



## 101ST GENERAL ASSEMBLY

### State of Illinois

2019 and 2020

SB2330

Introduced 1/8/2020, by Sen. Thomas Cullerton

#### SYNOPSIS AS INTRODUCED:

New Act

Creates the Data Transparency and Privacy Act. Provides that any business that processes personal information or deidentified information must, prior to processing, provide notice to the consumer to whom the information refers or belongs of specific information in the service agreement or somewhere readily accessible on the business' website or mobile application. Establishes a "right to know" for consumers and prescribes types of information that they may request of businesses. Provides that consumers have the right to opt out of agreements that entail the disclosure of personal information from the business to third parties and affiliates, the sale of personal information from the business to third parties and affiliates, and the processing of personal information by the business, third parties, and affiliates. Provides that consumers have the right to request that a business correct inaccurate personal information about the consumer or delete personal information about the consumer. Prescribes a protocol for the handling of consumer requests by businesses. Prescribes pricing incentives and prohibitions against discrimination. Provides that businesses, affiliates, and third parties must conduct risk assessments and provides requirements for the assessments. Provides that enforcement of the Act may arise through private actions or enforcement by the Attorney General. Provides that any waiver of the provisions of the Act is void and unenforceable. Contains home rule preemption and severability provisions. Effective July 1, 2021.

LRB101 16295 KTG 65668 b

1 AN ACT concerning business.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the Data  
5 Transparency and Privacy Act.

6 Section 5. Findings. The General Assembly finds and  
7 declares that:

8 (1) The right to privacy is a personal and fundamental  
9 right protected by the United States Constitution. As such,  
10 all individuals have a right to privacy and a personal  
11 property interest in information pertaining to them and  
12 that information shall be adequately protected from  
13 unlawful invasions and takings. This State recognizes the  
14 importance of providing consumers with transparency about  
15 how their personal information is stored, used, and shared  
16 by businesses. This transparency is crucial for Illinois  
17 citizens to protect themselves and their families from  
18 cyber-crimes and identity thieves.

19 (2) Businesses are now collecting, sharing, and  
20 selling personal information in ways not contemplated or  
21 properly covered by current law.

22 (a) Some websites install tracking tools that  
23 record when consumers visit web pages and send personal

1 information collected to third party marketers and  
2 data brokers.

3 (b) Third-party data broker companies are buying,  
4 selling, and trading personal information obtained  
5 from mobile phones, financial institutions, social  
6 media sites, and other online and brick and mortar  
7 companies.

8 (c) Social media companies, credit agencies and  
9 retail stores have all had their internal security  
10 systems breached, resulting in consumers' personal  
11 information being stolen and sold on the black market.

12 (3) Illinois consumers must be better informed about  
13 what kinds of personal information are collected, how  
14 information is shared with third parties, and how  
15 businesses store consumers' personal information. With  
16 this specific information, consumers can knowledgeably  
17 choose to opt in, opt out, or choose among businesses that  
18 disclose information to third parties on the basis of how  
19 protective the business is of consumers' privacy in order  
20 to properly protect their privacy, property, personal  
21 safety, and financial security.

22 Section 10. Definitions. As used in this Act:

23 "Affiliate" means a legal entity that controls, is  
24 controlled by, or is under common control with another legal  
25 entity.

1 "Business" means any sole proprietorship, partnership,  
2 limited liability company, corporation, association, or other  
3 legal entity that is organized or operated for the profit or  
4 financial benefit of its shareholders or other owners, that  
5 does business in the State of Illinois and meets one or more of  
6 the following thresholds:

7 (1) The business collects or discloses the personal  
8 information of 50,000 or more persons, Illinois  
9 households, or the combination thereof.

10 (2) The business derives 50% or more of its annual  
11 revenues from selling consumers' personal information.

12 "Business" does not include any third party that operates,  
13 hosts, or manages, but does not own, a website or online  
14 service on the owner's behalf or by processing information on  
15 behalf of the owners, or any State and local governments or  
16 municipal corporations.

17 "Categories of sources" means types of entities from which  
18 a business collects personal information about consumers,  
19 including, but not limited to, the consumer directly,  
20 government entities from which public records are obtained, and  
21 consumer data resellers.

