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House of Representatives, May 5, 2021

An Act To Create a Data Broker Registry and Improve Consumer Protections

Received by the Clerk of the House on May 3, 2021. Referred to the Committee on Innovation, Development, Economic Advancement and Business pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

A handwritten signature in black ink that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative O'NEIL of Saco.
Cosponsored by Representatives: BERRY of Bowdoinham, FAULKINGHAM of Winter Harbor, FECTEAU of Augusta, GROHOSKI of Ellsworth, Senators: BAILEY of York, KEIM of Oxford.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 10 MRSA c. 1057** is enacted to read:

3 **CHAPTER 1057**

4 **PERSONAL INFORMATION PRIVACY**

5 **§9571. Definitions**

6 As used in this chapter, unless the context otherwise indicates, the following terms
7 have the following meanings.

8 **1. Biometric data.** "Biometric data" means an individual's physiological, biological
9 or behavioral characteristics that may be used, singly or in combination with each other or
10 with other identifying data, to establish individual identity. "Biometric data" includes, but
11 is not limited to, imagery of the iris, retina, fingerprint, face, hand, palm or vein patterns
12 and voice recordings from which minutiae or an identifier template, such as a faceprint or
13 voiceprint, may be extracted, as well as keystroke patterns or rhythms, gait patterns or
14 rhythms or sleep, health or exercise data that contains identifying information.

15 **2. Brokered personal information.** "Brokered personal information" means
16 personally identifiable information or one or more of the following data elements, including
17 digital or computerized data elements, about a consumer, if categorized or organized for
18 dissemination to 3rd parties:

19 A. Name;

20 B. Address;

21 C. Date of birth;

22 D. Place of birth;

23 E. Mother's maiden name;

24 F. Biometric data;

25 G. Name or address of a member of the consumer's immediate family or household;

26 H. Social security number or other government-issued identification number;

27 I. Nongovernmental number assigned to a consumer, including, without limitation, a
28 credit or other financial account, insurance policy or license number; or

29 J. Other information that, alone or in combination with the other information sold,
30 licensed or otherwise publicly available, may allow a reasonable person to identify the
31 consumer with reasonable certainty.

32 "Brokered personal information" does not include publicly available information made
33 available by a state or local government to the extent that the information is about a
34 consumer's business or professional activities.

35 **3. Business.** "Business" means a commercial entity, including a sole proprietorship,
36 partnership, corporation, association, limited liability company or other group however
37 organized and whether or not organized to operate at a profit, including a financial

1 institution organized, chartered or holding a license or authorization certificate under the
2 laws of this State, any other state, the United States or any other country or the parent,
3 affiliate or subsidiary of a financial institution, but does not include the State, a state
4 agency, any political subdivision of the State or a vendor acting solely on behalf of and at
5 the direction of the State.

6 **4. Consumer.** "Consumer" means an individual residing in the State.

7 **5. Data broker.** "Data broker" means a business or unit or units of a business,
8 separately or together, that obtains and licenses to 3rd parties the brokered personal
9 information of a consumer with whom the business does not have a direct relationship.
10 "Data broker" includes a business that licenses, sells or allows a 3rd party to use personally
11 identifiable information to select individuals to receive e-mails, telephone calls or
12 advertising. "Data broker" does not include:

13 A. A business that obtains and licenses brokered personal information incidental to
14 conducting the following activities:

15 (1) Providing a name, address or telephone number for directory assistance or
16 directory information services, including name, address and telephone number on
17 behalf of or as a function of a telecommunications carrier;

18 (2) Providing publicly available information related to a consumer's business or
19 profession, including a consumer reporting agency but only when the agency is
20 engaging in conduct or an activity regulated under the federal Fair Credit Reporting
21 Act; or

22 (3) Providing publicly available information via real-time or near real-time alert
23 services for health or safety purposes.

