTROLLER.

10 (2) THE PRIVACY NOTICE IN PARAGRAPH (1) OF THIS SUBSECTION
11 SHALL BE MADE AVAILABLE TO THE PUBLIC.

12 (B) (1) A CONTROLLER SHALL ESTABLISH AND DESCRIBE IN THE
13 PRIVACY NOTICE ONE OR MORE SECURE AND RELIABLE METHODS FOR A CONSUMER
14 TO SUBMIT A REQUEST TO EXERCISE A CONSUMER RIGHT UNDER THIS SUBTITLE.

15 (2) THE METHOD A CONTROLLER CHOOSES TO SATISFY PARAGRAPH
16 (1) OF THIS SUBSECTION SHALL TAKE INTO ACCOUNT:

17 (I) THE WAYS IN WHICH CONSUMERS NORMALLY INTERACT
18 WITH THE CONTROLLER;

19 (II) THE NEED FOR SECURE AND RELIABLE COMMUNICATION
20 OF REQUESTS; AND

21 (III) THE ABILITY OF THE CONTROLLER TO VERIFY THE
22 IDENTITY OF A CONSUMER MAKING THE REQUEST.

23 (3) (I) A CONTROLLER MAY NOT REQUIRE A CONSUMER TO
24 CREATE A NEW ACCOUNT IN ORDER TO EXERCISE A CONSUMER RIGHT.

25 (II) A CONTROLLER MAY REQUIRE A CONSUMER TO USE AN
26 EXISTING ACCOUNT TO EXERCISE A CONSUMER RIGHT.

27 (4) A CONTROLLER MAY CONSIDER THE FOLLOWING METHODS TO
28 SATISFY PARAGRAPH (1) OF THIS SUBSECTION:

29 (I) PROVIDING A CLEAR AND CONSPICUOUS LINK ON THE
30 CONTROLLER'S WEBSITE TO A WEBPAGE THAT ALLOWS A CONSUMER, OR AN

1 AUTHORIZED AGENT OF THE CONSUMER, TO OPT OUT OF THE TARGETED
2 ADVERTISING OR THE SALE OF THE CONSUMER'S PERSONAL DATA; OR

3 (II) ALLOWING A CONSUMER TO OPT OUT OF ANY PROCESSING
4 OF THE CONSUMER'S PERSONAL DATA FOR THE PURPOSES OF TARGETED
5 ADVERTISING, OR ANY SALE OF PERSONAL DATA, THROUGH AN OPT-OUT
6 PREFERENCE SIGNAL SENT, WITH THE CONSUMER'S CONSENT, BY A PLATFORM, A
7 TECHNOLOGY, OR A MECHANISM TO THE CONTROLLER INDICATING THE
8 CONSUMER'S INTENT TO OPT OUT OF THE PROCESSING OR SALE.

9 (5) (I) A PLATFORM, A TECHNOLOGY, OR A MECHANISM USED IN
10 ACCORDANCE WITH PARAGRAPH (4) OF THIS SUBSECTION SHALL:

11 1. BE CONSUMER-FRIENDLY AND EASY TO USE BY THE
12 AVERAGE CONSUMER;

13 2. BE AS CONSISTENT AS POSSIBLE WITH ANY OTHER
14 SIMILAR PLATFORM, TECHNOLOGY, OR MECHANISM REQUIRED BY ANY FEDERAL OR
15 STATE LAW OR REGULATION; AND

16 3. ENABLE THE CONTROLLER TO ACCURATELY
17 DETERMINE WHETHER THE CONSUMER:

18 A. IS A RESIDENT OF THE STATE; AND

19 B. HAS MADE A LEGITIMATE REQUEST TO OPT OUT OF
20 ANY SALE OF THE CONSUMER'S PERSONAL DATA OR TARGETED ADVERTISING.

21 (II) A PLATFORM, A TECHNOLOGY, OR A MECHANISM USED IN
22 ACCORDANCE WITH PARAGRAPH (4) OF THIS SUBSECTION:

23 1. SHALL REQUIRE THE CONSUMER TO MAKE AN
24 AFFIRMATIVE, FREELY GIVEN, AND UNAMBIGUOUS CHOICE TO OPT OUT OF THE
25 PROCESSING OF THE CONSUMER'S PERSONAL DATA IN ACCORDANCE WITH THIS
26 SUBTITLE; AND

