

SENATE BILL NO. 297

INTRODUCED BY D. ZOLNIKOV

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING PRIVACY LAWS; PROVIDING DEFINITIONS; REQUIRING NOTIFICATION TO CONSUMERS THAT CERTAIN INFORMATION HAS BEEN COLLECTED; REQUIRING AN OPT-OUT OPTION FOR CONSUMERS; REQUIRING A PRIVACY NOTICE FROM CONTROLLERS; REQUIRING THE ATTORNEY GENERAL TO POST RIGHTS AND RESPONSIBILITIES INFORMATION ONLINE; SPECIFYING CONTROLLER DUTIES; SPECIFYING RESPONSIBILITIES BY ROLE; AMENDING SECTIONS 20-7-1324, 30-14-2802, 30-14-2803, 30-14-2804, 30-14-2808, 30-14-2812, 30-14-2816, AND 30-14-2817, MCA; AND REPEALING SECTION 15, CHAPTER 681, LAWS OF 2023."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 20-7-1324, MCA, is amended to read:

**"20-7-1324. Definitions.** As used in 20-7-1323 through 20-7-1326, the following definitions apply:

(1) "Deidentified information" means information that cannot be used to identify an individual pupil.

(2) "K-12 online application" means an internet website, online service, cloud computing service, online application, or mobile application that is used primarily for K-12 school purposes and that was designed and is marketed for K-12 school purposes.

(3) (a) "K-12 school purposes" means activities that customarily take place at the direction of a school, teacher, or school district or aid in the administration of school activities, including but not limited to instruction in the classroom or at home, administrative activities, and collaboration between pupils, school personnel, or parents, or that are for the use and benefit of a school.

(b) The term does not include courses that are provided for the purpose of postsecondary credit or work-based learning courses provided by a work-based learning partner pursuant to 20-7-1510.

(4) "Operator" means the operator of a K-12 online application who knows or reasonably should know that the application is used primarily for K-12 school purposes.

**Section 4.** Section 30-14-2804, MCA, is amended to read:

**"30-14-2804. Exemptions.** (1) This part does not apply to any:

(a) body, authority, board, bureau, commission, district, or agency of this state or any political subdivision of this state;

(b) nonprofit organization that is established to detect and prevent fraudulent acts in connection with insurance;

(c) institution of higher education;

(d) national securities association that is registered under 15 U.S.C. 78o-3 of the federal Securities Exchange Act of 1934, as amended;

(e) state or federally chartered bank or credit union or an affiliate or subsidiary that is principally engaged in financial activities as described in 12 U.S.C. 1843(k);

~~(e)(f) financial institution or an affiliate of a financial institution governed by, or personal data collected, processed, sold, or disclosed in accordance with, Title V of the Gramm-Leach-Bliley Act, 15 U.S.C. 6801, et seq.; or~~

~~(f)(g) covered entity or business associate as defined in the privacy regulations of the federal Health Insurance Portability and Accountability Act of 1996, 45 CFR 160.103; or~~

(h) insurer, as defined in 33-1-201, an insurance producer, as defined in 33-17-102, a third-party administrator of self-insurance, or an affiliate or subsidiary of an entity identified in this subsection (1)(h) that is principally engaged in financial activities, as described in 12 U.S.C. 1843(k), except that this subsection (1)(h) does not apply to a person who, alone or in combination with another person, establishes and maintains a self-insurance program that does not otherwise engage in the business of entering into policies of insurance.

