

ASSEMBLY, No. 3923

STATE OF NEW JERSEY 218th LEGISLATURE

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SYNOPSIS

Requires commercial Internet website and online service operators to conspicuously post their privacy policy.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 11/27/2018)

1 AN ACT concerning commercial Internet websites, online services,
2 and privacy policies and supplementing P.L.1960, c.39 (C.56:8-1
3 et seq.).

4
5 1. As used in P.L. , c. (C.) (pending before the
6 Legislature as this bill):

7 “Commercial Internet website” means a website operated for
8 business purposes, including, but not limited to, the sale of goods
9 and services.

10 “Conspicuously post” means notification provided through any
11 of the following:

12 a. an Internet webpage on which the actual privacy policy is
13 posted if the Internet webpage is the homepage or first significant
14 page after entering the Internet website;

15 b. an icon that hyperlinks to an Internet webpage on which the
16 actual privacy policy is posted, if the icon is located on the
17 homepage or the first significant page after entering the Internet
18 website, and if the icon contains the word “privacy.” The icon shall
19 also use a color that contrasts with the background color of the
20 Internet webpage or is otherwise distinguishable;

21 c. a text link that hyperlinks to an Internet webpage on which
22 the actual privacy policy is posted, if the text link is located on the
23 homepage or first significant page after entering the Internet
24 website, and if the text link does one of the following:

25 (1) includes the word “privacy;”

26 (2) is written in capital letters equal to or greater in size than the
27 surrounding text; or

28 (3) is written in larger type than the surrounding text, or in
29 contrasting type, font, or color to the surrounding text of the same
30 size, or set off from the surrounding text of the same size by
31 symbols or other marks that call attention to the language;

32 d. any other functional hyperlink that is so displayed that a
33 reasonable person would notice it; or

34 e. in the case of an online service, any other reasonably
35 accessible means of making the privacy policy available for
36 customers of the online service.

37 “Customer” means an individual within this State who provides,
38 either knowingly or unknowingly, personally identifiable
39 information to an operator, with or without an exchange of
40 consideration, in the course of seeking or acquiring, by purchase or
41 lease, any goods, services, money, or credit for personal, family, or
42 household purposes.

43 “Internet Protocol” means a communications protocol that
44 enables an Internet end user to send or receive a communication
45 over the Internet, regardless of whether the communication is voice,
46 data, or video.

47 “Online service” means a commercial information service
48 provided over the Internet, including, but not limited to, offsite data

1 storage services and computer application services.

2 “Operator” means a person or entity that owns an Internet
3 website or an online service that collects and maintains personally
4 identifiable information from a customer and which is operated for
5 commercial purposes. “Operator” shall not include any third party
6 that operates, hosts, or manages, but does not own, a website or
7 online service on the operator’s behalf, or by processing
8 information on behalf of the operator.

9 “Personally identifiable information” means any information that
10 personally identifies, describes, or is able to be associated with a
11 customer of a commercial Internet website or online service,
12 including, but not limited to, the customer’s:

- 13 a. name, alias, nickname, and user name;
- 14 b. postal and electronic mail address;
- 15 c. telephone number;
- 16 d. account name;
- 17 e. social security number or other government-issued
18 identification number, including driver’s license number or passport
19 number;
- 20 f. birthdate or age;
- 21 g. physical characteristic information, including height and
22 weight;
- 23 h. sexual information, including sexual orientation, sex, gender
24 status, gender identity, and gender expression;
- 25 i. race or ethnicity;
- 26 j. religious affiliation or activity;
- 27 k. political affiliation or activity;
- 28 l. professional or employment-related information;
- 29 m. educational information;
- 30 n. medical information, including medical conditions or drugs,
31 therapies, mental health, or medical products or equipment used;
- 32 o. financial information, including credit, debit, or account
33 numbers, account balances, payment history, or information related
34 to assets, liabilities, or general creditworthiness;
- 35 p. commercial information, including records of property,
36 products, or services provided, obtained or considered, or other
37 purchasing or customer histories;
- 38 q. geolocation information;
- 39 r. Internet or mobile activity information, including Internet
40 protocol addresses or information concerning the access or use of
41 any online service;
- 42 s. content, including text, photographs, audio or video
43 recordings, or other material generated or provided by the customer;
- 44 or
- 45 t. any of the above categories of information as they pertain to
46 the children of the customer.