27 2. MAY NOT:

28 A. UNFAIRLY DISADVANTAGE ANOTHER CONTROLLER;
29 OR

30 B. MAKE USE OF A DEFAULT SETTING.

1 **(C) (1) THIS SUBSECTION APPLIES ONLY TO A CONTROLLER THAT**
2 **COLLECTS THE BIOMETRIC DATA OF CONSUMERS.**

3 **(2) EXCEPT AS PROVIDED IN PARAGRAPHS (4) AND (5) OF THIS**
4 **SUBSECTION, A CONTROLLER IN POSSESSION OF BIOMETRIC DATA SHALL DEVELOP**
5 **A WRITTEN POLICY, MADE AVAILABLE TO THE PUBLIC, ESTABLISHING A RETENTION**
6 **SCHEDULE AND GUIDELINES FOR PERMANENTLY DESTROYING BIOMETRIC DATA ON**
7 **THE EARLIEST OF THE FOLLOWING:**

8 **(I) THE DATE ON WHICH THE INITIAL PURPOSE FOR**
9 **COLLECTING OR OBTAINING THE BIOMETRIC DATA HAS BEEN SATISFIED;**

10 **(II) WITHIN 3 YEARS AFTER THE CONSUMER'S LAST**
11 **INTERACTION WITH THE CONTROLLER IN POSSESSION OF THE BIOMETRIC DATA; OR**

12 **(III) WITHIN 30 DAYS AFTER THE CONTROLLER RECEIVES A**
13 **VERIFIED REQUEST TO DELETE THE BIOMETRIC DATA SUBMITTED BY THE**
14 **CONSUMER OR THE CONSUMER'S AUTHORIZED AGENT.**

15 **(3) ABSENT A VALID WARRANT OR SUBPOENA ISSUED BY A COURT OF**
16 **COMPETENT JURISDICTION, A CONTROLLER IN POSSESSION OF BIOMETRIC DATA**
17 **SHALL COMPLY WITH THE RETENTION SCHEDULE AND DESTRUCTION GUIDELINES**
18 **DEVELOPED UNDER PARAGRAPH (2) OF THIS SUBSECTION.**

19 **(4) A CONTROLLER IN POSSESSION OF BIOMETRIC DATA FOR FRAUD**
20 **PREVENTION OR SECURITY PURPOSES IS NOT REQUIRED TO DESTROY A**
21 **CONSUMER'S BIOMETRIC DATA IN ACCORDANCE WITH PARAGRAPH (2)(II) AND (III)**
22 **OF THIS SUBSECTION IF THE CONSUMER IS PART OF THE STATE VOLUNTARY**
23 **EXCLUSION PROGRAM.**

24 **(5) A CONTROLLER MAY NOT BE REQUIRED TO MAKE PUBLICLY**
25 **AVAILABLE A WRITTEN POLICY DEVELOPED UNDER THIS SUBSECTION IF:**

26 **(I) THE CONTROLLER COLLECTS BIOMETRIC DATA ONLY FROM**
27 **THE CONTROLLER'S EMPLOYEES; AND**

28 **(II) THE BIOMETRIC DATA IS USED SOLELY FOR INTERNAL**
29 **COMPANY OPERATIONS.**

30 **14-4509.**

31 **(A) (1) IF A CONTROLLER USES A PROCESSOR TO PROCESS THE**
32 **PERSONAL DATA OF CONSUMERS, THE CONTROLLER AND THE PROCESSOR SHALL**

1 ENTER INTO A CONTRACT THAT GOVERNS THE PROCESSOR'S DATA PROCESSING
2 PROCEDURES WITH RESPECT TO PROCESSING PERFORMED ON BEHALF OF THE
3 CONTROLLER.

4 (2) THE CONTRACT SHALL PROVIDE CLEAR INSTRUCTIONS FOR:

5 (I) PROCESSING DATA;

6 (II) THE NATURE AND PURPOSE OF PROCESSING;

7 (III) THE TYPE OF DATA SUBJECT TO PROCESSING;

8 (IV) THE DURATION OF PROCESSING; AND

9 (V) THE RIGHTS AND OBLIGATIONS OF THE CONTROLLER AND
10 THE PROCESSOR.

