



Sen. Thomas Cullerton

Filed: 5/29/2019

10100HB3358sam003

LRB101 11180 HEP 61371 a

1 AMENDMENT TO HOUSE BILL 3358

2 AMENDMENT NO. _____. Amend House Bill 3358 by replacing
3 everything after the enacting clause with the following:

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, all
10 individuals have a right to privacy and a personal property
11 interest in information pertaining to them and that information
12 shall be adequately protected from unlawful invasions and
13 takings. This State recognizes the importance of providing
14 consumers with transparency about how their personal
15 information, especially information relating to their
16 children, is shared by businesses. This transparency is crucial

1 for Illinois citizens to protect themselves and their families
2 from cyber-crimes and identity thieves.

3 (2) Furthermore, for free market forces to have a role in
4 shaping the privacy practices and for "opt-in" and "opt-out"
5 remedies to be effective, consumers must be more than vaguely
6 informed that a business might share personal information with
7 third parties. Consumers must be better informed about what
8 kinds of personal information is shared with other businesses.
9 With these specifics, consumers can knowledgeably choose to opt
10 in, opt out, or choose among businesses that disclose
11 information to third parties on the basis of how protective the
12 business is of consumers' privacy.

13 (3) Businesses are now collecting personal information and
14 sharing and selling it in ways not contemplated or properly
15 covered by the current law. Some websites are installing
16 tracking tools that record when consumers visit web pages, and
17 sending very personal information, such as age, gender, race,
18 income, health concerns, religion, and recent purchases to
19 third-party marketers and data brokers. Third-party data
20 broker companies are buying, selling, and trading personal
21 information obtained from mobile phones, financial
22 institutions, social media sites, and other online and brick
23 and mortar companies. Some mobile applications are sharing
24 personal information, such as location information, unique
25 phone identification numbers, and age, gender, and other
26 personal details with third-party companies.

1 (4) As such, consumers need to know the ways that their
2 personal information is being collected by companies and then
3 shared or sold to third parties in order to properly protect
4 their privacy, property, personal safety, and financial
5 security.

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

7 "Affiliate" means a legal entity that controls, is
8 controlled by, or is under common control with another legal
9 entity.

10 "Consumer" means a natural person residing in this State.
11 "Consumer" does not include a natural person acting in an
12 employment context.

13 "Deidentified" means information that cannot reasonably be
14 used to infer information about, or otherwise be linked to, a
15 particular consumer. An operator that uses deidentified
16 information:

17 (1) must take reasonable measures to ensure that the
18 data is deidentified; and

19 (2) must publicly commit to maintain and use the data
20 in a deidentified fashion and not to attempt to reidentify
21 the data.

22 If a company makes such deidentified data available to
23 service providers or other third parties, then it must
24 contractually prohibit such entities from attempting to
25 reidentify the data.

1 "Designated request address" means an electronic mail
2 address, online form, or toll-free telephone number that a
3 consumer may use to request the information required to be
4 provided pursuant to this Act.

5 "Disclose" means to disclose, release, transfer, share,
6 disseminate, make available, sell, or otherwise communicate
7 orally, in writing, or by electronic or any other means a
8 consumer's personal information to any affiliate or third
9 party.

10 "Disclose" does not include:

11 (1) Disclosure of personal information by an operator
12 to a third party or service provider under a written
13 contract authorizing the third party or service provider to
14 utilize the personal information to perform services on
15 behalf of the operator, including, but not limited to,
16 maintaining or servicing accounts, disclosure of personal
17 information by an operator to a service provider,
18 processing or fulfilling orders and transactions,
19 verifying consumer information, processing payments,
20 providing financing, or similar services, but only if: the
21 contract prohibits the third party or service provider from
22 using the personal information for any reason other than
23 performing the specified service on behalf of the operator
24 and from disclosing any such personal information to
25 additional third parties or service providers unless those
26 additional third parties or service providers (i) are

1 allowed by the contract to further the specified services
2 and (ii) the additional third parties are subject to the
3 same restrictions imposed by this subsection.

4 (2) Disclosure of personal information by an operator
5 to a third party based on a good faith belief that
6 disclosure is required to comply with applicable law,
7 regulation, legal process, or court order.

8 (3) Disclosure of personal information by an operator
9 to a third party that is reasonably necessary to address
10 fraud, risk management, security, or technical issues; to
11 protect the disclosing operator's rights or property; or to
12 protect consumers or the public from illegal activities.

