

ASSEMBLY, No. 2188

STATE OF NEW JERSEY 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

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SYNOPSIS

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

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning commercial Internet websites, online services,
2 and personally identifiable information and supplementing
3 P.L.1960, c.39 (C.56:8-1 et seq.).
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 “Commercial Internet website” means a website operated for
11 business purposes, including, but not limited to, the sale of goods
12 and services.

13 “Customer” means an individual within this State who provides,
14 either knowingly or unknowingly, personally identifiable
15 information to an operator, with or without an exchange of
16 consideration, in the course of purchasing, viewing, accessing,
17 renting, leasing, or otherwise using real or personal property, or any
18 interest therein, or obtaining a product or service from the operator,
19 including advertising or any other content.

20 “Designated request address” means an electronic mail address
21 or toll-free telephone number that a customer may use to request the
22 information required to be provided pursuant to section 3 of P.L. ,
23 c. (C.) (pending before the Legislature as this bill).

24 “Disclose” means to release, transfer, share, disseminate, make
25 available, or otherwise communicate orally, in writing, or by
26 electronic or any other means to a third party a customer’s
27 personally identifiable information. “Disclose” shall not include:

28 the disclosure of a customer’s personally identifiable information
29 by an operator to a third party under a written contract authorizing
30 the third party to use the personally identifiable information to
31 perform services on behalf of the operator, including maintaining or
32 servicing accounts, providing customer service, processing or
33 fulfilling orders and transactions, verifying customer information,
34 processing payments, providing financing, or similar services, but
35 only if the contract prohibits the third party from using the
36 personally identifiable information for any reason other than
37 performing the specified service on behalf of the operator and from
38 disclosing personally identifiable information to additional third
39 parties;

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

44 the disclosure of personally identifiable information by an
45 operator to a third party that is reasonably necessary to address
46 fraud, security, or technical issues, to protect the operator’s rights
47 or property, or to protect a customer or the public from illegal
48 activities as required by law.

1 “Internet Protocol” means a communications protocol that
2 enables an Internet end user to send or receive a communication
3 over the Internet, regardless of whether the communication is voice,
4 data, or video.

5 “Online service” means a commercial information service
6 provided over the Internet, including, but not limited to, offsite data
7 storage services and computer application services.

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

15 “Personally identifiable information” means any information that
16 personally identifies, describes, or is able to be associated with a
17 customer of a commercial Internet website or online service,
18 including, but not limited to:

- 19 name, alias, nickname, and user name;
- 20 postal and electronic mail address;
- 21 telephone number;
- 22 account name;
- 23 social security number or other government-issued identification
24 number, including driver’s license number or passport number;
- 25 birthdate or age;
- 26 physical characteristic information, including height and weight;
- 27 sexual information, including sexual orientation, sex, gender
28 status, gender identity, and gender expression;
- 29 race or ethnicity;
- 30 religious affiliation or activity;
- 31 political affiliation or activity;
- 32 professional or employment-related information;
- 33 educational information;
- 34 medical information, including, but not limited to, medical
35 conditions or drugs, therapies, mental health, or medical products or
36 equipment used;
- 37 financial information, including, but not limited to, credit, debit,
38 or account numbers, account balances, payment history, or
39 information related to assets, liabilities, or general creditworthiness;
- 40 commercial information, including, but not limited to, records of
41 property, products, or services provided, obtained or considered, or
42 other purchasing or consumer histories;
- 43 geolocation information;
- 44 Internet or mobile activity information, including, but not limited
45 to, Internet Protocol addresses or information concerning the access
46 or use of any online service;

1 content, including, but not limited to, text, photographs, audio or
2 video recordings, or other material generated by or provided by the
3 customer; and

4 any of the above categories of information as they pertain to the
5 children of the customer.

6 “Third party” means:

7 a private entity that is a separate legal entity from the operator;

8 a private entity that does not share common ownership or
9 common corporate control with the operator; or

10 a private entity that does not share a brand name or common
11 branding with the operator, such as an affiliate relationship that is
12 clear to the customer.

13

14 2. a. An operator that collects the personally identifiable
15 information of a customer through the Internet shall provide on its
16 Internet website or online service notification to a customer that
17 shall include, but not be limited to:

18 (1) a complete description of the personally identifiable
19 information that the operator collects through the Internet website
20 or online service about a customer who uses or visits the operator’s
21 commercial Internet website or online service;

22 (2) all third parties with which the operator may disclose a
23 customer’s personally identifiable information; and

24 (3) information concerning one or more designated request
25 addresses.

26 b. In addition to the requirements of subsection a. of this
27 section, an operator shall include the notification as a section of the
28 operator’s privacy policy.

