

As Reported by the House Government Oversight Committee

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Sub. H. B. No. 376

Representatives Carfagna, Hall

Cosponsors: Representatives Click, Plummer, Schmidt, Lanese, White, Stewart,
Carruthers, Ginter

A BILL

To amend section 1345.51 and to enact sections 1
1355.01, 1355.02, 1355.03, 1355.04, 1355.05, 2
1355.06, 1355.07, 1355.08, 1355.09, 1355.10, and 3
1355.11 of the Revised Code to enact the Ohio 4
Personal Privacy Act. 5

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 1345.51 be amended and sections 6
1355.01, 1355.02, 1355.03, 1355.04, 1355.05, 1355.06, 1355.07, 7
1355.08, 1355.09, 1355.10, and 1355.11 of the Revised Code be 8
enacted to read as follows: 9

Sec. 1345.51. (A) There is hereby created in the state 10
treasury the consumer protection enforcement fund. The fund 11
shall include ~~civil~~ all of the following: 12

(1) Civil penalties ordered pursuant to divisions (A) and 13
(D) of section 1345.07 of the Revised Code and paid as provided 14
in division (G) of that section, ~~all;~~ 15

(2) All civil penalties assessed under division (A) of 16
section 1349.192 of the Revised Code, ~~all;~~ 17

(3) All moneys awarded under section 1355.11 of the 18
Revised Code other than amounts awarded pursuant to division (D) 19
(4) of that section; 20

(4) All costs awarded to the attorney general and all 21
penalties imposed under section 4549.48 of the Revised Code, ~~and~~ 22
all; 23

(5) All money unclaimed under section 4549.50 of the 24
Revised Code. 25

(B) The money in the consumer protection enforcement fund 26
shall be used for the sole purpose of paying expenses incurred 27
by the consumer protection section of the office of the attorney 28
general. 29

Sec. 1355.01. As used in this chapter: 30

(A) (1) "Affiliate" means a legal entity that controls, is 31
controlled by, shares common branding with, or is under common 32
control with, another legal entity. 33

(2) For purposes of division (A) (1) of this section, 34
"control" or "controlled" means a relationship between two legal 35
entities characterized by any of the following: 36

(a) One entity having ownership of, or the power to vote, 37
more than fifty per cent of the outstanding shares of any class 38
of voting security of the other legal entity; 39

(b) One entity having control in any manner over the 40
election of a majority of the directors, or of individuals 41
exercising similar functions, of the other entity; 42

(c) One entity having the power to exercise a controlling 43
influence over the management of the other entity. 44

(B) "Aggregated data" means personal data that has been 45
aggregated using commercially reasonable methods such that a 46
consumer cannot be reasonably identified. 47

(C) "Business" means any limited liability company, 48
limited liability partnership, corporation, sole proprietorship, 49
association, or other group, however organized and regardless of 50
whether operating for profit or not for profit, including a 51
financial institution organized, chartered, or holding a license 52
authorizing operation under the laws of this state, any other 53
state, the United States, or any other country, that, alone or 54
jointly with others, determines the purpose and means of 55
processing personal data. "Business" does not include a public 56
entity, including a political subdivision of this state, a city, 57
township, county, or a processor to the extent that the 58
processor is acting in the role of a processor. 59

(D) "Child" means any natural person under thirteen years 60
of age. 61

(E) "Commercial purpose" means the processing of 62
information for the purpose of obtaining any form of 63
consideration from either of the following: 64

(1) The person that is the subject of such information; 65

(2) Any third party. 66

(F) "Consent" means a clear affirmative act signifying a 67
freely given, specific, informed, and unambiguous indication of 68
a consumer's agreement to the processing of personal data 69
relating to the consumer, such as by a written statement, 70
including by electronic means, or other course of action that 71
would clearly indicate that consent has been provided. 72

(G) "Consumer" means a natural person who is a resident of 73

this state acting only in an individual or household context. 74

"Consumer" does not include a natural person acting in a 75

business capacity or employment context, including contractors, 76

job applicants, officers, directors, or owners. 77

(H) "Deidentified data" means personal data that has been 78

deidentified using commercially reasonable methods such that a 79

consumer, or a device linked to a consumer, cannot be reasonably 80

identified. 81

(I) "HIPAA" has the same meaning as in section 3965.01 of 82

the Revised Code. 83

(J) "Personal data" means any information that is linked 84

or reasonably linkable to an identified or identifiable consumer 85

and that is processed by a business for a commercial purpose. 86

"Personal data" does not include either of the following: 87

(1) Any such data processed from publicly available 88

sources; 89

(2) Pseudonymized, deidentified, or aggregate data. 90

(K) "Process" or "processing" means any operation or set 91

of operations that are performed on personal data, whether or 92

not by automated means, including the collection, use, storage, 93

disclosure, analysis, deletion, transfer, or modification of 94

personal data. 95

(L) "Processor" means a natural or legal person who 96

processes personal data on behalf of a business subject to this 97

chapter. 98

(M) "Pseudonymized or pseudonymous data" means data that 99

no longer allows the identification of an individual without 100

combining it with other information, provided that such 101

additional information is kept separately and is subject to 102
appropriate technical and organizational measures to ensure that 103
the personal data is not attributed to an identified or 104
identifiable consumer. 105