22 "Categories of third parties" means types of entities that  
23 do not collect personal information directly from consumers,  
24 including, but not limited to, advertising networks, internet  
25 service providers, data analytics providers, government  
26 entities, operating systems and platforms, social networks,

1 and consumer data resellers.

2 "Consumer" means a natural person residing in this State.

3 "Consumer" does not include a natural person acting in an  
4 employment context.

5 "Deidentified" means information that cannot reasonably  
6 identify, relate to, describe, be capable of being associated  
7 with, or be linked, directly or indirectly, to a particular  
8 consumer, provided that a business that uses deidentified  
9 information:

10 (1) Has implemented technical safeguards that prohibit  
11 reidentification of the consumer to whom the information  
12 may pertain.

13 (2) Has implemented business processes that  
14 specifically prohibit reidentification of the information.

15 (3) Has implemented business processes to prevent  
16 inadvertent release of deidentified information.

17 (4) Makes no attempt to reidentify the information.

18 "Designated request address" means an electronic mail  
19 address, online form, mailing address, or toll-free telephone  
20 number that a consumer may use to request information, opt out  
21 of the sale or disclosure of personal information, or correct  
22 or delete personal information, as required to be provided  
23 under this Act.

24 "Disclose" means to disclose, release, transfer, share,  
25 disseminate, make available, or otherwise communicate orally,  
26 in writing, or by electronic or any other means a consumer's

1 personal information to any affiliate or third party.

2 "Disclose" does not include:

3 (1) Disclosure of personal information by a business to  
4 a third party or service provider under a written contract  
5 authorizing the third party or service provider to use the  
6 personal information to perform services on behalf of the  
7 business, including, but not limited to, maintaining or  
8 servicing accounts, disclosure of personal information by  
9 a business to a service provider, processing or fulfilling  
10 orders and transactions, verifying consumer information,  
11 processing payments, providing financing, or similar  
12 services, but only if: the contract prohibits the third  
13 party or service provider from using the personal  
14 information for any reason other than performing the  
15 specified service on behalf of the business and from  
16 disclosing any such personal information to additional  
17 third parties or service providers unless those additional  
18 third parties or service providers are allowed by the  
19 contract to further the specified services and the  
20 additional third parties and service providers and subject  
21 to the same restrictions imposed by this subsection.

22 (2) Disclosure of personal information by a business to  
23 a third party based on a good faith belief that disclosure  
24 is required to comply with applicable law, regulation,  
25 legal process, or court order.

26 (3) Disclosure of personal information by a business to

1 a third party that is reasonably necessary to address  
2 fraud, risk management, security, or technical issues; to  
3 protect the disclosing business' right or property; or to  
4 protect consumers or the public from illegal activities.

5 (4) Disclosure of personal information by a business to  
6 a third party in connection with the proposed or actual  
7 sale, merger, or bankruptcy of the business, to a third  
8 party.

9 "Personal information" means information that identifies,  
10 relates to, describes, is reasonably capable of being  
11 associated with, or could reasonably be linked, directly or  
12 indirectly, with a particular consumer or household. Personal  
13 information includes, but is not limited to, the following:

14 (1) Identifiers such as a real name, alias, signature,  
15 postal address, telephone number, unique personal  
16 identifier, online identifier Internet Protocol address,  
17 email address, account name, social security number,  
18 driver's license number, state identification number,  
19 passport number, physical characteristics or description,  
20 insurance policy number, employment, employment history,  
21 bank account number, credit card number, debit card number,  
22 financial information, medical information, health  
23 insurance information, or other similar identifiers.

24 (2) Characteristics of protected classifications under  
25 Illinois or federal law.

26 (3) Commercial information, including records of

1 personal property, products or services purchased,  
2 obtained, or considered, or other purchasing or consuming  
3 histories or tendencies.

4 (4) Biometric information.

5 (5) Internet or other electronic network activity  
6 information, including, but not limited to, browsing  
7 history, search history, and information regarding a  
8 consumer's interaction with an Internet website,  
9 application or advertisement.

10 (6) Geolocation data.

11 (7) Audio, electronic, visual, thermal, olfactory, or  
12 similar information.

13 (8) Professional or employment-related information.

