

Amendment No. 403

Senate Amendment to Senate Bill No. 370	(BDR 52-42)
Proposed by: Senate Committee on Commerce and Labor	
Amends: Summary: Yes Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date		
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.



SENATE BILL NO. 370—SENATORS CANNIZZARO, NGUYEN, DONATE; DALY, D.
HARRIS, LANGE, NEAL, PAZINA
AND SCHEIBLE

MARCH 23, 2023

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions relating to the protection of consumer ~~health data~~ information. (BDR 52-42)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to data privacy; requiring certain entities to develop, maintain and make available on the Internet a policy concerning the privacy of consumer health data; prohibiting such an entity from collecting or sharing consumer health data without the affirmative , voluntary consent of a consumer in certain circumstances; requiring such an entity to perform certain actions upon the request of a consumer; requiring such an entity to establish a process to appeal the denial of such a request; requiring such an entity to take certain actions to protect the security of consumer health data; limiting the circumstances under which a processor is authorized to process consumer health data; requiring a processor to assist certain entities in complying with certain requirements; prohibiting a person from selling or offering to sell consumer health data under certain circumstances; prohibiting the implementation of a geofence under certain circumstances; prohibiting discrimination against a consumer for certain reasons; authorizing certain civil ~~actions~~ enforcement; requiring certain persons to develop, maintain and make publicly available a policy concerning the storage and retention of biometric identifiers; establishing requirements governing storing, transmitting, protecting, collecting and sharing biometric identifiers; prohibiting the sale of a biometric identifier; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing federal law and regulations contain various protections for health information maintained or used: (1) by a person or entity that provides health care, an insurer or a business associate of a person or entity that provides health care or an insurer; or (2) for scientific research. (42 U.S.C. §§ 11101 et seq.; Pub. L. No. 104-191, 100 Stat. 2548; 21 C.F.R. Parts 46, 50 and 56, 42 C.F.R. Parts 2 and 3, 45 C.F.R. Parts 160 and 164) ~~[This]~~ Sections 2-34 of

this bill ~~prescribes~~ **prescribe** various protections for consumer health data that is maintained and used by other persons and nongovernmental entities and for other purposes. **Section 7** of this bill defines the term “consumer” to mean a natural person who **has requested a product or service from a regulated entity and who** resides in this State or whose consumer health data is collected in this State, except for a natural person acting in an employment context ~~or as an agent of a governmental entity~~. **Section 8** of this bill defines the term “consumer health data” to mean personally identifiable information that is linked or reasonably capable of being linked to a consumer and is ~~related~~ **used by a regulated entity to identify** the health **status** of the consumer. **Section 15** of this bill defines the term “regulated entity” to refer to a person who: (1) conducts business in this State or produces or provides products or services that are targeted to consumers in this State; and (2) determines the purpose and means of processing, sharing or selling consumer health data. **Sections 3-6, ~~9-14~~ 9-11, 13, 14 and 16-19** of this bill define certain other terms. **Section 20** of this bill provides that the provisions of ~~this bill~~ **sections 2-34** do not apply to certain **persons and entities whose collection and disclosure of data is specifically regulated by federal law and certain** data that is collected or disclosed under certain provisions of federal law or regulations or state law.

Section 21 of this bill requires a regulated entity to develop, maintain and make available ~~on the Internet~~ a policy concerning the privacy of consumer health data. **Section 21** also prohibits a regulated entity from: (1) taking certain actions with regard to consumer health data that are inconsistent with the policy without the affirmative, **voluntary** consent of the consumer; or (2) entering into a contract for the processing of consumer health data that is inconsistent with the policy. **Section 22** of this bill generally prohibits a regulated entity from collecting or sharing consumer health data without the affirmative, **voluntary** consent of the consumer to whom the data relates, except to the extent necessary to provide a product or service that the consumer has requested from the regulated entity. ~~Sections~~ **Section 22** ~~and 23~~ of this bill ~~prescribe~~ **prescribes** certain requirements governing such consent.

Section 24 of this bill requires a regulated entity, upon the request of a consumer, to: (1) confirm whether the regulated entity is collecting, sharing or selling consumer health data concerning the consumer; (2) provide the consumer with a list of all third parties ~~and affiliates~~ with whom the regulated entity has shared or to whom the regulated entity has sold consumer health data relating to the consumer; (3) cease collecting or sharing consumer health data relating to the consumer; or (4) delete consumer health data concerning the consumer. **Section 24** also requires a regulated entity to establish a secure and reliable means of making such a request. **Section 25** of this bill prescribes requirements governing the response to such a request, including a requirement that a regulated entity provide information in response to such a request free of charge in most circumstances. However, if a consumer submits more than two requests in a year and those requests are manifestly unfounded, excessive or repetitive, **section 25** authorizes the regulated entity to charge a reasonable fee to provide such information. **Section 26** of this bill prescribes requirements governing the time within which a regulated entity or an affiliate, processor or other third party with which a regulated entity has shared data must delete consumer health data in response to a request for such deletion. **Section 27** of this bill requires a regulated entity to establish a process to appeal the refusal of the regulated entity to act on a request made pursuant to **section 24**. ~~Section 32 of this bill: (1) requires a regulated entity, contractor of a regulated entity, processor or other third party to disclose consumer health data where required by law, court order, subpoena or search warrant; (2) authorizes certain other disclosures of consumer health data; and (3) provides that a regulated entity, contractor, processor or third party who discloses consumer health data under such circumstances is not required to comply with sections 22-27.~~

Section 28 of this bill requires a regulated entity to limit access to and establish, implement and maintain policies and procedures to protect the security of consumer health data. **Section 29** of this bill requires a processor who processes consumer health data on behalf of a regulated entity to only process such data in accordance with a written contract between the processor and the regulated entity. **Section 29** also requires such a processor to assist ~~the~~ **the** regulated entity in complying with the provisions of ~~this bill~~ **sections 2-34**.

