

ASSEMBLY, No. 3752

STATE OF NEW JERSEY
214th LEGISLATURE

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Sponsored by:

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

SYNOPSIS

"Adolescents' Online Privacy Protection Act."

CURRENT VERSION OF TEXT

As introduced.



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1 AN ACT concerning the protection of privacy of adolescents'
2 personal information on the Internet and supplementing chapter 8
3 of Title 56 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. This act shall be known as and may be cited as the
9 "Adolescents' Online Privacy Protection Act."

10

11 2. As used in this act:

12 "Adolescent" means a natural person between the ages of 13 and
13 17, inclusive.

14 "Disclosure" means, with respect to personal information, the
15 release of personal information collected in identifiable form by an
16 operator for any purpose, except where such information is
17 provided to a person other than the operator who provides support
18 for the internal operation of the website and does not disclose or use
19 that information for any other purpose.

20 "Division" means the Division of Consumer Affairs in the
21 Department of Law and Public Safety.

22 "Internet" means collectively the myriad of computer and
23 telecommunications facilities, including equipment and operating
24 software, which comprise the interconnected world-wide network of
25 networks that employ the Transmission Control Protocol/Internet
26 Protocol, or any predecessor or successor protocols to such
27 protocol, to communicate information of all kinds by wire or radio.

28 "Online contact information" means an e-mail address or another
29 substantially similar identifier that permits direct contact with a
30 person online.

31 "Operator" means any person who operates a website located on
32 the Internet or an online service which collects or maintains
33 personal information from or about the users of or visitors to that
34 website or online service, or on whose behalf such information is
35 collected or maintained, where that website or online service is
36 operated for commercial purposes, but does not include a person
37 properly registered with the division pursuant to the "Charitable
38 Registration and Investigation Act," P.L.1994, c.16 (C.45:17A-18 et
39 seq.).

40 "Parent" includes a legal guardian.

41 "Personal information" means information collected online from
42 an individual that identifies that individual, including first and last
43 name, home and other physical address, E-mail address, social
44 security number, telephone number, and any other identifier the
45 division determines permits the physical or online contacting of a
46 specific individual, or information concerning an adolescent or
47 parents of an adolescent that the website collects online from the
48 adolescent and combines with an identifier described above.

1 "Verifiable parental consent" means any reasonable effort, taking
2 into consideration available technology, including a request for
3 authorization for future collection, use and disclosure described in
4 the notice, to ensure that a parent of an adolescent receives notice of
5 the operator's personal information collection, use and disclosure
6 practices, and authorizes the collection, use and disclosure, as
7 applicable, of personal information and the subsequent use of that
8 information before that information is collected from that
9 adolescent.

10 "Website or online service directed at adolescents" means a
11 commercial website or online service that is targeted at adolescents
12 or that portion of a commercial website or online service that is
13 targeted at adolescents, but a commercial website or online service,
14 or portion thereof, shall not be deemed directed at adolescents
15 solely for referring or linking to a commercial website or online
16 service directed at adolescents using information tools, including a
17 directory, index, reference, pointer or hypertext link.

18

19 3. The division shall adopt regulations:

20 a. Requiring the operator of any website or online service
21 directed at adolescents that collects personal information from
22 adolescents or the operator of a website or online service that has
23 actual knowledge that it is collecting personal information from an
24 adolescent:

25 (1) to provide notice on the website of what information is
26 collected from adolescents by the operator, how the operator uses
27 that information and the operator's disclosure practices for that
28 information; and

29 (2) to obtain verifiable parental consent for the collection, use
30 and disclosure of personal information from adolescents.

31 b. Requiring the operator of any website or online service
32 directed at adolescents that collects personal information from
33 adolescents or the operator of a website or online service that has
34 actual knowledge that it is collecting personal information from an
35 adolescent to provide, upon request of a parent whose adolescent
36 has provided personal information to that website or online service,
37 upon proper identification of that parent, to the parent:

38 (1) a description of the specific types of personal information
39 collected from the adolescent by that operator;

40 (2) the opportunity at any time to refuse to permit the operator's
41 further use or maintenance in retrievable form, or future online
42 collection of personal information from that adolescent: and

43 (3) notwithstanding any other provision of law, a means that is
44 reasonable under the circumstances for the parent to obtain any
45 personal information collected from that adolescent.

46 c. Prohibiting the operator of any website or online service
47 directed at adolescents that collects personal information from
48 adolescents or the operator of a website or online service that has

1 actual knowledge that it is collecting personal information from an
2 adolescent from conditioning an adolescent's participation in a
3 game, the offering of a prize, or another activity on the adolescent's
4 disclosing more personal information than is reasonably necessary
5 to participate in the activity.

6 d. Requiring the operator of any website or online service
7 directed at adolescents that collects personal information from
8 adolescents or the operator of a website or online service that has
9 actual knowledge that it is collecting personal information from an
10 adolescent to establish and maintain reasonable procedures to
11 protect the confidentiality, security and integrity of personal
12 information collected from adolescents.

