

D R A F T

SUMMARY

Requires business entity that collects, stores or transfers personal data of resident individual to register with Department of Consumer and Business Services as data broker. Specifies form, method and contents of application. Specifies exemptions. Provides civil penalty in amount not to exceed \$1,000 for each violation of Act.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to registration of business entities that qualify as data brokers; and
3 declaring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

SECTION 1. (1) As used in this section:

5
6 (a) **“Aggregated data” means information that relates to or de-**
7 **scribes a group or category of resident individuals but that does not**
8 **identify, relate to or describe, and cannot reasonably be associated**
9 **with, any individual member of the group or category.**

10 (b)(A) **“Business entity” means a resident individual who regularly**
11 **engages in commercial activity for the purpose of generating income,**
12 **a corporation or nonprofit corporation, a limited liability company, a**
13 **partnership or limited liability partnership, a business trust, a joint**
14 **venture or other form of business organization the constituent parts**
15 **of which share a common economic interest or a financial institution,**
16 **as defined in ORS 706.008.**

17 (B) **“Business entity” does not include the state or a state agency,**
18 **a political subdivision of the state or a business entity or other person**

1 **during a period in which the business entity or person is acting solely**
2 **on behalf of and at the direction of the state, a state agency or a pol-**
3 **itical subdivision of the state.**

4 **(c)(A) “Data broker” means a business entity or part of a business**
5 **entity that collects, stores or transfers to another person the personal**
6 **data of a resident individual with whom the business entity or part**
7 **does not have a direct relationship.**

8 **(B) “Data broker” does not include:**

9 **(i) A consumer reporting agency, to the extent that the federal Fair**
10 **Credit Reporting Act, 15 U.S.C. 1681 et seq., governs the activities of**
11 **the consumer reporting agency; or**

12 **(ii) A financial institution, to the extent that the Gramm-Leach-**
13 **Bliley Act, P.L. 106-102, and regulations adopted under the Act, govern**
14 **the activities of the financial institution.**

15 **(d) “Deidentified data” means information that does not directly or**
16 **indirectly identify, relate to or describe a resident individual and that**
17 **cannot reasonably be associated with a resident individual or a device**
18 **that the resident individual owns, possesses or has a right or permis-**
19 **sion to use.**

20 **(e) “Personal data” means information that identifies, relates to,**
21 **describes or can reasonably be associated with a resident individual**
22 **either directly or by means of a device that the resident individual**
23 **owns, possesses or has a right or permission to use, examples of which**
24 **include, but are not limited to:**

25 **(A) A resident individual’s legal name, alias, street or postal ad-**
26 **dress, unique personal identifier, online identifier, Internet Protocol**
27 **address, electronic mail address, account name, Social Security num-**
28 **ber, driver license number, passport number or other, similar identi-**
29 **fying information;**

30 **(B) Characteristics that associate a residential individual with a**
31 **protected classification under federal law or the laws of this state;**

1 (C) Information related to commercial transactions, such as records
2 of personal property, products or services a resident individual con-
3 sidered for purchase, purchased or otherwise obtained or information
4 that indicates the resident individual's purchasing history or con-
5 sumption preferences, habits or tendencies;

6 (D) Biometric information about the resident individual;

7 (E) Records of a residential individual's online activities, such as
8 browser histories, search histories and interactions with websites, ap-
9 plications, advertisements or other electronic resources;

10 (F) Geolocation data that reveals a resident individual's present
11 location or history of movement;

12 (G) Audio, visual, olfactory, thermal, electronic or other, similar
13 information about or related to a resident individual;

14 (H) Employment or professional records of a resident individual;

15 (I) A resident individual's education records and directory infor-
16 mation, both as defined in the Family Educational Rights and Privacy
17 Act, 20 U.S.C. 1232g, and in 34 C.F.R. Part 99, along with similar or
18 related information about the resident individual that is not publicly
19 available; and

20 (J) Information that may be derived from any of the information
21 listed in this paragraph and that may be used to create a profile of a
22 resident individual's preferences, characteristics, psychology, predis-
23 positions, behavior, attitudes, intelligence, abilities or aptitudes.

24 (f) "Resident individual" means a natural person who resides in this
25 state.

26 (g) "Transfer" means to sell, rent, lease, release, disclose, dissem-
27 inate, make available, license or otherwise communicate orally, in
28 writing or by electronic or other means, except incidentally as part
29 of a change in the ownership of an asset of the business entity or
30 otherwise as a one-time or occasional occurrence that is not part of
31 the ordinary conduct of a business entity's operations.

