

SENATE COMMITTEE OF REFERENCE REPORT

Chair of Committee

Date

May 5, 2021

Committee on Business, Labor, & Technology.

After consideration on the merits, the Committee recommends the following:

SB21-190 be amended as follows, and as so amended, be referred to the Committee on Appropriations with favorable recommendation:

- 1 Amend printed bill, page 6, line 5, strike "CONTEXT." and substitute
- 2 "CONTEXT, AS A JOB APPLICANT, OR AS A BENEFICIARY OF SOMEONE
- 3 ACTING IN AN EMPLOYMENT CONTEXT."

- 4 Page 6, after line 10 insert:
 - 5 "(9) "DECISIONS THAT PRODUCE LEGAL OR SIMILARLY SIGNIFICANT
 - 6 EFFECTS CONCERNING A CONSUMER" MEANS A DECISION BASED SOLELY ON
 - 7 AUTOMATED PROCESSING MADE BY THE CONTROLLER THAT RESULTS IN
 - 8 THE PROVISION OR DENIAL BY THE CONTROLLER OF FINANCIAL OR LENDING
 - 9 SERVICES, HOUSING, INSURANCE, EDUCATION ENROLLMENT, CRIMINAL
 - 10 JUSTICE, EMPLOYMENT OPPORTUNITIES, HEALTH CARE SERVICES, OR
 - 11 ACCESS TO BASIC NECESSITIES SUCH AS FOOD AND WATER."

- 12 Renumber succeeding subsections accordingly.

- 13 Page 7, line 11, strike "(15)(b)," and substitute "(16)(b),".

- 14 Page 7, line 14, strike "RECORDS;" and substitute "RECORDS AND".

- 15 Page 7, strike lines 16 through 20 and substitute "AVAILABLE TO THE
- 16 GENERAL PUBLIC."

- 17 Page 8, line 14, after "OTHER" insert "VALUABLE".

- 1 Page 8, lines 21 and 22, strike "WITH WHOM THE CONSUMER HAS A DIRECT
2 RELATIONSHIP".
- 3 Page 8, line 24, strike "A CONSUMER'S" and substitute "CONSUMERS".
- 4 Page 9, line 1, strike "OR".
- 5 Page 9, line 3, after "A" insert "PROPOSED OR ACTUAL".
- 6 Page 9, line 5, strike "ASSETS." and substitute "ASSETS; OR
7 (V) THE DISCLOSURE OF PERSONAL DATA:
8 (A) THAT A CONSUMER DIRECTS THE CONTROLLER TO DISCLOSE OR
9 INTENTIONALLY DISCLOSES BY USING THE CONTROLLER TO INTERACT WITH
10 A THIRD PARTY; OR
11 (B) INTENTIONALLY MADE AVAILABLE TO THE GENERAL PUBLIC
12 VIA A CHANNEL OF MASS MEDIA AND DID NOT RESTRICT TO A SPECIFIC
13 AUDIENCE.".
- 14 Page 9, strike lines 14 through 18.
- 15 Renumber succeeding subsections accordingly.
- 16 Page 9, strike lines 25 and 26 and substitute:
- 17 "(b) DOES NOT INCLUDE:
18 (I) ADVERTISING TO A CONSUMER IN RESPONSE TO THE
19 CONSUMER'S REQUEST FOR INFORMATION OR FEEDBACK;
20 (II) ADVERTISEMENTS BASED ON ACTIVITIES WITHIN A
21 CONTROLLER'S OWN WEBSITES OR ONLINE APPLICATIONS;
22 (III) ADVERTISEMENTS BASED ON THE CONTEXT OF A CONSUMER'S
23 CURRENT SEARCH QUERY, VISIT TO A WEBSITE, OR ONLINE APPLICATION;
24 OR
25 (IV) PROCESSING PERSONAL DATA SOLELY FOR MEASURING OR
26 REPORTING ADVERTISING PERFORMANCE, REACH, OR FREQUENCY.".
- 27 Page 13, after line 6 insert:
- 28 "(I) AN AIR CARRIER AS DEFINED IN AND REGULATED UNDER 49
29 U.S.C. SEC. 40101 ET. SEQ., AS AMENDED, AND 49 U.S.C. SEC. 41713, AS
30 AMENDED;".