14 (9) Educational information.

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

21 "Personal information" does not include publicly available  
22 information which the business obtained directly from records  
23 lawfully made available from federal, state, or local  
24 government records. "Personal information" does not include  
25 consumer information that is deidentified or aggregate  
26 consumer information.



1 "Process" or "processes" means any collection, use,  
2 storage, disclosure, analysis, deletion, or modification of  
3 personal information.

4 "Request" means a consumer right set forth in this Act  
5 including one or more of the following: (i) for the disclosure  
6 of information regarding a consumer's personal information;  
7 (ii) the opt out of sale or disclosure of a consumer's personal  
8 information; (iii) the correction of inaccurate personal  
9 information; and (iv) the deletion of personal information.

10 "Sale" or "sell" means the selling, renting, or licensing  
11 of a consumer's personal information by a business to a third  
12 party in direct exchange for monetary consideration, whereby,  
13 as a result of such transaction, the third party may use the  
14 personal information for its own commercial purposes. "Sale" or  
15 "sell" does not include circumstances in which:

16 (1) A consumer uses or directs the business to  
17 intentionally disclose personal information or uses the  
18 business to intentionally interact with a third party or  
19 affiliate, provided the third party or affiliate does not  
20 also sell the personal information, unless that disclosure  
21 would be consistent with the provisions of this Act. An  
22 intentional interaction occurs when the consumer intends  
23 to interact with the third party by one or more deliberate  
24 interactions. Hovering over, muting, pausing, or closing a  
25 given piece of content does not constitute a consumer's  
26 intent to interact with a third party.

1           (2) The business uses or shares an identifier for a  
2 consumer who has opted out of the sale of the consumer's  
3 personal information for the purposes of altering third  
4 parties or affiliates that the consumer has opted out of  
5 the sale of the consumer's personal information.

6           (3) The business uses or shares with a service provider  
7 personal information of a consumer that is necessary to  
8 perform a business purpose or business purposes if the  
9 service provider does not further collect, sell, or use the  
10 personal information of the consumer except as necessary to  
11 perform the business purposes.

12           (4) The business transfers to a third party the  
13 personal information of a consumer as an asset that is part  
14 of a merger, acquisition, bankruptcy, or other transaction  
15 in which the third party or affiliate assumes control of  
16 all or part of the business, provided that information is  
17 used or shared consistently with this Act. If a third party  
18 or affiliate materially alters how it uses or shares the  
19 personal information of a consumer in a manner that is  
20 materially inconsistent with the promises made at the time  
21 of collection, it shall provide prior notice of the new or  
22 changed practice to the consumer. The notice shall be  
23 sufficiently prominent and robust to ensure that existing  
24 consumers can easily exercise their choices consistent  
25 with Section 20 and Section 25. This subparagraph does not  
26 authorize a business to make material, retroactive privacy

1 policy changes or make other changes in their privacy  
2 policy in a manner that would violate the Consumer Fraud  
3 and Deceptive Business Practices Act.

4 (5) A business uses a consumer's personal information  
5 to sell targeted advertising space to a third party as long  
6 as the personal information is not sold by the business to  
7 the third party or affiliate.

8 (6) The disclosure or transfer of personal information  
9 to an affiliate of the business.

10 "Service provider" means the natural or legal person that  
11 processes personal information on behalf of the business.

12 "Third party" means a business that is: (1) not an  
13 affiliate of the business that has collected, disclosed, or  
14 sold personal information; or (2) an affiliate with the  
15 business that has collected, disclosed, or sold personal  
16 information and the affiliate relationship is not clear to the  
17 consumer.

18 Section 15. Right to transparency. Any business that  
19 processes personal information or deidentified information  
20 must, prior to processing, provide notice to the consumer of  
21 the following in the service agreement or somewhere readily  
22 accessible on the business' website or mobile application:

23 (1) All categories of personal information and  
24 deidentified information that the business processes about  
25 individual consumers;

1           (2) All categories of third parties and affiliates with  
2           whom the business may disclose or sell that personal  
3           information or deidentified information and the business  
4           purpose for the disclosure or sale;

5           (3) The process in which an individual consumer may:

6                 (A) review the personal information collected by  
7           the business;

8                 (B) request changes to inaccurate personal  
9           information;

10                (C) opt out of the disclosure or sale of personal  
11           information; and

12                (D) request deletion of personal information; and

13           (4) The process in which the business notifies  
14           consumers of material changes to the notice required to be  
15           made available under this Section.

