

1 STATE OF OKLAHOMA

2 2nd Session of the 57th Legislature (2020)

3 COMMITTEE SUBSTITUTE

4 FOR

HOUSE BILL NO. 3801

By: Phillips

7 COMMITTEE SUBSTITUTE

8 An Act relating to digital privacy; defining terms;
9 requiring governmental entities to make posting of
10 certain consumer information to be collected; listing
11 information to be provided to consumer; listing
12 information to be provided to consumer if consumer
13 information is to be sold; providing penalties for
14 violations; providing for certain civil action;
15 allowing parties to seek guidance; authorizing the
16 promulgation of rules; providing for codification;
17 and providing an effective date.

18 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

19 SECTION 1. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 464.1 of Title 74, unless there
21 is created a duplication in numbering, reads as follows:

22 A. As used in this section:

23 1. "Business purpose" means the use of personal information for
24 the governmental entity's operational purposes, or other notified
purposes; provided, that the use of personal information shall be
reasonably necessary and proportionate to achieve the operational
purpose for which the personal information was collected or

1 processed or for another operational purpose that is compatible with
2 the context in which the personal information was collected.

3 "Business purposes" are:

- 4 a. auditing related to a current interaction with the
5 consumer and concurrent transactions, including, but
6 not limited to, counting ad impressions to unique
7 visitors, verifying positioning and quality of ad
8 impressions, and auditing compliance with this
9 specification and other standards,
- 10 b. detecting security incidents, protecting against
11 malicious, deceptive, fraudulent, or illegal activity,
12 and prosecuting those responsible for that activity,
- 13 c. debugging to identify and repair errors that impair
14 existing intended functionality,
- 15 d. short-term, transient use, provided the personal
16 information that is not disclosed to another third
17 party and is not used to build a profile about a
18 consumer or otherwise alter an individual consumer's
19 experience outside the current interaction, including,
20 but not limited to, the contextual customization of
21 ads shown as part of the same interaction,
- 22 e. performing services on behalf of the governmental
23 entity, including maintaining or servicing accounts,
24 providing customer service, processing or fulfilling

1 orders and transactions, verifying customer
2 information, processing payments, providing financing,
3 providing advertising or marketing services, providing
4 analytic services, or providing similar services on
5 behalf of the business or service provider,

6 f. undertaking internal research for technological
7 development and demonstration, and

8 g. undertaking activities to verify or maintain the
9 quality or safety of a service or device that is
10 owned, manufactured, manufactured for, or controlled
11 by the governmental entity, and to improve, upgrade,
12 or enhance the service or device that is owned,
13 manufactured, manufactured for, or controlled by the
14 governmental entity;

15 2. "Collects", "collected", or "collection" means buying,
16 renting, gathering, obtaining, receiving, or accessing any personal
17 information pertaining to a consumer by any means. This includes
18 receiving information from the consumer, either actively or
19 passively, or by observing the consumer's behavior;

20 3. "Commercial purposes" means to advance a person's commercial
21 or economic interests, such as by inducing another person to buy,
22 rent, lease, join, subscribe to, provide, or exchange products,
23 goods, property, information, or services, or enabling or effecting,
24 directly or indirectly, a commercial transaction. "Commercial

1 purposes" does not include for the purpose of engaging in speech
2 that state or federal courts have recognized as noncommercial
3 speech, including political speech and journalism;

4 4. "Consumer" means a natural person who is an Oklahoma
5 resident;

6 5. "Device" means any physical object that is capable of
7 connecting to the Internet, directly or indirectly, or to another
8 device;

9 6. "Governmental entity" means the State of Oklahoma or any
10 office, department, agency, authority, commission, board,
11 institution, hospital, college, university, public trust created
12 pursuant to Title 60 of the Oklahoma Statutes of which the State of
13 Oklahoma is the beneficiary, municipality, county, school district,
14 or any political subdivision in this state that collects consumers'
15 personal information, or any entity that collects consumers'
16 personal information on behalf of a governmental entity, that does
17 business in this state;

18 7. "Homepage" means the introductory page of an Internet
19 website and any Internet webpage where personal information is
20 collected. In the case of an online service, such as a mobile
21 application, homepage means the application's platform page or
22 download page, a link within the application, such as from the
23 application configuration "About", "Information", or settings page,
24

1 and any other location that allows consumers to review the posting
2 required by subsection B of this section;

3 8. "Person" means an individual, proprietorship, firm,
4 partnership, joint venture, syndicate, business trust, company,
5 corporation, limited liability company, association, committee, and
6 any other organization or group of persons acting in concert;

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

13 (1) identifiers such as a real name, alias, postal
14 address, unique personal identifier, online
15 identifier Internet Protocol address, email
16 address, account name, Social Security number,
17 driver's license number, passport number, or
18 other similar identifiers,