(2) Information and data exempt from this part include:

(a) protected health information under the privacy regulations of the federal Health Insurance Portability and Accountability Act of 1996;

(b) patient-identifying information for the purposes of 42 U.S.C. 290dd-2;

(c) identifiable private information for the purposes of the federal policy for the protection of human subjects of 1991, 45 CFR, part 46;

(d) identifiable private information that is otherwise information collected as part of human subjects

1 research pursuant to the good clinical practice guidelines issued by the international council for harmonisation  
2 of technical requirements for pharmaceuticals for human use;

3 (e) the protection of human subjects under 21 CFR, parts 6, 50, and 56, or personal data used or  
4 shared in research as defined in the federal Health Insurance Portability and Accountability Act of 1996, 45  
5 CFR 164.501, that is conducted in accordance with the standards set forth in this subsection (2)(e), or other  
6 research conducted in accordance with applicable law;

7 (f) information and documents created for the purposes of the Health Care Quality Improvement  
8 Act of 1986, 42 U.S.C. 11101, et seq.;

9 (g) patient safety work products for the purposes of the Patient Safety and Quality Improvement  
10 Act of 2005, 42 U.S.C. 299b-21, et seq., as amended;

11 (h) information derived from any of the health care-related information listed in this subsection (2)  
12 that is:

13 (i) de-identified in accordance with the requirements for de-identification pursuant to the privacy  
14 regulations of the federal Health Insurance Portability and Accountability Act of 1996; or

15 (ii) included in a limited data set as described in 45 CFR 164.514(e), to the extent that the  
16 information is used, disclosed, and maintained in a manner specified in 45 CFR 164.514(e).

17 (i) information originating from and intermingled to be indistinguishable with or information treated  
18 in the same manner as information exempt under this subsection (2) that is maintained by a covered entity or  
19 business associate as defined in the privacy regulations of the federal Health Insurance Portability and  
20 Accountability Act of 1996, 45 CFR 160.103, or a program or qualified service organization, as specified in 42  
21 U.S.C. 290dd-2, as amended;

22 (j) information used for public health activities and purposes as authorized by the federal Health  
23 Insurance Portability and Accountability Act of 1996, community health activities, and population health  
24 activities;

25 (k) the collection, maintenance, disclosure, sale, communication, or use of any personal  
26 information bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general  
27 reputation, personal characteristics, or mode of living by a consumer reporting agency, furnisher, or user that  
28 provides information for use in a consumer report and by a user of a consumer report, but only to the extent

1 that the activity is regulated by and authorized under the Fair Credit Reporting Act, 15 U.S.C. 1681, as

2 amended;

3 (l) personal data collected, processed, sold, or disclosed in compliance with the Driver's Privacy  
4 Protection Act of 1994, 18 U.S.C. 2721, et seq., as amended;

5 (m) personal data regulated by the Family Educational Rights and Privacy Act of 1974, 20 U.S.C.  
6 1232g, et seq., as amended;

7 (n) personal data collected, processed, sold, or disclosed in compliance with the Farm Credit Act  
8 of 1993, 12 U.S.C. 2001, et seq., as amended;

9 (o) data processed or maintained:

10 (i) by an individual applying to, employed by, or acting as an agent or independent contractor of a  
11 controller, processor, or third party to the extent that the data is collected and used within the context of that  
12 role;

13 (ii) as the emergency contact information of an individual under this part and used for emergency  
14 contact purposes; or

15 (iii) that is necessary to retain to administer benefits for another individual relating to the individual  
16 who is the subject of the information under subsection (2)(a) and is used for the purposes of administering the  
17 benefits; and

18 (p) personal data collected, processed, sold, or disclosed in relation to price, route, or service, as  
19 these terms are used in the Airline Deregulation Act of 1978, 49 U.S.C. 40101, et seq., as amended, by an air  
20 carrier subject to the Airline Deregulation Act of 1978, to the extent this part is preempted by the Airline  
21 Deregulation Act of 1978, 49 U.S.C. 41713, as amended.

22 (3) Controllers and processors that comply with the verifiable parental consent requirements of the  
23 Children's Online Privacy Protection Act of 1998, 15 U.S.C. 6501, et seq., shall be considered compliant with  
24 any obligation to obtain parental consent pursuant to this part."

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26 **Section 5.** Section 30-14-2808, MCA, is amended to read:

27 **"30-14-2808. Consumer personal data -- opt-out -- compliance -- appeals.** (1) A consumer must  
28 have the right to: