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Law on the Protection of Individuals with regard to the processing of their
personal data

NO. 8968

THE LEGISLATIVE ASSEMBLY
OF THE REPUBLIC OF COSTA RICA
DECREES:

**PROTECTION OF INDIVIDUALS WITH
REGARD TO THE PROCESSING OF THEIR
PERSONAL DATA**

CHAPTER I GENERAL

PROVISIONS

SINGLE SECTION

ARTICLE 1.- Objective and purpose

This law is of public order and aims to guarantee to any person, regardless of their nationality, residence or domicile, respect for their fundamental rights, specifically, their right to informational self-determination in relation to their private life or activity and other personality rights, as well as the defense of their freedom and equality with respect to the automated or manual processing of data pertaining to their person or property.

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ARTICLE 2.- Scope of application

This law shall apply to personal data contained in automated or manual databases, of public or private organizations, and to any form of subsequent use of such data.

The personal data protection regime set forth in this law shall not apply to databases maintained by natural or legal persons for exclusively internal, personal or domestic purposes, provided that they are not sold or otherwise commercialized.

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ARTICLE 3.- Definitions

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For the purposes of this law, the following is defined as follows:

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- a) Database: any file, archive, register or other structured set of personal data, which are subject to treatment or processing, automated or manual, regardless of the way in which they are created, organized or accessed.
- b) Personal data: any data relating to an identified or identifiable natural person.
- c) Personal data of unrestricted access: those contained in public databases of general access, as provided by special laws and in accordance with the purpose for which such data were collected.
- d) Restricted access personal data: data that, even being part of public access records, are not of unrestricted access because they are of interest only to their owner or to the Public Administration.
- e) Sensitive data: information related to a person's private life, such as information revealing racial origin, political opinions, religious or spiritual convictions, socioeconomic status, biomedical or genetic information, sexual life and orientation, among others.
- f) Duty of confidentiality: obligation of those responsible for databases, their personnel and the personnel of the Agency for the Protection of Inhabitants' Data (Prodhab), to maintain confidentiality when exercising the powers granted by this law, especially when accessing information on personal and sensitive data. This obligation will last even after the relationship with the database has ended.
- g) Data subject: natural person, owner of the data that are subject to automated or manual processing.
- h) Database manager: the natural or legal person who administers, manages or is in charge of the database, whether it is a public or private entity, competent, according to the law, to decide what is the purpose of the database, which categories of personal data shall be recorded and what type of processing shall be applied to them.
- i) Processing of personal data: any operation or set of operations, carried out by means of automated or manual procedures and applied to personal data, such as collection, recording, organization, conservation, modification, extraction, consultation, use, communication by transmission, dissemination or any other form that facilitates access to them, matching or interconnection, as well as their blocking, deletion or destruction, among others.

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CHAPTER II

BASIC PRINCIPLES AND RIGHTS FOR THE PROTECTION OF PERSONAL DATA

SECTION I

BASIC PRINCIPLES AND RIGHTS

ARTICLE 4.- Informational self-determination

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Everyone has the right to informational self-determination, which encompasses the set of principles and guarantees relating to the lawful processing of his or her personal data recognized in this section.

Informational self-determination is also recognized as a fundamental right, with the purpose of controlling the flow of information concerning each person, derived from the right to privacy, avoiding discriminatory actions.

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ARTICLE 5.- Principle of informed consent 1.

When personal data is requested, it will be necessary to previously inform the owners or their representatives, in an express, precise and unequivocal manner:

- a) The existence of a personal database.
- b) The purposes for which this data is collected.
- c) The recipients of the information, as well as who may consult it.
- d) The obligatory or optional nature of your answers to questions asked during data collection.
- e) The treatment that will be given to the requested data.
- f) The consequences of the refusal to provide the data.
- g) The possibility of exercising your rights.
- h) The identity and address of the person responsible for the database.

When questionnaires or other means of collecting personal data are used, these warnings should be clearly legible.

2.- Granting of consent

Whoever collects personal data must obtain the express consent of the data subject or his representative. This consent must be in writing, either in a physical or electronic document, which may be revoked in the same manner, without retroactive effect.

