

FAMILY PLANNING DATA PRIVACY AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kirk A. Cullimore

House Sponsor: _____

LONG TITLE**General Description:**

This bill amends and enacts provisions related to reproductive health data.

Highlighted Provisions:

This bill:

- ▶ amends the Utah Consumer Privacy Act (act) to make reproductive health data subject to the provisions of the act;
- ▶ enacts provisions prohibiting government entities from, in the course of an investigation into a potential violation of or prosecution of state law, seeking or using reproductive health data, except with the consent of the consumer;
- ▶ defines terms; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

13-61-101 (Effective 12/31/23), as enacted by Laws of Utah 2022, Chapter 462

13-61-102 (Effective 12/31/23), as enacted by Laws of Utah 2022, Chapter 462

ENACTS:



28 **13-61-306**, Utah Code Annotated 1953

29
30 *Be it enacted by the Legislature of the state of Utah:*

31 Section 1. Section **13-61-101 (Effective 12/31/23)** is amended to read:

32 **13-61-101 (Effective 12/31/23). Definitions.**

33 As used in this chapter:

34 (1) "Account" means the Consumer Privacy Restricted Account established in Section
35 **13-61-403**.

36 (2) "Affiliate" means an entity that:

37 (a) controls, is controlled by, or is under common control with another entity; or

38 (b) shares common branding with another entity.

39 (3) "Aggregated data" means information that relates to a group or category of
40 consumers:

41 (a) from which individual consumer identities have been removed; and

42 (b) that is not linked or reasonably linkable to any consumer.

43 (4) "Air carrier" means the same as that term is defined in 49 U.S.C. Sec. 40102.

44 (5) "Authenticate" means to use reasonable means to determine that a consumer's
45 request to exercise the rights described in Section **13-61-201** is made by the consumer who is
46 entitled to exercise those rights.

47 (6) (a) "Biometric data" means data generated by automatic measurements of an
48 individual's unique biological characteristics.

49 (b) "Biometric data" includes data described in Subsection (6)(a) that are generated by
50 automatic measurements of an individual's fingerprint, voiceprint, eye retinas, irises, or any
51 other unique biological pattern or characteristic that is used to identify a specific individual.

52 (c) "Biometric data" does not include:

53 (i) a physical or digital photograph;

54 (ii) a video or audio recording;

55 (iii) data generated from an item described in Subsection (6)(c)(i) or (ii);

56 (iv) information captured from a patient in a health care setting; or

57 (v) information collected, used, or stored for treatment, payment, or health care
58 operations as those terms are defined in 45 C.F.R. Parts 160, 162, and 164.

(7) "Business associate" means the same as that term is defined in 45 C.F.R. Sec. 160.103.

(8) "Child" means an individual younger than 13 years old.

(9) "Consent" means an affirmative act by a consumer that unambiguously indicates the consumer's voluntary and informed agreement to allow a person to process personal data related to the consumer.

(10) (a) "Consumer" means an individual who is a resident of the state acting in an individual or household context.

(b) "Consumer" does not include an individual acting in an employment or commercial context.

(11) "Control" or "controlled" as used in Subsection (2) means:

(a) ownership of, or the power to vote, more than 50% of the outstanding shares of any class of voting securities of an entity;

(b) control in any manner over the election of a majority of the directors or of the individuals exercising similar functions; or

(c) the power to exercise controlling influence of the management of an entity.

(12) "Controller" means a person doing business in the state who determines the purposes for which and the means by which personal data are processed, regardless of whether the person makes the determination alone or with others.

(13) "Covered entity" means the same as that term is defined in 45 C.F.R. Sec. 160.103.

(14) "Deidentified data" means data that:

(a) cannot reasonably be linked to an identified individual or an identifiable individual; and

(b) are possessed by a controller who:

(i) takes reasonable measures to ensure that a person cannot associate the data with an individual;

(ii) publicly commits to maintain and use the data only in deidentified form and not attempt to reidentify the data; and

(iii) contractually obligates any recipients of the data to comply with the requirements described in Subsections (14)(b)(i) and (ii).

(15) "Director" means the director of the Division of Consumer Protection.

(16) "Division" means the Division of Consumer Protection created in Section [13-2-1](#).

(17) "Governmental entity" means the same as that term is defined in Section [63G-2-103](#).

