

ASSEMBLY, No. 3255

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED FEBRUARY 25, 2020

Sponsored by:

Assemblyman JOHN J. BURZICHELLI
District 3 (Cumberland, Gloucester and Salem)
Assemblyman JOHN ARMATO
District 2 (Atlantic)

SYNOPSIS

Requires certain businesses to notify customers of certain information concerning the collection and sale of personally identifiable information and to allow customers to opt-in to collection and sale.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 2/22/2021)

1 AN ACT concerning certain businesses and personally identifiable
2 information and supplementing Title 56 of the Revised Statutes.

3

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

6

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

9 “Aggregate consumer information” means information that
10 relates to a group or category of consumers, from which individual
11 consumer identities have been removed, that is not linked or
12 reasonably linkable to any consumer or household, including
13 through use of a device. “Aggregate consumer information” does
14 not mean one or more individual consumer records that have been
15 de-identified.

16 “Biometric data” means an individual’s physiological, biological,
17 or behavioral characteristics, such as an individual’s
18 deoxyribonucleic acid, fingerprint, voice print, retina or iris image
19 or other unique physical representation, that can be used, singly or
20 in combination with each other or with other identifying data, to
21 establish an individual’s identity.

22 “Business” means a sole proprietorship, partnership, limited
23 liability company, corporation, association, or other legal entity that
24 is organized or operated for the profit or financial benefit of its
25 shareholders or other owners that collects consumers’ personally
26 identifiable information or on the behalf of which that information
27 is collected and that alone, or jointly with others, determines the
28 purposes and means of the processing of consumers’ personally
29 identifiable information, that does business in this State, and that
30 satisfies one or more of the following thresholds:

31 have an annual gross revenue of \$25,000,000 or more;

32 derive 50 percent or more of its annual revenue from selling the
33 personally identifiable information of consumers; or

34 alone, or in combination, annually buys, receives, sells, or shares
35 for commercial purposes the personally identifiable information of
36 at least 50,000 consumers.

37 “Business” shall include any entity that controls or is controlled
38 by a business and that shares a common branding with the business.

39 “Business purpose” means the use of personally identifiable
40 information for the business’s or a service provider’s operational
41 purposes, or other notified purposes, pursuant to
42 P.L. , c. (C.) (pending before the Legislature as this bill),
43 provided that the use of personally identifiable information shall be
44 reasonably necessary and proportionate to achieve the operational
45 purpose for which the personally identifiable information was
46 collected or processed or for another operational purpose that is
47 compatible with the context in which the personally identifiable

1 information was collected, which shall include, but not be limited
2 to:

3 auditing related to a current interaction with the consumer and
4 concurrent transactions, including, but not limited to, counting ad
5 impressions to unique visitors, verifying positioning and quality of
6 ad impressions, and auditing compliance with this specification and
7 other standards;

8 detecting security incidents, protecting against malicious,
9 deceptive, fraudulent, or illegal activity, and prosecuting those
10 responsible for that activity;

11 debugging to identify and repair errors that impair existing
12 intended functionality;

13 short-term, transient use, provided that the personally
14 identifiable information is not disclosed to another third party and is
15 not used to build a profile about a consumer or otherwise alter an
16 individual consumer's experience outside the current interaction,
17 including, but not limited to, the contextual customization of
18 advertisements shown as part of the same interaction;

19 performing services on behalf of the business or service
20 provider, including maintaining or servicing accounts, providing
21 customer service, processing or fulfilling orders and transactions,
22 verifying customer information, processing payments, providing
23 financing, providing advertising or marketing services, providing
24 analytic services, or providing similar services on behalf of the
25 business or service provider;

26 undertaking internal research for technological development and
27 demonstration; and

28 undertaking activities to verify or maintain the quality or safety
29 of a service or device that is owned, manufactured, manufactured
30 for, or controlled by the business, and to improve, upgrade, or
31 enhance the service or device that is owned, manufactured,
32 manufactured for, or controlled by the business.

33 "Collects" means buying, renting, gathering, obtaining,
34 receiving, or accessing any personally identifiable information
35 pertaining to a consumer by any means.

36 "Commercial purposes" means to advance a person's commercial
37 or economic interests, such as by inducing another person to buy,
38 rent, lease, join, subscribe to, provide, or exchange products, goods,
39 property, information, or services, or enabling or effecting, directly
40 or indirectly, a commercial transaction. "Commercial purposes"
41 shall not include engaging in speech that State or federal courts
42 have recognized as noncommercial speech, including political
43 speech and journalism.

44 "Consumer" means a natural person who is a New Jersey
45 resident.

46 "Deidentified information" means information that cannot
47 reasonably identify, relate to, describe, be capable of being
48 associated with, or be linked, directly or indirectly, to a particular

1 consumer, provided that a business that uses deidentified
2 information has:

3 implemented technical safeguards that prohibit reidentification
4 of the consumer to whom the information pertains;

5 implemented business processes that specifically prohibit
6 reidentification of the information;

7 implemented business process to prevent inadvertent release of
8 deidentified information; and

9 makes no attempt to reidentify the information.

10 “Designated request address” means a mailing address,
11 electronic mail address, Internet website, toll-free telephone
12 number, or other applicable contact information that a consumer
13 may use to request the information required to be provided pursuant
14 to section 3 of P.L. , c. (C.) (pending before the Legislature
15 as this bill).

16 “Device” means any physical object that is capable of connecting
17 to the Internet, either directly or indirectly, or to another device.

18 “Family” means a custodial parent or guardian and any minor
19 children over which the parent or guardian has custody.

20 “Person” means an individual, proprietorship, firm, partnership,
21 joint venture, syndicate, business trust, corporation, limited liability
22 company, association, committee, or any other organization or
23 group of persons acting in concert.

24 “Personally identifiable information” means any information that
25 personally identifies, relates to, describes, is capable of being
26 associated with, or could reasonably be linked, directly or
27 indirectly, to a consumer or household, including, but not limited
28 to:

29 identifiers such as a real name, alias, postal address, unique
30 personal identifier, online identifier, internet protocol address,
31 electronic mail address, account name, social security number,
32 driver’s license number, passport number, or other similar
33 identifiers;

34 characteristics of protected classifications under State or federal
35 law;

36 commercial information, including records of personal property,
37 products or services purchased, obtained, or considered, or other
38 purchasing or consuming histories or tendencies;

39 biometric information;

40 Internet or other electronic network activity information,
41 including, but not limited to, browsing history, search history, and
42 information regarding a consumer’s interaction with an Internet
43 website, application, or advertisement;

44 geolocation data;

45 audio, electronic, visual, thermal, olfactory, or similar
46 information;

47 professional or employment-related information;

1 education records, defined as information that is not publicly
2 available personally identifiable information, as defined in the
3 "Family Educational Rights and Privacy Act of 1974," (20 U.S.C.
4 s.1232g); and

5 inferences drawn from any of the information identified in this
6 subdivision to create a profile about a consumer reflecting the
7 consumer's preferences, characteristics, psychological trends,
8 predispositions, behavior, attitudes, intelligence, abilities, and
9 aptitudes.