24 The exclusions specified in this paragraph apply only to the extent that the information
25 is used for the activities specified in this paragraph;

26 B. A person to the extent the person is covered by Title 24-A, chapter 24; or

27 C. A business that obtains and licenses brokered personal information for fewer than
28 5,000 consumers.

29 **6. License.** "License" means to grant access to, or to distribute or allow the use of,
30 data in exchange for consideration, including by selling, renting, releasing, disclosing,
31 disseminating, making available, transferring or otherwise communicating orally, in
32 writing or by electronic or other means brokered personal information by a business to
33 another business or a 3rd party for monetary or other valuable consideration, including
34 targeted marketing. "License" does not include:

35 A. The use of data for the sole benefit of the data provider if the data provider maintains
36 control over the use of the data; or

37 B. The sale of the assets of a business as part of a transfer of control of those assets
38 that is not part of the ordinary conduct of the business.

39 **7. Personally identifiable information.** "Personally identifiable information" means
40 information about an identified or identifiable individual, including information about
41 location, housing, education, finances, health, employment, criminal history, military

1 service, taxation, agency program participation, Internet usage history or any other personal
2 activity or characteristic, that contains any of the following data:

3 A. Name;

4 B. Home address, post office box number, private mailbox number or other physical
5 or postal address;

6 C. E-mail address;

7 D. Telephone number;

8 E. Vehicle license plate number;

9 F. Social security number; passport number; credit or debit card number; account,
10 license or employee number; or other identifying number assigned to an individual;

11 G. Date of birth;

12 H. Internet protocol address or any comparable successor address;

13 I. Data that permits contact of a specific individual, either physically or electronically;

14 J. Biometric data, a photograph or a genetic identifier;

15 K. Information that identifies an individual's electronic device, including an
16 international mobile equipment identity number, media access control address,
17 contactless chip identifier or any information that a website or online service collects
18 online through a computer or from the individual, individual's cellular telephone or
19 other electronic device; or

20 L. Any other information concerning an individual processed in combination with data
21 described in paragraphs A to K.

22 "Personally identifiable information" does not include publicly available information that
23 is lawfully made available to the general public from federal, state or local government
24 records, unless the information is combined with other personally identifiable information.

25 **8. Security breach.** "Security breach" means an unauthorized acquisition of
26 electronic data, or a reasonable belief of an unauthorized acquisition of electronic data, that
27 compromises the security, confidentiality or integrity of a consumer's personally
28 identifiable information or login credentials. "Security breach" does not include a good
29 faith but unauthorized acquisition of personally identifiable information or login
30 credentials for a legitimate business purpose if the personally identifiable information or
31 login credentials are not used for a purpose unrelated to the business or subject to further
32 unauthorized disclosure.

33 **§9572. Annual registration**

34 **1. Annual registration.** Annually, a data broker shall:

35 A. Register with the Secretary of State;

36 B. Pay a registration fee of \$200;

37 C. Provide the following information:

38 (1) The name and primary physical address, primary e-mail address and all Internet
39 addresses of the data broker; and

1 (2) For an opt-out of a consumer required under section 9574:

2 (a) The method for requesting an opt-out;

3 (b) If the opt-out applies to activities or sales other than those for which a
4 consumer must be given an opt-out pursuant to section 9574, which activities
5 or sales the opt-out applies to; and

6 (c) Whether the data broker permits a consumer to authorize a 3rd party to
7 perform the opt-out on the consumer's behalf;

8 D. Provide a list of all databases in possession of or used by the data broker that include
9 personally identifiable information of residents of this State;

10 E. Provide a statement as to whether the data broker implements a purchaser
11 credentialing process;

12 F. Provide the number of security breaches that the data broker has experienced during
13 the prior year and, if known, the total number of consumers affected by the breaches;
14 and

15 G. If the data broker has reason to believe that the data broker possesses the brokered
16 personal information of minors, provide a separate statement detailing the data
17 collection practices, databases, sales activities and opt-out policies that are applicable
18 to the brokered personal information of minors.