(N) "Publicly available information" means information 106
that is lawfully made available from federal, state, or local 107
government records. "Publicly available information" includes 108
widely available media. 109

(O) (1) "Sale," "sell," or "sold" means the exchange of 110
personal data for monetary or other valuable consideration by a 111
business to a third party. 112

(2) "Sale," "sell," or "sold" does not include any of the 113
following: 114

(a) The disclosure of personal data to a processor who 115
processes the personal data on behalf of a business; 116

(b) The disclosure of personal data to a third party for 117
purposes of providing a product or service requested by the 118
consumer; 119

(c) The disclosure of personal data from one business to 120
another business without monetary or other valuable 121
consideration; 122

(d) The disclosure or transfer of personal data to an 123
affiliate of the business; 124

(e) The disclosure of information that a consumer 125
intentionally made available to the general public via a channel 126
of mass media and did not restrict to a specific audience; 127

(f) The disclosure or transfer of personal data to a third 128
party as an asset that is part of a merger, acquisition, 129

bankruptcy, or other transaction in which the third party 130
assumes control of all or part of the business's assets. 131

(P) "Targeted advertising" means displaying to a consumer 132
an advertisement that is selected based on personal data 133
obtained or inferred over time from the consumer's activities 134
across nonaffiliated web sites, applications, or online services 135
to predict consumer preferences or interests. "Targeted 136
advertising" does not include any of the following: 137

(1) Advertising to a consumer in response to the 138
consumer's request for information or feedback; 139

(2) Advertisements based on activities within a business's 140
or processor's own web sites or online applications; 141

(3) Advertisements based on the context of a consumer's 142
current search query, visit to a web site, or online 143
application; 144

(4) Processing personal data solely for measuring or 145
reporting advertising performance, reach, or frequency. 146

(Q) "Third party" means a natural or legal person, public 147
authority, agency, or body other than the consumer, business, or 148
processor, or an affiliate of the business or processor. 149

(R) "Verified request" means a request submitted to a 150
business under sections 1355.03 to 1355.06 of the Revised Code 151
that has been verified by the business as being made by the 152
consumer in question or by the consumer's representative. 153

As used in division (R) of this section, "consumer's 154
representative" means a child's parent or a representative of a 155
person for whom a guardian of the estate or conservator has been 156
appointed. 157

Sec. 1355.02. (A) This chapter applies to businesses that 158
conduct business in this state, or produce products or services 159
targeted to consumers in this state, that satisfy one or more of 160
the following criteria: 161

(1) The business's annual gross revenues generated in this 162
state exceed twenty-five million dollars; 163

(2) During a calendar year, the business controls or 164
processes personal data of one hundred thousand or more 165
consumers; 166

(3) During a calendar year, the business derives over 167
fifty per cent of its gross revenue from the sale of personal 168
data and processes or controls personal data of twenty-five 169
thousand or more consumers. 170

(B) This chapter does not apply to any of the following: 171

(1) Any body, authority, board, bureau, commission, 172
district, or agency of this state or of any political 173
subdivision of this state; 174

(2) A financial institution, data, or an affiliate of a 175
financial institution governed by Title V of the federal "Gramm- 176
Leach-Bliley Act," 15 U.S.C. 6801 et seq. and related 177
regulations; 178

(3) A covered entity or business associate governed by the 179
privacy, security, and breach notification rules issued by the 180
United States department of health and human services, 45 C.F.R. 181
Parts 160 and 164 established pursuant to HIPAA, and the health 182
information technology for economic and clinical health act, 42 183
U.S.C. 300jj et seq; 184

