

SENATE, No. 332

STATE OF NEW JERSEY 220th LEGISLATURE

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Sponsored by:

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District 7 (Burlington)

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SYNOPSIS

Requires commercial Internet websites and online services to notify consumers of collection and disclosure of personally identifiable information and allows consumers to opt out.

CURRENT VERSION OF TEXT

As reported by the Senate Commerce Committee with technical review.



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1 AN ACT concerning commercial Internet websites, consumers, and
2 personally identifiable information and supplementing Title 56
3 of the Revised Statutes.
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. As used in P.L. , c. (C.) (pending before the
9 Legislature as this bill):

10 “Affiliate” means a legal entity that controls, is controlled by, or
11 is under common control with another legal entity.

12 “Commercial Internet website” means a website operated for
13 business purposes, including, but not limited to, the sale of goods
14 and services, which collects and maintains personally identifiable
15 information from a consumer.

16 “Consumer” means an identified person who is a resident of this
17 State acting only in an individual or household context. “Consumer”
18 shall not include a person acting in a commercial or employment
19 context.

20 “De-identified data” means: data that cannot be linked to a
21 consumer without additional information that is kept separately; or
22 data that has been modified to a degree that the risk of re-
23 identification, consistent with guidance from the Federal Trade
24 Commission and the National Institute of Standards and
25 Technology, is small, as determined by the Director of the Division
26 of Consumer Affairs in the Department of Law and Public Safety
27 pursuant to section 8 of P.L. , c. (C.) (pending before the
28 Legislature as this bill), that is subject to a public commitment by
29 the operator not to attempt to re-identify the data, and to which one
30 or more enforceable controls to prevent re-identification has been
31 applied, which may include legal, administrative, technical, or
32 contractual controls.

33 “Designated request address” means an electronic mail address,
34 Internet website, or toll-free telephone number that a consumer may
35 use to request the information required to be provided pursuant to
36 section 3 of P.L. , c. (C.) (pending before the Legislature as
37 this bill).

38 “Disclose” means to release, transfer, share, disseminate, make
39 available, or otherwise communicate orally, in writing, or by
40 electronic or any other means to a third party a consumer’s
41 personally identifiable information. “Disclose” shall not include:

42 the disclosure of a consumer’s personally identifiable information
43 by an operator to a third party under a written contract authorizing
44 the third party to use the personally identifiable information to
45 perform services on behalf of the operator, including maintaining or
46 servicing accounts, providing customer service, processing or
47 fulfilling orders and transactions, verifying consumer information,
48 processing payments, providing financing, or similar services, but

1 only if the contract prohibits the third party from using the
2 personally identifiable information for any reason other than
3 performing the specified service on behalf of the operator and from
4 disclosing personally identifiable information to additional third
5 parties unless expressly authorized by the consumer;

6 the disclosure of personally identifiable information by an
7 operator to a third party based on a good-faith belief that disclosure
8 is required to comply with applicable law, regulation, legal process,
9 or court order;

10 the disclosure of personally identifiable information by an
11 operator to a third party that is reasonably necessary to address
12 fraud, risk management, security, or technical issues, to protect the
13 operator's rights or property, or to protect a consumer or the public
14 from illegal activities as required by law; or

15 the disclosure of personally identifiable information by an
16 operator to a third party in connection with the proposed or actual
17 sale or merger of the operator, or sale of all or part of its assets, to a
18 third party.

19 "Online service" means an information service provided over the
20 Internet that collects and maintains personally identifiable information
21 from a consumer.

22 "Operator" means a person or entity that operates a commercial
23 Internet website or an online service. "Operator" shall not include
24 any third party that operates, hosts, or manages, but does not own, a
25 commercial Internet website or online service on the operator's
26 behalf, or processes information on behalf of the operator.

27 "Personally identifiable information" means any information that
28 is linked or reasonably linkable to an identified or identifiable
29 person. "Personally identifiable information" shall not include de-
30 identified data or publicly available information.

31 "Publicly available information" means information that is
32 lawfully made available from federal, State, or local government
33 records, or widely-distributed media.