10 "Personally identifiable information" does not include publicly
11 available information or aggregate consumer information.

12 "Probabilistic identifier" means the identification of a consumer
13 for a device to a degree of certainty of more probable than not based
14 on any categories of personally identifiable information included in,
15 or similar to, the categories enumerated in the definition of
16 personally identifiable information.

17 "Processing" means any operation or set of operations that are
18 performed on personally identifiable information, whether or not by
19 automated means.

20 "Pseudonymize" or "pseudonymization" means the processing of
21 personally identifiable information in a manner that renders the
22 personally identifiable information no longer attributable to a
23 specific consumer without the use of additional information,
24 provided that the additional information is kept separately and is
25 subject to technical and organizational measures to ensure that the
26 personally identifiable information is not attributed to an identified
27 or identifiable consumer.

28 "Publicly available information" means information that is
29 lawfully made available from federal, State, or local government
30 records, or widely-distributed media.

31 "Research" means scientific, systematic study and observation,
32 including basic research or applied research that is in in the public
33 interest in the area of public health. Research with personally
34 identifiable information that may have been collected from a
35 consumer in the course of the consumer's interactions with a
36 business service or device for other purposes shall be:

37 compatible with the business purpose for which the personally
38 identifiable information was collected;

39 subsequently pseudonymized and deidentified, or deidentified
40 and in the aggregate, so that the information cannot reasonably
41 identify, relate to, describe, be capable of being associated with, or
42 be linked, directly or indirectly, to a particular consumer;

43 made subject to technical safeguards that prohibit
44 reidentification of the consumer to whom the information may
45 pertain;

46 subject to business processes that specifically prohibit
47 reidentification of the information;

1 made subject to business processes to prevent inadvertent release
2 of deidentified information;
3 protected from any reidentification attempts;
4 used solely for research purposes that are compatible with the
5 context in which the personally identifiable information was
6 collected;
7 not be used for any commercial purpose; and
8 subjected by the business conducting the research to additional
9 security controls that limit access to the research data to only those
10 individuals in a business as are necessary to carry out the research
11 purpose.

12 “Sell,” “selling,” “sale,” or “sold,” means selling, renting,
13 releasing, disclosing, disseminating, making available, transferring,
14 or otherwise communicating orally, in writing, or by electronic or
15 other means, a consumer’s personally identifiable information by
16 the business to another business or a third party for monetary or
17 other valuable consideration. “Sell,” “selling,” “sale,” or “sold”
18 shall not include a business selling personally identifiable
19 information when:

20 a consumer uses or directs the business to intentionally disclose
21 personally identifiable information or uses the business to
22 intentionally interact with a third party, provided the third party
23 does not also sell the personally identifiable information, unless that
24 disclosure would be consistent with the provisions of P.L. , c.
25 (C.) (pending before the Legislature as this bill). An intentional
26 interaction occurs when the consumer intends to interact with the
27 third party, through one or more deliberate interactions. Hovering
28 over, muting, pausing, or closing a given piece of content does not
29 constitute a consumer’s intent to interact with a third party;

30 the business uses or shares an identifier for a consumer who has
31 opted out of the sale of the consumer’s personally identifiable
32 information for the purposes of alerting third parties that the
33 consumer has opted out of the sale of the consumer’s personally
34 identifiable information;

35 the business uses or shares with a service provider personally
36 identifiable information of a consumer that is necessary to perform
37 a business purpose if both of the following conditions are met:

38 the business has provided notice of that personally identifiable
39 information being used or shared in its terms and conditions
40 consistent with P.L. , c. (C.) (pending before the Legislature
41 as this bill); and

42 the service provider does not further collect, sell, or use the
43 personally identifiable information of the consumer except as
44 necessary to perform the business purpose;

45 the business transfers to a third party the personally identifiable
46 information of a consumer as an asset that is part of a merger,
47 acquisition, bankruptcy, or other transaction in which the third party
48 assumes control of all or part of the business, provided that

1 information is used or shared consistently with section 4 and section
2 5 of P.L. , c. (C.) (pending before the Legislature as this
3 bill).

4 “Service” or “services” means work, labor, and services,
5 including services furnished in connection with the sale or repair of
6 goods.

7 “Service provider” means a sole proprietorship, partnership,
8 limited liability company, corporation, association, or other legal
9 entity that is organized or operated for the profit or financial benefit
10 of its shareholders or other owners, that processes information on
11 behalf of a business and to which the business discloses a
12 consumer’s personally identifiable information for a business
13 purpose pursuant to a written contract, provided that the contract
14 prohibits the entity receiving the information from retaining, using,
15 or disclosing the personally identifiable information for any purpose
16 other than for the specific purpose of performing the services
17 specified in the contract for the business, or as otherwise permitted
18 by P.L. , c. (C.) (pending before the Legislature as this bill),
19 including retaining, using, or disclosing the personally identifiable
20 information for a commercial purpose other than providing the
21 services specified in the contract with the business.

22 “Third party” means a person who is not any of the following:

23 the business that collects personally identifiable information
24 from a consumer pursuant to P.L. , c. (C.) (pending before
25 the Legislature as this bill);

26 a person to whom the business discloses a consumer’s personally
27 identifiable information for a business purpose pursuant to a written
28 contract, provided that the contract:

29 prohibits the person receiving the personally identifiable
30 information from:

31 selling the personally identifiable information;

32 retaining using, or disclosing the personally identifiable
33 information for any purpose other than for the specific purpose of
34 performing the services specified in the contract, including
35 retaining, using, or disclosing the personally identifiable
36 information for a commercial purpose other than providing the
37 services specified in the contract;

38 retaining using, or disclosing the personally identifiable
39 information outside of the direct business relationship between the
40 person and the business; and

41 includes a certification made by the person receiving the
42 personally identifiable information that the person understands the
43 restrictions on selling, retaining, using, or disclosing the personally
44 identifiable information.