- 1 Reletter succeeding paragraphs accordingly.
- 2 Page 13, line 10, after "INSTITUTION" insert "AS DEFINED BY AND".
- 3 Page 13, strike line 12 and substitute "REGULATIONS, INCLUDING
4 REGULATION P, 12 CFR 1016."
- 5 Page 15, line 9, strike "PERSONS;" and substitute "PERSONS, SUCH AS
6 EXERCISING THE RIGHT OF FREE SPEECH PURSUANT TO THE FIRST
7 AMENDMENT TO THE UNITED STATES CONSTITUTION, AND A CONSUMER'S
8 EXERCISE OF THE RIGHTS CONTAINED IN SECTION 6-1-1306 (1)(a) AND
9 (1)(d) DO NOT REQUIRE THE DELETION OF INFORMATION THAT A
10 CONTROLLER HAS A REASONABLE BASIS TO BELIEVE IS LAWFULLY MADE
11 AVAILABLE TO THE GENERAL PUBLIC BY A PERSON OTHER THAN THE
12 CONSUMER IN THE VALID EXERCISE OF THE PERSON'S FIRST AMENDMENT
13 RIGHTS;"
- 14 Page 15, line 27, after "TO" insert "AN EXCEPTION PROVIDED BY".
- 15 Page 16, strike line 2 and substitute "A PURPOSE EXPRESSLY LISTED IN
16 THIS SECTION OR AS OTHERWISE AUTHORIZED BY THIS PART 13; AND".
- 17 Page 16, line 5, strike "SECTION." and substitute "SECTION OR AS
18 OTHERWISE AUTHORIZED BY THIS PART 13."
- 19 Page 16, line 26, strike "REQUEST," and substitute "REQUEST USING THE
20 METHODS SPECIFIED BY THE CONTROLLER IN THE PRIVACY NOTICE. THE
21 METHOD MUST TAKE INTO ACCOUNT THE WAYS IN WHICH CONSUMERS
22 NORMALLY INTERACT WITH THE CONTROLLER, THE NEED FOR SECURE AND
23 RELIABLE COMMUNICATION RELATING TO THE REQUEST, AND THE ABILITY
24 OF THE CONTROLLER TO AUTHENTICATE THE IDENTITY OF THE CONSUMER
25 MAKING THE REQUEST. CONTROLLERS SHALL NOT REQUIRE A CONSUMER
26 TO CREATE A NEW ACCOUNT IN ORDER TO EXERCISE CONSUMER RIGHTS
27 PURSUANT TO THIS SECTION BUT MAY REQUIRE A CONSUMER TO USE AN
28 EXISTING ACCOUNT. A REQUEST MAY BE SUBMITTED".
- 29 Page 17, line 3, strike "CONSUMER." and substitute "CONSUMER FOR
30 PURPOSES OF:
31 (A) TARGETED ADVERTISING;
32 (B) THE SALE OF PERSONAL DATA; OR
33 (C) PROFILING IN FURTHERANCE OF SOLELY AUTOMATED



- 1 DECISIONS THAT PRODUCE LEGAL OR SIMILARLY SIGNIFICANT EFFECTS
2 CONCERNING A CONSUMER.".
- 3 Page 17, line 7, strike "DATA." and substitute "DATA, INCLUDING
4 THROUGH A TECHNOLOGY INDICATING THE CONSUMERS INTENT TO OPT
5 OUT SUCH AS A BROWSER SETTING, BROWSER EXTENSION, OR GLOBAL
6 DEVICE SETTING.".
- 7 Page 17, strike line 17 and substitute "INACCURACIES IN THE CONSUMER'S
8 PERSONAL DATA, TAKING INTO ACCOUNT THE NATURE OF THE PERSONAL
9 DATA AND THE PURPOSES OF THE PROCESSING OF THE CONSUMER'S
10 PERSONAL DATA.".
- 11 Page 17, line 19, strike "CONSUMER." and substitute "CONSUMER
12 PROVIDED TO THE CONTROLLER.".
- 13 Page 17, line 26, after the period add "NOTHING IN THIS SUBSECTION
14 (1)(e) REQUIRES A CONTROLLER TO PROVIDE THE DATA TO THE CONSUMER
15 IN A MANNER THAT WOULD DISCLOSE THE CONTROLLER'S TRADE
16 SECRETS.".
- 17 Page 17, strike line 27.
- 18 Page 18, strike lines 1 through 8.
- 19 Renumber succeeding subsections accordingly.
- 20 Page 18, line 24, strike "(4)" and substitute "(3)".
- 21 Page 19, line 13, strike "(3)(b)" and substitute "(2)(b)".
- 22 Page 20, line 22, strike "PARTY OTHER THAN A PROCESSOR," and substitute
23 "PARTY,".
- 24 Page 23, strike lines 23 and 24.
- 25 Renumber succeeding subparagraphs accordingly.
- 26 Page 24, line 10, strike "OBJECT TO" and substitute "OPT OUT OF".
- 27 Page 24, line 14, strike "RIGHT," and substitute "RIGHT AND UNRELATED