47 “Third party” means:

- 48 a. a private entity that is a separate legal entity from the
49 operator;

1 b. a private entity that does not share common ownership or
2 common corporate control with the operator; or

3 c. a private entity that does not share a brand name or common
4 branding with the operator, such as an affiliate relationship that is
5 clear to the customer.

6
7 2. a. An operator that collects through the Internet the
8 personally identifiable information of a customer shall
9 conspicuously post on its Internet website or online service a
10 privacy policy that shall include, but is not limited to:

11 (1) the categories of personally identifiable information that the
12 operator collects through the Internet website or online service
13 about individual customers who use or visit its commercial Internet
14 website or online service and the categories of third-party persons
15 or entities with whom the operator may share that personally
16 identifiable information;

17 (2) if offered by an operator, a description of the process by
18 which a customer who uses or visits a commercial Internet website
19 or online service may review and request changes to any of the
20 customer's personally identifiable information that is collected
21 through the commercial Internet website or online service;

22 (3) a description of the process by which the operator notifies
23 customers who use or visit its commercial Internet website or online
24 service of material changes to the operator's privacy policy for that
25 commercial Internet website or online service;

26 (4) the effective date of the privacy policy;

27 (5) disclosure of how the operator responds to Internet web
28 browser "do not track" settings or other mechanisms that provide
29 customers the ability to exercise choice concerning the collection of
30 personally identifiable information about an individual customer's
31 online activities over time and across third-party Internet websites
32 or online services; and

33 (6) disclosure of whether third parties may collect, purchase, or
34 access personally identifiable information about an individual
35 customer's online activities over time and across different Internet
36 websites when a customer uses the operator's commercial Internet
37 website or online service.

38 b. An operator shall conspicuously post its privacy policy
39 within 30 days after being notified of noncompliance by the
40 Director of the Division of Consumer Affairs.

41
42 3. It shall be an unlawful practice and violation of P.L.1960,
43 c.39 (C.56:8-1 et seq.) for an operator to knowingly and willfully or
44 negligently and materially fail to post a privacy policy pursuant to
45 section 2 of P.L. , c. (C.) (pending before the Legislature as
46 this bill).

47
48 4. The Director of the Division of Consumer Affairs in the

1 Department of Law and Public Safety shall promulgate rules and
2 regulations, pursuant to the “Administrative Procedure Act,”
3 P.L.1968, c.410 (C.52:14B-1 et seq.), necessary to effectuate the
4 purposes of P.L. , c. (C.) (pending before the Legislature as
5 this bill).

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7 5. This act shall take effect immediately.

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10 STATEMENT

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12 This bill requires commercial Internet website and online service
13 operators to conspicuously post on their Internet website or online
14 service a privacy policy that includes, but is not limited to:

15 1) the categories of personally identifiable information that the
16 operator collects through the Internet website or online service
17 about individual customers who use or visit its commercial Internet
18 website or online service and the categories of third-party persons
19 or entities with whom the operator may share that personally
20 identifiable information;

21 2) if offered by an operator, a description of the process by
22 which a customer who uses or visits a commercial Internet website
23 or online service may review and request changes to any of the
24 customer’s personally identifiable information that is collected
25 through the commercial Internet website or online service;

26 3) a description of the process by which the operator notifies
27 customers who use or visit its commercial Internet website or online
28 service of material changes to the operator’s privacy policy for that
29 commercial Internet website or online service;

30 4) the effective date of the privacy policy;

31 5) disclosure of how the operator responds to Internet web
32 browser “do not track” settings or other mechanisms that provide
33 customers the ability to exercise choice concerning the collection of
34 personally identifiable information about an individual customer’s
35 online activities over time and across third-party Internet websites
36 or online services; and

37 6) disclosure of whether third parties may collect, purchase, or
38 access personally identifiable information about an individual
39 customer’s online activities over time and across different Internet
40 websites when a customer uses the operator’s commercial Internet
41 website or online service.

42 This bill defines “personally identifiable information” as any
43 information that personally identifies, describes, or is able to be
44 associated with a customer of a commercial Internet website or
45 online service, including, but not limited to several examples that
46 are listed in the bill.