45 “Unique identifier” or “unique personal identifier” means a
46 persistent identifier that can be used to recognize a consumer, a
47 family, or a device that is linked to a consumer or family, over time
48 and across different services, including, but not limited to, a device

1 identifier; an Internet Protocol address; browser cookies, network
2 beacons, pixel tags, mobile advertisement identifiers, or similar
3 tracking technology; customer number, unique pseudonym, or user
4 alias; telephone numbers, or other forms of persistent or
5 probabilistic identifiers that can be used to identify a particular
6 consumer or device.

7 “Verifiable consumer request” means a request that is made by a
8 consumer, by a consumer on behalf of the consumer’s minor child,
9 or by a natural person or a person registered with the Secretary of
10 State, authorized by the consumer to act on the consumer’s behalf,
11 and that the business can reasonably verify, pursuant to regulations
12 adopted by the Attorney General pursuant to section 15 of
13 P.L. , c. (C.) (pending before the Legislature as this bill) to
14 be the consumer about whom the business has collected personally
15 identifiable information.

16

17 2. a. A business shall be prohibited from collecting or selling
18 a consumer’s personally identifiable information unless a consumer
19 affirmatively opts in to the collection, pursuant to section 9 of
20 P.L. , c. (C.) (pending before the Legislature as this bill). A
21 business shall not require a consumer to create an account in order
22 to direct the business not to collect or sell the consumer’s
23 personally identifiable information.

24 b. A consumer shall have the right to request that a business
25 that collects a consumer’s personally identifiable information
26 disclose to that consumer the categories and specific pieces of
27 personally identifiable information the business has collected.

28 c. A business that collects a consumer’s personally identifiable
29 information shall, at or before the point of collection, inform
30 consumers as to the categories of personally identifiable
31 information to be collected and the purposes for which the
32 categories of personally identifiable information shall be used. A
33 business shall not collect additional categories of personally
34 identifiable information or use personally identifiable information
35 collected for additional purposes without providing the consumer
36 with notice consistent with this section.

37 d. A business shall provide the information specified in
38 subsection b. of this section to a consumer only upon receipt of a
39 verifiable consumer request.

40 e. A business that receives a verifiable consumer request from
41 a consumer to access personally identifiable information shall
42 promptly take steps to disclose and deliver, free of charge to the
43 consumer, the personally identifiable information required by this
44 section. The information may be delivered by mail or electronically,
45 and if provided electronically, the information shall be in a portable
46 and, to the extent technically feasible, readily usable format that
47 allows the consumer to transmit this information to another entity
48 without hindrance. A business may provide personally identifiable

1 information to a consumer at any time, but shall not be required to
2 provide personally identifiable information to a consumer more than
3 twice in a 12-month period.

4 f. A business is not obligated to provide information to the
5 consumer pursuant to sections 2 through 5 of P.L. , c. (C.)
6 (pending before the Legislature as this bill) if the business cannot
7 verify, pursuant to regulations adopted by the Attorney General
8 pursuant to section 15 of P.L. , c. (C.) (pending before the
9 Legislature as this bill), that the consumer making the request is the
10 consumer about whom the business has collected information or is a
11 person authorized by the consumer to act on such consumer's
12 behalf.

13 g. This section shall not require a business to retain any
14 personally identifiable information collected for a single, one-time
15 transaction, if the personally identifiable information is not sold or
16 retained by the business or to reidentify or otherwise link
17 information that is not maintained in a manner that would be
18 considered personally identifiable information.

19

20 3. a. A consumer shall have the right to request that a business
21 delete any personally identifiable information about the consumer
22 that the business has collected from the consumer.

23 b. A business that collects personally identifiable information
24 about consumers shall disclose, pursuant to section 8 of
25 P.L. , c. (C.) (pending before the Legislature as this bill), the
26 consumer's right to request the deletion of the consumer's
27 personally identifiable information.

28 c. A business that receives a verifiable consumer request from
29 a consumer to delete the consumer's personally identifiable
30 information pursuant to subsection a. of this section shall delete the
31 consumer's personally identifiable information from its records and
32 direct any service providers to delete the consumer's personally
33 identifiable information from their records.

34 d. A business or a service provider shall not be required to
35 comply with a consumer's request to delete the consumer's
36 personally identifiable information if it is necessary for the business
37 or service provider to maintain the consumer's personally
38 identifiable information in order to:

39 (1) complete the transaction for which the personally
40 identifiable information was collected, fulfill the terms of a written
41 warranty or product recall conducted in accordance with federal
42 law, provide a good or service requested by the consumer, or
43 reasonably anticipated within the context of a business' ongoing
44 business relationship with the consumer, or otherwise perform a
45 contract between the business and the consumer;

46 (2) detect security incidents, protect against malicious,
47 deceptive, fraudulent, or illegal activity; or prosecute those
48 responsible for that activity;

- 1 (3) debug to identify and repair errors that impair existing
2 intended functionality;
- 3 (4) exercise free speech, ensure the right of another consumer to
4 exercise that consumer's right of free speech, or exercise another
5 right provided for by law;
- 6 (5) engage in public or peer-reviewed scientific, historical, or
7 statistical research in the public interest that adheres to all other
8 applicable ethics and privacy laws, when the business' deletion of
9 the information is likely to render impossible or seriously impair the
10 achievement of such research, if the consumer has provided
11 informed consent;
- 12 (6) to enable solely internal uses that are reasonably aligned
13 with the expectations of the consumer based on the consumer's
14 relationship with the business;
- 15 (7) comply with a legal obligation; or
- 16 (8) otherwise use the consumer's personally identifiable
17 information, internally, in a lawful manner that is compatible with
18 the context in which the consumer provided the personally
19 identifiable information.
20
- 21 4. a. A consumer shall have the right to request that a business
22 that collects personally identifiable information about the consumer
23 disclose to the consumer the following:
 - 24 (1) the categories of personally identifiable information it has
25 collected about that consumer;
 - 26 (2) the categories of sources from which the personally
27 identifiable information is collected;
 - 28 (3) the business or commercial purpose for collecting or selling
29 personally identifiable information;
 - 30 (4) the categories of third parties with whom the business shares
31 personally identifiable information; and
 - 32 (5) the specific pieces of personally identifiable information it
33 has collected about that consumer.
- 34 b. A business that collects personally identifiable information
35 about a consumer shall disclose to the consumer, pursuant to
36 paragraph (3) of subsection a. of section 8 of P.L. , c. (C.)
37 (pending before the Legislature as this bill), the information
38 specified in subsection a. of this section upon receipt of a verifiable
39 consumer request from the consumer.
- 40 c. A business that collects personally identifiable information
41 about a consumer shall disclose, pursuant to subparagraph (b) of
42 paragraph (5) of subsection a. of section 8 of P.L. , c. (C.)
43 (pending before the Legislature as this bill):
 - 44 (1) the categories of personally identifiable information it has
45 collected about consumers;
 - 46 (2) the categories of sources from which the personally
47 identifiable information is collected;

1 (3) the business or commercial purpose for collecting or selling
2 personally identifiable information;

3 (4) the categories of third parties with whom the business shares
4 personally identifiable information; and

5 (5) that a consumer has the right to request the specific pieces of
6 personally identifiable information the business has collected about
7 that consumer.