Express consent shall not be required when:

- a) There is a substantiated order issued by a competent judicial authority or a resolution adopted by a special investigative committee of the Legislative Assembly in the exercise of its duties.
- b) It is personal data of unrestricted access, obtained from sources of general public access.

c) The data must be provided by constitutional or legal provision.

The collection of data without the informed consent of the individual, or acquired by fraudulent, unfair or unlawful means, is prohibited.

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ARTICLE 6. Principle of quality of information

Personal data may only be collected, stored or used for automated or manual processing when such data is current, truthful, accurate and suitable for the purpose for which it was collected.

1.- News

Personal data must be current. The person in charge of the database will delete data that are no longer relevant or necessary for the purpose for which they were received and recorded. In no case, personal data that may affect, in any way, its owner, will be kept after ten years from the date of occurrence of the recorded facts, unless otherwise provided by special regulations. In case it is necessary to keep them beyond the stipulated period, they must be disassociated from their owner.

2. Truthfulness

The personal data must be truthful.

The person responsible for the database is obliged to modify or delete data that is untrue. In the same way, he/she shall ensure that the data are treated in a fair and lawful manner.

3.- Accuracy

Personal data must be accurate. The person responsible for the database shall take the necessary measures to ensure that inaccurate or incomplete data, with respect to the purposes for which they were collected or for which they were subsequently processed, are deleted or rectified.

If the personal data recorded are found to be inaccurate in whole or in part, or incomplete, they will be deleted or replaced ex officio by the person responsible for the database, by the corresponding rectified, updated or supplemented data. Likewise, they will be deleted if there is no informed consent or if their collection is prohibited.

Adequacy for the purpose

Personal data will be collected for specified, explicit and legitimate purposes and will not be further processed in a manner incompatible with those purposes.

Further processing of data for historical, statistical or scientific purposes shall not be considered incompatible, provided that appropriate safeguards are in place to safeguard the rights provided for in this law.

Databases may not be used for purposes contrary to law or public morality.

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ARTICLE 7.- Rights of the individual

The right of any person to access their personal data, rectify or delete it and to consent to the transfer of their data is guaranteed.

The person responsible for the database must comply with the person's request, free of charge, and resolve in the corresponding sense within five working days, counted from the receipt of the request.

Access to information

The information shall be stored in such a way as to fully guarantee the right of access by the person concerned.

The right of access to personal information guarantees the following powers of the interested party:

a) Obtain at reasonable intervals, as provided by regulation, without delay and free of charge, confirmation or non-confirmation of the existence or otherwise of his or her data in files or databases. In the event that his data does exist, it must be communicated to the person concerned in a precise and understandable form.

b) Receive information regarding your person, as well as the purpose for which they were collected and the use that has been made of your personal data. The report must be complete, clear and free of codifications. It should be accompanied by an explanation of the technical terms used.

c) To be informed in writing in a comprehensive manner, by physical or electronic means, about the totality of the record belonging to the holder, even when the request only includes one aspect of the personal data. This report may in no case disclose data belonging to third parties, even if they are linked to the person concerned, except when they are intended to constitute a criminal offense.

d) To have knowledge, where appropriate, of the system, program, method or process used in the processing of your personal data.

The exercise of the right referred to in this article, in the case of data of deceased persons, shall correspond to their successors or heirs.

2.- Right of rectification

The right is guaranteed to obtain, where appropriate, the rectification of personal data and their updating or deletion when they have been processed in violation of the provisions of this law, in particular due to the incompleteness or inaccuracy of the data, or when they have been collected without the owner's authorization.

Any holder may request and obtain from the person responsible for the database, the rectification, updating, cancellation or deletion and compliance with the guarantee of confidentiality with respect to their personal data.

The exercise of the right referred to in this article, in the case of data of deceased persons, shall correspond to their successors or heirs.

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ARTICLE 8. Exceptions to the citizen's right to informational self-determination

The principles, rights and guarantees established herein may be limited in a fair and reasonable manner and in accordance with the principle of administrative transparency, when the following purposes are pursued:

- a) State security.
- b) Security and the exercise of public authority.
- c) The prevention, prosecution, investigation, detention and repression of criminal offenses, or violations of professional ethics.
- d) The operation of databases used for statistical, historical or scientific research purposes, when there is no risk of individuals being identified.
- e) The adequate provision of public services.
- f) The effective ordinary activity of the Administration, by the official authorities.

