

Amendment to SB 255-FN

1 Amend RSA 507-H:1, III as inserted by section 1 of the bill by replacing it with the following:

2
3 III. "Authenticate" means to use reasonable means to determine that a request to exercise
4 any of the rights afforded under section 507-H:4, I(a)-(d) of this chapter is being made by, or on
5 behalf of, the consumer who is entitled to exercise such consumer rights with respect to the personal
6 data at issue.

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8 Amend RSA 507-H:1, XXVIII as inserted by section 1 of the bill by replacing it with the following:

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10 XXVIII. "Sensitive data" means personal data that includes data revealing racial or ethnic
11 origin, religious beliefs, mental or physical health condition or diagnosis, sex life, sexual orientation
12 or citizenship or immigration status; the processing of genetic or biometric data for the purpose of
13 uniquely identifying an individual; personal data collected from a child; or, precise geolocation data.

14
15 Amend RSA 507-H:1, XXIX as inserted by section 1 of the bill by replacing it with the following:

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17 XXIX. "Targeted advertising" means displaying advertisements to a consumer where the
18 advertisement is selected based on personal data obtained or inferred from that consumer's activities
19 over time and across nonaffiliated Internet web sites or online applications to predict such
20 consumer's preferences or interests. "Targeted advertising" does not include:

21 (a) Advertisements based on activities within a controller's own Internet web sites or
22 online applications;

23 (b) Advertisements based on the context of a consumer's current search query, visit to an
24 Internet web site, or online application;

25 (c) Advertisements directed to a consumer in response to the consumer's request for
26 information or feedback; or,

27 (d) Processing personal data solely to measure or report advertising frequency,
28 performance, or reach.

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30 Amend RSA 507-H:2 as inserted by section 1 of the bill by replacing it with the following:

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1 This chapter applies to persons that conduct business in this state or persons that produce
2 products or services that are targeted to residents of this state that (a) controlled or processed the
3 personal data of not less than 100,000 consumers, excluding personal data controlled or processed
4 solely for the purpose of completing a payment transaction; or (b) controlled or processed the
5 personal data of not less than 25,000 consumers and derived more than 25 percent of their gross
6 revenue from the sale of personal data.

7
8 Amend RSA 507-H:4, II as inserted by section 1 of the bill by replacing it with the following:

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10 II. A consumer may exercise rights under this section by a secure and reliable means
11 established by the controller and described to the consumer in the controller's privacy notice. A
12 consumer may designate an authorized agent in accordance with RSA 507-H:5 to exercise the rights
13 of such consumer to opt-out of the processing of such consumer's personal data for purposes of RSA
14 507-H:4, III(e) on behalf of the consumer. In the case of processing personal data of a child, the
15 parent or legal guardian may exercise such consumer rights on the child's behalf. In the case of
16 processing personal data concerning a consumer subject to a guardianship, conservatorship, or other
17 protective arrangement, the guardian or the conservator of the consumer may exercise such rights
18 on the consumer's behalf.

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20 Amend RSA 507-H:4, III(d) as inserted by section 1 of the bill by replacing it with the following:

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22 (d) If a controller is unable to authenticate a request to exercise any of the rights
23 afforded under sections I (a)-(d) of this section using commercially reasonable efforts, the controller
24 shall not be required to comply with a request to initiate an action pursuant to this section and shall
25 provide notice to the consumer that the controller is unable to authenticate the request to exercise
26 such right or rights until such consumer provides additional information reasonably necessary to
27 authenticate such consumer and such consumer's request to exercise such right or rights. A
28 controller shall not be required to authenticate an opt-out request, but a controller may deny an opt-
29 out request if the controller has a good faith, reasonable and documented belief that such request is
30 fraudulent. If a controller denies an opt-out request because the controller believes such request is
31 fraudulent, the controller shall send a notice to the person who made such request disclosing that
32 such controller believes such request is fraudulent, why such controller believes such request is
33 fraudulent and that such controller shall not comply with such request.

34
35 Amend RSA 507-H:6, I(d) as inserted by section 1 of the bill by replacing it with the following:

36

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1 (d) Not process sensitive data concerning a consumer without obtaining the consumer's
2 consent, or, in the case of the processing of sensitive data concerning a child, without processing such
3 data in accordance with COPPA;

4
5 Amend RSA 507-H:9, IV as inserted by section 1 of the bill by replacing it with the following:

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7 IV. The rights afforded under RSA 507-H:4, I(a)-(d) shall not apply to pseudonymized data
8 in cases where the controller is able to demonstrate that any information necessary to identify the
9 consumer is kept separately and is subject to effective technical and organizational controls that
10 prevent the controller from accessing such information.

11
12 Amend the bill by replacing section 2 with the following:

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14 2 Effective Date. This act shall take effect January 1, 2025.

15
16 Amend RSA 507-H:1, IV as inserted by section 1 of the bill by replacing it with the following:

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18 IV. "Biometric data" means data generated by automatic measurements of an individual's
19 biological characteristics, such as a fingerprint, a voiceprint, eye retinas, irises or other unique
20 biological patterns, or characteristics that are used to identify a specific individual. "Biometric data"
21 does not include a digital or physical photograph, an audio or video recording, or any data generated
22 from a digital or physical photograph, or an audio or video recording, unless such data is generated
23 to identify a specific individual.