HB216

207973-1

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RFD: Technology and Research

First Read: 02-FEB-21

PFD: 01/29/2021
SYNOPSIS: Current law provides for the confidentiality of certain personal information in certain contexts, and requires a business or person that suffers a breach of security of data that includes personal consumer information to disclose that breach under certain circumstances.

This bill would create the Alabama Consumer Privacy Act.

This bill would allow a consumer to request that a business disclose, categorically and specifically, the personal information the business collects about the consumer, the categories of sources from which that information is collected, the business purposes for collecting or selling that information, and the categories of any third parties with which the information is shared.

This bill would require a business to make certain disclosures regarding what information it collects and has collected, and the purposes for which that information is used.
This bill would allow a consumer to request deletion of personal information, and would require a business to delete that information upon receipt of a verified request from a consumer.

This bill would allow a consumer to request that a business that sells personal information about that consumer, or discloses that information for a business purpose, disclose the categories of information that it collects and categories of information and the identities of third parties to which the information was sold or disclosed. This bill would also require a business to provide this information upon receipt of a verified request by a consumer.

This bill would authorize a consumer to opt out of the sale of personal information by a business, and would prohibit a business from discriminating against a consumer for opting out or requesting information, including by charging the consumer a different price or providing the consumer with a different quality of goods or services, unless that change in price or quality is reasonably related to the value provided by that consumer's personal information. The bill would also allow a business to offer financial incentives for collection of personal information.
This bill would prohibit a business from selling the personal information of a consumer under 18 years of age, except with affirmative authorization and under certain conditions.

This bill would prescribe requirements for the receiving, processing, and fulfilling of requests from consumers relating to personal information.

This bill would provide for enforcement by the Attorney General under the Deceptive Trade Practices Act, and would also provide for a private cause of action in connection with certain unauthorized access and exfiltration, theft, or disclosure of a consumer's nonencrypted or nonredacted personal information.

This bill would also authorize the Attorney General to adopt rules for the implementation of this act, including rules relating to the submission and verification of consumer requests relating to personal information.

Amendment 621 of the Constitution of Alabama of 1901, now appearing as Section 111.05 of the Official Recompilation of the Constitution of Alabama of 1901, as amended, prohibits a general law whose purpose or effect would be to require a new or increased expenditure of local funds from becoming effective with regard to a local
governmental entity without enactment by a 2/3 vote unless: it comes within one of a number of specified exceptions; it is approved by the affected entity; or the Legislature appropriates funds, or provides a local source of revenue, to the entity for the purpose.

The purpose or effect of this bill would be to require a new or increased expenditure of local funds within the meaning of the amendment. However, the bill does not require approval of a local governmental entity or enactment by a 2/3 vote to become effective because it comes within one of the specified exceptions contained in the amendment.

A BILL
TO BE ENTITLED
AN ACT

Relating to consumer protection; to create the Alabama Consumer Privacy Act; to allow a consumer to request a business to disclose personal information it collects about the consumer and to require a business to make those disclosures under certain conditions; to allow a consumer to request deletion of certain personal information; to require a business to delete certain personal information under certain conditions; to allow a consumer to request a business to disclose the sale of certain personal information to third
parties; to allow a consumer to opt out of the sale of personal information by a business; to prohibit a business from retaliating against a consumer for making a request for disclosure or for opting out; to prohibit a business from selling the personal information of a consumer under 18 years of age, except with authorization and under certain conditions; to provide for enforcement by the Attorney General; to authorize the Attorney General to adopt rules; and in connection therewith would have as its purpose or effect the requirement of a new or increased expenditure of local funds within the meaning of Amendment 621 of the Constitution of Alabama of 1901, now appearing as Section 111.05 of the Official Recompilation of the Constitution of Alabama of 1901, as amended.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This act shall be known and may be cited as the "Alabama Consumer Privacy Act."

Section 2. For purposes of this act, the following terms shall have the following meanings:

(1) AGGREGATE CONSUMER INFORMATION. Information that relates to a group or category of consumers, and from which individual consumer identities have been removed, which is not linked or reasonably linkable to any consumer or household, including via a device. The term does not include one or more individual consumer records that have been deidentified.

(2) BIOMETRIC INFORMATION. An individual's physiological, biological, or behavioral characteristics that
can be used, singly or in combination with each other or with other identifying data, to establish individual identity. The term includes, but is not limited to, an individual's deoxyribonucleic acid (DNA); imagery of the iris, retina, fingerprint, face, hand, palm, or vein patterns, or voice recordings, or any other information from which an identifier template, such as a faceprint, a minutiae template, or a voiceprint, can be extracted; keystroke patterns or rhythms; gait patterns or rhythms; and sleep, health, or exercise data that contains identifying information.

(3) BUSINESS. Either of the following:

a. A sole proprietorship, partnership, limited liability company, corporation, association, or other legal entity that is organized or operated for the profit or financial benefit of its shareholders or other owners, that collects consumers' personal information, or on the behalf of which such information is collected and that alone, or jointly with others, determines the purposes and means of the processing of consumers' personal information, and that does business in the State of Alabama.

b. Any entity that controls or is controlled by a business as defined in paragraph a. and that shares common branding with the business. For purposes of this paragraph, "control" or "controlled" means ownership of, or the power to vote with, more than 50 percent of the outstanding shares of any class of voting security of a business; control in any manner over the election of a majority of the
directors, or of individuals exercising similar functions; or
the power to exercise a controlling influence over the
management of a company. Also for purposes of this paragraph,
"common branding" means a shared name, servicemark, or
trademark.