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SECTION II SPECIAL

CATEGORIES OF DATA

PROCESSING

ARTICLE 9. Particular categories of data

In addition to the general rules established in this law, for the processing of personal data, the particular categories of data to be mentioned shall be governed by the following provisions:

1.- Sensitive Data

No person shall be obliged to provide sensitive data. The processing of personal data revealing racial or ethnic origin, political opinions, religious, spiritual or philosophical convictions, as well as data relating to health, life and sexual orientation, among others, is prohibited.

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This prohibition shall not apply when:

- a) The processing of the data is necessary to safeguard the vital interests of the data subject or of another person, in the event that the data subject is physically or legally incapable of giving consent.
- b) The processing of data is carried out in the course of its legitimate activities and with due guarantees by a foundation, an association or any other body, whose purpose is political, philosophical, religious or trade union, provided that it concerns exclusively its members or persons who maintain regular contacts with the foundation, association or body, by reason of its purpose and provided that the data is not disclosed to third parties without the consent of the persons concerned.
- c) The processing relates to data that the data subject has voluntarily made public or is necessary for the recognition, exercise or defense of a right in legal proceedings.
- d) The processing of the data is necessary for the purposes of prevention or medical diagnosis, the provision of health care or medical treatment, or the management of health services, provided that such data processing is carried out by a health official, subject to the professional or professional secrecy of his or her function, or by another person also subject to an equivalent obligation of secrecy.

2.- Restricted personal data

Restricted access personal data are those that, even being part of publicly accessible records, are not of unrestricted access because they are of interest only to their owner or to the Public Administration. Their processing will be allowed only for public purposes or with the express consent of the owner.

3.- Unrestricted access to personal data

Personal data of unrestricted access are those contained in public databases of general access, as provided by special laws and in accordance with the purpose for which these data were collected.

The following will not be considered in this category: the exact address of the residence, except if its use is the result of a mandate, subpoena or administrative or judicial notification, or of a banking or financial operation, the photograph, private telephone numbers and others of the same nature whose treatment may affect the rights and interests of the owner.

4.- Data on credit behavior

The data referring to credit behavior shall be governed by the rules that regulate the National Financial System, in such a way as to guarantee an acceptable degree of risk on the part of the financial entities, without impeding the full exercise of the right to informative self-determination or exceeding the limits of this law.

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SECTION III

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SECURITY AND CONFIDENTIALITY OF DATA PROCESSING

ARTICLE 10.- Data security

The person responsible for the database must adopt the necessary technical and organizational measures to guarantee the security of the personal data and avoid its alteration, accidental or illicit destruction, loss, treatment or unauthorized access, as well as any other action contrary to this law.

Such measures shall include, at least, the most appropriate physical and logical security mechanisms in accordance with current technological developments, to ensure the protection of the information stored.

Personal data shall not be recorded in databases that do not meet the conditions that fully guarantee their security and integrity, as well as that of the processing centers, equipment, systems and programs.

The requirements and conditions to be met by automated and manual databases and by the persons involved in the collection, storage and use of the data shall be established by regulation.

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ARTICLE 11. Duty of confidentiality

The responsible person and those who intervene in any phase of the processing of personal data are bound to professional or functional secrecy, even after the end of their relationship with the database. The person bound may be relieved of the duty of secrecy by judicial decision in the strictly necessary and within the case before the court.

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ARTICLE 12. Action protocols

Natural and legal persons, public and private, which have among their functions the collection, storage and use of personal data, may issue a protocol of action in which they will establish the steps to be followed in the collection, storage and handling of personal data, in accordance with the rules provided for in this law.

In order to be valid, the action protocols must be registered, as well as their subsequent modifications, with Prodhav. Prodhav may verify, at any time, that the database is in full compliance with the terms of its protocol.

The manipulation of data based on an action protocol registered with the Prodhav will make it presumed, "iuris tantum", compliance with the provisions contained in this law, for the purposes of authorizing the transfer of the data contained in a database.

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ARTICLE 13. Effective guarantees

Every interested person has the right to a simple and prompt administrative procedure before the Prodhab, in order to be protected against acts that violate his fundamental rights recognized by this law. The foregoing is without prejudice to the general or specific jurisdictional guarantees established by law for the same purpose.