Section 30 of this bill prohibits a person from selling or offering to sell consumer health data without the written authorization of the consumer to whom the data pertains or beyond the scope of such authorization, with certain exceptions. **Section 30** also prohibits a person from conditioning the provision of goods or services on a consumer providing such authorization. **Section 30** requires a person who sells consumer health data to: (1) establish a

means by which a consumer may revoke such written authorization; and (2) provide a copy of such written authorization to the consumer ~~[-] and purchaser.~~ **Section 30** also requires both a seller and a purchaser of consumer health data to maintain such written authorization for at least 6 years after the expiration of the written authorization. **Section 17 of this bill exempts certain activity from the definition of the term “sell,” thereby exempting such activity from the requirements of section 30.**

Section 31 of this bill prohibits a person from implementing a geofence ~~[-around-]~~ **within 1,750 feet of** any person or entity that provides in-person health care services or products for certain purposes. **Section 33** of this bill prohibits a regulated entity from discriminating against a consumer for taking any action authorized by ~~[-this bill-]~~ **sections 2-34** or to enforce ~~[-the-]~~ **those provisions.** ~~[-of this bill-]~~

Sections 34.1-34.9 of this bill establish provisions for the protection of biometric identifiers. Section 34.1 of this bill sets forth certain legislative findings concerning biometric identifiers. Section 34.3 of this bill defines “biometric identifier” to mean biometric data relating to the face, fingerprint or iris of a person. Sections 34.35-34.45 of this bill define certain other terms. Section 34.5 of this bill provides that the provisions of sections 34.1-34.9 do not apply to: (1) certain entities whose collection and sharing of data is specifically regulated by federal law; (2) photographs collected, possessed or shared for purposes other than verifying the identity of a person; (3) information collected, possessed or shared for certain medical or scientific purposes; (4) governmental or tribal entities; or (5) a person who is in the business of manufacturing or selling automobiles. Section 34.6 of this bill authorizes the provision of information or consent under sections 34.1-34.9 electronically. Section 34.7 of this bill requires a person who possesses a biometric identifier of another to develop, maintain and comply with a publicly available written policy setting forth a schedule for the retention and destruction of biometric identifiers. Section 34.7 also establishes requirements governing the storage, transmittal and protection of biometric identifiers. Section 34.8 of this bill prescribes requirements governing collecting and sharing biometric identifiers. Section 34.8 also prohibits the sale of biometric identifiers.

Existing law provides that a variety of actions constitute deceptive trade practices. (NRS 118A.275, 205.377, 228.620, 370.695, 597.997, 603.170, 604B.910, 676A.770; chapter 598 of NRS) Existing law authorizes a court to impose a civil penalty of not more than \$12,500 for each violation upon a person whom the court finds has engaged in a deceptive trade practice directed toward an elderly person or a person with a disability. (NRS 598.0973) Additionally, existing law authorizes a court to make such additional orders or judgments as may be necessary to restore to any person in interest any money or property which may have been acquired by means of any deceptive trade practice. (NRS 598.0993) In addition to these enforcement mechanisms, existing law provides that when the Commissioner of Consumer Affairs or the Director of the Department of Business and Industry has cause to believe that a person has engaged or is engaging in any deceptive trade practice, the Commissioner or Director may request that the Attorney General represent him or her in instituting an appropriate legal proceeding, including an application for an injunction or temporary restraining order. (NRS 598.0979) Existing law provides that if a person violates a court order or injunction resulting from a complaint brought by the Commissioner, the Director, the district attorney of any county of this State or the Attorney General, the person is required to pay a civil penalty of not more than \$10,000 for each violation. Furthermore, if a court finds that a person has willfully engaged in a deceptive trade practice, the person who committed the violation: (1) may be required to pay an additional civil penalty not more than \$5,000 for each violation; and (2) is guilty of a felony or misdemeanor, depending on the value of the property or services lost as a result of the deceptive trade practice. (NRS 598.0999) ~~[-Existing law: (1) provides that certain deceptive trade practices constitute consumer fraud; and (2) authorizes a person injured by consumer fraud to bring a civil action. (NRS 41.600)]~~ With certain exceptions, ~~[-section-]~~ **sections 34 and 34.9** of this bill ~~[-(1) provides-]~~ **provide** that a person who violates any provision of **sections 2-34.9** of this bill is guilty of a deceptive trade practice. ~~[-(1) and (2) authorizes-]~~ **Sections 1, 34 and 34.9 of this bill provide** that a person injured by such a violation ~~[-to bring a civil-]~~ **does not have a private right of action. Sections 34 and 34.9 additionally provide that the provisions of sections 2-34.9 must not be construed to affect any other provision of law.**

Section 35 of this bill exempts consumer health data and biometric identifiers from provisions of existing law governing information collected on the Internet from consumers because those provisions are less stringent than the provisions of sections 2-34 of this bill, 2-34.9.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 598.0977 is hereby amended to read as follows:

598.0977 ~~HH~~ *Except as otherwise provided in sections 34 and 34.9 of this act,* an elderly person or a person with a disability suffers damage or injury as a result of a deceptive trade practice, he or she or his or her legal representative, if any, may commence a civil action against any person who engaged in the practice to recover the actual damages suffered by the elderly person or person with a disability, punitive damages, if appropriate, and reasonable attorney's fees. The collection of any restitution awarded pursuant to this section has a priority over the collection of any civil penalty imposed pursuant to NRS 598.0973.

~~[Section 1.]~~ *Sec. 1.5.* Chapter 603A of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to ~~34.9~~ 34.9, inclusive, of this act.

Sec. 2. As used in sections 2 to 34, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 to 19, inclusive, of this act have the meanings ascribed to them in those sections.