(4) BUSINESS PURPOSE. The use of personal
information for the business's or a service provider's
operational purposes, or other notified purposes, provided
that the use of personal information is reasonably necessary
and proportionate to achieve the operational purpose for which
the personal information was collected or processed or for
another operational purpose that is compatible with the
context in which the personal information was collected. The
term includes, but is not limited to:

a. Auditing related to a current interaction with
the consumer and concurrent transactions, including, but not
limited to, counting ad impressions to unique visitors,
verifying positioning and quality of ad impressions, and
auditing compliance with this specification and other
standards.

b. Detecting security incidents; protecting against
malicious, deceptive, fraudulent, or illegal activity; and
prosecuting those responsible for that activity.

c. Debugging to identify and repair errors that
impair existing intended functionality.

d. Short-term, transient use, provided the personal
information that is not disclosed to another third party and
is not used to build a profile about a consumer or otherwise alter an individual consumer's experience outside the current interaction, including, but not limited to, the contextual customization of ads shown as part of the same interaction.

e. Performing services on behalf of the business or service provider, including maintaining or servicing accounts, providing customer service, processing or fulfilling orders and transactions, verifying customer information, processing payments, providing financing, providing advertising or marketing services, providing analytic services, or providing similar services on behalf of the business or service provider.

f. Undertaking internal research for technological development and demonstration.

g. Undertaking activities to verify or maintain the quality or safety of a service or device that is owned, manufactured, manufactured for, or controlled by the business, and to improve, upgrade, or enhance the service or device that is owned, manufactured, manufactured for, or controlled by the business.

(5) COLLECTS, COLLECTED, or COLLECTION. Buying, renting, gathering, obtaining, receiving, or accessing any personal information pertaining to a consumer by any means, including, but not limited to, receiving information from the consumer, either actively or passively, or by observing the consumer's behavior.
(6) COMMERCIAL PURPOSES. The advancement of a person's commercial or economic interests, such as by inducing another person to buy, rent, lease, join, subscribe to, provide, or exchange products, goods, property, information, or services, or enabling or effecting, directly or indirectly, a commercial transaction. The term does not include engaging in speech that state or federal courts have recognized as noncommercial speech, including political speech and journalism.

(7) CONSUMER. An individual who is an Alabama resident, however identified, including by any unique identifier.

(8) DE-IDENTIFIED. Information that cannot reasonably identify, relate to, describe, be capable of being associated with, or be linked, directly or indirectly, to a particular consumer, provided that a business using de-identified information does all of the following:

a. Implements technical safeguards that prohibit re-identification of the consumer to whom the information may pertain.

b. Implements business processes that specifically prohibit re-identification of the information.

c. Implements business processes to prevent inadvertent release of de-identified information.

d. Makes no attempt to re-identify the information.

(9) DESIGNATED METHOD FOR SUBMITTING REQUESTS. A link on a business's Internet website page that allows a
consumer to submit a request or direction under this act, and
also displays a toll-free telephone number by which a consumer
may submit a request or direction under this act; or any
new, consumer-friendly means of contacting a business, as
approved by the Attorney General pursuant to Section 14.

(10) DEVICE. Any physical object that is
capable of connecting to the Internet, directly or indirectly,
or to another device.

(11) HEALTH INSURANCE INFORMATION. A consumer's
insurance policy number or subscriber identification number,
any unique identifier used by a health insurer to identify
the consumer, or any information in the consumer's application
and claims history, including any appeals records, if the
information is linked or reasonably linkable to a consumer or
household, including via a device, by a business or service
provider.

(12) HOMEPAGE. The introductory page of an Internet
website and any Internet webpage where personal information is
collected. In the case of another online service, such as a
mobile application, homepage means the application's platform
page or download page; a link within the application, such as
from the application's configuration, "About," "Information,"
or "Settings" page; or any other location that
allows consumers to review the notice required by subsection
(a) of Section 10, including, but not limited to, before
downloading the application.
(13) INFER or INERENCE. The derivation of information, data, assumptions, or conclusions from facts, evidence, or another source of information or data.

(14) PERSON. An individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, limited liability company, association, committee, and any other organization or group of persons acting in concert.

(15)a. PERSONAL INFORMATION. Except as provided in paragraph b., information that identifies, relates to, describes, is capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household. The term includes, but is not limited to, the following:

1. Identifiers such as a real name, signature, alias, postal address, telephone number, unique personal identifier, online identifier Internet Protocol address, email address, account name, social security number, insurance policy number or other health insurance information, medical information, physical characteristics or description, driver's license or state identification card number, passport number, or other similar identifiers.

2. Characteristics of protected classifications under Alabama or federal law.

3. Commercial information, including records of personal property, products or services purchased,
obtained, or considered, or other purchasing or consuming
histories or tendencies.

4. Biometric information.

5. Internet or other electronic network activity
information, including, but not limited to, browsing history,
search history, and information regarding a consumer's
interaction with an Internet website, application, or
advertisement.