11 (3) THE CONTRACT SHALL REQUIRE THAT THE PROCESSOR:

12 (I) ENSURE THAT EACH PERSON PROCESSING PERSONAL DATA
13 IS SUBJECT TO A DUTY OF CONFIDENTIALITY WITH RESPECT TO THE DATA;

14 (II) UNLESS RETENTION OF THE PERSONAL DATA IS REQUIRED
15 BY LAW, AT THE CONTROLLER'S DIRECTION, DELETE OR RETURN ALL PERSONAL
16 DATA TO THE CONTROLLER AS REQUESTED AT THE END OF THE PROVISION OF
17 SERVICE;

18 (III) MAKE AVAILABLE TO THE CONTROLLER ALL INFORMATION
19 IN THE PROCESSOR'S POSSESSION NECESSARY TO DEMONSTRATE THE PROCESSOR'S
20 COMPLIANCE WITH THE OBLIGATIONS IN THIS SUBTITLE;

21 (IV) AFTER PROVIDING THE CONTROLLER AN OPPORTUNITY TO
22 OBJECT, REQUIRE A SUBCONTRACTOR TO SIGN A CONTRACT AGREEING TO MEET
23 THE OBLIGATIONS OF THE PROCESSOR WITH RESPECT TO THE PERSONAL DATA; AND

24 (V) ALLOW AND COOPERATE WITH REASONABLE ASSESSMENTS
25 BY THE CONTROLLER, THE CONTROLLER'S DESIGNATED ASSESSOR, OR A QUALIFIED
26 AND INDEPENDENT ASSESSOR TO ASSESS THE PROCESSOR'S POLICIES AND
27 TECHNICAL AND ORGANIZATIONAL MEASURES TO COMPLY WITH THE OBLIGATIONS
28 UNDER THIS SUBTITLE.

1 **(4) (I) ON REQUEST, THE PROCESSOR SHALL PROVIDE A REPORT**
2 **OF AN ASSESSMENT REQUIRED BY PARAGRAPH (3)(V) OF THIS SUBSECTION TO THE**
3 **CONTROLLER.**

4 **(II) AN ASSESSMENT CONDUCTED IN ACCORDANCE WITH**
5 **PARAGRAPH (3)(V) OF THIS SUBSECTION SHALL BE CONDUCTED USING AN**
6 **APPROPRIATE AND ACCEPTED CONTROL STANDARD OR FRAMEWORK AND**
7 **ASSESSMENT PROCEDURE FOR THE ASSESSMENTS.**

8 **(B) A PROCESSOR SHALL ADHERE TO THE INSTRUCTIONS OF A**
9 **CONTROLLER AND SHALL ASSIST THE CONTROLLER IN MEETING THE**
10 **CONTROLLER'S OBLIGATIONS UNDER THIS SUBTITLE, INCLUDING:**

11 **(1) TAKING INTO ACCOUNT THE NATURE OF PROCESSING AND THE**
12 **INFORMATION AVAILABLE TO THE PROCESSOR BY FULFILLING THE CONTROLLER'S**
13 **OBLIGATION TO RESPOND TO CONSUMER RIGHTS REQUESTS;**

14 **(2) TAKING INTO ACCOUNT THE NATURE OF PROCESSING AND THE**
15 **INFORMATION AVAILABLE TO THE PROCESSOR, BY ASSISTING THE CONTROLLER IN**
16 **MEETING THE CONTROLLER'S OBLIGATIONS IN RELATION TO THE SECURITY OF**
17 **PROCESSING PERSONAL DATA AND THE NOTIFICATION OF A BREACH OF SECURITY**
18 **OF THE SYSTEM OF THE PROCESSOR, AS DEFINED IN § 14-3504 OF THIS TITLE, IN**
19 **ORDER TO MEET THE CONTROLLER'S OBLIGATIONS; AND**

20 **(3) PROVIDING NECESSARY INFORMATION TO ENABLE THE**
21 **CONTROLLER TO CONDUCT AND DOCUMENT DATA PROTECTION ASSESSMENTS.**

22 **(C) NOTHING IN THIS SECTION MAY BE CONSTRUED TO RELIEVE A**
23 **CONTROLLER OR A PROCESSOR FROM THE LIABILITIES IMPOSED ON THE**
24 **CONTROLLER OR PROCESSOR BY VIRTUE OF THE CONTROLLER'S OR PROCESSOR'S**
25 **ROLE IN THE PROCESSING RELATIONSHIP.**

