

ESHB 1155 - S AMD TO S AMD (S-2826.4/23) **303**
By Senator Short

NOT ADOPTED 04/05/2023

1 Beginning on page 9, line 1, strike all of sections 4 through 9
2 and insert the following:

3 "NEW SECTION. **Sec. 4.** (1) A regulated entity and a small
4 business shall maintain a consumer health data privacy policy that
5 clearly and conspicuously discloses:

6 (a) The categories of consumer health data collected and the
7 purpose for which the data is collected, including how the data will
8 be used;

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

11 (c) The categories of consumer health data that is shared;

12 (d) A list of the categories of third parties and specific
13 affiliates with whom the regulated entity or the small business
14 shares the consumer health data; and

15 (e) How a consumer can exercise the rights provided in section 6
16 of this act.

17 (2) A regulated entity and a small business shall prominently
18 publish a link to its consumer health data privacy policy on its home
19 page.

20 (3) A regulated entity or a small business may not collect, use,
21 or share additional categories of consumer health data not disclosed
22 in the consumer health data privacy policy without first disclosing
23 the additional categories and obtaining the consumer's affirmative
24 consent prior to the collection, use, or sharing of such consumer
25 health data.

26 (4) A regulated entity or a small business may not collect, use,
27 or share consumer health data for additional purposes not disclosed
28 in the consumer health data privacy policy without first disclosing
29 the additional purposes and obtaining the consumer's affirmative
30 consent prior to the collection, use, or sharing of such consumer
31 health data.

32 (5) It is a violation of this chapter for a regulated entity or a
33 small business to contract with a processor to process consumer

1 health data in a manner that is inconsistent with the regulated
2 entity's or the small business's consumer health data privacy policy.

3 NEW SECTION. **Sec. 5.** (1) A regulated entity or a small business
4 may not collect any consumer health data except:

5 (a) With consent from the consumer for such collection for a
6 specified purpose; or

7 (b) To the extent necessary to provide a product or service that
8 the consumer to whom such consumer health data relates has requested
9 from such regulated entity or small business.

10 (2) A regulated entity or a small business may not share any
11 consumer health data except:

12 (a) With consent from the consumer for such sharing that is
13 separate and distinct from the consent obtained to collect consumer
14 health data; or

15 (b) To the extent necessary to provide a product or service that
16 the consumer to whom such consumer health data relates has requested
17 from such regulated entity or small business.

18 (3) Consent required under this section must be obtained prior to
19 the collection or sharing, as applicable, of any consumer health
20 data, and the request for consent must clearly and conspicuously
21 disclose: (a) The categories of consumer health data collected or
22 shared; (b) the purpose of the collection or sharing of the consumer
23 health data, including the specific ways in which it will be used;
24 (c) the categories of entities with whom the consumer health data is
25 shared; and (d) how the consumer can withdraw consent from future
26 collection or sharing of the consumer's health data.

27 (4) A regulated entity or a small business may not unlawfully
28 discriminate against a consumer for exercising any rights included in
29 this chapter.

30 NEW SECTION. **Sec. 6.** (1) A consumer has the right to confirm
31 whether a regulated entity or a small business is collecting,
32 sharing, or selling consumer health data concerning the consumer and
33 to access such data, including a list of all third parties and
34 affiliates with whom the regulated entity or the small business has
35 shared or sold the consumer health data and an active email address
36 or other online mechanism that the consumer may use to contact these
37 third parties.

1 (2) A consumer has the right to withdraw consent from the
2 regulated entity's or the small business's collection and sharing of
3 consumer health data concerning the consumer.

4 (3) A consumer has the right to have consumer health data
5 concerning the consumer deleted and may exercise that right by
6 informing the regulated entity or the small business of the
7 consumer's request for deletion.