6. Geolocation data.

7. Audio, electronic, visual, thermal, olfactory, or
similar information.

8. Professional or employment-related information.

9. Education information that is not publicly
available personally identifiable information as defined in
the federal Family Educational Rights and Privacy Act (20

10. Inferences drawn from any of the information
identified in this subdivision to create a profile about
a consumer reflecting the consumer's preferences,
characteristics, psychological trends, preferences,
predispositions, behavior, attitudes, intelligence, abilities,
or aptitudes.

b. For purposes of this subdivision, "personal
information" does not include publicly available information.
For purposes of this paragraph, "publicly available" means
information that is lawfully made available from federal,
state, or local government records. Also for purposes of this
paragraph, "publicly available" does not mean biometric
information collected by a business about a consumer without
the consumer’s knowledge, or consumer information that is
de-identified or aggregate consumer information. Information
is not "publicly available" for purposes of this paragraph if
that data is used for a purpose that is not compatible with
the purpose for which the data is maintained and made
available in the government records or for which it is
publicly maintained.

(16) PROBABILISTIC IDENTIFIER. The
identification of a consumer or a device to a
degree of certainty of "more probable than not" based on any
one or more of the categories of personal information as
provided in this section.

(17) PROCESSING. Any operation or set of operations
that are performed on personal data or on sets of personal
data, whether or not by automated means.

(18) PSEUDONYMIZE or PSEUDONYMIZATION. The
processing of personal information in a manner that renders
the personal information no longer attributable to a
specific consumer without the use of additional information,
provided that the additional information is kept separately
and is subject to technical and organizational measures to
ensure that the personal information is not attributed to an
identified or identifiable consumer.

(19) RESEARCH. Scientific, systematic study and
observation, including basic research or applied research,
that is in the public interest and that adheres to all other applicable ethics and privacy laws or studies conducted in the public interest in the area of public health. For purposes of this subdivision, research with personal information that may have been collected from a consumer in the course of the consumer's interactions with a business’s service or device for other purposes shall be included within the meaning of "research" only if it is all of the following:

a. Compatible with the business purpose for which the personal information was collected.

b. Subsequently pseudonymized and de-identified, or de-identified and in the aggregate, such that the information cannot reasonably identify, relate to, describe, be capable of being associated with, or be linked, directly or indirectly, to a particular consumer.

c. Made subject to technical safeguards that prohibit re-identification of the consumer to whom the information may pertain.

d. Subject to business processes that specifically prohibit re-identification of the information.

e. Made subject to business processes to prevent inadvertent release of de-identified information.

f. Protected from any re-identification attempts.

g. Used solely for research purposes that are compatible with the context in which the personal information was collected.

h. Not be used for any commercial purpose.
i. Subjected by the business conducting the research
to additional security controls that limit access to the
research data to only those individuals in a business as are
necessary to carry out the research purpose.

(20) SELL, SELLING, SALE, or SOLD.

a. Except as provided in paragraph b.: selling,
renting, releasing, disclosing, disseminating, making
available, transferring, or otherwise communicating verbally,
in writing, or by electronic or other means, a consumer's
personal information by the business to another business or to
a third party for monetary or other valuable consideration.

b. For purposes of this subdivision, the terms sell,
selling, sale, or sold do not include any of the following:

1. A consumer uses or directs the business to
intentionally disclose personal information or uses the
business to intentionally interact with a third party,
provided the third party does not also sell the personal
information, unless that disclosure would be consistent with
the provisions of this act. An intentional interaction occurs
when the consumer intends to interact with the third party via
one or more deliberate interactions. For purposes of this
subparagraph, hovering over, muting, pausing, or closing a
given piece of content does not constitute a consumer's intent
to interact with a third party.

2. The business uses or shares an identifier for
a consumer who has opted out of the sale of the consumer's
personal information, solely for the purpose of alerting third
parties that the consumer has opted out of the
sale of the consumer's personal information.

3. The business uses or shares with a service
provider personal information of a consumer that is necessary
for the service provider to perform a business purpose on
behalf of the business, if both of the following conditions
are met:

   (i) The business has provided notice that
information is being used or shared in its terms and
conditions consistent with Section 9.

   (ii) The service provider does not further collect,
sell, or use the personal information of the consumer, except
as necessary to perform the business purpose.

4. The business transfers to a third party the
personal information of a consumer as an asset that is
part of a merger, acquisition, bankruptcy, or other
transaction in which the third party assumes control of all or
part of the business, provided that the information is used or
shared pursuant to Sections 4 and 5. If a third party
materially alters how it uses or shares the personal
information of a consumer in a manner that is materially
inconsistent with the promises made at the time of collection
by the business, the third party shall provide prior
notice of the new or changed practice to the consumer. The
notice shall be sufficiently prominent and robust to ensure
that existing consumers can easily exercise their choices
consistently with Section 7. This subparagraph does not
authorize a business to make material, retroactive privacy policy changes or make other changes in their privacy policy in a manner that would violate the Deceptive Trade Practices Act, Section 8-19-1 et seq., Code of Alabama 1975.

(21) SERVICE or SERVICES. Work, labor, and services, including services furnished in connection with the sale or repair of goods.

(22) SERVICE PROVIDER. A sole proprietorship, partnership, limited liability company, corporation, association, or other legal entity that is organized or operated for the profit or financial benefit of its shareholders or other owners, which processes information on behalf of a business and to which the business discloses a consumer's personal information for a business purpose pursuant to a written contract, provided that the contract prohibits the entity receiving the information from retaining, using, or disclosing the personal information for any purpose other than for the specific purpose of performing the services specified in the contract for the business, or as otherwise permitted by this act, including retaining, using, or disclosing the personal information for a commercial purpose other than providing the services specified in the contract with the business.