Sec. 3. "Affiliate" means an entity that shares common branding with another entity and controls, is controlled by or is under common control with the other entity. For the purposes of this section, an entity shall be deemed to control another entity if the entity:

1. Owns or has the power to vote at least half of the outstanding shares of any class of voting security in the other entity;

2. Controls in any manner the election of a majority of the directors or persons exercising similar functions to directors of the other entity; or

3. Has the power to exercise controlling influence over the management of the other entity.

Sec. 4. "Authenticate" means to ascertain the identity of the originator of an electronic or physical document and establish a link between the document and the originator.

Sec. 5. "Biometric data" means data which is generated from the measurement or technical processing of the physiological, biological or behavioral characteristics of a person and, alone or in combination with other data, is capable of being used to identify the person. The term includes, without limitation:

1. Imagery of the fingerprint, palm print, hand print, scar, bodily mark, tattoo, voiceprint, face, retina, iris or vein pattern of a person; and

2. Keystroke patterns or rhythms and gait patterns or rhythms that contain identifying information.

Sec. 6. "Collect" means to buy, rent, access, retain, receive, acquire, infer, derive or otherwise process consumer health data in any manner.

Sec. 7. "Consumer" means a natural person who has requested a product or service from a regulated entity and who resides in this State or whose consumer health data is collected in this State. The term does not include a natural person acting in an employment context ~~HH~~ or as an agent of a governmental entity.

1 Sec. 8. “Consumer health data” means personally identifiable information
2 that is linked or reasonably capable of being linked to a consumer and ~~is related~~
3 that a regulated entity uses to identify the past, present or future health status of
4 the consumer. The term ~~includes~~ :

5 1. Includes, without limitation:

6 ~~(1)~~ (a) Information relating to:

7 ~~(a)~~ (1) Any health condition or status, disease or diagnosis;

8 ~~(b)~~ (2) Social, psychological, behavioral or medical interventions;

9 ~~(c)~~ (3) Surgeries or other health-related procedures;

10 ~~(d)~~ (4) The use or acquisition of medication;

11 ~~(e)~~ (5) Bodily functions, vital signs or symptoms;

12 ~~(f)~~ (6) Reproductive or sexual health care; and

13 ~~(g)~~ (7) Gender-affirming care;

14 ~~(2)~~ (b) Biometric data or genetic data related to information described in
15 ~~subsection 1~~ paragraph (a);

16 ~~(3)~~ (c) Information related to the precise location of a consumer ~~that is~~
17 ~~derived from technology, including, without limitation, a global positioning~~
18 ~~system, and is reasonably capable of being used~~ within a radius of 1,750 feet that
19 a regulated entity uses to indicate an attempt by a consumer to receive health care
20 services or products; and

21 ~~(4)~~ (d) Any information described in ~~subsection 1, 2 or 3~~ paragraph (a),
22 (b) or (c) that is derived or extrapolated from information that is not consumer
23 health data, including, without limitation, proxy, derivative, inferred or emergent
24 data derived through an algorithm, machine learning or any other means.

25 2. Does not include information that is used to provide access to or enable
26 gameplay by a person on a video game platform.

27 Sec. 9. “Gender-affirming care” means health services or products that
28 support and affirm the gender identity of a person, including, without limitation:

29 1. Treatments for gender dysphoria;

30 2. Gender-affirming hormone therapy; and

31 3. Gender-affirming surgery.

32 Sec. 10. “Genetic data” means any data that concerns the genetic
33 characteristics of a person. The term includes, without limitation:

34 1. Data directly resulting from the sequencing of all or a portion of the
35 deoxyribonucleic acid of a person;

36 2. Genotypic and phenotypic information that results from analyzing the
37 information described in subsection 1; and

38 3. Data concerning the health of a person that is analyzed in connection
39 with the information described in subsection 1.

40 Sec. 11. “Health care services or products” means any service or product
41 provided to a person to assess, measure, improve or learn about the health of a
42 person. The term includes, without limitation:

43 1. Services relating to any health condition or status, disease or diagnosis;

44 2. Social, psychological, behavioral or medical interventions;

45 3. Surgeries or other health-related procedures;

46 4. Medication or services related to the use or acquisition of medication; or
47 5. Monitoring or measurement related to bodily functions, vital signs or
48 symptoms.

49 Sec. 12. ~~“Personally identifiable information” means information that,~~
50 ~~alone or in combination with other information, may be used to identify a person~~
51 ~~or an electronic device used by the person. The term:~~

52 1. Includes, without limitation,

~~(a) Data associated with an Internet protocol address, device identifier or other form of persistent unique identifier; and~~

~~(b) Any data about a person that is collected without the consent of the person.~~

~~2. Does not include:~~

~~(a) Information that is made lawfully available through the records of a federal, state or local governmental entity or widely distributed media and which a regulated entity has a reasonable basis to believe that a person has made available to the general public; or~~

~~(b) Deidentified information.] (Deleted by amendment.)~~

Sec. 13. "Process" means any operation or set of operations performed on consumer health data.

Sec. 14. "Processor" means a person who processes consumer health data on behalf of a regulated entity.

Sec. 15. "Regulated entity" means any person who:

1. Conducts business in this State or produces or provides products or services that are targeted to consumers in this State; and

2. Alone or with other persons, determines the purpose and means of processing, sharing or selling consumer health data.

Sec. 16. "Reproductive or sexual health care" means health care services or products that support or relate to the reproductive system or sexual well-being of a person. The term includes, without limitation, abortion, the provision of medication to induce an abortion and any medical or nonmedical services associated with an abortion.

Sec. 17. "Sell" means to exchange consumer health ~~information~~ data for money or other valuable consideration. The term does not include the exchange of consumer health data for money or other valuable consideration:

1. With a processor in a manner consistent with the purpose for which the consumer health data was collected, as disclosed to the consumer to whom the consumer health data pertains pursuant to section 22 of this act.

2. With a third party as an asset that is part of a merger, acquisition, bankruptcy or other transaction through which the third party assumes control of all or part of the assets of the regulated entity.