19 (2) characteristics of protected classifications
20 under Oklahoma or federal law,

21 (3) commercial information, including records of
22 personal property, products or services
23 purchased, obtained, or considered, or other
24 purchasing or consuming histories or tendencies,

- 1 (4) biometric information,
- 2 (5) Internet or other electronic network activity
- 3 information, including, but not limited to,
- 4 browsing history, search history, and information
- 5 regarding a consumer's interaction with an
- 6 Internet website, application, or advertisement,
- 7 (6) geolocation data,
- 8 (7) audio, electronic, visual, thermal, olfactory, or
- 9 similar information,
- 10 (8) professional- or employment-related information,
- 11 (9) education information, defined as information
- 12 that is not publicly available personally
- 13 identifiable information as defined in the Family
- 14 Educational Rights and Privacy Act pursuant to 20
- 15 U.S.C., Section 1232g, 34 C.F.R. Part 99, and
- 16 (10) inferences drawn from any of the information
- 17 identified in this subdivision to create a
- 18 profile about a consumer reflecting the
- 19 consumer's preferences, characteristics,
- 20 psychological trends, predispositions, behavior,
- 21 attitudes, intelligence, abilities, and
- 22 aptitudes,

23 b. "Personal information" does not include publicly

24 available information. For these purposes, "publicly

1 available" means information that is lawfully made
2 available from federal, state, or local government
3 records, if any conditions associated with such
4 information. "Publicly available" does not mean
5 biometric information collected by a business about a
6 consumer without the consumer's knowledge.

7 Information is not "publicly available" if that data
8 is used for a purpose that is not compatible with the
9 purpose for which the data is maintained and made
10 available in the government records or for which it is
11 publicly maintained;

12 10. "Processing" means any operation or set of operations that
13 is performed on personal data or on sets of personal data, whether
14 or not by automated means; and

15 11. "Sell", "selling", or "sold" means selling, renting,
16 releasing, disclosing, disseminating, making available,
17 transferring, or otherwise communicating orally, in writing, or by
18 electronic or other means, a consumer's personal information by the
19 governmental entity to another governmental entity or a third party
20 for monetary or other valuable consideration.

21 B. Any governmental entity that transacts business online or on
22 a webpage in this state that collects a consumer's personal digital
23 information or data shall, before the point of collection,
24 conspicuously post on its website homepage in a plain readable

1 format as to the categories of personal information to be collected
2 and the purposes for which the categories of personal information
3 shall be used. A governmental entity shall not collect additional
4 categories of personal information or use personal information
5 collected for additional purposes without providing the consumer
6 with notice consistent with this section.

7 C. The website posting described in subsection B of this
8 section shall provide the consumer the following:

9 1. The categories of personal information it will collect about
10 that consumer;

11 2. The categories of sources from which the personal
12 information is collected;

13 3. The business or commercial purpose for collecting or selling
14 personal information;

15 4. The categories of third parties with whom the governmental
16 entity will share personal information; and

17 5. The specific pieces of personal information it will collect
18 about that consumer.

19 D. If the governmental entity sells the consumer's personal
20 data information, or discloses such information for a business
21 purpose, the website posting described in subsection B of this
22 section shall provide the consumer the following:

23 1. The categories of personal information that the governmental
24 entity will collect about the consumer;

1 2. The categories of personal information that the governmental
2 entity will sell about the consumer and the categories of third
3 parties to whom the personal information will be sold, by category
4 or categories of personal information for each third party to whom
5 the personal information will be sold. If the information to be
6 collected will not be sold, the governmental entity shall disclose
7 that fact; and

8 3. The categories of personal information that the governmental
9 entity plans to disclose about the consumer for a business purpose.
10 If the information to be collected will not be disclosed for a
11 business purpose, the governmental entity shall disclose that fact.

12 E. A governmental entity shall be in violation of this title if
13 it fails to cure any alleged violation within thirty (30) days after
14 being notified of alleged noncompliance. Any governmental entity
15 that violates the provisions of this act shall be subject to a fine
16 of One Thousand Dollars (\$1,000.00) for the first violation and Five
17 Thousand Dollars (\$5,000.00) for each additional violation. The
18 penalties provided for in this subsection shall be exclusively
19 assessed and recovered in a civil action brought by the Attorney
20 General.

21 F. Any party subject to the provisions of this act may seek
22 information from the Office of the Attorney General for guidance on
23 how to comply with the provisions of this section. The Office of
24

1 the Attorney General is authorized to promulgate rules to effectuate
2 the provisions of this section.

3 SECTION 2. This act shall become effective November 1, 2020.
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