

Amendment to SB 255-FN

1 Amend RSA 507-H:2 and 507-H:3 as inserted by section 1 of the bill by replacing them with the
2 following:

3
4 507-H:2 Application. This chapter applies to persons that conduct business in this state or
5 persons that produce products or services that are targeted to residents of this state that during a
6 one year period:

7 (a) Controlled or processed the personal data of not less than 35,000 unique consumers,
8 excluding personal data controlled or processed solely for the purpose of completing a payment
9 transaction; or

10 (b) Controlled or processed the personal data of not less than 10,000 unique consumers
11 and derived more than 25 percent of their gross revenue from the sale of personal data.

12 507-H:3 Exclusions.

13 I. This chapter shall not apply to any:

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

16 (b) Nonprofit organization;

17 (c) Institution of higher education;

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

20 (e) Financial institution or data subject to Title V of the Gramm-Leach-Bliley Act, 15
21 U.S.C. 6801 et seq.; or,

22 (f) A covered entity or business associate, as defined in 45 C.F.R. 160.103.(b).

23 II. The following information and data shall be exempt from this chapter:

24 (a) Protected health information under HIPAA;

25 (b) Patient-identifying information for purposes of 42 U.S.C. section 290dd-2;

26 (c) Identifiable private information for purposes of the federal policy for the protection of
27 human subjects under 45 C.F.R. 46;

28 (d) Identifiable private information that is otherwise information collected as part of
29 human subjects research pursuant to the good clinical practice guidelines issued by the
30 International Council for Harmonization of Technical Requirements for Pharmaceuticals for Human
31 Use;

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1 (e) The protection of human subjects under 21 C.F.R. Parts 6, 50, and 56, or personal
2 data used or shared in research, as defined in 45 C.F.R. 164.501, that is conducted in accordance
3 with the standards set forth in this chapter, or other research conducted in accordance with
4 applicable law;

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

7 (g) Patient safety work product for purposes of the Patient Safety and Quality
8 Improvement Act, 42 U.S.C. 299b-21 et seq., as amended;

9 (h) Information derived from any of the health care related information listed in this
10 subsection that is de-identified in accordance with the requirements for de-identification pursuant to
11 HIPAA;

12 (i) Information originating from and intermingled to be indistinguishable with, or
13 information treated in the same manner as, information exempt under this section that is
14 maintained by a covered entity or business associate, program or qualified service organization, as
15 specified in 42 U.S.C. 290dd-2, as amended;

16 (j) Information used for public health activities and purposes as authorized by HIPAA,
17 community health activities and population health activities;

18 (k) The collection, maintenance, disclosure, sale, communication or use of any personal
19 information bearing on a consumer's credit worthiness, credit standing, credit capacity, character,
20 general reputation, personal characteristics or mode of living by a consumer reporting agency,
21 furnisher or user that provides information for use in a consumer report, and by a user of a
22 consumer report, but only to the extent that such activity is regulated by and authorized under the
23 Fair Credit Reporting Act, 15 U.S.C. 1681 et seq.;

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

26 (m) Personal data regulated by the Family Educational Rights and Privacy Act, 20
27 U.S.C. 1232g et seq., as amended;

28 (n) Personal data collected, processed, sold or disclosed in compliance with the Farm
29 Credit Act, 12 U.S.C. 2001 et seq., as amended;

30 (o) Data processed or maintained in the course of an individual applying to, employed by
31 or acting as an agent or independent contractor of a controller, processor or third party, to the extent
32 that the data is collected and used within the context of that role; as the emergency contact
33 information of an individual under this chapter used for emergency contact purposes; or, that is
34 necessary to retain to administer benefits for another individual relating to the individual who is the
35 subject of the information under HIPPA and used for the purposes of administering such benefits;
36 and,

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(p) Personal data collected, processed, sold or disclosed in relation to price, route or service, as such terms are used in the Airline Deregulation Act, 49 U.S.C. 40101 et seq., as amended, by an air carrier subject to the act, to the extent this chapter is preempted by the Airline Deregulation Act, 49 U.S.C. 41713, as amended;

(q) Personal information maintained or used for purposes of compliance with the regulation of listed chemicals under the federal Controlled Substances Act, 21 U.S.C. section 830.

(r) Information included in a limited data set as described at 45 C.F.R. 164.514(e), to the extent that the information is used, disclosed, and maintained in the manner specified at 45 C.F.R. 164.514(e).

III. Controllers and processors that comply with the verifiable parental consent requirements of COPPA shall be compliant with any obligation to obtain parental consent pursuant to this chapter.

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

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

Amend the introductory paragraph of RSA 507-H:6, III as inserted by section 1 of the bill by replacing it with the following:

III. A controller shall provide consumers with a reasonably accessible, clear and meaningful privacy notice meeting standards established by the secretary of state that includes:

Amend the introductory paragraph of RSA 507-H:6, V(a) as inserted by section 1 of the bill by replacing it with the following:

V.(a) A controller shall establish, and shall describe in a privacy notice, consistent with the requirements of the secretary of state, one or more secure and reliable means for consumers to submit a request to exercise their consumer rights pursuant to this chapter. Such means shall take

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into account the ways in which consumers normally interact with the controller, the need for secure and reliable communication of such requests and the ability of the controller to verify the identity of the consumer making the request. A controller shall not require a consumer to create a new account in order to exercise consumer rights, but may require a consumer to use an existing account. Any such means shall include:

Amend the bill by replacing all after RSA 507-H:10 as inserted by section 1 of the bill with the following:

507-H:11 Notice; Enforcement.

I. The attorney general shall have exclusive authority to enforce violations under this chapter.

II. During the period beginning January 1, 2025 and ending December 31, 2025, the attorney general shall, and following said period the attorney general may, prior to initiating any action for a violation under this chapter, issue a notice of violation to the controller if the attorney general determines that a cure is possible. If the controller fails to cure such violation within 60 days of receipt of the notice of violation, the attorney general may bring an action pursuant to this section.

III. Beginning January 1, 2026, in determining whether to grant a controller or processor the opportunity to cure an alleged violation described under this chapter, the attorney general may consider:

- (1) The number of violations;
- (2) The size and complexity of the controller or processor;
- (3) The nature and extent of the controller's or processor's processing activities;
- (4) The substantial likelihood of injury to the public;
- (5) The safety of persons or property; and
- (6) Whether such alleged violation was likely caused by human or technical error.

IV. Nothing in this chapter shall be construed as providing the basis for, or be subject to, a private right of action for violations under this chapter or any other law.

V. A violation under this chapter shall constitute an unfair method of competition or any unfair or deceptive act or practice in the conduct of any trade or commerce within this state under RSA 358-A:2 and shall be enforced by the attorney general.

507-H:12 Compliance with Other Law. An individual or entity covered by this chapter and other law regarding third party providers of information and services is required to comply with both chapters, provided, however, that to the extent there is a direct conflict between the two chapters which precludes compliance with both statutes, the individual or entity shall comply with the statute that provides the greater measure of privacy protection to individuals. For purposes of this section,

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1 an “opt in” procedure for an individual to grant consent for the disclosure of personal information
2 shall be deemed to provide a greater measure of protection of privacy than the “opt out” procedure
3 established under this chapter.

4 2 Effective Date. This act shall take effect January 1, 2025.