16           Section 20. Right to know. Consumers may request the  
17           following information of businesses:

18                (1) Copies of specific pieces of personal information  
19           about the consumer processed by the business.

20                (2) Categories of sources for the personal information  
21           processed.

22                (3) Name and contact information for each third party  
23           and affiliate to whom the personal information is disclosed  
24           or sold.

1 Section 25. Right to opt out, correct, and delete.  
2 Consumers have the following rights concerning their personal  
3 information:

4 (1) The right to request to opt out of the following:

5 (A) the disclosure of personal information from  
6 the business to third parties and affiliates;

7 (B) the sale of personal information from the  
8 business to third parties and affiliates; and

9 (C) the processing of personal information by the  
10 business, third parties, and affiliates.

11 (2) The right to request that a business correct  
12 inaccurate personal information about the consumer.

13 (3) The right to request that a business delete  
14 personal information about the consumer.

15 Section 30. Consumer requests and business responses.

16 (a) Businesses shall establish a process for collecting  
17 consumer requests and reasonably authenticating consumers  
18 making the requests and reasonably authenticating any request  
19 to correct inaccurate personal information. The method by which  
20 a consumer may submit a request under Section 20 and Section 25  
21 shall be done in a form and manner determined by the business  
22 in a way that is not overly burdensome on the consumer.

23 (b) A business shall post on its website, online service,  
24 and within any mobile application, a link to a designated  
25 request address web page maintained by the business for the

1 purpose of collecting and processing consumer requests. The  
2 business shall also post a designated request street address  
3 for consumers to submit requests by mail.

4 (c) A parent or legal guardian of a consumer under the age  
5 of 13 may submit a request on behalf of that consumer.

6 (d) A business that receives a request from a consumer  
7 through a designated request address shall promptly take steps  
8 to disclose and deliver, free of charge to the consumer, the  
9 personal information required or confirmation of the consumers  
10 opt out, correction or deletion request and business'  
11 compliance.

12 (1) The information may be delivered by mail or  
13 electronically, and if provided electronically, the  
14 information shall be in a portable and, to the extent  
15 technically feasible, in a readily usable format that  
16 allows the consumer to transmit this information to another  
17 entity without hindrance.

18 (2) A business that has received a request to opt out  
19 of the disclosure or sale of a consumer's personal  
20 information shall be prohibited from selling or disclosing  
21 that consumer's personal information after its receipt of  
22 the consumer's request, unless the consumer subsequently  
23 provides express authorization for the sale or disclosure  
24 of the consumer's personal information.

25 (3) A business that receives a request to delete the  
26 consumer's personal information, shall delete the

1 consumer's personal information from its records and  
2 direct any third party or affiliate with whom the personal  
3 information was disclosed, to delete the consumer's  
4 personal information from their records.

5 (4) A business shall not be required to comply with a  
6 consumer's request to delete the consumer's personal  
7 information if it is necessary for the business to maintain  
8 the consumer's personal information in order to:

9 (i) Complete the transaction for which the  
10 personal information was collected, provide a good or  
11 service requested by the consumer, or reasonably  
12 anticipated within the context of a business' ongoing  
13 business relationship with the consumer, or otherwise  
14 perform a contract between the business and the  
15 consumer.

16 (ii) Detect security incidents, protect against  
17 malicious, deceptive, fraudulent, or illegal activity;  
18 or prosecute those responsible for that activity.

19 (iii) Debug to identify and repair errors that  
20 impair existing intended functionality.

21 (iv) Exercise free speech, ensure the right of  
22 another consumer to exercise their right of free  
23 speech, or exercise another right provided for by law.

24 (v) Engage in public or peer-reviewed scientific,  
25 historical, or statistical research in the public  
26 interest that adheres to all other applicable ethics

1 and privacy laws, when the business' deletion of the  
2 information is likely to render impossible or  
3 seriously impair the achievement of such research, if  
4 the consumer has provided informed consent.