(18) "Health care facility" means the same as that term is defined in Section [26-21-2](#).

(19) "Health care provider" means the same as that term is defined in Section [\[26-21-2\]](#) [78B-3-403](#).

(20) "Identifiable individual" means an individual who can be readily identified, directly or indirectly.

(21) "Institution of higher education" means a public or private institution of higher education.

(22) "Local political subdivision" means the same as that term is defined in Section [11-14-102](#).

(23) "Nonprofit corporation" means:

(a) the same as that term is defined in Section [16-6a-102](#); or

(b) a foreign nonprofit corporation as defined in Section [16-6a-102](#).

(24) (a) "Personal data" means information that is linked or reasonably linkable to an identified individual or an identifiable individual.

(b) "Personal data" does not include deidentified data, aggregated data, or publicly available information.

(25) "Process" means an operation or set of operations performed on personal data, including collection, use, storage, disclosure, analysis, deletion, or modification of personal data.

(26) "Processor" means a person who processes personal data on behalf of a controller.

(27) "Protected health information" means the same as that term is defined in 45 C.F.R. Sec. 160.103.

(28) "Pseudonymous data" means personal data that cannot be attributed to a specific individual without the use of additional information, if the additional information is:

(a) kept separate from the consumer's personal data; and

(b) subject to appropriate technical and organizational measures to ensure that the personal data are not attributable to an identified individual or an identifiable individual.

(29) "Publicly available information" means information that a person:

(a) lawfully obtains from a record of a governmental entity;

(b) reasonably believes a consumer or widely distributed media has lawfully made available to the general public; or

(c) if the consumer has not restricted the information to a specific audience, obtains from a person to whom the consumer disclosed the information.

(30) "Reproductive health data" means personal data derived from an individual's online interaction with an Internet website or application that relates to the individual's past, present, or future reproductive health or sexual health, including:

(a) efforts to research or obtain reproductive health or sexual health information, services, or supplies, including location information that may indicate the individual's attempt to receive the information, services, or supplies;

(b) reproductive health or sexual health conditions, status, diseases, or diagnoses, including:

(i) pregnancy;

(ii) menstruation;

(iii) ovulation;

(iv) ability to conceive a pregnancy;

(v) whether the individual is sexually active; or

(vi) whether the individual is engaging in unprotected sex;

(c) reproductive health related and sexual health related surgeries or procedures, including termination of a pregnancy;

(d) use or purchase of contraceptives, birth control, or any medication related to reproductive health, including abortifacients;

(e) bodily functions, vital signs, measurements, or symptoms related to menstruation or pregnancy, including:

(i) basal temperature;

(ii) cramps;

(iii) bodily discharge; or

(iv) hormone levels;

(f) information about diagnoses or diagnostic testing, treatment, or medications related

to anything described in Subsections (30)(a) through (e);

(g) information about the use of a product or service related to anything described in Subsections (30)(a) through (e); and

(h) information described in Subsections (30)(a) through (g) that is derived or extrapolated from non-health information.

~~[(30)]~~ (31) "Right" means a consumer right described in Section 13-61-201.

~~[(31)]~~ (32) (a) "Sale," "sell," or "sold" means the exchange of personal data for monetary consideration by a controller to a third party.

(b) "Sale," "sell," or "sold" does not include:

(i) a controller's disclosure of personal data to a processor who processes the personal data on behalf of the controller;

(ii) a controller's disclosure of personal data to an affiliate of the controller;

(iii) considering the context in which the consumer provided the personal data to the controller, a controller's disclosure of personal data to a third party if the purpose is consistent with a consumer's reasonable expectations;

(iv) the disclosure or transfer of personal data when a consumer directs a controller to:

(A) disclose the personal data; or

(B) interact with one or more third parties;

(v) a consumer's disclosure of personal data to a third party for the purpose of providing a product or service requested by the consumer or a parent or legal guardian of a child;

(vi) the disclosure of information that the consumer:

(A) intentionally makes available to the general public via a channel of mass media;

and

(B) does not restrict to a specific audience; or

(vii) a controller's transfer of personal data to a third party as an asset that is part of a proposed or actual merger, an acquisition, or a bankruptcy in which the third party assumes control of all or part of the controller's assets.