8 d. This section shall not require a business to do the following:

9 (1) retain any personally identifiable information about a
10 consumer collected for a single one-time transaction if, in the
11 ordinary course of business, that information about the consumer is
12 not retained; and

13 (2) reidentify or otherwise link any data that, in the ordinary
14 course of business, is not maintained in a manner that would be
15 considered personally identifiable information.

16

17 5. a. A consumer shall have the right to request that a business
18 that sells the consumer's personally identifiable information, or that
19 discloses it for a business purpose, disclose to that consumer:

20 (1) the categories of personally identifiable information that the
21 business collected about the consumer;

22 (2) the categories of personally identifiable information that the
23 business sold about the consumer and the categories of third parties
24 to whom the personally identifiable information was sold, by
25 category or categories of personally identifiable information for
26 each category of third parties to whom the personally identifiable
27 information was sold; and

28 (3) the categories of personally identifiable information that the
29 business disclosed about the consumer for a business purpose.

30 b. A business that sells personally identifiable information
31 about a consumer, or that discloses a consumer's personally
32 identifiable information for a business purpose, shall disclose,
33 pursuant to paragraph (4) of subsection a. of section 8 of
34 P.L. , c. (C.) (pending before the Legislature as this bill), the
35 information specified in subsection a. of this section to the
36 consumer upon receipt of a verifiable consumer request from the
37 consumer.

38 c. A business that sells consumers' personally identifiable
39 information, or that discloses consumers' personally identifiable
40 information for a business purpose, shall disclose, pursuant to
41 subparagraph (c) of paragraph (5) of subsection a. of section 8 of
42 P.L. , c. (C.) (pending before the Legislature as this bill):

43 (1) the category or categories of consumers' personally
44 identifiable information it has sold, or if the business has not sold
45 consumers' personally identifiable information, it shall disclose that
46 fact; and

47 (2) the category or categories of consumers' personally
48 identifiable information it has disclosed for a business purpose, or if

1 the business has not disclosed the consumers' personally
2 identifiable information for a business purpose, it shall disclose that
3 fact.

4 d. A third party shall not sell personally identifiable
5 information about a consumer that has been sold to the third party
6 by a business unless the consumer has received explicit notice and
7 is provided an opportunity to exercise the right to opt-in pursuant to
8 section 6 of P.L. , c. (C.) (pending before the Legislature as
9 this bill).

10

11 6. a. A business that sells consumers' personally identifiable
12 information to third parties shall provide notice to consumers,
13 pursuant to subsection a. of section 9 of
14 P.L. , c. (C.) (pending before the Legislature as this bill),
15 that this information may be sold and that consumers have the
16 "right to refuse to opt-in" of the sale of their personally identifiable
17 information to third parties.

18 b. A consumer shall have the right, at any time, to direct a
19 business that sells personally identifiable information about the
20 consumer to third parties not to sell the consumer's personally
21 identifiable information. This right may be referred to as the "right
22 to opt-out."

23 c. If a third party materially alters how it uses or shares the
24 personally identifiable information of a consumer in a manner that
25 is materially inconsistent with the promises made at the time of
26 collection, it shall provide prior notice of the new or changed
27 practice to the consumer. The notice shall be sufficiently prominent
28 and robust to ensure that existing consumers can easily exercise
29 their choices consistently with the provisions of this section.

30 d. A third party that violates any of the restrictions provided in
31 P.L. , c. (C.) (pending before the Legislature as this bill)
32 shall be liable for the violations. A business that discloses
33 personally identifiable information to a third party in compliance
34 with the provisions of P.L. , c. (C.) (pending before the
35 Legislature as this bill) shall not be liable under
36 P.L. , c. (C.) (pending before the Legislature as this bill) if
37 the third party receiving the personally identifiable information uses
38 it in violation of the restrictions provided in P.L. , c. (C.)
39 (pending before the Legislature as this bill), provided that, at the
40 time of disclosing the personally identifiable information, the
41 business does not have actual knowledge, or reason to believe, that
42 the third party intends to commit a violation.

43

44 7. a. (1) A business shall not discriminate against a consumer
45 because the consumer exercised any of the consumer's rights
46 pursuant to P.L. , c. (C.) (pending before the Legislature as
47 this bill), including, but not limited to, by:

48 (a) denying goods or services to the consumer;

1 (b) charging different prices or rates for goods or services,
2 including through the use of discounts or other benefits or imposing
3 penalties;

4 (c) providing a different level or quality of goods or services to
5 the consumer; or

6 (d) suggesting that the consumer will receive a different price or
7 rate for goods or services or a different level or quality of goods or
8 services.

9 (2) Nothing in this subsection prohibits a business from
10 charging a consumer a different price or rate, or from providing a
11 different level or quality of goods or services to the consumer, if
12 that difference is reasonably related to the value provided to the
13 business by the consumer's personally identifiable information.

14 b. (1) A business may offer financial incentives, including
15 payments to consumers as compensation, for the collection of
16 personally identifiable information, the sale of personally
17 identifiable information, or the deletion of personally identifiable
18 information. A business may also offer a different price, rate, level,
19 or quality of goods or services to the consumer if that price or
20 difference is directly related to the value provided to the business
21 by the consumer's personally identifiable information.

22 (2) A business that offers any financial incentives pursuant to
23 this subsection shall notify consumers of the financial incentives in
24 a manner that is consistent with the provisions of section 8 of
25 P.L. , c. (C.) (pending before the Legislature as this bill).

26 (3) A business may enter a consumer into a financial incentive
27 program only if the consumer gives the business prior opt-in
28 consent pursuant to section 8 of P.L. , c. (C.) (pending
29 before the Legislature as this bill) that clearly describes the material
30 terms of the financial incentive program, and which may be revoked
31 by the consumer at any time.