(4) An institution of higher education. 185

<u>(5) Business to business transactions.</u>	186
<u>(6) Any of the following:</u>	187
<u>(a) Any insurer or independent insurance agent, as defined</u>	188
<u>in section 3905.49 of the Revised Code;</u>	189
<u>(b) Any nonprofit organization established to detect or</u>	190
<u>prevent insurance-related crime or fraud;</u>	191
<u>(c) Any advisory organization described in section 3937.09</u>	192
<u>of the Revised Code;</u>	193
<u>(d) Any rating organization licensed pursuant to section</u>	194
<u>3937.05 of the Revised Code or an affiliate thereof.</u>	195
<u>(7) Personal data regulated by the federal "Children's</u>	196
<u>Online Privacy Protection Act," 15 U.S.C. 6501 to 6506, if</u>	197
<u>collected, processed, and maintained in compliance with that law</u>	198
<u>and its implementing regulations or exemptions.</u>	199
<u>(C) The following information and data are exempt from</u>	200
<u>this chapter:</u>	201
<u>(1) Protected health information under HIPAA;</u>	202
<u>(2) Health records, as described in Chapter 3798. of the</u>	203
<u>Revised Code;</u>	204
<u>(3) Patient identifying information for purposes of 42</u>	205
<u>U.S.C. 290dd-2;</u>	206
<u>(4) Any of the following types of information or data:</u>	207
<u>(a) Identifiable private information for purposes of the</u>	208
<u>federal policy for the protection of human subjects under 45</u>	209
<u>C.F.R. Part 46;</u>	210
<u>(b) Identifiable private information that is otherwise</u>	211

<u>information collected as part of human subjects research</u>	212
<u>pursuant to the good clinical practice guidelines issued by the</u>	213
<u>international council for harmonisation of technical</u>	214
<u>requirements for pharmaceuticals for human use;</u>	215
<u>(c) Data related to the protection of human subjects under</u>	216
<u>21 C.F.R. parts 6, 50, and 56, or personal data used or shared</u>	217
<u>in research conducted in accordance with the requirements set</u>	218
<u>forth in this chapter, or other research conducted in accordance</u>	219
<u>with applicable law.</u>	220
<u>(5) Information and documents created for purposes of the</u>	221
<u>federal "Health Care Quality Improvement Act of 1986," 42 U.S.C.</u>	222
<u>11101 et seq.;</u>	223
<u>(6) Patient safety work product for purposes of the</u>	224
<u>federal "Patient Safety and Quality Improvement Act," 42 U.S.C.</u>	225
<u>299b-21 et seq.;</u>	226
<u>(7) Information derived from any of the health care-</u>	227
<u>related information listed in division (C) of this section that</u>	228
<u>is deidentified in accordance with the requirements for</u>	229
<u>deidentification pursuant to HIPAA;</u>	230
<u>(8) Information originating from, and intermingled to be</u>	231
<u>indistinguishable with, or information treated in the same</u>	232
<u>manner as information exempt under division (C) of this section</u>	233
<u>that is maintained by a covered entity or business associate as</u>	234
<u>defined by HIPAA or a program or a qualified service</u>	235
<u>organization as defined by 42 U.S.C. 290dd-2;</u>	236
<u>(9) Information used only for public health activities and</u>	237
<u>purposes as authorized by HIPAA;</u>	238
<u>(10) The collection, maintenance, disclosure, sale,</u>	239
<u>communication, or use of any personal information bearing on a</u>	240

consumer's credit worthiness, credit standing, credit capacity, 241
character, general reputation, personal characteristics, or mode 242
of living by a consumer reporting agency or furnisher that 243
provides information for use in a consumer report, and by a user 244
of a consumer report, but only to the extent that such activity 245
is regulated by and authorized under the federal "Fair Credit 246
Reporting Act," 15 U.S.C. 1681 et seq.; 247

(11) Personal data collected, processed, sold, or 248
disclosed in compliance with the federal "Driver's Privacy 249
Protection Act of 1994," 18 U.S.C. 2721 et seq.; 250

(12) Personal data regulated by the federal "Family 251
Educational Rights and Privacy Act," 20 U.S.C. 1232g et seq.; 252

(13) Personal data collected, processed, sold, or 253
disclosed in compliance with the federal "Farm Credit Act," 12 254
U.S.C. 2001 et seq.; 255

(14) Data processed or maintained in accordance with any 256
of the following: 257

(a) In the course of an individual applying to, employed 258
by, or acting as an agent or independent contractor of a 259
business subject to this chapter, processor, or a related third 260
party, to the extent that the data is collected and used within 261
the context of that role; 262

(b) For emergency contact purposes for individuals 263
described in division (C) (14) (a) of this section; 264

(c) As necessary to administer employment benefits to 265
those individuals described in division (C) (14) (a) of this 266
section, as well as to any persons related to those individuals, 267
such as dependents or spouses. 268