(23) THIRD PARTY.

a. A person who is not any of the following:
1. A business that collects personal information from consumers pursuant to this act.

2. A person to whom the business discloses a consumer's personal information for a business purpose pursuant to a written contract, provided that the contract fulfills all of the following:

   (i) Prohibits the person receiving the personal information from:

       A. Selling the personal information.

       B. Retaining, using, or disclosing the personal information for any purpose other than for the specific purpose of performing the services specified in the contract, including retaining, using, or disclosing the personal information for a commercial purpose other than providing the services specified in the contract.

       C. Retaining, using, or disclosing the information outside of the direct business relationship between the person and the business.

   (ii) Includes a certification made by the person receiving the personal information that the person understands the restrictions in item (i) and will comply with them.

b. A person described in subparagraph a.2. that violates any of the restrictions set forth in this act shall be liable for the violations, as provided in Sections 12 and 13. A business that discloses personal information to a person described in subparagraph a.2. shall not be liable under this act if the person receiving the personal information uses it
in violation of the restrictions set forth in this act,
provided both of the following are satisfied:

1. The contract requiring the disclosure is in
   compliance with subparagraph a.2.

2. At the time of disclosure, the business does not
   have actual knowledge, or reason to believe, that the person
   intends to commit such a violation.

(24) UNIQUE IDENTIFIER or UNIQUE PERSONAL
IDENTIFIER. A persistent identifier that can be used to
recognize a consumer, a family, or a device that is linked to
a consumer or family, over time and across different services,
including, but not limited to, a device identifier; an
Internet Protocol address; cookies, beacons, pixel tags,
mobile ad identifiers, or similar technology; customer number,
unique pseudonym, or user alias; telephone numbers; or other
forms of persistent or probabilistic identifiers that can be
used to identify a particular consumer or device. For
purposes of this subdivision, "family" includes a custodial
parent or guardian and any minor children over which the
parent or guardian has custody.

(25) VERIFIABLE CONSUMER REQUEST. A request that is
made by a consumer, by a consumer on behalf of the consumer's
minor child, or by a natural person or a person registered
with the Secretary of State and authorized by
the consumer to act on the consumer's behalf, and that the
business can reasonably verify, pursuant to rules adopted by
the Attorney General under Section 14, to be
the consumer about whom the business has collected personal
information.

Section 3. (a) A consumer may request that a
business that collects a consumer's personal information
disclose to that consumer the categories and specific
pieces of that consumer's personal information the business
has collected.

(b) A business that collects a consumer's personal
information, at or before the point of collection, shall
inform a consumer as to the categories of personal information
to be collected and the purposes for which the
categories of personal information shall be used. A business
shall not collect additional categories of personal
information or use personal information collected for
additional purposes without providing the consumer with notice
consistent with this section.

(c) A business shall provide the information
specified in subsection (a) to a consumer upon receipt of a
verifiable consumer request.

(d) A business that receives a
verifiable consumer request from a consumer to access personal
information shall promptly take steps to disclose and deliver,
free of charge to the consumer, the personal information
required to be disclosed by this section. The information may
be delivered by mail or electronically. If provided
electronically, the information shall be in a portable and, to
the extent technically feasible, readily usable format that
allows the consumer to transmit this information to another entity without hindrance. A business may provide personal information to a consumer at any time, but may not be required to provide personal information to the same consumer more than twice in a 12-month period.

(e) This section does not require a business to do either of the following:

(1) Retain any personal information collected for a single, one-time transaction, if the information is not sold or retained by the business.

(2) Re-identify or otherwise link any data which, in the ordinary course of business, is not maintained in a manner that would be considered personal information.

Section 4. (a) A consumer may request that a business delete any personal information about the consumer which the business has collected from the consumer.

(b) A business that collects personal information about consumers shall disclose, pursuant to paragraph (a)(5)a. of Section 9, the consumer's right to request the deletion of the consumer's personal information.

(c) A business that receives a verifiable request from a consumer to delete the consumer's personal information pursuant to subsection (a) shall delete the consumer's personal information from its records and direct any service providers to delete the consumer's personal information from their records.
(d) A business or a service provider may not be required to comply with a consumer's request to delete the consumer's personal information if it is necessary for the business or service provider to maintain the consumer's personal information in order to do any of the following:

(1) Complete the transaction for which the personal information was collected, provide a good or service requested by the consumer or reasonably anticipated within the context of a business's ongoing business relationship with the consumer, or otherwise perform a contract between the business and the consumer.

(2) Detect security incidents; protect against malicious, deceptive, fraudulent, or illegal activity; or prosecute those responsible for that activity.

(3) Debug, identify, and repair errors that impair existing intended functionality.

(4) Exercise free speech, ensure the right of another consumer to exercise his or her right of free speech, or exercise another right provided for by law.

(5) Engage in public or peer-reviewed scientific, historical, or statistical research in the public interest that adheres to all other applicable ethics and privacy laws, when deletion of the information is likely to render impossible or seriously impair the achievement of that research, so long as the consumer has provided informed consent.
(6) To enable solely internal uses that are reasonably aligned with the expectations of the consumer based on the consumer's relationship with the business.