8 (a) A regulated entity or a small business that receives a
9 consumer's request to delete any consumer health data concerning the
10 consumer shall:

11 (i) Delete the consumer health data from its records, including
12 from all parts of the regulated entity's or the small business's
13 network, including archived or backup systems pursuant to (c) of this
14 subsection; and

15 (ii) Notify all affiliates, processors, contractors, and other
16 third parties with whom the regulated entity or the small business
17 has shared consumer health data of the deletion request.

18 (b) All affiliates, processors, contractors, and other third
19 parties that receive notice of a consumer's deletion request shall
20 honor the consumer's deletion request and delete the consumer health
21 data from its records, subject to the same requirements of this
22 chapter.

23 (c) If consumer health data that a consumer requests to be
24 deleted is stored on archived or backup systems, then the request for
25 deletion may be delayed to enable restoration of the archived or
26 backup systems and such delay may not exceed six months from
27 authenticating the deletion request.

28 (4) A consumer may exercise the rights set forth in this chapter
29 by submitting a request, at any time, to a regulated entity or a
30 small business. Such a request may be made by a secure and reliable
31 means established by the regulated entity or the small business and
32 described in its consumer health data privacy policy. The method must
33 take into account the ways in which consumers normally interact with
34 the regulated entity or the small business, the need for secure and
35 reliable communication of such requests, and the ability of the
36 regulated entity or the small business to authenticate the identity
37 of the consumer making the request. A regulated entity or a small
38 business may not require a consumer to create a new account in order
39 to exercise consumer rights pursuant to this chapter but may require
40 a consumer to use an existing account.

1 (5) If a regulated entity or a small business is unable to
2 authenticate the request using commercially reasonable efforts, the
3 regulated entity or the small business is not required to comply with
4 a request to initiate an action under this section and may request
5 that the consumer provide additional information reasonably necessary
6 to authenticate the consumer and the consumer's request.

7 (6) Information provided in response to a consumer request must
8 be provided by a regulated entity and a small business free of
9 charge, up to twice annually per consumer. If requests from a
10 consumer are manifestly unfounded, excessive, or repetitive, the
11 regulated entity or the small business may charge the consumer a
12 reasonable fee to cover the administrative costs of complying with
13 the request or decline to act on the request. The regulated entity
14 and the small business bear the burden of demonstrating the
15 manifestly unfounded, excessive, or repetitive nature of the request.

16 (7) A regulated entity and a small business shall comply with the
17 consumer's requests under subsections (1) through (3) of this section
18 without undue delay, but in all cases within 45 days of receipt of
19 the request submitted pursuant to the methods described in this
20 section. A regulated entity and a small business must promptly take
21 steps to authenticate a consumer request but this does not extend the
22 regulated entity's and the small business's duty to comply with the
23 consumer's request within 45 days of receipt of the consumer's
24 request. The response period may be extended once by 45 additional
25 days when reasonably necessary, taking into account the complexity
26 and number of the consumer's requests, so long as the regulated
27 entity or the small business informs the consumer of any such
28 extension within the initial 45-day response period, together with
29 the reason for the extension.

30 (8) A regulated entity and a small business shall establish a
31 process for a consumer to appeal the regulated entity's or the small
32 business's refusal to take action on a request within a reasonable
33 period of time after the consumer's receipt of the decision. The
34 appeal process must be conspicuously available and similar to the
35 process for submitting requests to initiate action pursuant to this
36 section. Within 45 days of receipt of an appeal, a regulated entity
37 or a small business shall inform the consumer in writing of any
38 action taken or not taken in response to the appeal, including a
39 written explanation of the reasons for the decisions. If the appeal
40 is denied, the regulated entity or the small business shall also

1 provide the consumer with an online mechanism, if available, or other
2 method through which the consumer may contact the attorney general to
3 submit a complaint.