3. With a third party for the purpose of providing a product or service requested by the consumer to whom the consumer health data pertains.

4. With an affiliate of the person who is providing or disclosing the consumer health data.

5. As directed by the consumer to whom the consumer health data pertains or where the consumer to whom the consumer health data pertains intentionally uses the person who is providing or disclosing the consumer health data to interact with the third party to whom the consumer health data is provided or disclosed.

6. Where the consumer has intentionally made the consumer health data available to the general public through mass media that was not restricted to a specific audience.

Sec. 18. "Share" means to release, disclose, disseminate, divulge, make available, provide access to, license or otherwise communicate consumer health data orally, in writing or by electronic or other means.

Sec. 19. "Third party" means a person who is not a consumer, regulated entity, processor or affiliate of a regulated entity.

Sec. 20. 1. The provisions of sections 2 to 34, inclusive, of this act do not apply to:

~~[1. Information that is collected, used or shared in accordance with]~~

(a) Any person or entity that is subject to the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, and the regulations adopted pursuant thereto.

~~(2. Information originating from, and intermingled with to be indistinguishable from, information described in subsection 1 that is maintained by;~~

~~(a) A covered entity or business associate, as those terms are defined in 45 C.F.R. § 160.103; or~~

~~(b) A program or qualified service organization, as those terms are defined in 45 C.F.R. § 2.11;~~

(b) A financial institution or an affiliate of a financial institution that is subject to the provisions of the Gramm-Leach-Bliley Act, 15 U.S.C. §§ 6801 et seq., or any personally identifiable information regulated by that Act which is collected, maintained or sold as provided in that Act.

~~(3.) (c) Patient identifying information, as defined in 42 C.F.R. § 2.11, that is collected, used or disclosed in accordance with 42 C.F.R. Part 2.~~

~~(4.) (d) Patient safety work product, as defined in 42 C.F.R. § 3.20, that is collected, used or disclosed in accordance with 42 C.F.R. Part 3.~~

~~(5.) (e) Identifiable private information, as defined in 45 C.F.R. § 46.102, that is collected, used or disclosed in accordance with 45 C.F.R. Part 46.~~

~~(6.) (f) Information used or shared as part of research conducted pursuant to 45 C.F.R. Part 46 or 21 C.F.R. Parts 50 and 56.~~

~~(7.) (g) Information used only for public health activities and purposes, as described in 45 C.F.R. § 164.512(b), regardless of whether such information is subject to the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, and the regulations adopted pursuant thereto.~~

~~(8.) (h) Personally identifiable information that is governed by and collected, used or disclosed pursuant to:~~

~~(a) The Gramm-Leach-Bliley Act, 15 U.S.C. §§ 6801 et seq., and the regulations adopted pursuant thereto;~~

~~(b.) (1) Part C of Title XI of the Social Security Act, 42 U.S.C. §§ 1320d et seq.;~~

~~(c.) (2) The Fair Credit Reporting Act, 15 U.S.C. §§ 1681 et seq.; or~~

~~(d.) (3) The Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g, and the regulations adopted pursuant thereto.~~

~~(9.) (i) Information and documents created for the purposes of compliance with the federal Health Care Quality Improvement Act of 1986, 42 U.S.C. §§ 11101 et seq., and any regulations adopted pursuant thereto.~~

~~(10.) (j) The collection or sharing of consumer health data where expressly authorized by any provision of federal or state law.~~

~~(11.) (k) Any governmental or tribal entity or any person processing consumer health data on behalf of a governmental or tribal entity.~~

(l) Any person who holds a non-restricted license, as defined in NRS 463.0177, or an affiliate, as defined in NRS 463.0133, of such a person.

2. A third party that obtains consumer health data from a regulated entity through a merger, acquisition, bankruptcy or other transaction through which the third party assumes control of all or part of the assets of the regulated entity is deemed to assume all obligations of the regulated entity to comply with the provisions of sections 2 to 34, inclusive, of this act.

Sec. 21. 1. A regulated entity shall develop and maintain a policy concerning the privacy of consumer health data that clearly and conspicuously establishes:

1 (a) *The categories of consumer health data being collected by the regulated*
2 *entity and the manner in which the consumer health data will be used;*

3 (b) *The categories of sources from which consumer health data is collected;*

4 (c) *The categories of consumer health data that are shared by the regulated*
5 *entity;*

6 (d) ~~*The categories of third parties and affiliates with whom the*~~
7 *regulated entity shares consumer health data;*

8 (e) *The purposes of collecting, using and sharing consumer health data;*

9 (f) *The manner in which consumer health data will be processed;*

10 (g) *The procedure for submitting a request pursuant to section 24 of this act;*

11 (h) *The process, if any such process exists, for a consumer to review and*
12 *request changes to any of his or her consumer health data that is collected by the*
13 *regulated entity;*

14 (i) *The process by which the regulated entity notifies consumers whose*
15 *consumer health data is collected by the regulated entity of material changes to*
16 *the privacy policy;*

17 (j) *Whether a third party may collect consumer health data over time and*
18 *across different Internet websites or online services when the consumer uses any*
19 *Internet website or online service of the regulated entity; and*

20 (k) *The effective date of the privacy policy.*

21 2. *A regulated entity shall post conspicuously on the main Internet website*
22 *maintained by the regulated entity a hyperlink to the policy developed pursuant to*
23 *subsection 1 ~~1~~ or otherwise provide that policy to consumers in a manner that is*
24 *clear and conspicuous.*

25 3. *A regulated entity shall not:*

26 (a) *Collect, use or share categories of consumer health data, other than those*
27 *included in the privacy policy pursuant to paragraph (c) of subsection 1, without*
28 *disclosing those additional categories to each consumer whose data will be*
29 *collected, used or shared and obtaining the affirmative, voluntary consent of the*
30 *consumer;*