(7) Comply with a legal obligation.

(8) Otherwise use the consumer's personal information internally and in a lawful manner that is compatible with the context in which the consumer provided the information.

Section 5. (a) A consumer may request that a business that collects personal information about the consumer disclose to the consumer all the following:

(1) The categories of personal information it has collected about that consumer.

(2) The categories of sources from which the personal information is collected.

(3) The business or commercial purpose for collecting or selling personal information.

(4) The categories of third parties with whom the business shares personal information.

(5) The specific pieces of personal information it has collected about that consumer.

(b) A business that collects personal information about a consumer shall disclose to the consumer, pursuant to subdivision (a)(3) of Section 9, the information specified in subsection (a) upon receipt of a verifiable request from the consumer.
(c) A business that collects personal information about consumers shall disclose, pursuant to paragraph(a)(5)b. of Section 9, all of the following:

(1) The categories of personal information it has collected about that consumer.

(2) The categories of sources from which the personal information is collected.

(3) The business or commercial purpose for collecting or selling personal information.

(4) The categories of third parties with whom the business shares personal information.

(5) The specific pieces of personal information the business has collected about that consumer.

(d) This section does not require a business to do either of the following:

(1) Retain any personal information about a consumer collected for a single, one-time transaction if, in the ordinary course of business, that information about the consumer is not retained.

(2) Re-identify or otherwise link any data that, in the ordinary course of business, is not maintained in a manner that would be considered personal information.

Section 6. (a) A consumer may request that a business that sells the consumer's personal information, or that discloses it for a business purpose, disclose to the consumer all of the following:
(1) The categories of personal information about the consumer that the business collected.

(2) The categories of personal information about the consumer that the business sold.

(3) The categories of third parties to whom the personal information was sold.

(4) The category or categories of personal information sold to each category of third party.

(5) The categories of personal information about the consumer that the business disclosed for a business purpose.

(b) A business that sells personal information about a consumer or that discloses a consumer's personal information for a business purpose, upon receipt of a verifiable request from the consumer, shall disclose to the consumer the information specified in subsection (a), pursuant to subdivision (a)(4) of Section 9.

(c) A business that sells consumers' personal information or that discloses consumers' personal information for a business purpose shall disclose all of the following pursuant to paragraph (a)(5)c. of Section 9:

(1) The category or categories of consumers' personal information the business has sold. If the business has not sold consumers' personal information, it shall disclose that fact.

(2) The category or categories of consumers' personal information it has disclosed for a business purpose.
If the business has not disclosed consumers' personal information for a business purpose, it shall disclose that fact.

(d) A third party shall not sell personal information about a consumer that has been sold to the third party by a business unless the consumer has received explicit notice of the sale and has been provided an opportunity to opt out pursuant to Section 7.

Section 7. (a) A consumer, at any time, may direct a business that sells personal information about the consumer to third parties to not sell the consumer's personal information. This may be referred to as the "right to opt out."

(b) A business that sells consumers' personal information to third parties shall provide notice to consumers, pursuant to subsection (a) of Section 10, that this information may be sold and that consumers have the right to opt out of the sale of their personal information.

(c) Pursuant to subdivision (a)(4) of Section 10, a business that has received direction from a consumer to not sell the consumer's personal information or, in the case of a minor consumer's personal information, has not received consent to sell the minor consumer's personal information, may not sell the consumer's personal information after receipt by the business of the consumer's direction, unless the consumer subsequently provides express authorization for the sale of the consumer's personal information.
(d) Notwithstanding subsection (a), a business may not sell the personal information of consumers if the business has actual knowledge that the consumer is less than 18 years of age unless the consumer's parent or guardian has affirmatively authorized the sale of the consumer's personal information. A business that willfully disregards the consumer's age shall be deemed to have had actual knowledge of the consumer's age. This right may be referred to as the "right to opt in."

Section 8. (a) A business shall not discriminate against a consumer because the consumer exercised any of the consumer's rights under this act. For purposes of this section, discrimination includes, but is not limited to, any of the following:

(1) Denying goods or services to the consumer.

(2) Charging different prices or rates for goods or services, including through the use of discounts or other benefits or imposing penalties.

(3) Providing a different level or quality of goods or services to a consumer.

(4) Suggesting that the consumer will receive a different price or rate for goods or services or a different level or quality of goods or services.

(b)(1) A business may offer financial incentives, including payments to consumers, as compensation for the collection of personal information, the sale of personal information, or the deletion of personal information.
business may also offer a different price, rate, level, or quality of goods or services to the consumer if that price or difference is directly related to the value provided to the consumer by the consumer's data.

(2) A business that offers any financial incentives pursuant to subdivision (1) shall notify consumers of those financial incentives pursuant to Section 10.

(3) A business may enter a consumer into a financial incentive program only if the consumer gives the business prior opt-in consent pursuant to Section 10, which shall clearly describe the material terms of the financial incentive program, and which may be revoked by the consumer at any time.

(4) A business may not use financial incentive practices that are unjust, unreasonable, coercive, or usurious in nature.

Section 9. (a) In order to comply with Sections 3, 4, 5, 6, and 7, a business, in a form that is reasonably accessible to consumers, shall do all of the following:

(1) Make available to consumers two or more designated methods for submitting requests for information required to be disclosed pursuant to Sections 5 and 6, including, at a minimum, a toll-free telephone number and, if the business maintains an Internet website or mobile application, a Web site address or portal visible on that website homepage or that application homepage.