19 In addition to the information required under this subsection, a data broker may provide
20 any additional information or explanation concerning the data broker's data collection
21 practices.

22 **2. Violations.** The Attorney General shall enforce the provisions of this section. A
23 data broker that fails to register pursuant to subsection 1 commits a civil violation for which
24 the following must be adjudged:

25 A. A fine of \$100 for each day, not to exceed a total of \$10,000 for each year, the data
26 broker fails to register pursuant to this section;

27 B. An amount equal to the fees due under this section during the period the data broker
28 failed to register pursuant to this section;

29 C. An amount equal to the amount of expenses incurred by the Attorney General in
30 the investigation and prosecution of the civil violation as the court determines
31 appropriate; and

32 D. Other penalties imposed by law.

33 The Treasurer of State shall transfer any fine or amount received under this subsection to
34 the Attorney General to be used for consumer protection enforcement.

35 **§9573. Data broker duty to protect information; standards; technical requirements**

36 **1. Duty to protect personally identifiable information.** A data broker shall develop,
37 implement and maintain a comprehensive information security program to protect
38 personally identifiable information. The program must be written in one or more readily
39 accessible parts and contain administrative, technical and physical safeguards that are
40 appropriate to:

41 A. The size, scope and type of business of the data broker;

- 1 B. The amount of resources available to the data broker;
- 2 C. The amount of stored data; and
- 3 D. The need for security and confidentiality of personally identifiable information.

4 A data broker subject to this subsection shall adopt safeguards in the comprehensive
5 information security program that are consistent with the safeguards for protection of
6 personally identifiable information and information of a similar character set forth in other
7 state rules or federal regulations applicable to the data broker.

8 **2. Comprehensive information security program; minimum features and**
9 **requirements.** The Attorney General, by rulemaking as required in section 9575, shall
10 establish minimum features and requirements for the comprehensive information security
11 program required under subsection 1.

12 **3. Enforcement.** A person who violates a provision of this section, including rules
13 adopted pursuant to section 9575, commits a violation of the Maine Unfair Trade Practices
14 Act.

15 **§9574. Opt-out right of consumers**

16 **1. Opt-out right of consumers.** A data broker shall provide notice to a consumer that
17 the consumer may direct the data broker not to license the consumer's brokered personal
18 information. Upon request of a consumer not to license the consumer's brokered personal
19 information, a data broker may not license the brokered personal information of the
20 consumer to a 3rd party. A 3rd party may not license brokered personal information about
21 a consumer that has been licensed to the 3rd party by a data broker unless the data broker
22 provides the consumer notice of the consumer's option and provides the consumer an
23 opportunity to direct the 3rd party not to license the brokered personal information of that
24 consumer. A data broker that has received direction from a consumer not to license the
25 consumer's brokered personal information may not license the consumer's brokered
26 personal information after receipt of the consumer's direction unless the consumer
27 subsequently provides written consent for the license of the consumer's brokered personal
28 information. A data broker shall accept from a 3rd party acting on behalf of a consumer
29 direction not to license that consumer's brokered personal information.

30 **2. Enforcement.** The Attorney General shall enforce this section. A person who
31 violates a provision of this section commits a violation of the Maine Unfair Trade Practices
32 Act.

33 **§9575. Rules**

34 The Attorney General may adopt rules to carry out the provisions of this chapter,
35 including establishing minimum features and computer system security requirements for
36 comprehensive information security programs as required by section 9573. Rules adopted
37 pursuant to this section are routine technical rules as defined by Title 5, chapter 375,
38 subchapter 2-A.

39 **SUMMARY**

40 This bill requires data brokers, which are businesses that obtain and sell or license to
41 3rd parties or allow 3rd parties to access the personal information of a consumer with whom
42 the business does not have a direct relationship, to register with the Secretary of State, to

- 1 protect a consumer's personal information through various security requirements and to
- 2 allow a consumer to opt out of allowing the sale or lease of or access to the consumer's
- 3 personal information.