1 **(2)(a) A business entity may not collect, store or transfer personal**
2 **data within this state unless the business entity first registers as a**
3 **data broker with the Department of Consumer and Business Services**
4 **as provided in subsection (3) of this section or submits to the depart-**
5 **ment the declaration described in subsection (4) of this section.**

6 **(b) The requirement to register as a data broker under paragraph**
7 **(a) of this subsection does not apply to a business entity that:**

8 **(A) Has a direct relationship with all resident individuals from**
9 **whom the business entity collects personal information. For purposes**
10 **of this subparagraph, a business entity has a direct relationship with**
11 **a resident individual if the resident individual was or is:**

12 **(i) A customer, client, subscriber or user of the business entity's**
13 **goods or services;**

14 **(ii) An employee or agent of the business entity or a person in a**
15 **contractual relationship with the business entity;**

16 **(iii) An investor in the business entity; or**

17 **(iv) A donor to the business entity;**

18 **(B) Undertakes any of the following activities in which collecting,**
19 **storing or transferring personal data is an incidental part of the ac-**
20 **tivity:**

21 **(i) Developing or maintaining an electronic commerce service or**
22 **software applications under contract to another person; or**

23 **(ii) Providing directory assistance or directory information services**
24 **as or on behalf of a telecommunications carrier; or**

25 **(C) Provides information to the public that is lawfully available**
26 **from federal, state or local government records and that is related to**
27 **a resident individual's business or profession or that the business en-**
28 **tity provides as part of an alert service for health or safety purposes.**

29 **(3) To register as a data broker with the department, a business**
30 **entity shall:**

31 **(a) Submit on a form and in a format the department specifies:**

1 (A) The name of the business entity;

2 (B) The street address and telephone number of the business entity;

3 and

4 (C) The business entity's primary website and electronic mail ad-
5 dress.

6 (b) Pay a fee in an amount the department specifies by rule. The
7 department shall set the fee in an amount that is sufficient, when
8 aggregated, to pay the costs of administering the registration pro-
9 gram.

10 (c) Include with the application form a declaration in which the
11 business entity:

12 (A) States whether resident individuals may refuse to permit the
13 business entity to collect the residential individual's personal data,
14 store the personal data or transfer the personal data or whether the
15 resident individual may choose to permit selective collection, storage
16 or transfers of the personal data;

17 (B) Identifies which personal data a resident individual may refuse
18 to permit the business entity to collect, store or transfer or choose to
19 selectively permit or to not permit the business entity to collect, store
20 or transfer and which personal data the resident individual must per-
21 mit the business entity to collect, store or transfer;

22 (C) Describes the method by which a resident individual may exer-
23 cise the choice described in subparagraph (A) of this paragraph; and

24 (D) States whether a resident individual may authorize another
25 person to exercise the choice described in subparagraph (A) of this
26 paragraph on the resident individual's behalf and, if so, how to do so.

27 (d) Provide any other information or perform any other action the
28 department requires by rule for registration under this section.

29 (4)(a) A business entity in lieu of registration may submit to the
30 department a signed written declaration that states, under penalty of
31 false swearing as provided in ORS 162.075, that:

1 (A) All personal data that the business entity collects, stores or
2 transfers is aggregated data or personal data that is deidentified;

3 (B) The business entity will maintain all personal data only as ag-
4 gregated data or deidentified personal data and will not by any means
5 attempt to associate the personal data with a resident individual; and

6 (C) The business entity by contract shall obligate any recipient of
7 the data that the business entity collects, stores or transfers to treat
8 the personal data in the same way the business entity must under this
9 paragraph.

10 (b) The department by rule may specify the form, format and con-
11 tents of the declaration.

12 (5) If a business entity complies with the requirements set forth in
13 subsection (3) of this section, the department shall approve the regis-
14 tration. A registration under this section is valid until December 31
15 of the year in which the department approves the registration.

16 (6) The department may approve and renew a registration under
17 this section by means of an agreement with the Nationwide Multistate
18 Licensing System and may, by rule, conform the practices, procedures
19 and information that the department uses to approve or renew a reg-
20 istration to the requirements of the Nationwide Multistate Licensing
21 System.

22 (7) The department shall make the information that business enti-
23 ties submit for registration under this section publicly available on the
24 department's website.

25 (8) The department may impose a civil penalty in an amount that
26 does not exceed \$1,000 for each of a business entity's violations of a
27 requirement under this section or each violation of a rule the depart-
28 ment adopted under this section or, in the case of a continuing vio-
29 lation, a civil penalty in the amount of \$1,000 for each day in which
30 the violation continues.

31 SECTION 2. (1) Section 1 of this 2022 Act becomes operative on

1 **January 1, 2023.**

2 **(2) The Director of the Department of Consumer and Business Ser-**
3 **vices may adopt rules and take any other action before the operative**
4 **date specified in subsection (1) of this section that is necessary to en-**
5 **able the director to undertake and exercise all of the duties, functions**
6 **and powers conferred on the director by section 1 of this 2022 Act.**

7 **SECTION 3. This 2022 Act being necessary for the immediate pres-**
8 **ervation of the public peace, health and safety, an emergency is de-**
9 **clared to exist, and this 2022 Act takes effect on its passage.**

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