32 (4) A business shall not use financial incentive practices that are
33 unjust, unreasonable, coercive, or usurious in nature.

34

35 8. a. In order to comply with P.L. , c. (C.) (pending
36 before the Legislature as this bill), a business shall, in a form that is
37 reasonably accessible to a consumer:

38 (1) (a) make available to consumers two or more designated
39 request addresses for information required to be disclosed pursuant
40 to section 4 and section 5 of P.L. , c. (C.) (pending before
41 the Legislature as this bill), including, at a minimum, a toll-free
42 telephone number. A business that operates exclusively online and
43 has a direct relationship with a consumer from whom it collects
44 personally identifiable information shall only be required to provide
45 an electronic mail address for submitting requests for information
46 required to be disclosed pursuant to section 4 and section 5 of
47 P.L. , c. (C.) (pending before the Legislature as this bill);

1 (b) if the business maintains an Internet website, make the
2 Internet website available to a consumer to submit requests for
3 information required to be disclosed pursuant to section 4 and
4 section 5 of P.L. , c. (C.) (pending before the Legislature as
5 this bill);

6 (2) disclose and deliver the required information to a consumer
7 free of charge within 45 days of receiving a verifiable consumer
8 request from the consumer. The business shall promptly take steps
9 to determine whether the request is a verifiable consumer request,
10 but this requirement shall not extend the business's duty to disclose
11 and deliver the information within 45 days of receipt of the
12 consumer's request. The time period to provide the required
13 information may be extended once by an additional 45 days when
14 reasonably necessary, provided the consumer is provided notice of
15 the extension within the first 45-day period. The disclosure shall
16 cover the 12-month period preceding the business' receipt of the
17 verifiable consumer request and shall be made in writing and
18 delivered through the consumer's account with the business, if the
19 consumer maintains an account with the business, or by mail or
20 electronically at the consumer's option if the consumer does not
21 maintain an account with the business, in a readily usable format
22 that allows the consumer to transmit this required information from
23 one entity to another entity without hindrance. The business may
24 require authentication of the consumer that is reasonable in light of
25 the nature of the personally identifiable information requested, but
26 shall not require the consumer to create an account with the
27 business in order to make a verifiable consumer request. If the
28 consumer maintains an account with the business, the business may
29 require the consumer to submit the request through that account;

30 (3) for the purposes of subsection b. of section 4 of
31 P.L. , c. (C.) (pending before the Legislature as this bill):

32 (a) identify the consumer, associate the information provided by
33 the consumer in the verifiable consumer request to any personally
34 identifiable information previously collected by the business about
35 the consumer;

36 (b) identify by category or categories the personally identifiable
37 information collected about the consumer in the preceding 12
38 months by reference to the enumerated category or categories in
39 subsection c. of this section that most closely describes the
40 personally identifiable information collected;

41 (4) for the purposes of subsection b. of section 5 of
42 P.L. , c. (C.) (pending before the Legislature as this bill):

43 (a) identify the consumer and associate the information provided
44 by the consumer in the verifiable consumer request to any
45 personally identifiable information previously collected by the
46 business about the consumer;

47 (b) identify by category or categories the personally identifiable
48 information of the consumer that the business sold in the preceding

1 12 months by reference to the enumerated category in subsection c.
2 of this section that most closely describes the personally identifiable
3 information, and provide the categories of third parties to whom the
4 consumer's personally identifiable information was sold in the
5 preceding 12 months by reference to the enumerated category or
6 categories in subsection c. of this section that most closely
7 describes the personally identifiable information sold. The business
8 shall disclose the information in a list that is separate from the list
9 generated for the purposes of subparagraph (c) of this paragraph;

10 (c) identify by category or categories the personally identifiable
11 information of the consumer that the business disclosed for a
12 business purpose in the preceding 12 months by reference to the
13 enumerated category or categories in subsection c. of this section
14 that most closely describes the personally identifiable information,
15 and provide the categories of third parties to whom the consumer's
16 personally identifiable information was disclosed for a business
17 purpose in the preceding 12 months by reference to the enumerated
18 category or categories in subsection c. of this section that most
19 closely describes the personally identifiable information disclosed.
20 The business shall disclose the information in a list that is separate
21 from a list generated for the purposes of subparagraph (b) of this
22 paragraph;

23 (5) disclose the following information in its online privacy
24 policy or policies if the business has an online privacy policy or
25 policies and in any State-specific description of consumers' privacy
26 rights, or if the business does not maintain those policies, on its
27 Internet website and update that information at least once every 12
28 months:

29 (a) a description of a consumer's rights pursuant to sections 2
30 through 5 and section 7 of P.L. , c. (C.) (pending before the
31 Legislature as this bill) and one or more designated methods for
32 submitting requests;

33 (b) for the purposes of subsection c. of section 4 of
34 P.L. , c. (C.) (pending before the Legislature as this bill), a
35 list of the categories of personally identifiable information it has
36 collected about consumers in the preceding 12 months by reference
37 to the enumerated category or categories in subsection c. of this
38 section that most closely describe the personally identifiable
39 information collected;

40 (c) for the purposes of paragraphs (1) and (2) of subsection c. of
41 section 5 of P.L. , c. (C.) (pending before the Legislature as
42 this bill), two separate lists:

43 (i) one of which shall be a list of the categories of personally
44 identifiable information it has sold about consumers in the
45 preceding 12 months by reference to the enumerated category or
46 categories in subsection c. of this section that most closely describe
47 the personally identifiable information sold, or if the business has

1 not sold consumers' personally identifiable information in the
2 preceding 12 months, the business shall disclose that fact; and

3 (ii) one of which shall be a list of the categories of personally
4 identifiable information it has disclosed about consumers for a
5 business purpose in the preceding 12 months by reference to the
6 enumerated category in subsection c. of this section that most
7 closely describe the personally identifiable information disclosed,
8 or if the business has not disclosed consumers' personally
9 identifiable information for a business purpose in the preceding 12
10 months, the business shall disclose that fact;

11 (6) ensure that all individuals responsible for handling consumer
12 inquiries about the business' privacy practices or the business'
13 compliance with P.L. , c. (C.) (pending before the
14 Legislature as this bill) are informed of all requirements in sections
15 2 through 5 and section 7 of P.L. , c. (C.) (pending before
16 the Legislature as this bill), and this section, and how to direct
17 consumers to exercise their rights under those sections;

18 (7) use any personally identifiable information collected from
19 the consumer in connection with the business' verification of the
20 consumer's request solely for the purposes of verification.