(2) Disclose and deliver the required information to a consumer free of charge within 45 days of receiving a
verifiable consumer request. The business shall promptly take
steps to determine whether the request is a verifiable
consumer request, but this shall not extend the business's
duty to disclose and deliver the information within 45
days of receipt of the consumer's request. The time period to
provide the required information may be extended once by an
additional 45 days when reasonably necessary, provided
the consumer is provided notice of the extension within the
first 45-day period. The disclosure shall cover the 12-month
period preceding the receipt of the verifiable request by the
business, and shall be made in writing and delivered through
the consumer's account with the business if
the consumer maintains an account with the business, or by
mail or electronically at the consumer's option if
the consumer does not maintain an account with the business,
in a readily usable format that allows the consumer to
transmit this information from one entity to another entity
without hindrance. The business may not require
the consumer to create an account with the business in order
to make a verifiable consumer request.

(3) For purposes of subsection (b) of Section 5,
both of the following:

a. Identify the consumer and associate the
information provided by the consumer in the verifiable request
to any personal information previously collected by the
business about the consumer.
b. Identify, by category or categories, the personal information about the consumer collected in the preceding 12 months by reference to the enumerated category or categories in subsection (c) that most closely describes the personal information collected.

(4) For purposes of subsection (b) of Section 6, both of the following:

a. Identify the consumer and associate the information provided by the consumer in the verifiable request to any personal information previously collected by the business about the consumer.

b. Identify, by category or categories, the personal information of the consumer that the business sold in the preceding 12 months by reference to the enumerated category in subsection (c) that most closely describes the personal information, and provide the categories of third parties to whom the consumer's personal information was sold in the preceding 12 months by reference to the enumerated category or categories in subsection (c) that most closely describes the personal information sold. The business shall disclose the information in a list that is separate from a list generated for the purposes of paragraph c.

c. Identify, by category or categories, the personal information of the consumer that the business disclosed for a business purpose in the preceding 12 months by reference to the enumerated category or categories in subsection (c) that most closely describes the personal information, and provide
the categories of third parties to whom the consumer's personal information was disclosed for a business purpose in the preceding 12 months by reference to the enumerated category or categories in subsection (c) that most closely describes the personal information disclosed. The business shall disclose the information in a list that is separate from a list generated for the purposes of paragraph b.

(5) Disclose all of the following information in its online privacy policy or policies, if any, and in any Alabama-specific description of consumers' privacy rights, or, if the business does not maintain those policies, the business shall disclose all of the following information on its Internet website and update that information at least once every 12 months:

a. A description of a consumer's rights pursuant to Sections 5, 6, and 8, and one or more designated methods for submitting requests.

b. For purposes of subsection (c), a list of the categories of personal information the business has collected about consumers in the preceding 12 months by reference to the enumerated category or categories in subsection (c) that most closely describe the personal information collected.

c. For purposes of subdivisions (c)(1) and (c)(2) of Section 6, two separate lists:

(i) A list of the categories of personal information the business has sold about consumers in the preceding 12 months by reference to the enumerated category or categories
in subsection (c) of this section that most closely describe
the personal information sold. If the business has not
sold consumers' personal information in the preceding 12
months, the business shall disclose that fact.

(ii) A list of the categories of personal
information the business has disclosed about consumers for a
business purpose in the preceding 12 months by reference to
the enumerated category in subsection (c) that most closely
describes the personal information disclosed. If the business
has not disclosed consumers' personal information for a
business purpose in the preceding 12 months, the business
shall disclose that fact.

(6) Ensure that all individuals responsible for
handling consumer inquiries about the
business's privacy practices or the business's compliance with
this act are informed of all requirements in this section and
in Sections 5, 6, and 8, and how to direct consumers to take
actions authorized under those sections.

(7) Use any personal information collected from
the consumer in connection with the business's
verification of the consumer's request solely for the
purposes of verification.

(b) A business is not required to provide the
information required by Sections 5 and 6 to the
same consumer more than twice in a 12-month period.

(c) A business is not obligated to provide
information to a consumer pursuant to Sections 5 or 6 if the
business, pursuant to regulations adopted by the Attorney
General pursuant to Section 14, cannot identify that
the consumer making the request is the consumer about whom the
business has collected information or is a person authorized
by the consumer to act on the consumer's behalf.

(d) The categories of personal information required
to be disclosed pursuant to Sections 5 and 6 shall follow the
categories found within the definition of personal information
in Section 2.

Section 10. (a) A business that is required to
comply with Section 7, in a form that is reasonably accessible
to consumers, shall do all of the following:

(1) Provide a clear and conspicuous link on the
business's Internet website homepage, as well as on the
homepage of any mobile application controlled by the business,
titled "Do Not Sell My Personal Information," to an Internet
website page that enables a consumer or the person authorized
by the consumer to opt out of the sale of the consumer's
personal information. A business may not require a consumer to
create an account in order to direct the business not to sell
the consumer's personal information.

(2) Include a description of a consumer's rights
pursuant to Section 7, along with a separate link to the "Do
Not Sell My Personal Information" Internet website page in:
   a. Its online privacy policy or policies, if any.
   b. Any Alabama-specific
description of consumers' privacy rights.
(3) Ensure that all individuals responsible for handling consumer inquiries about the business's privacy practices or the business's compliance with this act are informed of all requirements in Section 7 and this section and how to direct consumers to exercise their rights under those sections.