~~[(32)]~~ (33) (a) "Sensitive data" means:

(i) personal data that reveals:

(A) an individual's racial or ethnic origin;

183 (B) an individual's religious beliefs;
184 (C) an individual's sexual orientation;
185 (D) an individual's citizenship or immigration status; or
186 (E) information regarding an individual's medical history, mental or physical health
187 condition, or medical treatment or diagnosis by a health care professional;
188 (ii) the processing of genetic personal data or biometric data, if the processing is for the
189 purpose of identifying a specific individual; ~~[or]~~
190 (iii) specific geolocation data.
191 (b) "Sensitive data" includes reproductive health data.
192 ~~[(b)]~~ (c) "Sensitive data" does not include personal data that reveals an individual's:
193 (i) racial or ethnic origin, if the personal data are processed by a video communication
194 service; or
195 (ii) if the personal data are processed by a person licensed to provide health care under
196 Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act, or Title 58,
197 Occupations and Professions, information regarding an individual's medical history, mental or
198 physical health condition, or medical treatment or diagnosis by a health care professional.
199 ~~[(33)]~~ (34) (a) "Specific geolocation data" means information derived from technology,
200 including global position system level latitude and longitude coordinates, that directly
201 identifies an individual's specific location, accurate within a radius of 1,750 feet or less.
202 (b) "Specific geolocation data" does not include:
203 (i) the content of a communication; or
204 (ii) any data generated by or connected to advanced utility metering infrastructure
205 systems or equipment for use by a utility.
206 ~~[(34)]~~ (35) (a) "Targeted advertising" means displaying an advertisement to a consumer
207 where the advertisement is selected based on personal data obtained from the consumer's
208 activities over time and across nonaffiliated websites or online applications to predict the
209 consumer's preferences or interests.
210 (b) "Targeted advertising" does not include advertising:
211 (i) based on a consumer's activities within a controller's website or online application
212 or any affiliated website or online application;
213 (ii) based on the context of a consumer's current search query or visit to a website or

online application;

(iii) directed to a consumer in response to the consumer's request for information, product, a service, or feedback; or

(iv) processing personal data solely to measure or report advertising:

(A) performance;

(B) reach; or

(C) frequency.

~~[(35)]~~ (36) "Third party" means a person other than:

(a) the consumer, controller, or processor; or

(b) an affiliate or contractor of the controller or the processor.

~~[(36)]~~ (37) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

(a) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from the information's disclosure or use; and

(b) is the subject of efforts that are reasonable under the circumstances to maintain the information's secrecy.

Section 2. Section **13-61-102 (Effective 12/31/23)** is amended to read:

13-61-102 (Effective 12/31/23). Applicability.

(1) This chapter applies to any controller or processor who:

(a) (i) conducts business in the state; or

(ii) produces a product or service that is targeted to consumers who are residents of the state;

(b) has annual revenue of \$25,000,000 or more; and

(c) satisfies one or more of the following thresholds:

(i) during a calendar year, controls or processes personal data of 100,000 or more consumers; or

(ii) derives over 50% of the entity's gross revenue from the sale of personal data and controls or processes personal data of 25,000 or more consumers.

(2) This chapter does not apply to:

(a) except as provided in Section 13-61-306, a governmental entity or a third party

under contract with a governmental entity when the third party is acting on behalf of the governmental entity;

- (b) a tribe;
- (c) an institution of higher education;
- (d) a nonprofit corporation;
- (e) a covered entity;
- (f) a business associate;
- (g) information that meets the definition of:
 - (i) protected health information for purposes of the federal Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. Sec. 1320d et seq., and related regulations;
 - (ii) patient identifying information for purposes of 42 C.F.R. Part 2;
 - (iii) identifiable private information for purposes of the Federal Policy for the Protection of Human Subjects, 45 C.F.R. Part 46;
 - (iv) identifiable private information or personal data collected as part of human subjects research pursuant to or under the same standards as:
 - (A) the good clinical practice guidelines issued by the International Council for Harmonisation; or
 - (B) the Protection of Human Subjects under 21 C.F.R. Part 50 and Institutional Review Boards under 21 C.F.R. Part 56;
 - (v) personal data used or shared in research conducted in accordance with one or more of the requirements described in Subsection (2)(g)(iv);
 - ~~[(vi) information and documents created specifically for, and collected and maintained by, a committee listed in Section 26-1-7;]~~
 - ~~[(vii)]~~ (vi) information and documents created for purposes of the federal Health Care Quality Improvement Act of 1986, 42 U.S.C. Sec. 11101 et seq., and related regulations;
 - ~~[(viii)]~~ (vii) patient safety work product for purposes of 42 C.F.R. Part 3; or
 - ~~[(ix)]~~ (viii) information that is:
 - (A) deidentified in accordance with the requirements for deidentification set forth in 45 C.F.R. Part 164; and
 - (B) derived from any of the health care-related information listed in this Subsection (2)(g);