26 **(D) (1) THE DETERMINATION OF WHETHER A PERSON IS ACTING AS A**
27 **CONTROLLER OR A PROCESSOR WITH RESPECT TO A SPECIFIC PROCESSING OF DATA**
28 **IS A FACT-BASED DETERMINATION THAT DEPENDS UPON THE CONTEXT IN WHICH**
29 **PERSONAL DATA IS BEING PROCESSED.**

30 **(2) A PERSON IS CONSIDERED TO BE A CONTROLLER IF THE PERSON:**

31 **(I) IS NOT LIMITED IN THE PERSON'S PROCESSING OF SPECIFIC**
32 **PERSONAL DATA IN ACCORDANCE WITH A CONTROLLER'S INSTRUCTIONS; OR**

1 **(II) FAILS TO FOLLOW A CONTROLLER’S INSTRUCTIONS**
2 **REGARDING THE SPECIFIC PROCESSING OF PERSONAL DATA.**

3 **(3) IF A PROCESSOR, ALONE OR JOINTLY WITH OTHERS, DETERMINES**
4 **THE PURPOSES AND MEANS OF THE PROCESSING OF PERSONAL DATA, THE**
5 **PROCESSOR:**

6 **(I) IS A CONTROLLER WITH RESPECT TO THE PROCESSING; AND**

7 **(II) MAY BE SUBJECT TO AN ENFORCEMENT ACTION UNDER**
8 **THIS SUBTITLE.**

9 **14-4510.**

10 **(A) IN THIS SECTION, “PROCESSING ACTIVITIES THAT PRESENT A**
11 **HEIGHTENED RISK OF HARM TO A CONSUMER” MEANS:**

12 **(1) THE PROCESSING OF PERSONAL DATA FOR THE PURPOSES OF**
13 **TARGETED ADVERTISING;**

14 **(2) THE SALE OF PERSONAL DATA;**

15 **(3) THE PROCESSING OF SENSITIVE DATA; AND**

16 **(4) THE PROCESSING OF PERSONAL DATA FOR THE PURPOSES OF**
17 **PROFILING, IN WHICH THE PROFILING PRESENTS A REASONABLY FORESEEABLE**
18 **RISK OF:**

19 **(I) UNFAIR, ABUSIVE, OR DECEPTIVE TREATMENT OF A**
20 **CONSUMER;**

21 **(II) HAVING AN UNLAWFUL DISPARATE IMPACT ON A**
22 **CONSUMER;**

23 **(III) FINANCIAL, PHYSICAL, OR REPUTATIONAL INJURY TO A**
24 **CONSUMER;**

25 **(IV) A PHYSICAL OR OTHER INTRUSION ON THE SOLITUDE OR**
26 **SECLUSION OR THE PRIVATE AFFAIRS OR CONCERNS OF A CONSUMER INTO WHICH**
27 **THE INTRUSION WOULD BE OFFENSIVE TO A REASONABLE PERSON; OR**

28 **(V) OTHER SUBSTANTIAL INJURY TO A CONSUMER.**

1 **(B) A CONTROLLER SHALL CONDUCT AND DOCUMENT A DATA PROTECTION**
2 **ASSESSMENT FOR EACH OF THE CONTROLLER'S PROCESSING ACTIVITIES THAT**
3 **PRESENT A HEIGHTENED RISK OF HARM TO A CONSUMER.**

4 **(C) (1) A DATA PROTECTION ASSESSMENT CONDUCTED IN ACCORDANCE**
5 **WITH THIS SECTION SHALL IDENTIFY AND WEIGH THE BENEFITS OF THE**
6 **PROCESSING TO THE CONTROLLER, THE CONSUMER, OTHER STAKEHOLDERS, AND**
7 **THE PUBLIC AGAINST THE POTENTIAL RISKS TO THE RIGHTS OF THE CONSUMER**
8 **ASSOCIATED WITH THE PROCESSING.**