(4) For consumers who exercise their right to opt out of the sale of their personal information, refrain from selling personal information collected by the business about the consumer.

(5) For a consumer who has opted out of the sale of the consumer's personal information, respect the consumer's decision to opt out for at least 12 months before requesting that the consumer authorize the sale of the consumer's personal information.

(6) Use any personal information collected from the consumer in connection with the submission of the consumer's opt-out request solely for the purposes of complying with the opt-out request.

(b) A consumer may authorize another person solely to opt out of the sale of the consumer's personal information on the consumer's behalf. A business shall comply with an opt out request received from a person authorized by the consumer to act on the consumer's behalf, pursuant to rules adopted by the Attorney General under Section 14.
Section 11. (a) The obligations imposed on businesses by this act shall not restrict a business's ability to do any of the following:

(1) Comply with federal, state, or local law.

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

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

(4) Exercise or defend legal claims.

(5) Collect, use, retain, sell, or disclose consumer information that is de-identified or in the aggregate consumer information.

(6) Collect or sell a consumer's personal information if every aspect of that commercial conduct takes place wholly outside of this state. For purposes of this act, commercial conduct takes place wholly outside of this state if the business collected that information while the consumer was outside of this state, no part of the sale of the consumer's personal information occurred in this state, and no personal information collected while the consumer was in this state is sold. This subdivision shall not permit a business to store, including on a device, personal information about a consumer when the consumer is in this state and then collect
that personal information when the consumer and stored
personal information is outside of this state.

(b) The obligations imposed on a business by this
act do not apply when compliance by the business with this act
would violate an evidentiary privilege under state law and do
not prevent a business from providing the personal
information of a consumer to a person covered by an
evidentiary privilege under state law as part of a privileged
communication.

(c) This act does not apply to protected or health
information that is collected by a covered entity governed by
the privacy, security, and breach notification rules issued by
the federal Department of Health and Human Services, 45 C.F.R.
Parts 160 and 164, established pursuant to the Health
Insurance Portability and Availability Act of 1996. For
purposes of this subsection, the definition of "medical
information" in Section 56.05 shall apply and the
definitions of "protected health information" and "covered
entity" from the federal privacy rule shall apply.

(d) This act does not apply to the sale of personal
information to or from a consumer reporting agency if that
information is to be reported in, or used to generate,
a consumer report as defined by 15 U.S.C. § 1681a(d) of the
United States Code, and use of that information is limited by
the federal Fair Credit Reporting Act (15 U.S.C. § 1681 et
seq.).
1 (e) This act does not apply to personal information
2 collected, processed, sold, or disclosed pursuant to the
3 federal Gramm-Leach-Bliley Act (Public Law 106-102), and
4 regulations implemented under that act, if this act is in
5 conflict with that federal law.

6 (f) This act does not apply to personal information
7 collected, processed, sold, or disclosed pursuant to the
8 Driver's Privacy Protection Act of 1994 (18 U.S.C. § 2721 et
9 seq.), if it is in conflict with that act, nor to any personal
10 information collected, processed, or disclosed by any agency
11 of this state necessary for the operation of that agency
12 relating to driver's licenses or hunting, fishing, or boating
13 licenses, nor to any agency of any other state with whom
14 Alabama has a reciprocity agreement for those licenses.

15 (g) Notwithstanding a business's obligations to
16 respond to and honor consumer rights requests pursuant to this
17 act:

18 (1) A time period for a business to respond to any
19 verified consumer request may be extended by up to 90
20 additional days where necessary due to the complexity and
21 number of requests. The business shall inform
22 the consumer of any extension within 45 days of receipt of the
23 request, along with the reasons for the delay.

24 (2) If the business does not take action on the
25 request of the consumer, the business shall inform
26 the consumer, without delay and within the time period
27 permitted for a response under this section, of the reasons
for not taking action and any rights the consumer may have to
appeal the decision to the business.

(3) If requests from a consumer are manifestly
unfounded or excessive, including, but not limited to,
because of their repetitive character, a business may charge a
fee reasonably related to the administrative
costs of providing the information or communication or taking
the action requested, or may refuse to act on the request and
notify the consumer of the reason for refusing the request.
The business shall bear the burden of demonstrating that any
verified consumer request is manifestly unfounded or
excessive.

(h) A business that discloses personal information
to a service provider is not liable under this act if the
service provider receiving the personal information uses it in
violation of the restrictions set forth in this act, provided
that, at the time of disclosing the personal information, the
business does not have actual knowledge, or reason to believe,
that the service provider intended to commit the violation. A
service provider is not liable under this act for the
obligations of a business for which it provides services as
set forth in this act.

(i) This act may not be construed to require a
business to re-identify or otherwise link information that is
not maintained in a manner that would be considered personal
information.
Section 12. (a)(1) Any consumer whose nonencrypted
or nonredacted personal information is subject to an
unauthorized access and exfiltration, theft, or disclosure as
a result of the business's failure to implement and maintain
reasonable personal information security procedures and
practices appropriate to the nature of the information may
institute a civil action for any or all of the following:

a. To recover damages in an amount as determined by
   the court.

b. Injunctive or declaratory relief.

c. Any other relief the court deems proper.