13 (4) Disclosure of personal information by an operator
14 to a third party in connection with the proposed or actual
15 sale, merger, or bankruptcy of the operator, to a third
16 party.

17 "Operator" means any private entity that owns an Internet
18 website or an online service that collects, maintains, or
19 discloses personal information of a consumer residing in this
20 State who uses or visits the website or online service if the
21 website or online service is operated for commercial purposes.
22 It does not include any third party that operates, hosts, or
23 manages, but does not own, a website or online service on the
24 owner's behalf or by processing information on behalf of the
25 owner.

26 "Personal information" means any information that can

1 reasonably be used to infer information about, or otherwise be
2 linked to, a particular consumer, including, but not limited
3 to, identifiers such as a real name, alias, signature, address,
4 telephone number, passport number, driver's license or State
5 identification card number, insurance policy number, bank
6 account number, credit card number, debit card number, or any
7 other financial account information, unique personal
8 identifier, geolocation, or biometric information. Personal
9 information does not include data that has been deidentified.

10 "Private entity" means a sole proprietorship, partnership,
11 limited liability company, corporation, association, or other
12 legal entity that is organized or operated for the profit or
13 financial benefit of its shareholders or other owners, that
14 does business in the State of Illinois, and that satisfies one
15 or more of the following thresholds:

16 (1) Annually buys, receives for the business'
17 commercial purposes, sells, or shares for commercial
18 purposes, alone or in combination, the personal
19 information of 50,000 or more consumers, households, or
20 devices.

21 (2) Derives 50% or more of its annual revenues from
22 selling consumers' personal information.

23 "Process" or "processes" means any collection, use,
24 storage, disclosure, analysis, deletion, or modification of
25 personal information.

26 "Sale" or "sell" means the selling, renting, or licensing

1 of a consumer's personal information by an operator to a third
2 party in direct exchange for monetary consideration, whereby,
3 as a result of such transaction, the third party may use the
4 personal information for its own commercial purposes.

5 "Sale" or "sell" does not include circumstances in which:

6 (1) A consumer uses or directs the operator to
7 intentionally disclose personal information or uses the
8 operator to intentionally interact with a third party,
9 provided the third party does not also sell the personal
10 information, unless that disclosure would be consistent
11 with the provisions of this Act. An intentional interaction
12 occurs when the consumer intends to interact with the third
13 party by one or more deliberate interactions. Hovering
14 over, muting, pausing, or closing a given piece of content
15 does not constitute a consumer's intent to interact with a
16 third party.

17 (2) The operator uses or shares an identifier for a
18 consumer who has opted out of the sale of the consumer's
19 personal information for the purposes of alerting third
20 parties that the consumer has opted out of the sale of the
21 consumer's personal information.

22 (3) The operator uses or shares with a service provider
23 personal information of a consumer that is necessary to
24 perform a business purpose or business purposes if the
25 service provider does not further collect, sell, or use the
26 personal information of the consumer except as necessary to

1 perform the business purpose or business purposes.

2 (4) The operator transfers to a third party the
3 personal information of a consumer as an asset that is part
4 of a merger, acquisition, bankruptcy, or other transaction
5 in which the third party assumes control of all or part of
6 the business provided that information is used or shared
7 consistently with this Act. If a third party materially
8 alters how it uses or shares the personal information of a
9 consumer in a manner that is materially inconsistent with
10 the promises made at the time of collection, it shall
11 provide prior notice of the new or changed practice to the
12 consumer. The notice shall be sufficiently prominent and
13 robust to ensure that existing consumers can easily
14 exercise their choices consistently with Section 25. This
15 subparagraph does not authorize a business to make
16 material, retroactive privacy policy changes or make other
17 changes in their privacy policy in a manner that would
18 violate the Consumer Fraud and Deceptive Business
19 Practices Act.

20 (5) An operator uses a consumer's personal information
21 to sell targeted advertising space to a third party as long
22 as the personal information is not sold by the operator to
23 the third party.

24 (6) The disclosure or transfer of personal information
25 to an affiliate of the operator.

26 "Service provider" means the natural or legal person that

1 processes personal information on behalf of the operator.

2 "Third party" means a private entity that is: (1) not an
3 affiliate of the private entity that has disclosed personal
4 information; or (2) a private entity that is an affiliate with
5 the private entity that has disclosed personal information and
6 the affiliate relationship is not clear to the consumer.