5 (vi) To enable solely internal uses that are  
6 reasonably aligned with the expectations of the  
7 consumer based on the consumer's relationship with the  
8 business.

9 (vii) Comply with a legal obligation.

10 (viii) Otherwise use the consumer's personal  
11 information, internally, in a lawful manner that is  
12 compatible with the context in which the consumer  
13 provided the information.

14 (e) A business must provide a response to the consumer  
15 within 45 days of a request under Section 20 and Section 25.

16 (1) The business shall promptly take steps to verify  
17 the request, but shall not extend the business' duty to  
18 disclose and deliver the information within 45 days of  
19 receipt of the consumer's request. The time period to  
20 provide the required information may be extended once by an  
21 additional 45 days when reasonably necessary, provided the  
22 consumer is provided notice of the extension within the  
23 first 45-day period.

24 (2) The disclosure shall cover at least the 12-month  
25 period preceding the business' receipt of the request. The  
26 business shall not require the consumer to create an



1 account with the business in order to make a request.

2 (3) If requests from a consumer are manifestly  
3 unfounded or excessive, in particular because of their  
4 repetitive character, a business may either charge a  
5 reasonable fee, taking into account the administrative  
6 costs of providing the information or communication or  
7 taking the action requested or refuse to act on the request  
8 and notify the consumer of the reason for refusing the  
9 request. The business shall bear the burden of  
10 demonstrating that any consumer request is manifestly  
11 unfounded or excessive.

12 (f) A business shall not be required to respond to a  
13 request made by or on behalf of the same consumer more than  
14 once in any 12-month period.

15 Section 35. Businesses, affiliates, and third parties.

16 (a) A business is not required to retain any personal  
17 information collected for a single, one-time transaction, if  
18 such information is not sold or retained by the business or to  
19 reidentify or otherwise link information that is not maintained  
20 in a manner that would be considered personal information.

21 (b) A business shall not reidentify any deidentified  
22 consumer information, unless the consumer subsequently  
23 provides express authorization for reidentification of  
24 deidentified information.

25 (c) A business shall not sell the personal information of

1 any consumer for which the business has actual knowledge that  
2 the consumer is less than 16 years of age. A business that  
3 willfully disregards the consumer's age shall be deemed to have  
4 had actual knowledge of the consumer's age.

5 (d) A business shall not use a consumer's personal  
6 information for any purpose other than those disclosed in the  
7 notice at collection. If the business intends to use a  
8 consumer's personal information for a purpose that was not  
9 previously disclosed to the consumer in the notice at  
10 collection, the business shall directly notify the consumer of  
11 this new use and obtain explicit consent from the consumer to  
12 use it for this new purpose.

13 (e) A business shall not collect categories of personal  
14 information other than those disclosed in the notice at  
15 collection. If the business intends to collect additional  
16 categories of personal information, the business shall provide  
17 a new notice at collection.

18 (f) If a business does not give the notice at collection to  
19 the consumer at or before the collection of their personal  
20 information, the business shall not collect personal  
21 information from the consumer.

22 (g) Affiliates and third parties shall not sell consumer  
23 personal information purchased from a business unless the  
24 consumer has received notice and is provided an opportunity to  
25 opt out of the resale of the consumer's personal information.

26 (h) Pricing incentives and prohibition of discrimination.

1           (1) A business shall not discriminate against a  
2 consumer because the consumer exercised any of the  
3 consumer's rights in this Act, including, but not limited  
4 to:

5                   (A) Denying goods or services to the consumer.

6                   (B) Charging different prices or rates for goods or  
7 services, including through the use of discounts or  
8 other benefits or imposing penalties.

9                   (C) Providing a different level or quality of goods  
10 or services to the consumer, if the consumer exercises  
11 the consumer's rights under this Act.

12                   (D) Suggesting that the consumer will receive a  
13 different price or rate for goods or services or a  
14 different level or quality of goods or services.

15           (2) Nothing shall prohibit a business from charging a  
16 consumer a different price or rate, or from providing a  
17 different level or quality of goods or services to the  
18 consumer, if that difference is reasonably related to the  
19 value provided to the consumer by the consumer's data.