13 e. The regulations adopted pursuant to subsection a. of this
14 section shall provide that verifiable parental consent shall not be
15 required in the case of:

16 (1) online contact information collected from an adolescent that
17 is used only to respond directly on a one-time basis to a specific
18 request from the adolescent and is not used to recontact the
19 adolescent and is not maintained in retrievable form by the
20 operator;

21 (2) a request for the name or online contact information of a
22 parent or adolescent that is used for the sole purpose of obtaining
23 parental consent or providing notice under this section and where
24 that information is not maintained in retrievable form by the
25 operator if parental consent is not obtained after a reasonable time;

26 (3) online contact information collected from an adolescent that
27 is used only to respond more than once directly to a specific request
28 from the adolescent and is not used to recontact the adolescent
29 beyond the scope of that request

30 (a) if, before any additional response after the initial response to
31 the adolescent, the operator uses reasonable efforts to provide a
32 parent notice of the online contact information collected from the
33 adolescent, the purposes for which it is to be used, and an
34 opportunity for the parent to request that the operator make no
35 further use of the information and that it not be maintained in
36 retrievable form; or

37 (b) without notice to the parent in such circumstances as the
38 division may determine are appropriate, taking into consideration
39 the benefits to the adolescent of access to information and services,
40 and risks to the security and privacy of the adolescent, pursuant to
41 regulation adopted by the division;

42 (4) the name of the adolescent and online contact information,
43 to the extent reasonably necessary to protect the safety of an
44 adolescent participant on the site, when the name is:

45 (a) used only for the purpose of protecting the adolescent's
46 safety;

47 (b) not used to recontact the adolescent or for any other purpose;
48 and

1 (c) not disclosed on the site,
2 if the operator uses reasonable efforts to provide a parent notice of
3 the name and online contact information collected from the
4 adolescent, the purposes for which it is to be used, and an
5 opportunity for the parent to request that the operator make no
6 further use of the information and that it not be maintained in
7 retrievable form; or

8 (5) the collection, use or dissemination of personal information
9 by the operator of a website or online is necessary to:

10 (a) protect the security and integrity of its website;

11 (b) take precautions against liability;

12 (c) respond to judicial process; or

13 (d) provide, to the extent permitted under other provisions of
14 law, information to law enforcement agencies or for an
15 investigation on a matter related to public safety.

16 The regulations shall permit the operator of a website or an
17 online service to terminate service provided to an adolescent whose
18 parent has refused, under the regulations adopted pursuant to
19 subsection a. of this section, to permit the operator's further use or
20 maintenance in retrievable form, or future online collection, of
21 personal information from that adolescent.

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23 4. It shall be an unlawful practice for an operator of a website
24 or online service to collect, use or disclose personal information in
25 a manner that violates the regulations adopted pursuant to section 3
26 of this act.

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28 5. An operator of a website or online service shall not be held
29 liable under this act for any disclosure made in good faith and
30 following reasonable procedures in responding to a request for
31 disclosure of personal information pursuant to subsection b. of
32 section 3 of this act to the parent of an adolescent.

33

34 6. Nothing in this act shall be interpreted to require an operator
35 to collect or maintain any data that would not otherwise be
36 collected or maintained.

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38 7. This act shall take effect on the 180th day after enactment,
39 but the division may take such anticipatory administrative action in
40 advance as shall be necessary for the implementation of this act.

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STATEMENT

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45 This bill, the "Adolescents' Online Privacy Protection Act,"
46 would regulate the disclosure of personal information collected
47 from adolescents by an operator of a website or online service. The
48 bill would apply to personal information of individuals over the age

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1 of 13 but under the age of 18. This bill is modeled on the federal
2 "Children's Online Privacy Protection Act," 15 U.S.C.A.s.6501 et
3 seq., which applies only to children under the age of 13.

4 Under the provisions of the bill, it would be an unlawful practice
5 under the State's consumer fraud act, P.L.1960, c.39 (C.56:8-1 et
6 seq.) to collect, use or disclose an adolescent's personal information
7 in a manner that violates regulations to be adopted by the Division
8 of Consumer Affairs in the Department of Law and Public Safety
9 concerning collection and disclosure of personal information.

10 The division would be required to adopt regulations requiring the
11 operator of a website or an online service that collects personal
12 information from adolescents to provide notice on the website of
13 what information is collected from adolescents, how that
14 information is used by the operator and the operator's disclosure
15 practices.

16 Further, the bill would require the operator to obtain verifiable
17 parental consent for the use and disclosure of personal information
18 from adolescents. The bill provides that verifiable parental consent
19 would not be required in certain limited circumstances.

20 The regulations would provide parental access to the personal
21 information about an adolescent. The regulations would also
22 prohibit an operator from conditioning an adolescent's participation
23 in a game, the offering of a prize or another activity on the
24 adolescent's disclosing more personal information than is
25 reasonably necessary to participate in the activity.

26 The regulations would permit an operator of a website or online
27 service to terminate service to an adolescent whose parents have
28 refused to permit the operator's further use or maintenance in
29 retrievable form, or future online collection of, personal information
30 from that adolescent.

31 A person who violates the provisions of the consumer fraud act
32 is liable to a penalty of not more than \$7,500 for the first offense
33 and not more than \$15,000 for the second and each subsequent
34 offense.