31 (b) *Share consumer health data with a third party or affiliate, other than*
32 *those included in the privacy policy pursuant to paragraph (d) of subsection 1,*
33 *without disclosing those additional third parties or affiliates to each consumer*
34 *whose data will be shared and obtaining the affirmative, voluntary consent of the*
35 *consumer;*

36 (c) *Collect, use or share consumer health data for purposes other than those*
37 *included in the privacy policy pursuant to paragraph (e) of subsection 1 without*
38 *disclosing those additional purposes to each consumer whose data will be*
39 *collected, used or shared and obtaining the affirmative, voluntary consent of the*
40 *consumer; or*

41 (d) *Enter into a contract pursuant to section 29 of this act with a processor to*
42 *process consumer health data that is inconsistent with the privacy policy.*

43 **Sec. 22.** 1. *A regulated entity shall not collect consumer health data*
44 *except:*

45 (a) *With the affirmative, voluntary consent of the consumer; or*

46 (b) *To the extent necessary to provide a product or service that the consumer*
47 *to whom the consumer health data relates has requested from the regulated*
48 *entity.*

49 2. *A regulated entity shall not share consumer health data except:*

50 (a) *With the affirmative, voluntary consent of the consumer to whom the*
51 *consumer health data relates, which must be separate and distinct from the*
52 *consent provided pursuant to subsection 1 for the collection of the data;*

(b) To the extent necessary to provide a product or service that the consumer to whom the consumer health data relates has requested from the regulated entity; or

(c) Where required or authorized by ~~section 32 of this act,~~ another provision of law.

3. Any consent required by this section must be obtained before the collection or sharing, as applicable, of consumer health data. The request for such consent must clearly and conspicuously disclose:

(a) The categories of consumer health data to be collected or shared, as applicable;

(b) The purpose for collecting or sharing, as applicable, the consumer health data including, without limitation, the manner in which the consumer health data will be used;

(c) If the consumer health data will be shared, the categories of persons and entities with whom the consumer health data will be shared; and

(d) The manner in which the consumer may withdraw consent for the collection or sharing, as applicable, of consumer health data relating to the consumer and request that the regulated entity cease such collection or sharing pursuant to section 24 of this act.

Sec. 23. ~~[Any consent provided pursuant to section 21 or 22 of this act must be an affirmative, voluntary act. Such consent may be provided electronically, but may not be provided through:~~

~~1. The acceptance of a general agreement concerning terms of use or a similar agreement that contains descriptions of the manner in which personal data will be used or processed and other unrelated information;~~

~~2. A consumer hovering over, muting, pausing or closing a piece of online content; or~~

~~3. The use of a user interface designed or manipulated with the effect of subverting or impairing the autonomy, decision making or choice of the user.]~~

(Deleted by amendment.)

Sec. 24. 1. Except as otherwise provided in section 25 of this act, upon the request of a consumer, a regulated entity shall:

(a) Confirm whether the regulated entity is collecting, sharing or selling consumer health data relating to the consumer.

(b) Provide the consumer with a list of all third parties ~~[and affiliates]~~ with whom the regulated entity has shared consumer health data relating to the consumer or to whom the regulated entity has sold such consumer health data. ~~[The list must include, without limitation, a valid electronic mail address for each such third party or affiliate or another valid mechanism by which the consumer may contact each such third party or affiliate using the Internet.]~~

(c) Cease collecting, sharing or selling consumer health data relating to the consumer.

(d) Delete consumer health data concerning the consumer.

2. A regulated entity shall establish a secure and reliable means of making a request pursuant to this section. ~~[The means of making such a request must not require a consumer to create a new account with the regulated entity, but may require the consumer to use an existing account.]~~ When establishing the means for making such a request, the regulated entity must consider:

(a) The need for the safe and reliable communication of such requests; and

(b) The ability of the regulated entity to authenticate the identity of the consumer making the request.

Sec. 25. 1. Except as otherwise provided in this section, a regulated entity shall respond to a request made pursuant to section 24 of this act without undue

1 *delay and not later than 45 days after authenticating the request. If reasonably*
2 *necessary based on the complexity and number of requests from the same*
3 *consumer, the regulated entity may extend the period prescribed by this section*
4 *not more than an additional 45 days. A regulated entity that grants itself such an*
5 *extension must, not later than 45 days after authenticating the request, provide*
6 *the consumer with notice of the extension and the reasons therefor.*

7 2. *If a regulated entity is not able to authenticate a request made pursuant*
8 *to section 24 of this act after making commercially reasonable efforts, the*
9 *regulated entity:*

10 (a) *Is not required to comply with the request; and*

11 (b) *May request that the consumer provide such additional information as is*
12 *reasonably necessary to authenticate the request.*

13 3. *A regulated entity:*

14 (a) *Shall provide information free of charge to a consumer in response to:*

15 (1) *Requests made pursuant to section 24 of this act at least twice each*
16 *year; and*

17 (2) *Additional requests that are not manifestly unfounded, excessive or*
18 *repetitive.*

19 (b) *Except as otherwise provided in paragraph (a), may charge a reasonable*
20 *fee to provide information to a consumer in response to requests made pursuant*
21 *to section 24 of this act that are manifestly unfounded, excessive or repetitive.*

22 4. *In any civil proceeding challenging the validity of a fee charged pursuant*
23 *to paragraph (b) of subsection 3, the regulated entity has the burden of*
24 *demonstrating by a preponderance of the evidence that the request to which the*
25 *fee pertained was manifestly unfounded, excessive or repetitive.*

26 ~~15. In any criminal proceeding to enforce the provisions of this section, it is~~
27 ~~an affirmative defense that the regulated entity charged a fee pursuant to~~
28 ~~paragraph (b) of subsection 3 in response to a request that was manifestly~~
29 ~~unfounded, excessive or repetitive.]~~

30 Sec. 26. 1. *Not later than 30 days after authenticating a request made*
31 *pursuant to paragraph (d) of subsection 1 of section 24 of this act for the deletion*
32 *of consumer health data, a regulated entity shall, except as otherwise provided in*
33 *subsection 3:*