<u>(D) This chapter does not apply to the extent necessary</u>	269
<u>for a business or processor to do any of the following:</u>	270
<u>(1) Comply with federal or state law;</u>	271
<u>(2) Comply with a civil, criminal, or regulatory inquiry,</u>	272
<u>investigation, subpoena, or summons by federal, state, or local</u>	273
<u>authorities;</u>	274
<u>(3) Cooperate with law enforcement agencies concerning</u>	275
<u>conduct or activity that the business, the processor, or a third</u>	276
<u>party reasonably and in good faith believes may violate federal,</u>	277
<u>state, or local law;</u>	278
<u>(4) Exercise, or defend against, legal claims;</u>	279
<u>(5) (a) Prevent, detect, or protect against, or provide a</u>	280
<u>response to, security incidents, identity theft, fraud,</u>	281
<u>harassment, malicious or deceptive activities, or any illegal</u>	282
<u>activity;</u>	283
<u>(b) Report or prosecute those responsible for any such</u>	284
<u>action.</u>	285
<u>(6) Preserve the integrity or security of systems;</u>	286
<u>(7) Engage in public or peer-reviewed scientific,</u>	287
<u>historical, or statistical research in the public interest that</u>	288
<u>adheres to all other applicable ethics and privacy laws, if the</u>	289
<u>deletion of the information is likely to render impossible or</u>	290
<u>seriously impair the achievement of the research and the</u>	291
<u>consumer in question has provided consent;</u>	292
<u>(8) Assist another business, processor, or third party</u>	293
<u>with any of the obligations imposed under division (C) of this</u>	294
<u>section;</u>	295

<u>(9) Provide a product or service specifically requested by</u>	296
<u>a consumer or a child's parent or guardian;</u>	297
<u>(10) Perform a contract to which a consumer or child's</u>	298
<u>parent or guardian is a party, including fulfilling the terms of</u>	299
<u>a written warranty;</u>	300
<u>(11) Comply with the request of a consumer or child's</u>	301
<u>parent or guardian prior to entering into a contract;</u>	302
<u>(12) Take immediate steps to protect an interest that is</u>	303
<u>essential for the life of the consumer or of another natural</u>	304
<u>person, and where the processing cannot be manifestly based on</u>	305
<u>another legal basis.</u>	306
<u>(E) The requirements of this chapter do not apply to the</u>	307
<u>extent that compliance would violate or hinder an evidentiary</u>	308
<u>privilege under Ohio law.</u>	309
<u>(F) The obligations imposed on businesses or processors</u>	310
<u>under this chapter shall not be construed as restricting a</u>	311
<u>business's or processor's ability to collect, use, or retain</u>	312
<u>data as necessary to do any of the following:</u>	313
<u>(1) Conduct internal research solely to improve or repair</u>	314
<u>products, services, or technology;</u>	315
<u>(2) Identify and repair technical errors that impair</u>	316
<u>existing or intended functionality;</u>	317
<u>(3) Perform solely internal operations that are reasonably</u>	318
<u>aligned with the expectations of the consumer based on the</u>	319
<u>consumer's existing relationship with the business, or are</u>	320
<u>otherwise compatible with processing in furtherance of the</u>	321
<u>provision of a product or service specifically requested by a</u>	322
<u>consumer or the performance of a contract or warranty to which</u>	323

<u>the consumer is a party;</u>	324
<u>(4) Effectuate a product recall.</u>	325
<u>(G) This chapter shall not be construed as requiring a</u>	326
<u>business or processor to collect personal data that it would not</u>	327
<u>otherwise collect in the ordinary course of its business, retain</u>	328
<u>personal data for longer than it would otherwise retain such</u>	329
<u>data in the ordinary course of its business, or reidentify or</u>	330
<u>otherwise link information that is not maintained in a manner</u>	331
<u>that would be considered personal data.</u>	332
<u>(H) Obligations imposed on businesses and processors under</u>	333
<u>this chapter shall not be construed as doing either of the</u>	334
<u>following:</u>	335
<u>(1) Adversely affecting the rights or freedoms of any</u>	336
<u>persons, such as exercising the right of free speech pursuant to</u>	337
<u>the first amendment of the United States Constitution or Article</u>	338
<u>I, Section 11, of the Ohio Constitution;</u>	339
<u>(2) Applying to the processing of personal data by a</u>	340
<u>natural person in the course of a purely personal or household</u>	341
<u>activity.</u>	342
<u>(I) The consumer rights provided under sections 1355.04 to</u>	343
<u>1355.08 of the Revised Code do not apply to pseudonymous data in</u>	344
<u>cases where the business or processor is able to demonstrate</u>	345
<u>that any information necessary to identify the consumer is kept</u>	346
<u>separately and is subject to effective technical and</u>	347
<u>organizational controls to prevent the business or processor</u>	348
<u>from accessing such information.</u>	349
<u>(J) Nothing in this chapter requires a business or</u>	350
<u>processor to disclose a trade secret.</u>	351

Sec. 1355.03. (A) A consumer has a right to know the 352
personal data that a business collects about that consumer, such 353
as by obtaining a privacy policy from the business. 354

(B) A business shall provide consumers notice about the 355
personal data that it processes about the consumer by providing 356
a reasonably accessible, clear, and conspicuously posted privacy 357
policy. 358

(C) (1) The privacy policy shall include all of the 359
following: 360

(a) The identity and the contact information of the 361
business, including the business's contact for privacy and data 362
security inquiries, and the identity of any affiliate to which 363
personal data may be transferred by the business; 364