276 (h) information originating from, and intermingled to be indistinguishable with,
277 information under Subsection (2)(g) that is maintained by:

278 (i) a health care facility or health care provider; or
279 (ii) a program or a qualified service organization as defined in 42 C.F.R. Sec. 2.11;
280 (i) information used only for public health activities and purposes as described in 45
281 C.F.R. Sec. 164.512;

282 (j) (i) an activity by:

283 (A) a consumer reporting agency, as defined in 15 U.S.C. Sec. 1681a;
284 (B) a furnisher of information, as set forth in 15 U.S.C. Sec. 1681s-2, who provides
285 information for use in a consumer report, as defined in 15 U.S.C. Sec. 1681a; or
286 (C) a user of a consumer report, as set forth in 15 U.S.C. Sec. 1681b;
287 (ii) subject to regulation under the federal Fair Credit Reporting Act, 15 U.S.C. Sec.
288 1681 et seq.; and

289 (iii) involving the collection, maintenance, disclosure, sale, communication, or use of
290 any personal data bearing on a consumer's:

291 (A) credit worthiness;
292 (B) credit standing;
293 (C) credit capacity;
294 (D) character;
295 (E) general reputation;
296 (F) personal characteristics; or
297 (G) mode of living;

298 (k) a financial institution or an affiliate of a financial institution governed by, or
299 personal data collected, processed, sold, or disclosed in accordance with, Title V of the
300 Gramm-Leach-Bliley Act, 15 U.S.C. Sec. 6801 et seq., and related regulations;

301 (l) personal data collected, processed, sold, or disclosed in accordance with the federal
302 Driver's Privacy Protection Act of 1994, 18 U.S.C. Sec. 2721 et seq.;

303 (m) personal data regulated by the federal Family Education Rights and Privacy Act,
304 20 U.S.C. Sec. 1232g, and related regulations;

305 (n) personal data collected, processed, sold, or disclosed in accordance with the federal
306 Farm Credit Act of 1971, 12 U.S.C. Sec. 2001 et seq.;

(o) data that are processed or maintained:

(i) in the course of an individual applying to, being employed by, or acting as an agent or independent contractor of a controller, processor, or third party, to the extent the collection and use of the data are related to the individual's role;

(ii) as the emergency contact information of an individual described in Subsection (2)(o)(i) and used for emergency contact purposes; or

(iii) to administer benefits for another individual relating to an individual described in Subsection (2)(o)(i) and used for the purpose of administering the benefits;

(p) an individual's processing of personal data for purely personal or household purposes; or

(q) an air carrier.

(3) A controller is in compliance with any obligation to obtain parental consent under this chapter if the controller complies with the verifiable parental consent mechanisms under the Children's Online Privacy Protection Act, 15 U.S.C. Sec. 6501 et seq., and the act's implementing regulations and exemptions.

(4) This chapter does not require a person to take any action in conflict with the federal Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. Sec. 1320d et seq., or related regulations.

Section 3. Section **13-61-306** is enacted to read:

Part 3. Requirements Relating to Personal Data

13-61-306. Reproductive health data restrictions.

Notwithstanding any provision of law to the contrary, in the course of an investigation into a potential violation of or prosecution of state law, a governmental entity may not:

(1) request a search warrant that seeks to obtain reproductive health data;

(2) issue a subpoena that seeks to obtain reproductive health data; or

(3) without the consent of the consumer:

(a) request that an Internet website or application release the consumer's reproductive health data; or

(b) use the consumer's reproductive health data for any purpose in connection with the investigation or prosecution.

Section 4. **Effective date.**

338 This bill takes effect on December 31, 2023.