(2) In assessing the amount of statutory damages,
the court shall consider any one or more of the relevant
circumstances presented by any of the parties to the case,
including, but not limited to, the nature and
seriousness of the misconduct, the number of violations, the
persistence of the misconduct, the length of time over which
the misconduct occurred, the willfulness of the defendant’s
misconduct, and the defendant's assets, liabilities, and net
worth.

(b) Actions pursuant to this section may be brought
by a consumer if all of the following requirements are met:

(1) a. Prior to initiating any action against a
business for statutory damages on an individual or class-wide
basis, a consumer shall provide a business 30 days' written
notice identifying the specific provisions of this act
the consumer alleges have been or are being violated.
b. In the event a solution to that violation or violations is possible, if within those 30 days the business actually rectifies the violation or violations and provides the consumer an express written statement that the violation or violations have been cured and that no further violations shall occur, no action for individual statutory damages or class-wide statutory damages may be initiated against the business by that consumer.

c. Notwithstanding paragraph a., no notice shall be required prior to an individual consumer initiating an action solely for actual pecuniary damages suffered as a result of alleged violations of this act.

d. If a business continues to violate this act in breach of the express written statement provided to the consumer under paragraph b., the consumer may initiate an action against the business to enforce the written statement and may pursue statutory damages for each breach of the express written statement, as well as any other violation of the act that postdates the written statement.

(2) A consumer bringing an action as defined in subdivision (c)(1) shall notify the Attorney General within 30 days that the action has been filed.

(c) Nothing in this act shall be interpreted to serve as the basis for a private right of action under any other law. This shall not be construed to relieve any party from any duties or obligations imposed under other law or the United States or Alabama Constitution.
Section 13. (a) Any business or third party may seek the opinion of the Attorney General for guidance on how to comply with the provisions of this act.

(b) Any violation of this act by a business, service provider, or other person shall be deemed a violation of the Deceptive Trade Practices Act, Section 8-19-1 et seq., Code of Alabama 1975, and shall be subject to the same penalties as provided in that act.

Section 14. (a) On or before October 1, 2022, the Attorney General shall solicit broad public commentary and adopt rules to further the purposes of this act, including, but not limited to, the following areas:

(1) Updating, as needed, additional categories of personal information to those enumerated in subdivision (c) of Section 9 and the definition of personal information in Section 2, in order to address changes in technology, data collection practices, obstacles to implementation, and privacy concerns.

(2) Updating as needed the definition of unique identifiers to address changes in technology, data collection, obstacles to implementation, and privacy concerns, and additional categories to the definition of designated methods for submitting requests to facilitate a consumer's ability to obtain information from a business pursuant to Section 9.

(3) Establishing any exceptions necessary to comply with state or federal law, including, but not limited to,
those relating to trade secrets and intellectual property rights.

(4) Establishing rules and procedures for the following:

a. To facilitate and govern the submission of a request by a consumer to opt out of the sale of personal information pursuant to Section 7.

b. To govern business compliance with a consumer's opt-out request.

c. The development and use of a recognizable and uniform opt-out logo or button by all businesses to promote consumer awareness of the opportunity to opt out of the sale of personal information.

(5) Establishing rules, procedures, and any exceptions necessary to ensure that the notices and information that businesses are required to provide pursuant to this act are provided in a manner that may be easily understood by the average consumer, are accessible to consumers with disabilities, and are available in the language primarily used to interact with the consumer, including establishing rules and guidelines regarding financial incentive offerings.

(6) Establishing rules and procedures to further the purposes of Sections 5 and 6 and to facilitate a consumer's or the consumer's authorized agent's ability to obtain information pursuant to Section 9, with the goal of minimizing the administrative burden on consumers, taking into account
available technology, security concerns, and the burden on the business, to govern a business's determination that a request for information received by a consumer is a verifiable consumer request, including treating a request submitted through a password-protected account maintained by the consumer with the business while the consumer is logged into the account as a verifiable consumer request and providing a mechanism for a consumer who does not maintain an account with the business to request information through the business's authentication of the consumer's identity.

(b) The Attorney General may adopt additional rules as necessary to further the purposes of this act.

Section 15. Any provision of a contract or agreement of any kind that purports to waive or limit in any way a consumer's rights under this act, including, but not limited to, any right to a remedy or means of enforcement, shall be deemed contrary to public policy and shall be void and unenforceable. This section shall not prevent a consumer from declining to request information from a business, declining to opt out of a business's sale of the consumer's personal information, or authorizing a business to sell the consumer's personal information after previously opting out.

Section 16. This act shall be liberally construed to effectuate its purposes.

Section 17. This act is intended to supplement federal and state law, if permissible, but shall not apply if
such application is preempts by, or in conflict with, federal
law or the Constitution of Alabama of 1901.

Section 18. Although this bill would have as its
purpose or effect the requirement of a new or increased
expenditure of local funds, the bill is excluded from further
requirements and application under Amendment 621, now
appearing as Section 111.05 of the Official Recompilation of
the Constitution of Alabama of 1901, as amended, because the
bill defines a new crime or amends the definition of an
existing crime.

Section 19. Section 14 of this act shall become
effective immediately following its passage and approval by
the Governor, or its otherwise becoming law; the remainder of
this act shall become effective October 1, 2022, following its
passage and approval by the Governor, or its otherwise
becoming law.