

1.1 **Senator Klein from the Committee on Commerce and Consumer Protection, to**
1.2 **which was referred**

1.3 **S.F. No. 2810:** A bill for an act relating to consumer data privacy; creating the Minnesota
1.4 Age-Appropriate Design Code Act; placing obligations on certain businesses regarding
1.5 children's consumer information; providing for enforcement by the attorney general;
1.6 proposing coding for new law in Minnesota Statutes, chapter 13; proposing coding for new
1.7 law as Minnesota Statutes, chapter 325O.

1.8 Reports the same back with the recommendation that the bill be amended as follows:

1.9 Page 2, delete section 3 and insert:

1.10 "Sec. 3. [325O.02] DEFINITIONS.

1.11 (a) For purposes of this chapter, the following terms have the meanings given.

1.12 (b) "Affiliate" means a legal entity that controls, is controlled by, or is under common
1.13 control with, that other legal entity. For these purposes, "control" or "controlled" means:
1.14 ownership of, or the power to vote, more than 50 percent of the outstanding shares of any
1.15 class of voting security of a company; control in any manner over the election of a majority
1.16 of the directors or of individuals exercising similar functions; or the power to exercise a
1.17 controlling influence over the management of a company.

1.18 (c) "Business" means:

1.19 (1) a sole proprietorship, partnership, limited liability company, corporation, association,
1.20 or other legal entity that is organized or operated for the profit or financial benefit of its
1.21 shareholders or other owners; and

1.22 (2) an affiliate of a business that shares common branding with the business. For purposes
1.23 of this clause, "common branding" means a shared name, servicemark, or trademark that
1.24 the average consumer would understand that two or more entities are commonly owned.

1.25 For purposes of this chapter, for a joint venture or partnership composed of businesses in
1.26 which each business has at least a 40 percent interest, the joint venture or partnership and
1.27 each business that composes the joint venture or partnership shall separately be considered
1.28 a single business, except that personal data in the possession of each business and disclosed
1.29 to the joint venture or partnership must not be shared with the other business.

1.30 (d) "Child" means a consumer who is under 18 years of age.

1.31 (e) "Collect" means buying, renting, gathering, obtaining, receiving, or accessing any
1.32 personal data pertaining to a consumer by any means. This includes receiving data from the
1.33 consumer, either actively or passively, or by observing the consumer's behavior.

2.1 (f) "Consumer" means a natural person who is a Minnesota resident, however identified,
2.2 including by any unique identifier.

2.3 (g) "Dark pattern" means a user interface designed or manipulated with the substantial
2.4 effect of subverting or impairing user autonomy, decision making, or choice.

2.5 (h) "Data protection impact assessment" means a systematic survey to assess and mitigate
2.6 risks to children who are reasonably likely to access the online service, product, or feature
2.7 that arise from the data management practices of the business.

2.8 (i) "Default" means a preselected option adopted by the business for the online service,
2.9 product, or feature.

2.10 (j) "Deidentified" means data that cannot reasonably be used to infer information about,
2.11 or otherwise be linked to, an identified or identifiable natural person, or a device linked to
2.12 such person, provided that the business that possesses the data:

2.13 (1) takes reasonable measures to ensure that the data cannot be associated with a natural
2.14 person;

2.15 (2) publicly commits to maintain and use the data only in a deidentified fashion and not
2.16 attempt to reidentify the data; and

2.17 (3) contractually obligates any recipients of the data to comply with all provisions of
2.18 this paragraph.

2.19 (k) "Likely to be accessed by children" means an online service, product, or feature that
2.20 it is reasonable to expect would be accessed by children based on any of the following
2.21 indicators:

2.22 (1) the online service, product, or feature is directed to children, as defined by the
2.23 Children's Online Privacy Protection Act, United States Code, title 15, section 6501 et seq.;

2.24 (2) the online service, product, or feature is determined, based on competent and reliable
2.25 evidence regarding audience composition, to be routinely accessed by a significant number
2.26 of children;

2.27 (3) the online service, product, or feature contains advertisements marketed to children;

2.28 (4) the online service, product, or feature is substantially similar or the same as an online
2.29 service, product, or feature subject to clause (2);

2.30 (5) the online service, product, or feature has design elements that are known to be of
2.31 interest to children, including but not limited to games, cartoons, music, and celebrities who
2.32 appeal to children; or

3.1 (6) a significant amount of the audience of the online service, product, or feature is
3.2 determined, based on internal company research, to be children.