34 (a) *Delete all consumer health data described in the request from the records*
35 *and network of the regulated entity; and*

36 (b) *Notify each affiliate, processor, contractor or other third party with which*
37 *the regulated entity has shared consumer health data of the deletion request.*

38 2. *Not later than 30 days after receiving notification of a deletion request*
39 *pursuant to paragraph (b) of subsection 1, an affiliate, processor, contractor or*
40 *other third party shall, except as otherwise provided in subsection 3, delete the*
41 *consumer health data described in the request from the records and network of*
42 *the affiliate, processor, contractor or other third party.*

43 3. *If data described in a deletion request made pursuant to paragraph (d) of*
44 *subsection 1 of section 24 of this act is stored or archived on backup systems, a*
45 *regulated entity or an affiliate, processor, contractor or other third party may*
46 *delay the deletion of the data for not more than 6 months after the request is*
47 *authenticated, as necessary to restore the archived or backup system.*

48 Sec. 27. 1. *A regulated entity shall establish a process by which a*
49 *consumer may appeal the refusal of the regulated entity to act on a request made*
50 *pursuant section 24 of this act. The process must be:*

51 (a) *Conspicuously available on the Internet website of the regulated entity;*
52 *and*

(b) Similar to the process for making a request pursuant to section 24 of this act.

2. Not later than 45 days after receiving an appeal pursuant to subsection 1, a regulated entity shall inform the consumer in writing of:

(a) Any action taken in response to the appeal or any decision not to take such action;

(b) The reasons for any such action or decision; and

(c) If the regulated entity decided not to take the action requested in the appeal, the contact information for the Office of the Attorney General.

Sec. 28. 1. A regulated entity shall only authorize the employees ~~and~~ processors ~~and contractors~~ of the regulated entity to access consumer health data where reasonably necessary to:

(a) Further the purpose for which the consumer consented to the collection or sharing of the consumer data pursuant to section 22 of this act; or

(b) Provide a product or service that the consumer to whom the consumer health data relates has requested from the regulated entity.

2. A regulated entity shall establish, implement and maintain policies and practices for the administrative, technical and physical security of consumer health data. The policies must:

(a) Satisfy the standard of care in the industry in which the regulated entity operates to protect the confidentiality, integrity and accessibility of consumer health data;

(b) Comply with the provisions of NRS 603A.010 to 603A.290, inclusive, where applicable; and

(c) Be reasonable, taking into account the volume and nature of the consumer health data at issue.

Sec. 29. 1. A processor shall only process consumer health data pursuant to a contract between the processor and a regulated entity. Such a contract must set forth the applicable processing instructions and the specific actions that the processor is authorized to take with regard to the consumer health data it possesses on behalf of the regulated entity.

2. To the extent practicable, a processor shall assist ~~the~~ the regulated entity with which the processor has entered into a contract pursuant to subsection 1 in complying with the provisions of sections 2 to 34, inclusive, of this act.

3. If a processor processes consumer health data outside the scope of a contract described in subsection 1 or in a manner inconsistent with any provision of such a contract, the processor:

(a) Is not guilty of ~~an unfair~~ a deceptive trade practice ~~for subject to a civil action~~ pursuant to section 34 of this act solely because the processor violated the requirements of this section; and

(b) Shall be deemed a regulated entity for the purposes of sections 2 to 34, inclusive, of this act ~~for~~ for actions and omissions with regard to such consumer health data.

Sec. 30. 1. A person shall not sell or offer to sell consumer health data:

(a) Without the written authorization of the consumer to whom the data pertains; or

(b) If the consumer provides such written authorization, in a manner that is outside the scope of or inconsistent with the written authorization.

2. A person shall not condition the provision of goods or services on a consumer authorizing the sale of consumer health data pursuant to subsection 1.

3. Written authorization pursuant to subsection 1 must be provided in a form written in plain language which includes, without limitation:

1 (a) The name and contact information of the person selling the consumer
2 health data;

3 (b) A description of the specific consumer health data that the person intends
4 to sell;

5 (c) The name and contact information of the person purchasing the
6 consumer health data;

7 (d) A description of the purpose of the sale, including, without limitation, the
8 manner in which the consumer health data will be gathered and the manner in
9 which the person described in paragraph (c) intends to use the consumer health
10 data;

11 (e) A statement of the provisions of subsection 2;

12 (f) A statement that the consumer may revoke the written authorization at
13 any time and a description of the means established pursuant to subsection 4 for
14 revoking the authorization;

15 (g) A statement that any consumer health data sold pursuant to the written
16 authorization may be disclosed to additional persons and entities by the person
17 described in paragraph (c) and, after such disclosure, is no longer subject to the
18 protections of this section;

19 (h) The date on which the written authorization expires pursuant to
20 subsection 5; and

21 (i) The signature of the consumer to which the consumer health data
22 pertains.

23 4. A person who sells consumer health data shall establish a means by
24 which a consumer may revoke a written authorization made pursuant to
25 subsection 1.

26 5. Written authorization provided pursuant to subsection 1 expires 1 year
27 after the date on which the authorization is given.

28 6. A written authorization provided pursuant to subsection 1 is not valid if
29 the written authorization:

30 (a) Was a condition for the provision of goods or services to the consumer in
31 violation of subsection 2;

32 (b) Does not comply with the requirements of subsection 3;

33 (c) Has been revoked pursuant to subsection 4; or

34 (d) Has expired pursuant to subsection 5.

35 7. A person who sells consumer health data shall provide a copy of the
36 written authorization provided pursuant to subsection 1 to the consumer who
37 signed the written authorization ~~and~~ and the purchaser of the consumer health
38 data.

39 8. A seller and purchaser of consumer health data shall each retain a copy
40 of the written authorization provided pursuant to subsection 1 for at least 6 years
41 after the date on which the written authorization expired pursuant to subsection
42 5.