(b) The categories of personal data the business 365
processes; 366

(c) The purposes of processing for each category of 367
personal data; 368

(d) The categories of sources from which the personal data 369
is collected; 370

(e) The categories of processors with whom the business 371
discloses personal data; 372

(f) If the business sells personal data to third parties, 373
the business shall clearly and conspicuously disclose such 374
processing, as well as the categories of third parties to whom 375
the business sells personal data, and how a consumer may 376
exercise the right to opt out of such processing; 377

(g) A description of the business's data retention 378
practices for personal data and the purposes for such retention; 379

<u>(h) How individuals can exercise their rights under this</u>	380
<u>chapter;</u>	381
<u>(i) The effective date of the privacy policy;</u>	382
<u>(j) A description of the mechanism or mechanisms a</u>	383
<u>business can use to notify consumers, pursuant to division (E)</u>	384
<u>of this section, when it makes a material change to its privacy</u>	385
<u>policy or decides to process personal data for purposes</u>	386
<u>incompatible with the privacy policy.</u>	387
<u>(2) (a) The privacy policy shall also disclose any and all</u>	388
<u>commercial purposes for which the company collects or processes</u>	389
<u>personal data.</u>	390
<u>(b) Failure on the part of a business to maintain a</u>	391
<u>privacy policy that reflects the business's data privacy</u>	392
<u>practices to a reasonable degree of accuracy shall be considered</u>	393
<u>an unfair and deceptive practice under Chapter 1345. of the</u>	394
<u>Revised Code, except that a consumer shall not be entitled to a</u>	395
<u>private cause of action under that chapter for a failure to</u>	396
<u>comply with division (C) (2) (a) of this section.</u>	397
<u>(D) A business, a co-business, or a processor may provide</u>	398
<u>the privacy policy to the consumer.</u>	399
<u>(E) If a business makes a material change to its privacy</u>	400
<u>policy or decides to process personal data for purposes</u>	401
<u>incompatible with the privacy policy, it shall do either of the</u>	402
<u>following prior to further processing previously collected</u>	403
<u>personal data:</u>	404
<u>(1) Obtain affirmative consent from the consumers</u>	405
<u>affected;</u>	406
<u>(2) (a) Provide notice outlining the changes to the</u>	407

business's privacy policy and providing affected consumers a 408
reasonable means to opt out of having their data processed or 409
disseminated. 410

(b) Such notice shall be provided not less than sixty days 411
prior to implementing the change, taking into account available 412
technology and the nature of the relationship between the 413
business and the consumer. 414

(F) The business shall provide direct notification, where 415
possible, regarding a material change to the privacy policy to 416
affected consumers, taking into account available technology and 417
the nature of the relationship. 418

Sec. 1355.04. (A) A consumer, or the parent or guardian of 419
a known child on the child's behalf, may invoke the rights 420
provided under sections 1355.05 to 1355.08 of the Revised Code 421
at any time by making a verifiable request as described in this 422
section. 423

(B) (1) (a) A business shall provide at least one of the 424
following methods for consumers to make requests under sections 425
1355.05 to 1355.08 of the Revised Code: 426

(i) A toll-free telephone number; 427

(ii) An electronic mail address; 428

(iii) A web form; 429

(iv) A clear and conspicuous link on the business's main 430
internet homepage to an internet web page that enables a 431
consumer to exercise the rights provided under sections 1355.05 432
to 1355.08 of the Revised Code. 433

(b) However, if the consumer maintains an account with the 434
business, the business may require the consumer to submit the 435

request through that account. If the consumer does not maintain 436
an account, the business shall not require that an account be 437
created to submit the request. 438

(2) A business shall reasonably verify the identity of the 439
consumer before granting a request made under sections 1355.05 440
to 1355.08 of the Revised Code. 441

(3) A business need not respond to a consumer request made 442
pursuant to this section if the business is unable to reasonably 443
verify the consumer. 444

(C) (1) A business shall comply with a verified request 445
within forty-five calendar days of the request. 446

(2) (a) For reasonable cause, and upon notice to the 447
consumer citing the cause for the delay, a business may extend 448
the time required to respond to a request under this section by 449
an additional forty-five calendar days. 450

(b) Such a delay shall not be used more than one time per 451
request. 452

(D) Upon receipt of a request made pursuant to sections 453
1355.04 to 1355.08 of the Revised Code, a business shall comply 454
with all requirements of this chapter as they relate to the 455
request, including by notifying the necessary processors. 456

Sec. 1355.05. (A) A consumer may request a copy of the 457
consumer's personal data that the consumer previously provided 458
to the business electronically in a portable, and, to the extent 459
technically feasible, readily usable format. 460