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**CHAPTER III TRANSFER OF
PERSONAL DATA
SINGLE SECTION**

ARTICLE 14.- Transfer of personal data, general rule

Those responsible for databases, public or private, may only transfer data contained therein when the right holder has expressly and validly authorized such transfer and it is made without violating the principles and rights recognized in this law.

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**CHAPTER IV
DATA PROTECTION AGENCY OF
THE INHABITANTS
(Prodhab)
SECTION I GENERAL
PROVISIONS**

ARTICLE 15. Agency for the Protection of Inhabitants' Data (Prodhab)

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An organ of maximum deconcentration attached to the Ministry of Justice and Peace called the Agency for the Protection of Inhabitants' Data (Prodhab) is hereby created. It shall have its own instrumental legal personality in the performance of the functions assigned to it by this law, in addition to the administration of its resources and budget, as well as to enter into the contracts and agreements required for the fulfillment of its functions. The Agency shall enjoy independence of criteria.

Article sheet

ARTICLE 16. Powers

The Prodhab has the following attributions, in addition to those imposed by this or other norms:

- a)** To ensure compliance with data protection regulations, both by private individuals or legal entities, as well as by public entities and bodies.
- b)** To keep a registry of the databases regulated by this law.
- c)** Request, from those who manage databases, the information necessary for the exercise of their duties, including the protocols used.
- d)** To access the databases regulated by this law, for the purpose of effectively enforcing the rules on personal data protection. This attribution will be applied for specific cases submitted to the Agency and, exceptionally, when there is evidence of a generalized mishandling of the database or information system.
- e)** Decide on claims for infringement of the rules on personal data protection.
- f)** Order, ex officio or at the request of a party, the deletion, rectification, addition or restriction in the circulation of the information contained in the files and databases, when these contravene the rules on the protection of personal data.
- g)** To impose the sanctions established in Article 28 of this law on natural or legal persons, public or private, who violate the rules on the protection of personal data, and to transfer to the Public Prosecutor's Office those that may constitute a crime.
- h)** Promote and contribute to the drafting of regulations aimed at implementing the rules on personal data protection.
- i)** To issue the necessary guidelines, which must be published in the official gazette La Gaceta, in order for public institutions to implement the appropriate procedures regarding the handling of personal data, respecting the different degrees of administrative autonomy and functional independence.
- j)** Promote awareness among residents of their rights concerning the collection, storage, transfer and use of their personal data.

In the exercise of its duties, Prodhab shall use automated procedures, in accordance with the best technological tools available to it.

Article sheet

ARTICLE 17. Management of the Agency

The Director of Prodhav will be in charge of a national director, who must have at least a bachelor's degree in a subject related to the purpose of his or her function and be of recognized professional and moral solvency.

Any person who is an owner, shareholder, member of the board of directors, manager, advisor, legal representative or employee of a company engaged in the collection or storage of personal data may not be appointed as a national director. Such prohibition shall persist for up to two years after the termination of their functions or business relationship. The person who is a spouse or relative up to the third degree of consanguinity or affinity of a person who is in any of the aforementioned cases shall also be barred.

Article sheet

ARTICLE 18. Personnel of the Agency

Prodhav will have the technical and administrative personnel necessary for the proper performance of its functions, appointed through a competitive process based on suitability, in accordance with the Civil Service Statute or as provided by regulation. The personnel is obliged to maintain professional secrecy and the duty of confidentiality of the personal data they learn in the exercise of their functions.

Article sheet

ARTICLE 19. Prohibitions

All Prodhav employees have the following prohibitions:

- a) Providing services to persons or companies engaged in the collection, storage or handling of personal data. Such prohibition will persist for up to two years after the termination of their functions.
- b) Taking personal and improper interest in matters within the Agency's knowledge.
- c) Disclose or in any way disseminate personal data to which he/she has had access by reason of his/her position. This prohibition shall persist indefinitely even after leaving office.
- d) In the case of civil servants appointed to professional positions, to practice their profession externally. An exception to the above is the exercise of teaching activities in the following areas

higher education institutions or the liberal practice in favor of relatives by blood or affinity up to the third degree, provided that it is not in the case of subparagraph a).

Failure to comply with any of the above prohibitions shall be considered a very serious offense for the purposes of applying the disciplinary regime, without prejudice to other forms of liability that such conduct may entail.