43 9. The provisions of this section do not ~~apply to the sale of consumer~~
44 ~~health data to:~~

45 ~~(a) A processor in a manner consistent with the purpose for which the~~
46 ~~consumer health data was collected, as disclosed to the consumer to whom the~~
47 ~~consumer health data pertains pursuant to section 22 of this act; or~~

48 ~~(b) A third party as an asset that is part of a merger, acquisition, bankruptcy~~
49 ~~or other transaction through which the third party assumes control of all or part~~
50 ~~of the assets of the regulated entity. A third party that obtains consumer health~~
51 ~~data from a regulated entity pursuant to this paragraph assumes all obligations of~~
52 ~~the regulated entity to comply with the provisions of sections 2 to 34, inclusive, of~~

~~this act.~~ authorize the sale of a biometric identifier, as prohibited by subsection 3 of section 34.8 of this act.

Sec. 31. 1. A person shall not implement a geofence within ~~[2,000]~~ 1,750 feet of any medical facility, facility for the dependent or any other person or entity that provides in-person health care services or products for the purpose of:

(a) Identifying or tracking consumers seeking in-person health care services or products;

(b) Collecting consumer health data; or

(c) Sending notifications, messages or advertisements to consumers related to their consumer health data or health care services or products.

2. As used in this section:

(a) "Facility for the dependent" has the meaning ascribed to it in NRS 449.0045.

(b) "Geofence" means technology that uses coordinates for global positioning, connectivity to cellular towers, cellular data, radio frequency identification, wireless Internet data or any other form of detecting the physical location of a person to establish a virtual boundary with a radius of 1,750 feet or less around a specific physical location.

(c) "Medical facility" has the meaning ascribed to it in NRS 449.0151.

Sec. 32. ~~1. A regulated entity, contractor of a regulated entity, processor or other third party that is in possession of consumer health data:~~

~~(a) Shall disclose the consumer health data where required by law, a court order, a subpoena, a search warrant or other lawful process; and~~

~~(b) Is not required to comply with the provisions of sections 22 to 27, inclusive, of this act, when making such a disclosure.~~

~~2. A regulated entity may share consumer health data without complying with the provisions of sections 22 to 27, inclusive, of this act:~~

~~(a) Directly with a processor for the purpose of providing goods or services in a manner consistent with the purpose for which the consumer health data was collected, as disclosed to the consumer to whom the consumer health data pertains pursuant to section 22 of this act.~~

~~(b) With a third party with whom the consumer to whom the consumer health data relates has a direct relationship if:~~

~~(1) The disclosure is for the purpose of providing a product or service requested by the consumer;~~

~~(2) The regulated entity maintains control and ownership of the consumer health data; and~~

~~(3) The third party uses the consumer health data as directed by the regulated entity and in a manner consistent with the purpose for which the consumer health data was collected, as disclosed to the consumer to whom the consumer health data relates pursuant to section 22 of this act.~~

~~(c) With a third party as an asset that is part of a merger, acquisition, bankruptcy or other transaction through which the third party assumes control of all or part of the assets of the regulated entity. A third party that obtains consumer health data from a regulated entity pursuant to this paragraph assumes all obligations of the regulated entity to comply with the provisions of sections 2 to 34, inclusive, of this act.~~

~~3. A regulated entity or processor may collect, use or disclose consumer health data without complying with the provisions of sections 22 to 27, inclusive, of this act to:~~

~~(a) Prevent, detect, protect against, respond to, investigate, report or aid in the prosecution of malicious, deceptive or illegal activities, security incidents, identity theft, fraud or harassment; or~~

~~(b) Preserve the integrity or security of electronic systems.~~

~~4. In any civil proceeding where a regulated entity or processor is alleged to have failed to comply with the provisions of sections 22 to 27, inclusive, of this act, a regulated entity or processor that collected, used or disclosed the consumer health data for a purpose described in subsection 3 has the burden of demonstrating by a preponderance of the evidence that the collection, use or disclosure was for such a purpose.~~

~~5. In any criminal proceeding where a regulated entity or processor is alleged to have failed to comply with the provisions of sections 22 to 27, inclusive, of this act, it is an affirmative defense that a regulated entity or processor collected, used or disclosed consumer health data for a purpose described in subsection 3.~~ (Deleted by amendment.)

Sec. 33. A regulated entity shall not discriminate against a consumer for taking:

1. Any action authorized by sections 2 to 34, inclusive, of this act; or
2. Any action to enforce the provisions of sections 2 to 34, inclusive, of this act.

Sec. 34. 1. Except as otherwise provided in this section and section 29 of this act,

~~(a) A~~ a violation of sections 2 to 34, inclusive, of this act constitutes a deceptive trade practice for the purposes of NRS 598.0903 to 598.0999, inclusive.

~~[(b) An action may be brought by any person who is a victim of a violation of sections 2 to 34, inclusive, of this act. If the claimant is the prevailing party, the court shall award the claimant:~~

- ~~(1) Any damages that the claimant has sustained;~~
 - ~~(2) Any equitable relief that the court deems appropriate; and~~
 - ~~(3) The claimant's costs in the action and reasonable attorney's fees.~~
- ~~2. Any action brought pursuant to this section is not an action upon any contract underlying the original transaction.]~~

2. The provisions of sections 2 to 34, inclusive, of this act:

- (a) Do not create a private right of action; and
- (b) Must not be construed to affect any other provision of law.

Sec. 34.1. The Legislature hereby finds and declares that:

1. The use of biometric identifiers to verify the identity of persons in personal and business settings is growing and is likely to streamline online transactions and the management of digital accounts, strengthen the security of identities and reduce the risk of cybersecurity issues and fraud for governmental entities, businesses and consumers.

2. Biometric identifiers are unlike other identifiers that are used to verify the identity of a person or access a digital account because biometric identifiers are unique to a person and are not capable of being changed if stolen.

