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 consumer health data. (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 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; 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 bill prescribes 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 resides in this State or whose consumer health data is collected in this State, except for a natural person acting in an employment context. **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 to the health 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 and 16-19** of this bill define certain other terms. **Section 20** of this bill provides that the provisions of this bill do not apply to 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 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 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 22 and 23** of this bill prescribe 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 a regulated entity in complying with the provisions of this bill.

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. **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 31 of this bill prohibits a person from implementing a geofence around 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 or to enforce the provisions of this bill.

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 34** of this bill: (1) provides that a person who violates any provision of this bill is guilty of a deceptive trade practice; and (2) authorizes a person injured by such a violation to bring a civil action. **Section 35** of this bill exempts consumer health data 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.

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

Section 1. Chapter 603A of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 34, 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 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.

Sec. 8. *"Consumer health data" means personally identifiable information that is linked or reasonably capable of being linked to a consumer and is related to the past, present or future health of the consumer. The term includes, without limitation:*

1. Information relating to:

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

(b) Social, psychological, behavioral or medical interventions;

(c) Surgeries or other health-related procedures;

(d) The use or acquisition of medication;

(e) Bodily functions, vital signs or symptoms;

(f) Reproductive or sexual health care; and

(g) Gender-affirming care;

2. Biometric data or genetic data related to information described in subsection 1;

3. Information related to the precise location of a consumer that is derived from technology, including, without limitation, a global positioning system, and is reasonably capable of being used to indicate an attempt by a consumer to receive health care services or products; and

4. Any information described in subsection 1, 2 or 3 that is derived or extrapolated from information that is not consumer health data, including, without limitation, proxy, derivative, inferred or emergent data derived through an algorithm, machine learning or any other means.

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

1. Treatments for gender dysphoria;

2. Gender-affirming hormone therapy; and

3. Gender-affirming surgery.

Sec. 10. *"Genetic data" means any data that concerns the genetic characteristics of a person. The term includes, without limitation:*

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

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

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

Sec. 11. *"Health care services or products" means any service or product provided to a person to assess, measure,*

improve or learn about the health of a person. The term includes, without limitation:

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

2. Social, psychological, behavioral or medical interventions;

3. Surgeries or other health-related procedures;

4. Medication or services related to the use or acquisition of medication; or

5. Monitoring or measurement related to bodily functions, vital signs or symptoms.

Sec. 12. *"Personally identifiable information" means information that, alone or in combination with other information, may be used to identify a person or an electronic device used by the person. The term:*

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.

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 for money or other valuable consideration.*

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. *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 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.

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

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

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

9. 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. The collection or sharing of consumer health data where expressly authorized by any provision of state law.

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

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

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

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

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

(d) A list of third parties and affiliates with whom the regulated entity shares consumer health data;

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

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

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

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

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

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

(k) The effective date of the privacy policy.

2. A regulated entity shall post conspicuously on the main Internet website maintained by the regulated entity a hyperlink to the policy developed pursuant to subsection 1.

3. A regulated entity shall not:

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

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

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

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

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

(a) With the affirmative consent of the consumer; or

(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.

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

(a) With the affirmative consent of the consumer to whom the consumer health data relates, which must be separate and distinct from the 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.

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.

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

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

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

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

3. A regulated entity:

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

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

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

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

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

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

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

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

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

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

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

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

(a) Conspicuously available on the Internet website of the regulated entity; 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, processors and contractors of the regulated entity to access consumer health data where 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 a 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 trade practice or 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.

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:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Has expired pursuant to subsection 5.

7. A person who sells consumer health data shall provide a copy of the written authorization provided pursuant to subsection 1 to the consumer who signed the written authorization.

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

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

(a) 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; or

(b) 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.

Sec. 31. *1. A person shall not implement a geofence within 2,000 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 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.

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 section 29 of this act:*

(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.

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; ~~[or]~~

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

7. 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.

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