(B) Upon receiving a verified request, a business shall 461
disclose both of the following to the consumer in question in 462
conformance with this section: 463

(1) The categories of third parties to whom the business sells personal data, or if it does not sell personal data, that fact; 464
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(2) The personal data the business has collected about the consumer or an accurate description or summary of such data. 467
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(C) The disclosure shall cover the twelve-month period preceding the business's receipt of the request. A business is not obligated to provide access to a consumer's personal data more than once in a twelve-month period, beginning from the prior date on which the consumer made a request pursuant to this section. 469
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(D) A business may redact personal data in its responses to consumers to protect the security of personal data, including, without limitation, redacting social security numbers, financial account numbers, or driver's license numbers. 475
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Sec. 1355.06. (A) A consumer has a right to correct inaccuracies in the consumer's personal data that the consumer previously provided to the business, taking into account the nature of the personal data and the purposes of the processing of the consumer's personal data, by making a verifiable request to have the consumer's data be corrected. 479
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(B) Upon receiving a verified request, a business shall correct inaccurate information as requested by the consumer, taking into account the nature of the personal data and the purposes of the processing of the consumer's personal data. 485
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Sec. 1355.07. (A) A consumer shall have the right to request that a business delete personal data that the business has collected from the consumer for commercial purposes and that the business maintains in an electronic format. 489
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(B) Such a verifiable request shall reasonably describe 493
the personal data the consumer is requesting be deleted. 494

(C) (1) If the consumer's personal data is stored on 495
archived or backup systems, the business may delay compliance 496
with the consumer's request to delete until the archived or 497
backup system relating to that data is restored to an active 498
system, next accessed, or used for a sale, disclosure, or 499
commercial purpose. 500

(2) If the consumer's personal data is stored on archived 501
or backup systems, the business may comply with the consumer's 502
request by deleting or overwriting the data in accordance with a 503
scheduled backup or creation of a new archive, so long as the 504
business employs encryption standards to protect that data both 505
when the data is in transit and is at rest. 506

(D) A business is not required to delete personal data 507
that it maintains or uses as aggregated, deidentified, or 508
pseudonymous data, provided that such data in the possession of 509
the business is not linked to a specific consumer. 510

(E) A business, or an associated processor, shall not be 511
required to comply with a consumer's request to delete personal 512
data if it is necessary for the business or processor to 513
maintain the consumer's personal data in order to adhere to its 514
written records retention schedule. 515

Sec. 1355.08. (A) A consumer has a right to request both 516
of the following from a business: 517

(1) That the business not sell the consumer's personal 518
data; 519

(2) That the business not process the consumer's personal 520
data for the purpose of targeted advertising. 521

(B) Upon receipt of a verified request made under division 522
(A) of this section, a business shall not sell the personal data 523
of the consumer in question or process the data for the purpose 524
of targeted advertising. 525

(C) A business shall not sell the personal data collected 526
online of a known child without complying with the requirements 527
of or exceptions in the "Children's Online Privacy Protection 528
Act of 1998," 15 U.S.C. 6501, et seq. and its regulations. 529

(D) A business that sells personal data or uses processed 530
personal data for the purposes of targeted advertising shall 531
provide clear and conspicuous notice of these facts in such a 532
manner as to enable a consumer to opt out of the sale of the 533
consumer's personal data, the use of that data for targeted 534
advertising, or both; such as by providing clear and conspicuous 535
notice on its web site privacy policy or other publicly 536
available notice. 537

(E) A business is not required to comply with an opt-out 538
request that the business reasonably determines to be 539
fraudulent. 540

(F) A business shall reasonably inform its processors or 541
third parties of a consumer's request to opt out and request 542
that they comply with the consumer's opt-out request. 543

Sec. 1355.09. (A) Subject to divisions (B) and (C) of this 544
section, a business shall not discriminate against a consumer 545
for exercising the rights provided to a consumer under this 546
chapter. 547

(B) A business may charge different prices or rates for 548
goods or services for individuals who exercise their rights 549
under this chapter for legitimate business reasons or as 550

otherwise permitted or required by applicable law. 551

(C) A business's denial of a consumer's request in 552
compliance with this chapter shall not be considered 553
discrimination against the consumer. 554

(D) Nothing in this section shall be construed as doing 555
either of the following: 556

(1) Requiring a business to provide a product or service 557
that requires the personal data of a consumer that the business 558
does not collect or maintain or requiring a business to provide 559
a product or service if the consumer has exercised the right to 560
opt-out pursuant to section 1355.08 of the Revised Code; 561

(2) Prohibiting a business from offering a different 562
price, rate, level, quality, or selection of goods or services 563
to a consumer, including offering goods or services for no fee, 564
if the offer is related to a consumer's voluntary participation 565
in a bona fide loyalty, rewards, premium features, discounts, or 566
club card program. 567