29

30 3. a. An operator that discloses a customer’s personally
31 identifiable information to a third party shall make the following
32 information available to the customer free of charge upon receipt of
33 a request from the customer for this information through a
34 designated request address:

35 (1) the customer’s personally identifiable information that was
36 disclosed; and

37 (2) the names of, and the contact information for, the third
38 parties that received the customer’s personally identifiable
39 information.

40 b. An operator that receives a request from a customer pursuant
41 to this section shall provide a response to the customer within 30
42 days of the operator’s receipt of the request and shall provide the
43 information for all disclosures of personally identifiable
44 information that occurred in the prior 12 months.

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

1 4. a. An operator that collects the personally identifiable
2 information of a customer through the Internet shall clearly and
3 conspicuously post on its Internet website or online service
4 homepage a link, entitled “Do Not Sell My Personal Information,”
5 to an Internet webpage maintained by the operator, which enables a
6 customer to opt out of the disclosure of the customer’s personally
7 identifiable information. The method in which a customer may opt
8 out shall be in a form and manner determined by the operator but a
9 customer shall not be required to establish an account with the
10 operator in order to opt out of the disclosure of a customer’s
11 personally identifiable information.

12 b. An operator shall be prohibited from discriminating against
13 or penalizing a customer if the customer chooses to opt out of the
14 disclosure of the customer’s personally identifiable information
15 pursuant to subsection a. this section.

16 c. An operator shall be prohibited from requesting that a
17 customer authorize the disclosure of the customer’s personally
18 identifiable information for at least 12 months following the date
19 the customer opted out pursuant to subsection a. of this section.
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21 5. A waiver of the requirements of, or an agreement that does
22 not comply with, the provisions of P.L. , c. (C.) (pending
23 before the Legislature as this bill) shall be void and unenforceable.
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25 6. Nothing in P.L. , c. (C.) (pending before the
26 Legislature as this bill) shall be construed to apply to any State
27 agency, any political subdivision thereof, or federal agency, or any
28 contractor or subcontractor employed by a State agency, political
29 subdivision thereof, or federal agency.
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31 7. It shall be an unlawful practice and violation of P.L.1960,
32 c.39 (C.56:8-1 et seq.) for an operator to fail to notify a customer of
33 the disclosure of personally identifiable information pursuant to
34 sections 2 and 3 of P.L. , c. (C.) (pending before the
35 Legislature as this bill) or fail to allow a customer to opt out of the
36 disclosure of a customer’s personally identifiable information
37 pursuant to section 4 of P.L. , c. (C.) (pending before the
38 Legislature as this bill).
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40 8. The Director of the Division of Consumer Affairs in the
41 Department of Law and Public Safety shall promulgate rules and
42 regulations, pursuant to the “Administrative Procedure Act,”
43 P.L.1968, c.410 (C.52:14B-1 et seq.), necessary to effectuate the
44 purposes of P.L. , c. (C.) (pending before the Legislature as
45 this bill).
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47 9. This act shall take effect immediately.

STATEMENT

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This bill requires commercial Internet website and online service operators to notify customers of the collection and disclosure of personally identifiable information to third parties. An operator that collects through the Internet the personally identifiable information of a customer is to provide on its Internet website or online service notification to a customer that includes, but is not limited to: a complete description of the personally identifiable information that the operator collects through the Internet website or online service about a customer who uses or visits its commercial Internet website or online service; all third parties with which the operator may disclose a customer's personally identifiable information; and information concerning one or more designated request addresses, which are an email address or toll-free telephone number, that a customer may use to request information under the bill.

This bill requires that an operator that discloses a customer's personally identifiable information to a third party is to make the following information available to the customer free of charge upon receipt of a request from the customer: the customer's personally identifiable information that was disclosed and the names and contact information of the third parties that received the customer's personally identifiable information. An operator that receives a request from a customer is to provide a response to the customer within 30 days and is to provide the information for all disclosures of personally identifiable information that occurred in the prior 12 months.

The bill requires an operator that collects the personally identifiable information of a customer to clearly and conspicuously post on its Internet website or online service homepage a link, entitled "Do Not Sell My Personal Information," to an Internet webpage maintained by the operator, which enables a customer to opt out of the disclosure of the customer's personally identifiable information. The method in which a customer may opt out is to be in a form and manner determined by the operator but a customer is not to be required to establish an account with the operator in order to opt out of the disclosure of a customer's personally identifiable information.

Further, this bill prohibits an operator from discriminating against or penalizing a customer if the customer chooses to opt out of the disclosure of the customer's personally identifiable information and is prohibited from requesting that a customer authorize the disclosure of the customer's personally identifiable information for at least 12 months following the date the customer opted out.

This bill defines "personally identifiable information" as any information that personally identifies, describes, or is able to be associated with a customer of a commercial Internet website or

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- 1 online service, including, but not limited to several examples that
- 2 are listed in the bill.