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ARTICLE 20. Budget

Prodhab's budget shall consist of the following:

- a) Royalties, fees and rights obtained in the exercise of its functions.
- b) Transfers made by the State in favor of the Agency.
- c) Donations and subsidies from other states, national public institutions or international organizations, provided that they do not compromise the Agency's independence, transparency and autonomy.
- d) The amount generated by its financial resources.

The proceeds from the collection of the fines set forth in this law will be used to update Prodhab's equipment and programs.

The Agency shall be subject to compliance with the principles and liability regime established in Titles II and X of Law No. 8131, Financial Administration of the Republic and Public Budgets, of September 18, 2001. In addition, it shall provide the information required by the Ministry of Finance for its studies. Otherwise, the Agency is exempted from the scope and application of this law. In auditing, the Agency shall be subject only to the provisions of the Comptroller General of the Republic.

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SECTION II INTERNAL

STRUCTURE

ARTICLE 21. Registration of files and databases

Any database, public or private, managed for distribution, dissemination or commercialization purposes, must be registered in the register set up for this purpose by Prodhab. Registration does not imply the transfer of data.

It shall record any other information required by law and the action protocols referred to in Articles 12 and 16(c) of this law.

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ARTICLE 22. Disclosure

Prodhab will elaborate and execute a communication strategy aimed at making the data subjects aware of the rights derived from the handling of their personal data, as well as the mechanisms that the law provides for the defense of such prerogatives. It shall coordinate with local governments and with the Ombudsman's Office of the Republic to periodically carry out dissemination activities among the inhabitants of the cantons.

Likewise, it will promote among the persons and companies that collect, store or handle personal data, the adoption of practices and action protocols in accordance with the protection of such information.

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CHAPTER V PROCEDURES

SECTION I COMMON

PROVISIONS

ARTICLE 23.-Supplementary application

The provisions of Book II of the General Law of Public Administration shall be applicable in all matters not expressly provided for in this law and insofar as they are compatible with its purpose.

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SECTION II

INTERVENTION IN ARCHIVES AND DATABASES

ARTICLE 24.

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Any person with a subjective right or legitimate interest may denounce, before the Prodhab, that a public or private database is acting in contravention of the rules or basic principles for data protection and informational self-determination set forth in this law.

Article sheet

ARTICLE 25. Processing of complaints

Once the complaint has been received, the person in charge of the database shall be given a period of three working days in order to make a statement as to the veracity of such charges. The person denounced shall submit the means of proof supporting his allegations together with a report, which shall be deemed to be given under oath. Failure to submit the report within the stipulated term shall be deemed to be true.

At any time, Prodhab may order the accused person to submit the necessary information. It may also carry out on-site inspections of its files or databases. In order to safeguard the rights of the interested party, it may issue, by means of a well-founded act, precautionary measures to ensure the effective outcome of the procedure.

No later than one month after the filing of the complaint, the Prodhab shall issue the final act. An appeal for reconsideration may be lodged against its decision within the third day, which must be resolved within eight days of receipt.

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ARTICLE 26.- Effects of the favorable decision

If it is determined that the data subject's information is false, incomplete, inaccurate, or that, in accordance with the rules on personal data protection, it was improperly collected, stored or disseminated, its immediate deletion, rectification, addition or clarification must be ordered, or its transfer or dissemination must be prevented. If the person denounced does not fully comply with the order, he/she will be subject to the sanctions provided for in this and other laws.

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ARTICLE 27. Disciplinary proceedings

Ex officio or at the request of a party, the Prodhab may initiate a procedure aimed at demonstrating whether a database regulated by this law is being used in accordance with its principles; to this end, the procedures provided for in the General Law on Public Administration for the ordinary procedure must be followed. An appeal for reconsideration may be filed against the final act within the third day, which must be resolved within eight days of receipt.

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ARTICLE 28. Penalties

If any of the offenses set forth in this law have been committed, any of the following penalties shall be imposed, without prejudice to the corresponding criminal sanctions:

- a) For minor offenses, a fine of up to five basic salaries for the position of judicial assistant I, according to the Budget Law of the Republic.
- b) For serious misconduct, a fine of five to twenty base salaries for the position of judicial assistant I, according to the Budget Law of the Republic.
- c) For very serious offenses, a fine of fifteen to thirty basic salaries for the position of judicial assistant I, according to the Budget Law of the Republic, and the suspension of the operation of the file from one to six months.