9 **(2) THE CONTROLLER SHALL FACTOR INTO A DATA PROTECTION**
10 **ASSESSMENT:**

11 **(I) THE USE OF DE-IDENTIFIED DATA;**

12 **(II) THE REASONABLE EXPECTATIONS OF CONSUMERS;**

13 **(III) THE CONTEXT OF THE PROCESSING;**

14 **(IV) THE RELATIONSHIP BETWEEN THE CONTROLLER AND THE**
15 **CONSUMER WHOSE PERSONAL DATA WILL BE PROCESSED; AND**

16 **(V) THE SAFEGUARDS THAT CAN BE EMPLOYED BY THE**
17 **CONTROLLER TO REDUCE THE RISKS AGAINST CONSUMERS ASSOCIATED WITH THE**
18 **PROCESSING.**

19 **(D) (1) THE DIVISION MAY REQUIRE THAT A CONTROLLER MAKE**
20 **AVAILABLE TO THE DIVISION A DATA PROTECTION ASSESSMENT THAT IS RELEVANT**
21 **TO AN INVESTIGATION CONDUCTED BY THE DIVISION.**

22 **(2) THE DIVISION MAY EVALUATE A DATA PROTECTION ASSESSMENT**
23 **FOR COMPLIANCE WITH THE RESPONSIBILITIES ESTABLISHED IN THIS SUBTITLE.**

24 **(E) A SINGLE DATA PROTECTION ASSESSMENT MAY ADDRESS A**
25 **COMPARABLE SET OF PROCESSING OPERATIONS THAT INCLUDE SIMILAR**
26 **ACTIVITIES.**

27 **(F) IF A CONTROLLER CONDUCTS A DATA PROTECTION ASSESSMENT FOR**
28 **THE PURPOSE OF COMPLYING WITH ANOTHER LAW OR REGULATION, THE DATA**
29 **PROTECTION ASSESSMENT SHALL SATISFY THE REQUIREMENTS ESTABLISHED IN**
30 **THIS SECTION IF THE DATA PROTECTION ASSESSMENT IS REASONABLY SIMILAR IN**
31 **SCOPE AND EFFECT TO THE DATA PROTECTION ASSESSMENT THAT WOULD**
32 **OTHERWISE BE CONDUCTED IN ACCORDANCE WITH THIS SECTION.**

1 (G) A DATA PROTECTION ASSESSMENT SHALL BE CONFIDENTIAL AND
2 EXEMPT FROM DISCLOSURE UNDER THE MARYLAND PUBLIC INFORMATION ACT.

3 14-4511.

4 (A) NOTHING IN THIS SECTION MAY BE CONSTRUED TO:

5 (1) REQUIRE A CONTROLLER OR A PROCESSOR TO RE-IDENTIFY
6 DE-IDENTIFIED DATA;

7 (2) MAINTAIN DATA IN AN IDENTIFIABLE FORM; OR

8 (3) COLLECT, OBTAIN, RETAIN, OR ACCESS ANY DATA OR
9 TECHNOLOGY IN ORDER TO BE CAPABLE OF ASSOCIATING AN AUTHENTICATED
10 CONSUMER REQUEST WITH PERSONAL DATA.

11 (B) A CONTROLLER IN POSSESSION OF DE-IDENTIFIED DATA SHALL:

12 (1) TAKE REASONABLE MEASURES TO ENSURE THAT THE DATA
13 CANNOT BE ASSOCIATED WITH A CONSUMER;

14 (2) PUBLICLY COMMIT TO MAINTAINING AND USING DE-IDENTIFIED
15 DATA WITHOUT ATTEMPTING TO RE-IDENTIFY THE DATA; AND

16 (3) CONTRACTUALLY OBLIGATE A RECIPIENT OF DE-IDENTIFIED
17 DATA TO COMPLY WITH ITEMS (1) AND (2) OF THIS SUBSECTION.

18 (C) A CONTROLLER THAT DISCLOSES DE-IDENTIFIED DATA SHALL:

19 (1) EXERCISE REASONABLE OVERSIGHT TO MONITOR COMPLIANCE
20 WITH A CONTRACTUAL COMMITMENT TO WHICH THE DE-IDENTIFIED DATA IS
21 SUBJECT; AND

22 (2) IF NECESSARY, TAKE APPROPRIATE STEPS TO ADDRESS A BREACH
23 OF A CONTRACTUAL COMMITMENT.