7 "Verified request" means the process through which a
8 consumer may submit a request to exercise a right or rights set
9 forth in this Act and by which an operator can reasonably
10 authenticate the request. A consumer shall not be required to
11 create an account with the operator in order to make a verified
12 request, and the method for exercising the rights set forth in
13 this Act shall be reasonably accessible and not be overly
14 burdensome on the consumer.

15 Section 15. Right to transparency. An operator that
16 collects personal information or deidentified information
17 through the Internet about individual consumers who use or
18 visit its Internet website or online service, in its consumer
19 service agreement or incorporated addendum or any other similar
20 and readily available mechanism accessible to the consumer,
21 shall:

22 (1) identify all categories of personal information
23 and deidentified information that the operator processes
24 about individual consumers collected through its Internet
25 website or online service;

1 (2) identify all categories of third parties with whom
2 the operator may disclose that personal information or
3 deidentified information;

4 (3) disclose whether a third party may collect personal
5 information or deidentified information about an
6 individual consumer's online activities over time and
7 across different Internet websites or online services when
8 the consumer uses the Internet website or online service of
9 the operator;

10 (4) provide a description of the process, if any such
11 process exists, for an individual consumer who uses or
12 visits the Internet website or online service to review and
13 request changes to inaccurate personal information that is
14 collected by the operator as a result of the consumer's use
15 or visits to the Internet website or online service;

16 (5) describe the process by which the operator notifies
17 consumers who use or visit its Internet website or online
18 service of material changes to the notice required to be
19 made available under this Section;

20 (6) state the effective date of the notice;

21 (7) provide a description of a consumer's rights, as
22 required by this Act, accompanied by one or more designated
23 request addresses.

24 Section 20. Right to know.

25 (a) An operator that discloses personal information of a

1 consumer collected through the consumer's use of or visit to
2 the operator's website or online service to a third party shall
3 make the following information available to a consumer, free of
4 charge, upon receipt of a verified request:

5 (1) the categories of personal information that were
6 disclosed about an individual consumer and the approximate
7 number of all third parties that received the consumer's
8 personal information; or

9 (2) all categories of personal information about
10 consumers that were disclosed and the approximate number of
11 all third parties that received any consumer's personal
12 information.

13 (b) An operator may establish processes for reasonably
14 authenticating consumers making the request if the operator
15 seeks to provide the consumer with information about the
16 individual consumer pursuant to item(1) of subsection (a).

17 (c) Notwithstanding the other provisions of this Section, a
18 parent or legal guardian of a consumer under the age of 13 may
19 submit a verified request under this Section on behalf of that
20 consumer.

21 (d) This Section applies only to personal information
22 disclosed after the effective date of this Act.

23 Section 25. Right to opt out. An operator that sells the
24 personal information of a consumer collected through the
25 consumer's use of or visit to the operator's Internet website

1 or online service shall clearly and conspicuously post, on its
2 Internet website or online service or in another prominently
3 and easily accessible location the operator maintains for
4 consumer privacy settings, a link to an Internet web page
5 maintained by the operator that enables a consumer, by verified
6 request through a designated request address, to opt out of
7 such sale of the consumer's personal information to third
8 parties. The method by which a consumer may opt out shall be
9 done in a form and manner determined by the operator in a way
10 and fashion that is not overly burdensome, shall not require a
11 consumer to establish an account with the operator in order to
12 opt out of the sale of a consumer's personal information, and
13 shall be posted in a conspicuous place that is readily and
14 easily accessible to a consumer. This Section applies only to
15 operators that sell personal information. This Section only
16 applies to personal information sold after the effective date
17 of this Act.

18 Section 30. Response to verified requests.

19 (a) An operator that receives a verified request from a
20 consumer through a designated request address under this Act
21 shall provide a response to the consumer within 45 days of the
22 request.

23 (b) An operator shall not be required to respond to a
24 request made by the same consumer or made by the same parent or
25 legal guardian on behalf of a consumer under the age of 13 more

1 than once in any 12-month period.

2 Section 35. Enforcement. A violation of this Act
3 constitutes an unlawful practice under the Consumer Fraud and
4 Deceptive Business Practices Act. The Attorney General has
5 exclusive authority to enforce this Act as a violation of the
6 Consumer Fraud and Deceptive Business Practices Act, subject to
7 the remedies available to the Attorney General pursuant to the
8 Consumer Fraud and Deceptive Business Practices Act. There
9 shall be no private right of action to enforce violations under
10 this Act.