21 b. A business is not obligated to provide the information
22 required by section 4 and section 5 of P.L. , c. (C.) (pending
23 before the Legislature as this bill) to the same consumer more than
24 twice in a 12-month period.

25 c. The categories of personally identifiable information
26 required to be disclosed pursuant to section 4 and section 5 of
27 P.L. , c. (C.) (pending before the Legislature as this bill)
28 shall follow the definition of personally identifiable information in
29 section 1 of P.L. , c. (C.) (pending before the Legislature as
30 this bill).

31

32 9. a. A business that is required to comply with section 2 of
33 P.L. , c. (C.) (pending before the Legislature as this bill)
34 shall, in a form that is reasonably accessible to consumers:

35 (1) provide two clear and conspicuous links on the business's
36 Internet homepage, titled "I Permit This Business To Collect My
37 Personally Identifiable Information" and "I Permit This Business To
38 Sell My Personally Identifiable Information," to an Internet
39 webpage that enables a consumer, or a person authorized by the
40 consumer, to opt-in to the collection or sale of the consumer's
41 personally identifiable information;

42 (2) include a description of a consumer's rights pursuant to
43 section 6 of P.L. , c. (C.) (pending before the Legislature as
44 this bill) in its online privacy policy or policies if the business has
45 an online privacy policy or policies, including any State-specific
46 description of a consumer's privacy rights;

47 (3) ensure that all individuals responsible for handling consumer
48 inquiries about the business's privacy practices or the business's

1 compliance with P.L. , c. (C.) (pending before the
2 Legislature as this bill) are informed of all requirements in section 6
3 of P.L. , c. (C.) (pending before the Legislature as this bill)
4 and this section and how to direct consumers to exercise their rights
5 under those sections;

6 (4) for consumers who exercise their right not to opt-in to the
7 collection or sale of their personally identifiable information,
8 refrain from collecting or selling any of the consumer's personally
9 identifiable information;

10 (5) for a consumer who has not opted in to the collection or sale
11 of the consumer's personally identifiable information, respect the
12 consumer's decision not to opt-in for at least 12 months before
13 requesting that the consumer authorize the sale of the consumer's
14 personally identifiable information; and

15 (6) use any personally identifiable information collected from
16 the consumer in connection with the submission of the consumer's
17 request not to opt-in to the sale of the consumer's personally
18 identifiable information solely for the purposes of complying with
19 the request.

20 b. Nothing in P.L. , c. (C.) (pending before the
21 Legislature as this bill) shall be construed to require a business to
22 comply with P.L. , c. (C.) (pending before the Legislature as
23 this bill) by including the required links and text on the homepage
24 that the business makes available to the public generally, if the
25 business maintains a separate and additional homepage that is
26 dedicated to State consumers and that includes the required links
27 and text, and the business takes reasonable steps to ensure that State
28 consumers are directed to the homepage for State consumers and
29 not the homepage made available to the public generally.

30 c. A consumer may authorize another person solely to refuse to
31 opt-in of the sale of the consumer's personally identifiable
32 information on the consumer's behalf, and a business shall comply
33 with an opt-in request received from a person authorized by the
34 consumer to act on the consumer's behalf, pursuant to regulations
35 adopted by the Attorney General under section 15 of
36 P.L. , c. (C.) (pending before the Legislature as this bill).

37
38 10. a. The obligations imposed on a business pursuant to
39 P.L. , c. (C.) (pending before the Legislature as this bill)
40 shall not restrict a business's ability to:

41 (1) comply with federal, State, or local laws;

42 (2) comply with a civil, criminal, or regulatory inquiry,
43 investigation, subpoena, or summons by federal, State, or local
44 authorities;

45 (3) cooperate with law enforcement agencies concerning
46 conduct or activity that the business, service provider, or third party
47 reasonably and in good faith believes may violate federal, State, or
48 local law;

1 (4) exercise or defend legal claims;

2 (5) collect, use, retain, sell, or disclose consumer information
3 that is deidentified or in the aggregate consumer information;

4 (6) collect or sell a consumer's personally identifiable
5 information if every aspect of that commercial conduct takes place
6 wholly outside of the State. For the purposes of P.L. , c. (C.)
7 (pending before the Legislature as this bill), "commercial conduct
8 takes place wholly outside of the State" means if the business
9 collected a consumer's personally identifiable information while the
10 consumer was outside of the State, no part of the sale of the
11 consumer's personally identifiable information occurred in the
12 State, and no personally identifiable information collected while the
13 consumer was in the State is sold. This paragraph shall not permit a
14 business from storing, including on a device, personally identifiable
15 information about a consumer when the consumer is in the State
16 and then collecting that personally identifiable information when
17 the consumer and stored personally identifiable information is
18 outside of the State.

19 b. The obligations imposed on businesses pursuant to section 4
20 and section 5 of P.L. , c. (C.) (pending before the
21 Legislature as this bill) shall not apply where compliance by the
22 business with P.L. , c. (C.) (pending before the Legislature
23 as this bill) would violate an evidentiary privilege under State law
24 and shall not prevent a business from providing the personally
25 identifiable information of a consumer to a person covered by an
26 evidentiary privilege under State law as part of a privileged
27 communication.

28 c. (1) The provisions of P.L. , c. (C.) (pending before
29 the Legislature as this bill) shall not apply to any of the following:

30 (a) protected health information collected by a covered entity or
31 business associate subject to the privacy, security, and breach
32 notification rules issued by the United States Department of Health
33 and Human Services, Parts 160 and 164 of Title 45 of the Code of
34 Federal Regulations, established pursuant to the federal "Health
35 Insurance Portability and Accountability Act of 1996," Pub.L.104-
36 191, and the federal "Health Information Technology for Economic
37 and Clinical Health Act," (42 U.S.C. s.17921 et seq.);

38 (b) a covered entity governed by the privacy, security, and
39 breach notification rules issued by the United States Department of
40 Health and Human Services, Parts 160 and 164 of Title 45 of the
41 Code of Federal Regulations, established pursuant to the federal
42 "Health Insurance Portability and Accountability Act of 1996,"
43 Pub.L.104-191, to the extent the provider or covered entity
44 maintains patient information in the same manner as medical
45 information or protected health information as described in
46 subparagraph (a) of this paragraph;

47 (c) information collected as part of a clinical trial subject to the
48 Federal Policy for the Protection of Human Subjects, also known as

1 the Common Rule, pursuant to good clinical practice guidelines
2 issued by the International Council for Harmonisation of Technical
3 Requirements for Pharmaceuticals for Human Use or pursuant to
4 human subject protection requirements of the United States Food
5 and Drug Administration.