24 (D) A CONTROLLER THAT POSSESSES THE DE-IDENTIFIED DATA SHALL:

25 (1) TAKE REASONABLE MEASURES TO ENSURE THAT THE DATA
26 CANNOT BE ASSOCIATED WITH A CONSUMER;

27 (2) PUBLICLY COMMIT TO:

1 **(I) PROCESS THE DATA ONLY IN A DE-IDENTIFIED MANNER;**
2 **AND**

3 **(II) NOT ATTEMPT TO RE-IDENTIFY THE DATA; AND**

4 **(3) CONTRACTUALLY OBLIGATE A RECIPIENT OF THE DATA TO**
5 **SATISFY THE CRITERIA IN ITEMS (1) AND (2) OF THIS SUBSECTION.**

6 **14-4512.**

7 **(A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, A**
8 **VIOLATION OF THIS SUBTITLE IS:**

9 **(1) AN UNFAIR, ABUSIVE, OR DECEPTIVE TRADE PRACTICE WITHIN**
10 **THE MEANING OF TITLE 13 OF THIS ARTICLE; AND**

11 **(2) SUBJECT TO THE ENFORCEMENT AND PENALTY PROVISIONS**
12 **CONTAINED IN TITLE 13 OF THIS ARTICLE, EXCEPT FOR § 13-408 OF THIS ARTICLE.**

13 **(B) IN ADDITION TO THE REMEDIES AVAILABLE IN SUBSECTION (A) OF THIS**
14 **SECTION, A CONSUMER WHO IS AFFECTED BY A VIOLATION OF § 14-4507(A)(1) OF**
15 **THIS SUBTITLE MAY BRING AN ACTION AGAINST THE CONTROLLER IN ACCORDANCE**
16 **WITH § 13-408 OF THIS ARTICLE.**

17 SECTION 2. AND BE IT FURTHER ENACTED, That:

18 (a) There is a Task Force to Study Online Data Privacy.

19 (b) The Task Force consists of the following members:

20 (1) two members of the Senate of Maryland, appointed by the President of
21 the Senate;

22 (2) two members of the House of Delegates, appointed by the Speaker of
23 the House;

24 (3) the Attorney General, or the Attorney General's designee; and

25 (4) the following members, appointed by the Governor:

26 (i) one representative of the business sector;

27 (ii) one representative of the academic sector;

1 (iii) one representative from a consumer advocacy group; and

2 (iv) two attorneys with experience in privacy law.

3 (c) The Governor shall designate the chair of the Task Force.

4 (d) The State agencies represented on the Task Force shall provide staff for the
5 Task Force.

6 (e) A member of the Task Force:

7 (1) may not receive compensation as a member of the Task Force; but

8 (2) is entitled to reimbursement for expenses under the Standard State
9 Travel Regulations, as provided in the State budget.

10 (f) The Task Force shall:

11 (1) study and make recommendations regarding:

12 (i) information sharing among health care and social care providers;

13 (ii) algorithmic decision-making and the proper use of data to reduce
14 bias in algorithmic decision-making;

15 (iii) requiring an operator, upon a parent's request, to delete the
16 account of a child and cease to collect, use or maintain, in retrievable form, the child's
17 personal data on the operator's website or online service directed to children, and provide
18 parents with an accessible, reasonable, and verifiable means to make the request;

19 (iv) methods of verifying the age of a child who creates a social media
20 account;

21 (v) issues concerning data colocation, including the impact that the
22 provisions of Section 1 of this Act may have on third parties that provide data storage and
23 colocation services;

24 (vi) issues surrounding additional persons or groups that are subject
25 to the provisions of Section 1 of this Act; and

26 (vii) other topics concerning online data privacy; and

27 (2) make recommendations for future data privacy legislation.

28 (g) On or before June 1, 2024, the Task Force shall report its findings and
29 recommendations to the Governor and, in accordance with § 2-1257 of the State

1 Government Article, the Senate Finance Committee and the House Economic Matters
2 Committee.

3 SECTION 3. AND BE IT FURTHER ENACTED, That § 14–4510 of the Commercial
4 Law Article, as enacted by Section 1 of this Act, shall be construed to apply only
5 prospectively and may not be applied or interpreted to have any effect on or application to
6 any personal data processing activities before the effective date of this Act.

7 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
8 October 1, 2023. Section 2 of this Act shall remain effective for a period of 2 years and, at
9 the end of September 30, 2025, Section 2 of this Act, with no further action required by the
10 General Assembly, shall be abrogated and of no further force and effect.