Sec. 1355.10. (A) A contract between a business and a 568
processor shall govern the data processing procedures of the 569
processor with respect to processing performed on behalf of the 570
business. 571

(B) A processor shall do all of the following: 572

(1) Taking into account the nature of the processing, 573
assist a business, to the extent reasonably possible and through 574
the use of appropriate technical and organizational measures, in 575
fulfilling the obligation of the business to respond to consumer 576
requests made pursuant to sections 1355.04 to 1355.08 of the 577
Revised Code; 578

(2) Develop, implement, and maintain reasonable 579
administrative, technical, and physical safeguards to protect 580
the security and confidentiality of personal data processed by 581
the processor. The safeguards shall reflect the nature and scope 582
of the activities of the processor and its role in processing 583
the personal data. 584

(3) At the direction of the business and pursuant to the 585
contract described in division (A) of this section, delete or 586
return, except as required by law, all personal data to the 587
business as requested at the end of the contract period; 588

(4) If the processor uses the services of a subprocessor 589
with respect to a business, require the subprocessor to meet the 590
obligations of the processor with respect to any personal data 591
collected. 592

(C) Whether a person acts as a business or a processor 593
with respect to a specific processing of personal data is a 594
fact-based determination that depends on the context in which 595
the personal data is processed. A processor adhering to the 596
instructions of a business with respect to a specific processing 597
of personal data is considered a processor. 598

Sec. 1355.11. (A) The attorney general has exclusive 599
authority to enforce this chapter. 600

(B) Except as provided in divisions (B)(1) to (4) of this 601
section, if, by the attorney general's own inquiries or as a 602
result of complaints, the attorney general has reasonable cause 603
to believe that a business or processor has engaged or is 604
engaging in an act or practice that violates this chapter, the 605
attorney general may investigate in accordance with section 606
1345.06 of the Revised Code. 607

(1) References to "person" in section 1345.06 of the 608
Revised Code shall be interpreted, for purposes of 609
investigations entered into under this section, as referring to 610
an individual or a business, as defined in section 1355.01 of 611
the Revised Code. 612

(2) References to a "supplier" in section 1345.06 of the 613
Revised Code shall be interpreted, for purposes of 614
investigations entered into under this section, as referring to 615
a business, as defined in section 1355.01 of the Revised Code. 616

(3) Division (E) of section 1345.06 of the Revised Code 617
does not apply to investigations entered into under this 618
section. 619

(4) Nothing in this section shall be construed as granting 620
any additional rights or responsibilities under any other 621
section of Chapter 1345. of the Revised Code. 622

(C) The attorney general shall not disclose publicly the 623
identity of a business or processor investigated under this 624
section or the facts developed in investigations unless either 625
of the following are met: 626

(1) These matters have become a matter of public record in 627
enforcement proceedings, including if the business has entered 628
into an assurance of voluntary compliance with the attorney 629
general pursuant to section 1345.06 of the Revised Code. 630

(2) The business or processor that is the subject of the 631
investigation has consented in writing to public disclosure. 632

(D) (1) If the attorney general, by the attorney general's 633
own inquiries or as a result of complaints, has reasonable cause 634
to believe that a business or processor has engaged or is 635
engaging in an act or practice that violates this chapter, the 636

attorney general, subject to divisions (D) (2) to (4) of this 637
section, may bring an action in a court of common pleas of this 638
state seeking any or all of the following relief: 639

(a) Declaratory judgment that the act or practice violates 640
this chapter; 641

(b) Injunctive relief, including preliminary and permanent 642
injunctions, to prevent further violations of and compel 643
compliance with this chapter; 644

(c) Civil penalties described in division (D) (2) (c) of 645
this section; 646

(d) Attorneys' fees and investigative costs; 647

(e) Any other relief the court determines appropriate, 648
including relief described in division (D) (4) of this section. 649

(2) (a) Prior to initiating any action under this section, 650
the attorney general shall provide a business or processor 651
thirty-days' notice, in writing, identifying the specific 652
provisions of this chapter the attorney general alleges have 653
been or are being violated. 654

(b) If, within the thirty-day period, the business or 655
processor cures the noticed violation and provides the attorney 656
general an express written statement that the alleged violations 657
have been cured and that no further such violations will occur, 658
the attorney general shall not initiate an action against the 659
business or processor, except as provided in division (D) (2) (c) 660
of this section. 661

(c) If a business or processor continues to violate a 662
representation made in such written statement following the cure 663
period described in division (D) (2) (b) of this section or 664

breaches an express written statement provided to the attorney 665
general pursuant to that division, the attorney general may 666
initiate an action pursuant to division (D) (1) of this section 667
and seek civil penalties of up to five thousand dollars for each 668
violation under this chapter. 669

(3) Civil penalties levied in accordance with this 670
division shall be made in accordance with the following 671
criteria: 672