20           (3) A business may offer financial incentives,  
21 including payments to consumers as compensation, for the  
22 collection of personal information, the sale of personal  
23 information, or the deletion of personal information. A  
24 business may also offer a different price, rate, level, or  
25 quality of goods or services to the consumer if that price  
26 or difference is directly related to the value provided to

1 the consumer by the consumer's data.

2 (A) A business that offers any financial  
3 incentives regarding consumer personal information or  
4 deidentified information, shall notify consumers of  
5 the financial incentives in the consumer service  
6 agreement, website, online service or mobile  
7 application.

8 (B) A business may enter a consumer into a  
9 financial incentive program only if the consumer gives  
10 the business prior opt-in consent which clearly  
11 describes the material terms of the financial  
12 incentive program, and which may be revoked by the  
13 consumer at any time.

14 (C) A business shall not use financial incentive  
15 practices that are unjust, unreasonable, or coercive.

16 (i) A business that discloses personal information to a  
17 service provider shall not be liable under this Act if the  
18 service provider receiving the personal information uses it in  
19 violation of the restrictions set forth in the Act, provided  
20 that, at the time of disclosing the personal information, the  
21 business does not have actual knowledge, or reason to believe,  
22 that the service provider intends to commit such a violation. A  
23 service provider shall likewise not be liable under this Act  
24 for the obligations of a business for which it provides  
25 services as set forth in this Act.

26 (j) The obligations imposed on businesses by this Act do

1 not restrict a business' ability to:

2 (1) Comply with federal, state, or local laws, rules,  
3 regulations, or enforceable guidance.

4 (2) Comply with a civil, criminal, or regulatory  
5 inquiry, investigation, subpoena, or summons by federal,  
6 state, or local authorities.

7 (3) Cooperate with law enforcement agencies concerning  
8 conduct or activity that the business, service provider, or  
9 third party reasonably and in good faith believes may  
10 violate federal, state, or local law.

11 (4) Exercise or defend legal claims.

12 (5) Prevent, detect, or respond to identity theft,  
13 fraud, or other malicious or illegal activity.

14 (6) Collect, use, retain, sell, or disclose consumer's  
15 personal information that is deidentified or in the  
16 aggregate consumer information.

17 (k) Businesses, affiliates, and third parties shall take  
18 reasonable measures to protect customer's personal information  
19 from unauthorized use, disclosure, or access.

20 (1) In implementing security measures required by this  
21 subsection, a business, affiliate, and third party shall  
22 take into account each of the following factors:

23 (A) The nature and scope of the business;,  
24 affiliate's, or third party's activities;

25 (B) The sensitivity of the data processed;

26 (C) The size of the business, affiliate, or third

1 party; and

2 (D) The technical feasibility of the security  
3 measures.

4 (2) A business, affiliate, or third party may employ  
5 any lawful measure that allows the business, affiliate, or  
6 third party to comply with the requirements of this  
7 subsection.

8 (1) Risk assessments.

9 (1) Businesses, affiliates, and third parties must  
10 conduct, to the extent not previously conducted, a risk  
11 assessment of each of their processing activities  
12 involving personal information and an additional risk  
13 assessment any time there is a change in processing that  
14 materially increases the risk to consumers. Such risk  
15 assessments must take into account the type of personal  
16 data to be processed by the business, affiliate, or third  
17 party, including the extent to which the personal  
18 information is sensitive information or otherwise  
19 sensitive in nature, and the context in which the personal  
20 information is to be processed.

21 (2) Risk assessments conducted under subsection (a)  
22 must identify and weigh the benefits that may flow directly  
23 and indirectly from the processing to the business,  
24 consumer, other stakeholders, and the public, against the  
25 potential risks to the rights of the consumer associated  
26 with such processing, as mitigated by safeguards that can

1 be employed by the business to reduce such risks. The use  
2 of deidentified data and the reasonable expectations of  
3 consumers, as well as the context of the processing and the  
4 relationship between the business, affiliate, or third  
5 party and the consumer whose personal data will be  
6 processed, must factor into this assessment by the  
7 business, affiliate, or third party.