6 (2) For purposes of this subsection, the definitions of “business
7 associate,” “covered entity,” and “protected health information” in
8 45 C.F.R. s.160.103 shall apply.

9 d. (1) Nothing in P.L. , c. (C.) (pending before the
10 Legislature as this bill) shall be construed to apply to an activity
11 involving the collection, maintenance, disclosure, sale,
12 communication, or use of any personally identifiable information
13 bearing on a consumer’s credit worthiness, credit standing, credit
14 capacity, character, general reputation, personal characteristics, or
15 mode of living by a “consumer reporting agency,” as defined in 15
16 U.S.C. s.1681a, by a furnisher of information, as set forth in 15
17 U.S.C. s.1681s-2, who provides information for use in a “consumer
18 report,” as defined in 15 U.S.C. s.1681a, and by a user of a
19 consumer report as set forth in 15 U.S.C. s.1681b.

20 (2) The provisions of paragraph (1) of this subsection shall
21 apply only to the extent that activity involving the collection,
22 maintenance, disclosure, sale, communication, or use of information
23 by that agency, furnisher, or user is subject to regulation under the
24 federal Fair Credit Reporting Act, 15 U.S.C. s.1681 et seq., and the
25 information is not used, communicated, disclosed, or sold except as
26 authorized by the Fair Credit Reporting Act.

27 e. Nothing in P.L. , c. (C.) (pending before the
28 Legislature as this bill) shall be construed to apply to a financial
29 institution or an affiliate of a financial institution that is subject to
30 Title V of the federal “Gramm-Leach-Bliley Act of 1999,” 15
31 U.S.C. s.6801 et seq., and the rules and implementing regulations
32 promulgated thereunder.

33 f. Nothing in P.L. , c. (C.) (pending before the
34 Legislature as this bill) shall be construed to apply to the sale of a
35 consumer’s personally identifiable information by the New Jersey
36 Motor Vehicle Commission that is permitted by the federal
37 "Drivers' Privacy Protection Act of 1994," Pub.L.103-322.

38 h. (1) The provisions of P.L. , c. (C.) (pending before
39 the Legislature as this bill) shall not apply to any of the following:

40 (a) personally identifiable information that is collected by a
41 business about a natural person in the course of the natural person
42 acting as a job applicant to, an employee of, owner of, director of,
43 officer of, medical staff member of, or contractor of that business to
44 the extent that the natural person’s personally identifiable
45 information is collected and used by the business solely within the
46 context of the natural person’s role or former role as a job applicant
47 to, an employee of, owner of, director of, officer of, medical staff
48 member of, or a contractor of that business;

1 (b) personally identifiable information that is collected by a
2 business that is emergency contact information of the natural person
3 acting as a job applicant to, an employee of, owner of, director of,
4 officer of, medical staff member of, or contractor of that business to
5 the extent that the personally identifiable information is collected
6 and used solely within the context of having an emergency contact
7 on file;

8 (c) personally identifiable information that is necessary for the
9 business to retain to administer benefits for another natural person
10 relating to the natural person acting as a job applicant to, an
11 employee of, owner of, director of, officer of, medical staff member
12 of, or contractor of that business to the extent that the personally
13 identifiable information is collected and used solely within the
14 context of administering those benefits.

15 (2) For the purposes of this subsection:

16 (a) “contractor” means a natural person who provides any
17 service to a business pursuant to a written contract;

18 (b) “director” means a natural person designated in the articles
19 of incorporation as such or elected by the incorporators and natural
20 persons designated, elected, or appointed by any other name or title
21 to act as directors, and their successors;

22 (c) “medical staff member” means a licensed physician and
23 surgeon, dentist, or podiatrist, licensed pursuant to State law;

24 (d) “officer” means a natural person elected or appointed by the
25 board of directors to manage the daily operations of a corporation,
26 such as a chief executive officer, president, secretary, or treasurer;

27 (e) “owner” means a natural person who has one of the
28 following:

29 (i) ownership of, or the power to vote, more than 50 percent of
30 the outstanding shares of any class of voting security of a business;

31 (ii) control in any manner over the election of a majority of the
32 directors or of individuals exercising similar functions; or

33 (iii) the power to exercise a controlling influence over the
34 management of a company.

35 (3) This subsection shall not apply to subsection b. of section 2
36 of P.L. , c. (C.) (pending before the Legislature as this bill).

37 (4) The provisions of this subsection shall become inoperative
38 one year after the date of enactment of P.L. , c. (C.)
39 (pending before the Legislature as this bill).

40 i. Notwithstanding a business’s obligations to respond to and
41 honor consumer rights requests pursuant to P.L. , c. (C.)
42 (pending before the Legislature as this bill):

43 (1) a time period for a business to respond to any verified
44 consumer request may be extended by up to 90 additional days
45 where necessary, taking into account the complexity and number of
46 the requests. The business shall inform the consumer of any such
47 extension within 45 days of receipt of the request, together with the
48 reasons for the delay;

1 (2) if the business does not take action on the request of the
2 consumer, the business shall inform the consumer, without delay
3 and at the latest within the time period permitted of response by this
4 section, of the reasons for not taking action and any rights the
5 consumer may have to appeal the decision to the business;

6 (3) if requests from a consumer are manifestly unfounded or
7 excessive, in particular if requests number in excess of twice a year,
8 a business may either charge a reasonable fee, taking into account
9 the administrative costs of providing the information or
10 communication or taking the action requested, or refuse to act on
11 the request and notify the consumer of the reason for refusing the
12 request. The business shall bear the burden of demonstrating to the
13 Attorney General that any verified consumer request is manifestly
14 unfounded or excessive.

15 j. A business that discloses personally identifiable information
16 to a service provider shall not be liable under P.L. , c. (C.)
17 (pending before the Legislature as this bill) if the service provider
18 receiving the personally identifiable information uses it in violation
19 of the restrictions set forth in P.L. , c. (C.) (pending before
20 the Legislature as this bill), provided that, at the time of disclosing
21 the personally identifiable information, the business does not have
22 actual knowledge, or reason to believe, that the service provider
23 intends to commit such a violation. A service provider shall
24 likewise not be liable under P.L. , c. (C.) (pending before
25 the Legislature as this bill) for the obligations of a business for
26 which it provides services as set forth in this title.