3.3 (l) "Online service, product, or feature" does not mean any of the following:

3.4 (1) telecommunications service, as defined in United States Code, title 47, section 153;

3.5 (2) a broadband service as defined by section 116J.39, subdivision 1; or

3.6 (3) the delivery or use of a physical product.

3.7 (m) "Personal data" means any information that is linked or reasonably linkable to an
3.8 identified or identifiable natural person. Personal data does not include deidentified data or
3.9 publicly available information. For purposes of this paragraph, "publicly available
3.10 information" means information that (1) is lawfully made available from federal, state, or
3.11 local government records or widely distributed media, and (2) a controller has a reasonable
3.12 basis to believe a consumer has lawfully made available to the general public.

3.13 (n) "Precise geolocation" means any data that is derived from a device and that is used
3.14 or intended to be used to locate a consumer within a geographic area that is equal to or less
3.15 than the area of a circle with a radius of 1,850 feet, except as prescribed by regulations.

3.16 (o) "Process" or "processing" means any operation or set of operations that are performed
3.17 on personal data or on sets of personal data, whether or not by automated means, such as
3.18 the collection, use, storage, disclosure, analysis, deletion, or modification of personal data.

3.19 (p) "Profiling" means any form of automated processing of personal data to evaluate,
3.20 analyze, or predict personal aspects concerning an identified or identifiable natural person's
3.21 economic situation, health, personal preferences, interests, reliability, behavior, location,
3.22 or movements.

3.23 (q) "Sale," "sell," or "sold" means the exchange of personal data for monetary or other
3.24 valuable consideration by the business to a third party. Sale does not include the following:

3.25 (1) the disclosure of personal data to a third party who processes the personal data on
3.26 behalf of the business;

3.27 (2) the disclosure of personal data to a third party with whom the consumer has a direct
3.28 relationship for purposes of providing a product or service requested by the consumer;

3.29 (3) the disclosure or transfer of personal data to an affiliate of the business;

3.30 (4) the disclosure of data that the consumer intentionally made available to the general
3.31 public via a channel of mass media, and did not restrict to a specific audience; or

4.1 (5) the disclosure or transfer of personal data to a third party as an asset that is part of a
 4.2 completed or proposed merger, acquisition, bankruptcy, or other transaction in which the
 4.3 third party assumes control of all or part of the business's assets.

4.4 (r) "Share" means sharing, renting, releasing, disclosing, disseminating, making available,
 4.5 transferring, or otherwise communicating orally, in writing, or by electronic or other means
 4.6 a consumer's personal data by the business to a third party for cross-context behavioral
 4.7 advertising, whether or not for monetary or other valuable consideration, including
 4.8 transactions between a business and a third party for cross-context behavioral advertising
 4.9 for the benefit of a business in which no money is exchanged.

4.10 (s) "Third party" means a natural or legal person, public authority, agency, or body other
 4.11 than the consumer or the business."

4.12 Page 7, after line 6, insert:

4.13 "(a) A business is subject to this chapter if it:

4.14 (1) collects consumers' personal data or has consumers' personal data collected on its
 4.15 behalf by a third party;

4.16 (2) alone, or jointly with others, determines the purposes and means of the processing
 4.17 of consumers' personal data;

4.18 (3) does business in Minnesota; and

4.19 (4) satisfies one or more of the following thresholds:

4.20 (i) has annual gross revenues in excess of \$25,000,000, as adjusted every odd-numbered
 4.21 year to reflect the Consumer Price Index;

4.22 (ii) alone or in combination, annually buys, receives for the business's commercial
 4.23 purposes, sells, or shares for commercial purposes, alone or in combination, the personal
 4.24 data of 50,000 or more consumers, households, or devices; or

4.25 (iii) derives 50 percent or more of its annual revenues from selling consumers' personal
 4.26 data."

4.27 Page 7, line 7, before "This" insert "(b)"

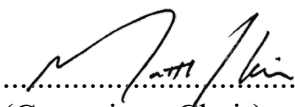
4.28 Page 8, line 29, delete "information" and insert "data"

4.29 Page 9, line 20, delete "sensitive personal information" and insert "personal data"

4.30 Page 9, line 29, delete "information" and insert "data"

4.31 Page 10, lines 9, 12, 14, 15, 16, 25, and 30, delete "information" and insert "data"

5.1 And when so amended the bill do pass and be re-referred to the Committee on Judiciary
 5.2 and Public Safety. Amendments adopted. Report adopted.

5.3 .....
 5.4 (Committee Chair)

5.5 March 23, 2023.....
 5.6 (Date of Committee recommendation)