8 (3) If the risk assessment conducted under subsection  
9 (a) of this Section determines that the potential risks of  
10 privacy harm to consumers are substantial and outweigh the  
11 interests of the business, consumer, other stakeholders,  
12 and the public in processing the personal information of  
13 the consumer, the business may only engage in such  
14 processing with the consent of the consumer or if another  
15 exemption under this Act applies. To the extent the  
16 business seeks consumer consent for processing, such  
17 consent shall be as easy to withdraw as to give.

18 (4) Processing for a business purpose shall be presumed  
19 to be permissible unless: (i) it involves the processing of  
20 sensitive data; and (ii) the risk of processing cannot be  
21 reduced through the use of appropriate administrative and  
22 technical safeguards.

23 (5) The business, affiliate, and third party must make  
24 the risk assessment available to the Office of the Attorney  
25 General upon request. Risk assessments are confidential  
26 and exempt from public inspection and copying under the

1 Freedom of Information Act.

2 Section 40. Enforcement.

3 (a) Private right of action.

4 (1) Any consumer whose unencrypted or unredacted  
5 personal information is subject to an unauthorized access  
6 and exfiltration, theft, or disclosure as a result of the  
7 business' violation of the duty to implement and maintain  
8 reasonable security procedures and practices appropriate  
9 to the nature of the information to protect the personal  
10 information may institute a civil action for any of the  
11 following:

12 (A) To recover damages in an amount not less than  
13 \$100 and not greater than \$750 per customer per  
14 incident or actual damages, whichever is greater.

15 (B) Injunctive or declaratory relief.

16 (C) Any other relief the court deems proper.

17 (2) In assessing the amount of statutory damages, the  
18 court shall consider any one or more of the relevant  
19 circumstances presented by any of the parties to the case,  
20 including, but not limited to, the nature and seriousness  
21 of the misconduct, the number of violations, the  
22 persistence of the misconduct, the length of time over  
23 which the misconduct occurred, the willfulness of the  
24 defendant's misconduct, and the defendant's assets,  
25 liabilities, and net worth.



1           (3) Nothing in this Act shall be interpreted to serve  
2           as the basis for a private right of action under any other  
3           law. This shall not be construed to relieve any party from  
4           any duties or obligations imposed under other law or the  
5           United States or Illinois Constitution.

6           (b) Attorney General enforcement. A violation of this Act  
7           constitutes an unlawful practice under the Consumer Fraud and  
8           Deceptive Business Practices Act. The Attorney General has  
9           authority to enforce this Act as a violation of the Consumer  
10          Fraud and Deceptive Business Practices Act, subject to the  
11          remedies available to the Attorney General under the Consumer  
12          Fraud and Deceptive Business Practices Act.

13          Section 45. Applicability.

14          (a) This Act does not apply to personal information  
15          collected, processed, sold, or disclosed under:

16               (1) The Gramm-Leach-Bliley Act, and the rules  
17               promulgated under that Act.

18               (2) The Health Insurance Portability and  
19               Accountability Act of 1996, and the rules promulgated under  
20               that Act.

21               (3) The Fair Credit Reporting Act, and the rules  
22               promulgated under that Act.

23          (b) Nothing in this Act restricts a business' ability to  
24          collect or disclose a consumer's personal information if a  
25          consumer's conduct takes place wholly outside of Illinois. For

1 purposes of this Act, conduct takes place wholly outside of  
2 Illinois if the business collected that information while the  
3 consumer was outside of Illinois, no part of the sale of the  
4 consumer's personal information occurred in Illinois, and no  
5 personal information collected while the consumer was in  
6 Illinois is disclosed.

7 Section 50. Waivers; contracts. Any waiver of the  
8 provisions of this Act is void and unenforceable.

9 Section 55. Home rule preemption. Except as otherwise  
10 provided in this Act, the regulation of the activities  
11 described in this Act are the exclusive powers and functions of  
12 the State. Except as otherwise provided in this Act, a unit of  
13 local government, including a home rule unit, may not regulate  
14 the activities described in this Act. This Section is a denial  
15 and limitation of home rule powers and functions under  
16 subsection (h) of Section 6 of Article VII of the Illinois  
17 Constitution.

18 Section 97. Severability. The provisions of this Act are  
19 severable under Section 1.31 of the Statute on Statutes.

20 Section 99. Effective date. This Act takes effect July 1,  
21 2021.