4 NEW SECTION. **Sec. 7.** A regulated entity and a small business
5 shall:

6 (1) Restrict access to consumer health data by the employees,
7 processors, and contractors of such regulated entity or small
8 business to only those employees, processors, and contractors for
9 which access is necessary to further the purposes for which the
10 consumer provided consent or where necessary to provide a product or
11 service that the consumer to whom such consumer health data relates
12 has requested from such regulated entity or small business; and

13 (2) Establish, implement, and maintain administrative, technical,
14 and physical data security practices that, at a minimum, satisfy
15 reasonable standard of care within the regulated entity's or the
16 small business's industry to protect the confidentiality, integrity,
17 and accessibility of consumer health data appropriate to the volume
18 and nature of the consumer health data at issue.

19 NEW SECTION. **Sec. 8.** (1)(a) A processor may process consumer
20 health data only pursuant to a binding contract between the processor
21 and the regulated entity or the small business that sets forth the
22 processing instructions and limits the actions the processor may take
23 with respect to the consumer health data it processes on behalf of
24 the regulated entity or the small business.

25 (b) A processor may process consumer health data only in a manner
26 that is consistent with the binding instructions set forth in the
27 contract with the regulated entity or the small business.

28 (2) A processor shall assist the regulated entity or the small
29 business by appropriate technical and organizational measures,
30 insofar as this is possible, in fulfilling the regulated entity's and
31 the small business's obligations under this chapter.

32 (3) If a processor fails to adhere to the regulated entity's or
33 the small business's instructions or processes consumer health data
34 in a manner that is outside the scope of the processor's contract
35 with the regulated entity or the small business, the processor is
36 considered a regulated entity or a small business with regard to such
37 data and is subject to all the requirements of this chapter with
38 regard to such data.

1 NEW SECTION. **Sec. 9.** (1) It is unlawful for any person to sell
2 or offer to sell consumer health data concerning a consumer without
3 first obtaining valid authorization from the consumer. The sale of
4 consumer health data must be consistent with the valid authorization
5 signed by the consumer. This authorization must be separate and
6 distinct from the consent obtained to collect or share consumer
7 health data, as required under section 5 of this act.

8 (2) A valid authorization to sell consumer health data is a
9 document consistent with this section and must be written in plain
10 language. The valid authorization to sell consumer health data must
11 contain the following:

12 (a) The specific consumer health data concerning the consumer
13 that the person intends to sell;

14 (b) The name and contact information of the person collecting and
15 selling the consumer health data;

16 (c) The name and contact information of the person purchasing the
17 consumer health data from the seller identified in (b) of this
18 subsection;

19 (d) A description of the purpose for the sale, including how the
20 consumer health data will be gathered and how it will be used by the
21 purchaser identified in (c) of this subsection when sold;

22 (e) A statement that the provision of goods or services may not
23 be conditioned on the consumer signing the valid authorization;

24 (f) A statement that the consumer has a right to revoke the valid
25 authorization at any time and a description on how to submit a
26 revocation of the valid authorization;

27 (g) A statement that the consumer health data sold pursuant to
28 the valid authorization may be subject to redisclosure by the
29 purchaser and may no longer be protected by this section;

30 (h) An expiration date for the valid authorization that expires
31 one year from when the consumer signs the valid authorization; and

32 (i) The signature of the consumer and date.

33 (3) An authorization is not valid if the document has any of the
34 following defects:

35 (a) The expiration date has passed;

36 (b) The authorization does not contain all the information
37 required under this section;

38 (c) The authorization has been revoked by the consumer;

39 (d) The authorization has been combined with other documents to
40 create a compound authorization; or

1 (e) The provision of goods or services is conditioned on the
2 consumer signing the authorization.

3 (4) A copy of the signed valid authorization must be provided to
4 the consumer.

5 (5) The seller and purchaser of consumer health data must retain
6 a copy of all valid authorizations for sale of consumer health data
7 for six years from the date of its signature or the date when it was
8 last in effect, whichever is later."

9 On page 19, after line 4, insert the following:

10 "NEW SECTION. **Sec. 16.** Sections 4 through 9 of this act take
11 effect July 31, 2025."

EFFECT: Aligns the effective dates for when regulated entities
and small businesses must comply with this act to July 31, 2025.

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