34 "Sale" means the exchange of personally identifiable information
35 for monetary consideration by the operator to a third party for
36 purposes of licensing or selling personally identifiable information
37 at the third party's discretion to additional third parties. "Sale" shall
38 not include the following:

39 the disclosure of personally identifiable information to a service
40 provider that processes that information on behalf of the operator;

41 the disclosure of personally identifiable information to a third
42 party with whom the consumer has a direct relationship for
43 purposes of providing a product or service requested by the
44 consumer or otherwise in a manner that is consistent with a
45 consumer's reasonable expectations considering the context in
46 which the consumer provided the personally identifiable
47 information to the operator;

1 the disclosure or transfer of personally identifiable information
2 to an affiliate of the operator; or

3 the disclosure or transfer of personally identifiable information
4 to a third party as an asset that is part of a merger, acquisition,
5 bankruptcy, or other transaction in which the third party assumes
6 control of all or part of the operator's assets.

7 "Service provider" means a person, private entity, public entity,
8 agency, or other entity that processes personally identifiable
9 information on behalf of the operator and who shall provide
10 sufficient guarantees to the operator to implement appropriate
11 technical and organizational measures in a manner that processing
12 shall ensure the protection of the consumer's personally identifiable
13 information.

14 "Third party" means a person, private entity, public entity, agency,
15 or entity other than the consumer, operator, or affiliate or service
16 provider of the operator.

17 "Verified request" means the process through which a consumer
18 may submit a request to exercise a right or rights established in
19 P.L. , c. (C.) (pending before the Legislature as this bill),
20 and by which an operator can reasonably authenticate the request
21 and the consumer making the request using commercially
22 reasonable means.

23

24 2. a. An operator that collects the personally identifiable
25 information of a consumer through a commercial Internet website or
26 online service shall provide on its commercial Internet website or
27 online service notification to a consumer that shall include, but not
28 be limited to:

29 (1) the categories of the personally identifiable information that
30 the operator collects through the commercial Internet website or
31 online service about a consumer who uses or visits the operator's
32 commercial Internet website or online service;

33 (2) the categories of all third parties with which the operator
34 may disclose a consumer's personally identifiable information;

35 (3) whether a third party may collect personally identifiable
36 information about a consumer's online activities over time and
37 across different commercial Internet websites or online services
38 when the consumer uses the Internet website or online service of the
39 operator;

40 (4) a description of the process for an individual consumer who
41 uses or visits the commercial Internet website or online service to
42 review and request changes to any of the consumer's personally
43 identifiable information that is collected by the commercial Internet
44 website or online service of the operator;

45 (5) the process by which the operator notifies consumers who
46 use or visit the commercial Internet website or online service of
47 material changes to the notification required to be made available

1 pursuant to this subsection, along with the effective date of the
2 notice; and

3 (6) information concerning one or more designated request
4 addresses of the operator.

5 b. In addition to the requirements of subsection a. of this
6 section, an operator shall include the notification as a separate
7 section of the operator's privacy policy.

8

9 3. a. An operator that collects a consumer's personally
10 identifiable information through its commercial Internet website or
11 online service and discloses the consumer's personally identifiable
12 information to a third party shall make the following information
13 available to the consumer free of charge upon receipt of a verified
14 request from the consumer for this information through a designated
15 request address:

16 (1) the category or categories of a consumer's personally
17 identifiable information that were disclosed; and

18 (2) the category or categories of the third parties that received the
19 consumer's personally identifiable information.

20 b. An operator that receives a verified request from a consumer
21 pursuant to subsection a. of this section shall provide a response to
22 the consumer within 60 days of the operator's verification of the
23 request and shall provide the information, pursuant to subsection a.
24 of this section, for all disclosures of personally identifiable
25 information that occurred in the prior 12 months.

26 c. This section shall not apply to personally identifiable
27 information disclosed prior to the effective date of
28 P.L. , c. (C.) (pending before the Legislature as this bill).

29

30 4. a. An operator that collects the personally identifiable
31 information of a consumer through its commercial Internet website
32 or online service and sells the personally identifiable information of
33 the consumer through the Internet shall clearly and conspicuously
34 post a link, on its commercial Internet website or online service or
35 in another prominently accessible location the commercial Internet
36 website maintains for consumer privacy settings, to an Internet
37 webpage maintained by the operator, which enables a consumer, by
38 verified request, to opt out of the sale of the consumer's personally
39 identifiable information. The method in which a consumer may opt
40 out shall be in a form and manner determined by the operator,
41 provided that a consumer shall not be required to establish an
42 account with the operator in order to opt out of the sale of a
43 consumer's personally identifiable information.

