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## 23AndMe's Ch. 11 Sale Hinges On Patchwork Of Privacy Laws

By Rick Archer

Law360 (March 26, 2025, 7:04 PM EDT) -- Bankrupt genetic testing company 23andMe wants to put its vast store of genetic data up for auction in order to repay creditors, but customer privacy concerns and a patchwork of state data protection laws could throw this plan into disarray.



Unlike with most debtors, the assets 23andMe is looking to sell while in Chapter 11 consist of sensitive genetic information of its customers, an issue which may prompt a number of consumers to opt out of a sale of the data. (Tiffany Hagler-Geard/Bloomberg via Getty Images)

Data is big money in modern business, and the sale of customer lists and other basic information is common in bankruptcy — but the prospect of 23andMe's millions of DNA test results going on the market has sparked a push by consumers to cancel their accounts and opt out of the sale, which may impact the company's hopes of paying off its debts, some legal experts say.

"If every single one of them does it, there's no going concern," Daniel Gielchinsky, a partner at DGIM Law PLLC, said in a phone interview on Wednesday.

23andMe, which reports it has 15 million customers for its genetic testing services, filed for **Chapter 11 protection** on March 23, citing among other things the high cost of dealing with a 2023 data breach, which compromised information on 7 million customers and sparked a class action that it **settled for \$30 million**. It said it plans to spend the next month and a half seeking a buyer for its assets.

The company's privacy policy reserves its right to sell customer genetic data — specifically naming bankruptcy as a circumstance under which it can do so — while also specifying it will not supply customer information to public databases, insurance companies or law enforcement agencies without a court order.

Lucy Porter, an attorney with Bracewell LLP specializing in data privacy, told Law360 there was nothing preventing 23andMe from changing its data sale policy previously — and nothing to prevent the eventual buyer from changing it in the future except compliance with certain state laws.

In its Chapter 11 sale procedures motion, the company said it will only accept bids from companies that comply with its existing privacy policy.

"To the extent circumstances arise where any deviation from the company's consumer privacy practices is warranted and/or necessary, the debtors will implement any such change in accordance with applicable law(s), with adequate notice to applicable parties, and/or with necessary relief from this court, as appropriate," Matthew Kvarda, the chief restructuring officer overseeing the company in its Chapter 11, said in a filing.

There are currently no federal laws governing the use of 23andMe's genetic data, as it isn't a healthcare provider and therefore does not fall under the Health Insurance Portability and Accountability Act that governs the treatment of medical records.

Instead, the use of the data falls under a "patchwork" of data privacy laws that have been enacted in 20 states and are now in effect in 13 of them, offering varying degrees of protection, usually including at least notification of the sale or transfer of data, Porter said.

"Typically, no law outright prohibits the sale or the transfer of this type of information," she said.

Another factor that varies from state to state is how the privacy laws on the books are enforced, she said.

"If you look at what the Texas attorney general has done, they've become quite active," she said. The office created a dedicated privacy team last year.

The most comprehensive such law, the California Consumer Privacy Act, also gives customers the right to opt out of the sale of personal data and the right to ask holders to delete personal data, a move California Attorney General Rob Bonta urged 23andMe customers to take in an announcement Friday as the company approached bankruptcy.

"Given 23andMe's reported financial distress, I remind Californians to consider invoking their rights and directing 23andMe to delete their data and destroy any samples of genetic material held by the company," Bonta said.

Multiple state attorneys general — including New York, Michigan, Maine, South Carolina and Oregon — joined Bonta this week in advising customers to consider deleting their accounts.

However, 23andMe's website states that it must retain some data to comply with legal and professional certification requirements. One law cited on the site, the federal Clinical Laboratory Improvement Amendments of 1988, states non-pathology test results must be preserved for two years.

Customer information like names and addresses are routinely included in bankruptcy sales, sometimes as the company's most valuable remaining asset, but the massive amount of biometric information held by 23andMe is raising particular concerns.

Following the 2023 data breach, 1.1 million customer profiles — in many cases including name, sex, birth year, ancestry information, location and family tree information — were released online.

"There's a real potential for abuse," Gielchinsky of DGIM Law said.

On Wednesday, the state of Indiana filed a notice with the bankruptcy court saying it would need to be satisfied that any sale includes sufficient security and privacy measures, including the right of customers to ask that their data be deleted and their samples destroyed, and Gielchinsky said he expects more states will follow.

However, customers deleting their accounts or opting out of the sale presents 23andMe with a problem that could send it into liquidation as the company's value drains away, he said.

"The only asset that 23andMe has that's worth selling is this data," he said.

Gielchinsky suggested a way to balance the interests in the case would be the appointment of a privacy ombudsman — a feature in other bankruptcies involving sensitive creditor information, including cryptocurrency exchanges and healthcare providers — who could look at the issues and establish policies and procedures.

John Loughnane, a partner White and Williams LLP who has served as an ombudsman in a bankruptcy case last year, noted the law only mandates an ombudsman if the debtor is seeking to sell consumer information in violation of its own privacy policies. While this isn't the case with 23andMe, the judge retains the discretion to appoint one; in its notice, Indiana said it may seek an appointment.

"I get the feeling everybody is going to feel more comfortable if a consumer privacy ombudsman is appointed," he said.

He said he expects a negotiation between 23andMe, its lenders, its customers and state regulatory agencies to determine what data is actually sold.

Clark Hill partner Peter Berk agreed that sale opt-outs and account deletions will have an impact on the bottom line in a sale.

"Data is money in this day and age," he added.

--Editing by Philip Shea.

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