1 TO FEASIBILITY OR THE VALUE OF A SERVICE,".

2 Page 24, after line 15 insert:

3 "(d) NOTHING IN THIS PART 13 SHALL BE CONSTRUED TO REQUIRE
4 A CONTROLLER TO PROVIDE A PRODUCT OR SERVICE THAT REQUIRES THE
5 PERSONAL DATA OF A CONSUMER THAT THE CONTROLLER DOES NOT
6 COLLECT OR MAINTAIN OR TO PROHIBIT A CONTROLLER FROM OFFERING A
7 DIFFERENT PRICE, RATE, LEVEL, QUALITY, OR SELECTION OF GOODS OR
8 SERVICES TO A CONSUMER, INCLUDING OFFERING GOODS OR SERVICES FOR
9 NO FEE, IF THE CONSUMER HAS EXERCISED THE RIGHT TO OPT OUT
10 PURSUANT TO THIS PART 13 OR THE OFFER IS RELATED TO A CONSUMER'S
11 VOLUNTARY PARTICIPATION IN A BONA FIDE LOYALTY, REWARDS,
12 PREMIUM FEATURES, DISCOUNT, OR CLUB CARD PROGRAM."

13 Page 25, line 5, strike "AND" and substitute "OR".

14 Page 25, lines 9 and 10, strike "CONCERNING A CONSUMER WITHOUT
15 OBTAINING THE CONSUMER'S CONSENT" and substitute "IT COLLECTS FROM
16 A CONSUMER WITHOUT THE CONSUMER RECEIVING CLEAR NOTICE AND THE
17 OPPORTUNITY TO OPT OUT OF PROCESSING OF THE CONSUMER'S SENSITIVE
18 PERSONAL INFORMATION".

19 Page 25, line 11, strike "CHILD OR STUDENT," and substitute "CHILD,".

20 Page 25, line 12, strike "OR STUDENT'S".

21 Page 25, line 26, strike "PROFILING;" and substitute "FOR PROFILING IF THE
22 PROFILING PRESENTS A REASONABLY FORESEEABLE RISK OF:

23 (I) UNFAIR OR DECEPTIVE TREATMENT OF, OR UNLAWFUL
24 DISPARATE IMPACT ON, CONSUMERS;

25 (II) FINANCIAL OR PHYSICAL INJURY TO CONSUMERS;

26 (III) A PHYSICAL OR OTHER INTRUSION UPON THE SOLITUDE OR
27 SECLUSION, OR THE PRIVATE AFFAIRS OR CONCERNS, OF CONSUMERS IF THE
28 INTRUSION WOULD BE OFFENSIVE TO A REASONABLE PERSON; OR

29 (IV) OTHER SUBSTANTIAL INJURY TO CONSUMERS;"

30 Page 26, after line 24 insert:

31 "(5) A SINGLE DATA PROTECTION ASSESSMENT MAY ADDRESS A
32 COMPARABLE SET OF PROCESSING OPERATIONS THAT INCLUDE SIMILAR



1 ACTIVITIES.

2 (6) DATA PROTECTION ASSESSMENT REQUIREMENTS APPLY TO
3 PROCESSING ACTIVITIES CREATED OR GENERATED AFTER JANUARY 1,
4 2023, AND ARE NOT RETROACTIVE."

5 Page 27, line 14, after "BY" insert "FIRST ISSUING A NOTICE OF VIOLATION
6 TO THE CONTROLLER AND, IF THE CONTROLLER DOES NOT CURE THE
7 VIOLATION WITHIN SIXTY DAYS AFTER RECEIPT OF THE NOTICE,".

8 Page 27, after line 24 insert:

9 "(3) NOTHING IN THIS PART 13 CREATES OR PROVIDES A BASIS FOR
10 A PRIVATE RIGHT OF ACTION ARISING UNDER THIS PART 13 OR UNDER ANY
11 OTHER LAW FOR A VIOLATION OF THIS PART 13."

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