44 b. An operator shall be prohibited from discriminating against
45 a consumer if the consumer chooses to opt out of the sale of the
46 consumer's personally identifiable information pursuant to
47 subsection a. of this section. The provisions of this section shall not
48 prohibit the operator's ability to offer consumers discounts, loyalty

1 programs, or other incentives for the sale of the consumer's
2 personally identifiable information, or to provide different services
3 to consumers that are reasonably related to the value of the relevant
4 data.

5

6 5. A waiver of the requirements of, or an agreement that does
7 not comply with, the provisions of P.L. , c. (C.) (pending
8 before the Legislature as this bill) shall be void and unenforceable.

9

10 6. Nothing in P.L. , c. (C.) (pending before the
11 Legislature as this bill) shall apply to:

12 a. protected health information collected by a covered entity or
13 business associate subject to the privacy, security, and breach
14 notification rules issued by the United States Department of Health
15 and Human Services, Parts 160 and 164 of Title 45 of the Code of
16 Federal Regulations, established pursuant to the "Health Insurance
17 Portability and Accountability Act of 1996," Pub.L.104-191, and
18 the "Health Information Technology for Economic and Clinical
19 Health Act," (42 U.S.C. s.17921 et seq.).

20 b. a financial institution or an affiliate of a financial institution
21 that is subject to Title V of the federal "Gramm-Leach-Bliley Act of
22 1999," 15 U.S.C. s.6801 et seq., and the rules and implementing
23 regulations promulgated thereunder;

24 c. the secondary market institutions identified in
25 15 U.S.C. s.6809(3)(D) and 12 C.F.R. s.1016.3(l)(3)(iii); or

26 d. an insurance institution subject to P.L.1985, c.179
27 (C.17:23A-1 et seq.).

28 e. the sale of a consumer's personally identifiable information
29 by the New Jersey Motor Vehicle Commission that is permitted by
30 the federal "Drivers' Privacy Protection Act of 1994," 18 U.S.C.
31 s.2721 et seq.; and

32 f. personally identifiable information collected, processed,
33 sold, or disclosed by a consumer reporting agency, as defined in 15
34 U.S.C. s.1681a(f), if the collection, processing, sale, or disclosure
35 of the personally identifiable information is limited by the federal
36 "Fair Credit Reporting Act," 15 U.S.C. s.1681 et seq., and
37 implementing regulations.

38

39 7. Nothing in P.L. , c. (C.) (pending before the
40 Legislature as this bill) shall require an operator to:

41 a. re-identify de-identified data;

42 b. collect, retain, use, link, or combine personally identifiable
43 information concerning a consumer that it would not otherwise
44 collect, retain, use, link, or combine in the ordinary course of
45 business.

46

47 8. It shall be an unlawful practice and violation of P.L.1960,
48 c.39 (C.56:8-1 et seq.) for an operator to fail to notify a consumer of

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1 the sale of personally identifiable information pursuant to sections 2
2 and 3 of P.L. , c. (C.) (pending before the Legislature as this
3 bill) or fail to allow a consumer to opt out of the sale of a
4 consumer’s personally identifiable information pursuant to section 4
5 of P.L. , c. (C.) (pending before the Legislature as this bill)
6 if the operator fails to cure any alleged violation of
7 P.L. , c. (C.) (pending before the Legislature as this bill)
8 within 30 days after receiving notice of alleged noncompliance
9 from the Attorney General.

10

11 9. The Director of the Division of Consumer Affairs in the
12 Department of Law and Public Safety shall promulgate rules and
13 regulations, pursuant to the “Administrative Procedure Act,”
14 P.L.1968, c.410 (C.52:14B-1 et seq.), necessary to effectuate the
15 purposes of P.L. , c. (C.) (pending before the Legislature as
16 this bill).

17

18 10. The Office of the Attorney General shall have sole and
19 exclusive authority to enforce a violation of P.L. , c. (C.)
20 (pending before the Legislature as this bill).

21

22 11. This act shall take effect on the 180th day following the date
23 of enactment, except that the Director of the Division of Consumer
24 Affairs may take any anticipatory administrative action in advance as
25 shall be necessary for the implementation of this act.