3. Without ongoing measures to protect the security of biometric identifiers, persons are at a heightened risk of identity theft.

4. The public welfare, security and safety will be served by regulating the collection, use, security, handling, storage, retention and destruction of biometric identifiers.

Sec. 34.2. As used in sections 34.1 to 34.9, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 34.3 to 34.45, inclusive, of this act have the meanings ascribed to them in those sections.

Sec. 34.3. "Biometric identifier" means biometric data relating to the face, fingerprint or iris of a person. The term includes, without limitation, data from a photo identification document that contains the image of the face of a person with sufficient resolution that artificial intelligence or a machine learning

algorithm is able to match the data with other biometric data to positively identify the person.

Sec. 34.35. "Collect" means to access, retain, receive, acquire, infer, derive or otherwise obtain a biometric identifier in any manner.

Sec. 34.4. "Share" means to release, disclose, disseminate, divulge, make available or provide access to a biometric identifier.

Sec. 34.45. "Subject" means the natural person to whom a biometric identifier relates.

Sec. 34.5. The provisions of sections 34.1 to 34.9, inclusive, of this act do not apply to:

1. Any person or entity that is subject to the provisions of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, and the regulations adopted pursuant thereto.

2. A financial institution or an affiliate of a financial institution that is subject to the provisions of the Gramm-Leach-Bliley Act, 15 U.S.C. §§ 6801 et seq., or any personally identifiable information regulated by that Act which is collected, maintained or sold as provided in that Act.

3. Physical or digital photographs collected, possessed or shared for purposes not related to verifying the identity of the subject.

4. Information collected, possessed or shared for a medical purpose or to validate scientific testing or screening.

5. Any governmental or tribal entity or any person who collects, possesses or shares a biometric identifier on behalf of a governmental or tribal entity.

6. Any person in the business of manufacturing or selling automobiles, when acting in that capacity.

Sec. 34.6. For the purposes of sections 34.1 to 34.9, inclusive, of this act:

1. Any information required to be provided in writing may be provided electronically; and

2. Any consent or release may be obtained electronically.

Sec. 34.7. A person who possesses a biometric identifier that relates to another person shall:

1. Develop, maintain and comply with a written policy setting forth a schedule for and procedures governing the retention and destruction of biometric identifiers. Except where preservation of a biometric identifier for a longer period of time is required by law, subpoena or an order by a court of competent jurisdiction or other lawful authority, such a policy must require the destruction of a biometric identifier on or before the earlier of:

(a) The date on which the initial purpose of obtaining the biometric identifier has been satisfied; or

(b) One year after the most recent interaction between the person in possession of the biometric identifier and the subject.

2. Make the policy established pursuant to subsection 1 available to the public.

3. Store and transmit biometric identifiers and protect biometric identifiers from disclosure a manner that:

(a) Meets the standard of care in the industry in which the person operates; and

(b) Is at least as protective as the manner in which the person stores, transmits or protects from disclosure, as applicable, other personally identifiable information.

Sec. 34.8. 1. Before collecting a biometric identifier, a person shall:

(a) Inform the subject or his or her representative in writing:

(1) That the biometric identifier is being collected;

(2) The purpose for which the biometric identifier is being collected, stored and used; and

(3) The length of time for which the biometric identifier will be retained in accordance with the policy developed pursuant to section 34.7 of this act;

(b) Obtain the informed written consent of the subject or his or her representative which may include, without limitation, a written release executed as a condition of employment; and

(c) Verify of the identity of the subject and any representative providing written consent pursuant to paragraph (b) in a manner that meets the requirements of Special Publication 800-63-3 published by the National Institute of Standards and Technology of the United States Department of Commerce.

2. At the time a person collects a biometric identifier, the person shall ensure that the subject is present.

3. A person shall not sell, lease, trade or otherwise receive compensation for sharing a biometric identifier.

4. A person shall not share a biometric identifier unless:

(a) The subject or his or her representative consents to the sharing;

(b) The sharing completes a financial transaction requested or authorized by the subject or his or her representative;

(c) The sharing is required by law, a court order, a subpoena, a search warrant or other lawful process; or

(d) The sharing is performed by a person who holds a nonrestricted license, as defined in NRS 463.0177, and the biometric identifier is shared with a subsidiary or affiliate of the person for the purpose of security or surveillance.

Sec. 34.9. 1. Except as otherwise provided in this section, a violation of sections 34.1 to 34.9, inclusive, of this act constitutes a deceptive trade practice for the purposes of NRS 598.0903 to 598.0999, inclusive.

2. The provisions of sections 34.1 to 34.9, inclusive, of this act:

(a) Do not create a private right of action; and

(b) Must not be construed to affect any other provision of law.

Sec. 35. NRS 603A.338 is hereby amended to read as follows:

603A.338 The provisions of NRS 603A.300 to 603A.360, inclusive, do not apply to:

1. A consumer reporting agency, as defined in 15 U.S.C. § 1681a(f);

2. Any personally identifiable information regulated by the Fair Credit Reporting Act, 15 U.S.C. §§ 1681 et seq., and the regulations adopted pursuant thereto, which is collected, maintained or sold as provided in that Act;

3. A person who collects, maintains or makes sales of personally identifiable information for the purposes of fraud prevention;

4. Any personally identifiable information that is publicly available;

5. Any personally identifiable information protected from disclosure under the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. §§ 2721 et seq., which is collected, maintained or sold as provided in that Act; ~~for~~

6. Any consumer health data subject to the provisions of sections 2 to 34, inclusive, of this act; ~~for~~

7. Any biometric identifiers subject to the provisions of sections 34.1 to 34.9, inclusive, of this act; or

8. A financial institution or an affiliate of a financial institution that is subject to the provisions of the Gramm-Leach-Bliley Act, 15 U.S.C. §§ 6801 et seq., or any personally identifiable information regulated by that Act which is collected, maintained or sold as provided in that Act.