11 Section 40. Waivers; contracts. Any waiver of the
12 provisions of this Act is void and unenforceable. If a party
13 violates any provision of this Act, the non-violating party's
14 obligations under any agreement between the parties are
15 terminated.

16 Section 45. Construction.

17 (a) The obligations imposed on operators by this Act shall
18 not restrict an operator's ability to:

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

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

1 (3) Cooperate with law enforcement agencies concerning
2 conduct or activity that the operator, service provider, or
3 third party reasonably and in good faith believes may
4 violate federal, state, or local law.

5 (4) Exercise or defend legal claims.

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

8 (b) Nothing in this Act applies to a health care provider
9 or other covered entity subject to the Federal Health Insurance
10 Portability and Accountability Act of 1996 and the rules
11 promulgated under that Act.

12 (c) Nothing in this Act applies in any manner to a
13 financial institution or an affiliate of a financial
14 institution that is subject to Title V of the Federal
15 Gramm-Leach-Bliley Act and the rules promulgated under that
16 Act.

17 (d) Nothing in this Act applies to a contractor,
18 subcontractor, or agent of a State agency or local unit of
19 government when working for that State agency or local unit of
20 government.

21 (e) Nothing in this Act applies to a public utility, an
22 alternative retail electric supplier, or an alternative gas
23 supplier, as those terms are defined in Sections 3-105, 16-102,
24 and 19-105 of the Public Utilities Act, or an electric
25 cooperative, as defined in Section 3.4 of the Electric Supplier
26 Act.

1 (f) Nothing in this Act applies to: (i) a hospital operated
2 under the Hospital Licensing Act; (ii) a hospital affiliate, as
3 defined under the Hospital Licensing Act; or (iii) a hospital
4 operated under the University of Illinois Hospital Act.

5 (g) Nothing in this Act applies to personal information or
6 deidentified information collected, processed, or disclosed by
7 a retailer in connection with a prospective or complete sale,
8 transaction, or communication conducted on, before, or after
9 the effective date of this Act that is related to business
10 services or delivering information, or selling, offering to
11 sell, moving, or delivering tangible personal property. As used
12 in this Section, "retailer" means an entity that holds itself
13 out as being engaged, or habitually engages, in selling,
14 moving, or delivering tangible personal property at retail and
15 includes a retailer's affiliates, subsidiaries, and service
16 providers collecting, processing, or disclosing personal
17 information or deidentified information on behalf of the
18 retailer to facilitate a prospective or complete sale,
19 transaction, or communication related to business services or
20 delivering information, or selling, offering to sell, moving,
21 or delivering tangible personal property.

22 (h) Nothing in this Act applies to the following entities
23 and affiliates, as defined in 17 CFR 230.405, of any such
24 entities: telecommunications carriers as defined in Section
25 13-202 of the Public Utilities Act and wireless carriers as
26 defined in Section 2 of the Emergency Telephone System Act.

1 (i) Nothing in this Act restricts an operator's ability to
2 collect or disclose a consumer's personal information if a
3 consumer's conduct takes place wholly outside of Illinois. For
4 purposes of this Act, conduct takes place wholly outside of
5 Illinois if the operator collected that information while the
6 consumer was outside of Illinois, no part of the sale of the
7 consumer's personal information occurred in Illinois, and no
8 personal information collected while the consumer was in
9 Illinois is disclosed.

10 (j) Nothing in this Act shall require an operator to (i)
11 retain any personal information collected for a single,
12 one-time transaction, if such information is not sold or
13 retained by the business or to reidentify or otherwise link
14 information that is not maintained in a manner that would be
15 considered personal information; or (ii) reidentify or
16 otherwise link any data that, in the ordinary course of
17 business, is not maintained in a manner that would be
18 considered personal information.

19 (k) Nothing in this Act shall be construed to modify,
20 limit, or supersede the operation of any other Illinois law or
21 prevent a party from otherwise seeking relief under the Code of
22 Civil Procedure.

23 Section 50. Severability. If any provision of this Act or
24 its application to any person or circumstance is held invalid,
25 the invalidity of that provision or application does not affect

1 other provisions or applications of this Act that can be given
2 effect without the invalid provision or application.

3 Section 99. Effective date. This Act takes effect July 1,
4 2020.".