

House Bill 4017

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Business and Labor for Attorney General Ellen Rosenblum)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

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 declaring an emer-
3 gency.

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 describes a group or category**
7 **of resident individuals but that does not identify, relate to or describe, and cannot reasonably**
8 **be associated with, any individual member of the group or category.**

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

14 (B) **“Business entity” does not include the state or a state agency, a political subdivision**
15 **of the state or a business entity or other person during a period in which the business entity**
16 **or person is acting solely on behalf of and at the direction of the state, a state agency or a**
17 **political subdivision of the state.**

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

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

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

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

26 (d) **“Deidentified data” means information that does not directly or indirectly identify,**
27 **relate to or describe a resident individual and that cannot reasonably be associated with a**
28 **resident individual or a device that the resident individual owns, possesses or has a right or**
29 **permission to use.**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (e) “Personal data” means information that identifies, relates to, describes or can rea-
 2 sonably be associated with a resident individual either directly or by means of a device that
 3 the resident individual owns, possesses or has a right or permission to use, examples of
 4 which include, but are not limited to:

5 (A) A resident individual’s legal name, alias, street or postal address, unique personal
 6 identifier, online identifier, Internet Protocol address, electronic mail address, account name,
 7 Social Security number, driver license number, passport number or other, similar identifying
 8 information;

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

11 (C) Information related to commercial transactions, such as records of personal prop-
 12 erty, products or services a resident individual considered for purchase, purchased or oth-
 13 erwise obtained or information that indicates the resident individual’s purchasing history or
 14 consumption preferences, habits or tendencies;

15 (D) Biometric information about the resident individual;

16 (E) Records of a residential individual’s online activities, such as browser histories,
 17 search histories and interactions with websites, applications, advertisements or other elec-
 18 tronic resources;

19 (F) Geolocation data that reveals a resident individual’s present location or history of
 20 movement;

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

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

24 (I) A resident individual’s education records and directory information, both as defined
 25 in the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g, and in 34 C.F.R. Part 99,
 26 along with similar or related information about the resident individual that is not publicly
 27 available; and

28 (J) Information that may be derived from any of the information listed in this paragraph
 29 and that may be used to create a profile of a resident individual’s preferences, character-
 30 istics, psychology, predispositions, behavior, attitudes, intelligence, abilities or aptitudes.

31 (f) “Resident individual” means a natural person who resides in this state.

32 (g) “Transfer” means to sell, rent, lease, release, disclose, disseminate, make available,
 33 license or otherwise communicate orally, in writing or by electronic or other means, except
 34 incidentally as part of a change in the ownership of an asset of the business entity or oth-
 35 erwise as a one-time or occasional occurrence that is not part of the ordinary conduct of a
 36 business entity’s operations.

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

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

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

- 1 (i) A customer, client, subscriber or user of the business entity's goods or services;
2 (ii) An employee or agent of the business entity or a person in a contractual relationship
3 with the business entity;
4 (iii) An investor in the business entity; or
5 (iv) A donor to the business entity;
- 6 (B) Undertakes any of the following activities in which collecting, storing or transferring
7 personal data is an incidental part of the activity:
8 (i) Developing or maintaining an electronic commerce service or software applications
9 under contract to another person; or
10 (ii) Providing directory assistance or directory information services as or on behalf of a
11 telecommunications carrier; or
12 (C) Provides information to the public that is lawfully available from federal, state or
13 local government records and that is related to a resident individual's business or profession
14 or that the business entity provides as part of an alert service for health or safety purposes.
- 15 (3) To register as a data broker with the department, a business entity shall:
16 (a) Submit on a form and in a format the department specifies:
17 (A) The name of the business entity;
18 (B) The street address and telephone number of the business entity; and
19 (C) The business entity's primary website and electronic mail address.
20 (b) Pay a fee in an amount the department specifies by rule. The department shall set
21 the fee in an amount that is sufficient, when aggregated, to pay the costs of administering
22 the registration program.
23 (c) Include with the application form a declaration in which the business entity:
24 (A) States whether resident individuals may refuse to permit the business entity to col-
25 lect the residential individual's personal data, store the personal data or transfer the per-
26 sonal data or whether the resident individual may choose to permit selective collection,
27 storage or transfers of the personal data;
28 (B) Identifies which personal data a resident individual may refuse to permit the business
29 entity to collect, store or transfer or choose to selectively permit or to not permit the
30 business entity to collect, store or transfer and which personal data the resident individual
31 must permit the business entity to collect, store or transfer;
32 (C) Describes the method by which a resident individual may exercise the choice de-
33 scribed in subparagraph (A) of this paragraph; and
34 (D) States whether a resident individual may authorize another person to exercise the
35 choice described in subparagraph (A) of this paragraph on the resident individual's behalf
36 and, if so, how to do so.
37 (d) Provide any other information or perform any other action the department requires
38 by rule for registration under this section.
- 39 (4)(a) A business entity in lieu of registration may submit to the department a signed
40 written declaration that states, under penalty of false swearing as provided in ORS 162.075,
41 that:
42 (A) All personal data that the business entity collects, stores or transfers is aggregated
43 data or personal data that is deidentified;
44 (B) The business entity will maintain all personal data only as aggregated data or dei-
45 identified personal data and will not by any means attempt to associate the personal data with

1 a resident individual; and

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

5 (b) The department by rule may specify the form, format and contents of the declaration.

6 (5) If a business entity complies with the requirements set forth in subsection (3) of this
7 section, the department shall approve the registration. A registration under this section is
8 valid until December 31 of the year in which the department approves the registration.

9 (6) The department may approve and renew a registration under this section by means
10 of an agreement with the Nationwide Multistate Licensing System and may, by rule, conform
11 the practices, procedures and information that the department uses to approve or renew a
12 registration to the requirements of the Nationwide Multistate Licensing System.

13 (7) The department shall make the information that business entities submit for regis-
14 tration under this section publicly available on the department's website.

15 (8) The department may impose a civil penalty in an amount that does not exceed \$1,000
16 for each of a business entity's violations of a requirement under this section or each vio-
17 lation of a rule the department adopted under this section or, in the case of a continuing
18 violation, a civil penalty in the amount of \$1,000 for each day in which the violation contin-
19 ues.

20 **SECTION 2.** (1) Section 1 of this 2022 Act becomes operative on January 1, 2023.

21 (2) The Director of the Department of Consumer and Business Services may adopt rules
22 and take any other action before the operative date specified in subsection (1) of this section
23 that is necessary to enable the director to undertake and exercise all of the duties, functions
24 and powers conferred on the director by section 1 of this 2022 Act.

25 **SECTION 3.** This 2022 Act being necessary for the immediate preservation of the public
26 peace, health and safety, an emergency is declared to exist, and this 2022 Act takes effect
27 on its passage.

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