Article sheet

ARTICLE 29. Minor offenses

For the purposes of this law, misdemeanors shall be considered minor:

- a) Collect personal data for use in a database without sufficient and ample information being provided to the person concerned, in accordance with the specifications of Article 5, Section I.
- b) Collect, store and transmit personal data of third parties by means of insecure mechanisms or mechanisms that in any way do not guarantee the security and unalterability of the data.

Article sheet

ARTICLE 30. Serious misconduct

For the purposes of this law, the following shall be considered serious misconduct:

- a) Collect, store, transmit or otherwise use personal data without the informed and express consent of the data subject, in accordance with the provisions of this law.

- b) Transferring personal data to other persons or companies in contravention of the rules set forth in Chapter III of this law.
- c) Collect, store, transmit or otherwise use personal data for a purpose other than that authorized by the owner of the information.
- d) Unjustifiably refusing to give access to a data subject to data contained in files and databases, in order to verify their quality, collection, storage and use in accordance with this law.
- e) Unjustifiably refusing to delete or rectify the data of a person who has so requested by clear and unequivocal means.

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ARTICLE 31. Most serious faults

For the purposes of this law, the following shall be considered very serious misconduct:

- a) Collect, store, transmit or otherwise use, by private natural or legal persons, sensitive data, as defined in article 3 of this law.
- b) Obtaining, from owners or third parties, personal data of a person by means of deception, violence or threat.
- c) Disclose information recorded in a personal database whose secrecy is required by law.
- d) Knowingly providing a third party with false or different information contained in a data file.
- e) Processing personal data without being duly registered with the Prodhab, in the case of those responsible for databases covered by Article 21 of this law.
- f) Transferring, to the databases of third countries, personal information of Costa Ricans or foreigners residing in the country, without the consent of their owners.

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SECTION III INTERNAL

PROCEDURES

ARTICLE 32. Sanctioning regime for public databases

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When the person responsible for a public database commits any of the above offenses, Prodhab will issue a resolution establishing the appropriate measures to be taken to cease or correct the effects of the offense. This resolution will be notified to the person responsible for the database, to the body to which he/she reports hierarchically and to the affected parties, if any. The resolution may be issued ex officio or at the request of a party. The foregoing is without prejudice to any criminal liability incurred.

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CHAPTER VI

FEES

ARTICLE 33. Fee for database regulation and administration

The persons responsible for databases that must register with Prodhab, pursuant to Article 21 of this law, shall be subject to a database regulation and administration fee to be paid annually, in the amount of two hundred dollars (\$200), legal tender of the United States of America. The procedure for the collection of this fee shall be detailed in the regulations to be issued by Prodhab for such purposes.

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ARTICLE 34. Fee for commercialization of consulting services

The person responsible for the database shall pay Prodhab a fee for each sale of data from files defined in section 3(b) of this law, of individualizable persons legitimately registered and provided that it is marketed for profit, which shall range from twenty-five cents of a dollar (\$0.25) to one dollar (\$1), legal tender of the United States of America, amount that may be fixed within such range by regulation. In the case of global contracts of low, medium and high consumption of consultations, or contractual modalities of online service by number of applications, it shall be the regulation of the law which shall fix the details of the fee charge, which may not exceed ten percent (10%) of the contractual price.

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TRANSITIONS

TRANSITIONAL I.-

Natural or legal persons, whether public or private, who are currently owners or administrators of the databases covered by this law, shall adapt their procedures and rules of action, as well as the

content of their databases to the provisions of this law, within a maximum period of one year from the creation of the Prodhab.

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TRANSITORY II.

As of the effective date of this law, the process of creation and integration of the Prodhab will begin within a maximum period of six months.

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TRANSITIONAL III.

The Executive Branch will issue the regulations of this law within a maximum period of six months after the creation of Prodhab, taking into account the technical recommendations provided by the Agency.

Effective as of its publication.

Given at the Presidency of the Republic, San José, on the seventh day of the month of July of the year two thousand eleven.

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Date of generation: 07/09/2022 01:35:18 p.m.