(a) Each provision of this chapter that was violated 673
counts as a separate violation. 674

(b) Each consumer affected counts as a separate violation. 675

(c) When calculating civil penalties, the court may 676
consider all of the following: 677

(i) The number of affected consumers; 678

(ii) The severity of the violation; 679

(iii) The size, nature, and complexity of the business; 680

(iv) The sensitivity of the information in question; 681

(v) The precautions taken to prevent a violation. 682

(4) (a) The court may award relief to each identified 683
consumer affected by a violation of a section of this chapter, 684
regardless of whether any actual damages were suffered, in an 685
amount that is not less than one hundred dollars and not more 686
than seven hundred fifty dollars per violation. 687

(b) If the court finds the business or processor willfully 688
or knowingly violated this chapter, the court may, in its 689
discretion, triple the award. 690

(E) Any moneys awarded under this section, with the 691

exception of amounts awarded under division (D) (4) of this 692
section, shall be deposited into the consumer protection 693
enforcement fund established in section 1345.51 of the Revised 694
Code. 695

(F) The remedies available to the attorney general under 696
this section are cumulative and concurrent, and the exercise of 697
one remedy by the attorney general does not preclude or require 698
the exercise of any other remedy. 699

(G) Any violation of this chapter shall not serve as the 700
basis for, or be subject to, a private right of action, 701
including a class action lawsuit, under this chapter or under 702
any other law. 703

(H) A business or processor that discloses personal data 704
to another business or processor shall not be liable under this 705
chapter if the recipient uses it in violation of the 706
restrictions set forth in this chapter, provided that, at the 707
time of disclosing the personal data, the business or processor 708
does not have actual knowledge, or reason to believe, that the 709
processor intends to commit such a violation. 710

(I) (1) (a) A business has an affirmative defense against 711
allegations of violations of this chapter if that business 712
creates, maintains, and complies with a written privacy program 713
that does both of the following: 714

(i) Reasonably conforms to the national institute of 715
standards and technology privacy framework entitled "A Tool for 716
Improving Privacy through Enterprise Risk Management Version 717
1.0," including applicable controls selected by the business 718
from special publication 800-53 and 800-53a published by the 719
national institute of standards and technology and referenced by 720

<u>the national institute of standards and technology privacy</u>	721
<u>framework;</u>	722
<u>(ii) Provides individuals with the substantive rights</u>	723
<u>provided to individuals by this chapter.</u>	724
<u>(b) When a final revision to the national institute of</u>	725
<u>standards and technology privacy framework is published, a</u>	726
<u>business shall reasonably conform its privacy program to the</u>	727
<u>revised framework not later than one year after the publication</u>	728
<u>date stated in the revision.</u>	729
<u>(2) The scale and scope of a business's privacy program</u>	730
<u>under division (I) (1) of this section is appropriate if it is</u>	731
<u>based on all of the following factors:</u>	732
<u>(a) The size and complexity of the business;</u>	733
<u>(b) The nature and scope of the activities of the</u>	734
<u>business;</u>	735
<u>(c) The sensitivity of the personal information processed;</u>	736
<u>(d) The cost and availability of tools to improve privacy</u>	737
<u>protections and data governance;</u>	738
<u>(e) Compliance with any comparable state or federal law.</u>	739
<u>(3) A business that satisfies divisions (I) (1) and (2) of</u>	740
<u>this section has an affirmative defense to any cause of action</u>	741
<u>brought under the laws of this state or in the courts of this</u>	742
<u>state that alleges a violation of this chapter or similar claim</u>	743
<u>based on a violation of privacy rights afforded to individuals</u>	744
<u>under this chapter or under Chapter 1345. of the Revised Code,</u>	745
<u>commonly referred to as the consumer sales practices act.</u>	746
<u>(J) Where more than one business or processor, or both a</u>	747

business and a processor, involved in the same processing 748
violate this chapter, liability shall be apportioned according 749
to the amount of responsibility born by each. 750

(K) The intent of the general assembly in enacting this 751
chapter is to establish a statewide, comprehensive enactment 752
that applies to all parts of the state, operates uniformly 753
throughout the state, and sets forth police regulations. No 754
political subdivision as defined in section 2744.01 of the 755
Revised Code shall regulate the collection, processing, or sale 756
of personal data by a business. 757

Section 2. That existing section 1345.51 of the Revised 758
Code is hereby repealed. 759

Section 3. The Attorney General may use \$250,000 of 760
appropriation item 055321, Operating Expenses, in fiscal year 761
2023 for the purpose of enforcing the Ohio Personal Privacy Act 762
and enacted sections 1355.01 to 1355.11 of the Revised Code. 763

Section 4. Sections 1, 2, and 3 of this act take effect 764
one year after the effective date of this section. 765