27 k. The provisions of P.L. , c. (C.) (pending before the
28 Legislature as this bill) shall not be construed to require a business
29 to collect personally identifiable information that it would not
30 otherwise collect in the ordinary course of its business, retain
31 personally identifiable information for longer than it would
32 otherwise retain such information in the ordinary course of its
33 business, or reidentify or otherwise link information that is not
34 maintained in a manner that would be considered personally
35 identifiable information.

36 l. The rights afforded to consumers and the obligations
37 imposed on the business in P.L. , c. (C.) (pending before the
38 Legislature as this bill) shall not adversely affect the rights and
39 freedoms of other consumers.

40 m. (1) The obligations imposed on businesses by sections 2
41 through 5 and sections 8 through 9 of P.L. , c. (C.) (pending
42 before the Legislature as this bill) shall not apply to personally
43 identifiable information reflecting a written or verbal
44 communication or a transaction between the business and the
45 consumer, where the consumer is a natural person who is acting as
46 an employee, owner, director, officer, or contractor of a company,
47 partnership, sole proprietorship, non-profit, or government agency
48 and whose communications or transaction with the business occur

1 solely within the context of the business conducting due diligence
2 regarding, or providing or receiving a product or service to or from
3 such company, partnership, sole proprietorship, non-profit, or
4 government agency.

5 (2) For the purposes of this subsection:

6 (a) “contractor” means a natural person who provides any
7 service to a business pursuant to a written contract;

8 (b) “director” means a natural person designated in the articles
9 of incorporation as such or elected by the incorporators and natural
10 persons designated, elected, or appointed by any other name or title
11 to act as directors, and their successors;

12 (c) “officer” means a natural person elected or appointed by the
13 board of directors to manage the daily operations of a corporation,
14 such as a chief executive officer, president, secretary, or treasurer;

15 (d) “owner” means a natural person who has one of the
16 following:

17 (i) ownership of, or the power to vote, more than 50 percent of
18 the outstanding shares of any class of voting security of a business;

19 (ii) control in any manner over the election of a majority of the
20 directors or of individuals exercising similar functions; or

21 (iii) the power to exercise a controlling influence over the
22 management of a company.

23 (3) This subsection shall become inoperative one year after the
24 date of enactment of P.L. , c. (C.) (pending before the
25 Legislature as this bill).

26

27 11. a. On or before six months after the date of enactment of
28 P.L. , c. (C.) (pending before the Legislature as this bill), the
29 Attorney General shall solicit broad public participation and adopt
30 regulations, pursuant to section 15 of P.L. , c. (C.) (pending
31 before the Legislature as this bill) to further the purposes of P.L. ,
32 c. (C.) (pending before the Legislature as this bill), including,
33 but not limited to, the following areas:

34 (1) updating as needed additional categories of personally
35 identifiable information to those enumerated in section 1 of
36 P.L. , c. (C.) (pending before the Legislature as this bill) in
37 order to address changes in technology, data collection practices,
38 obstacles to implementation, and privacy concerns;

39 (2) updating as needed the definition of unique identifiers
40 pursuant to section 1 of P.L. , c. (C.) (pending before the
41 Legislature as this bill) to address changes in technology, data
42 collection, obstacles to implementation, and privacy concerns, and
43 additional categories to the definition of designated methods for
44 submitting requests to facilitate a consumer’s ability to obtain
45 information from a business pursuant to section 8 of
46 P.L. , c. (C.) (pending before the Legislature as this bill);

47 (3) establishing any exceptions necessary to comply with State
48 or federal law, including, but not limited to, those relating to trade

1 secrets and intellectual property rights, within one year of passage
2 of P.L. , c. (C.) (pending before the Legislature as this bill)
3 and as needed thereafter;

4 (4) establishing rules and procedures for the following:

5 (a) to facilitate and govern the submission of a request by a
6 consumer to opt-in or opt-out of the sale of personally identifiable
7 information pursuant to section 6 of P.L. , c. (C.) (pending
8 before the Legislature as this bill).

9 (b) to govern business compliance with a consumer’s opt-in or
10 opt-out request; and

11 (c) for the development and use of a recognizable and uniform
12 opt-in logo or button by all businesses to promote consumer
13 awareness of the opportunity to opt-in of the sale of personally
14 identifiable information;

15 (5) adjusting the monetary threshold in the definition of
16 “business,” pursuant to section 1 of P.L. , c. (C.) (pending
17 before the Legislature as this bill), in January of every odd-
18 numbered year to reflect any increase in the federal Consumer Price
19 Index, as defined in section 16 of P.L.2007, c.335 (C.39:2A-36.1);

20 (6) establishing rules, procedures, and any exceptions necessary
21 to ensure that the notices and information that businesses are
22 required to provide pursuant to P.L. , c. (C.) (pending before
23 the Legislature as this bill) are provided in a manner that may be
24 easily understood by the average consumer, are accessible to
25 consumers with disabilities, and are available in the language
26 primarily used to interact with the consumer, including establishing
27 rules and guidelines regarding financial incentive offerings, within
28 one year of passage of P.L. , c. (C.) (pending before the
29 Legislature as this bill) and as needed thereafter;

30 (7) establishing rules and procedures to further the purposes of
31 section 4 and section 5 of P.L. , c. (C.) (pending before the
32 Legislature as this bill) and to facilitate a consumer’s or the
33 consumer’s authorized agent’s ability to obtain information
34 pursuant to section 8 of P.L. , c. (C.) (pending before the
35 Legislature as this bill), with the goal of minimizing the
36 administrative burden on consumers, taking into account available
37 technology, security concerns, and the burden on the business, to
38 govern a business’s determination that a request for information
39 received from a consumer is a verifiable consumer request,
40 including treating a request submitted through a password-protected
41 account maintained by the consumer with the business while the
42 consumer is logged into the account as a verifiable consumer
43 request and providing a mechanism for a consumer who does not
44 maintain an account with the business to request information
45 through the business’s authentication of the consumer’s identity,
46 within one year of passage of P.L. , c. (C.) (pending before
47 the Legislature as this bill)and as needed thereafter.

1 12. Any provision of a contract or agreement of any kind that
2 purports to waive or limit in any way a consumer's rights pursuant
3 to P.L. , c. (C.) (pending before the Legislature as this bill),
4 including, but not limited to, any right to a remedy or means of
5 enforcement, shall be deemed contrary to public policy and shall be
6 void and unenforceable. The provisions of this section shall not
7 prevent a consumer from declining to request information from a
8 business, declining to opt-in or opt-out of a business's sale of the
9 consumer's personally identifiable information, or authorizing a
10 business to sell the consumer's personally identifiable information
11 after previously opting out.

12

13 13. a. A business or third party may seek the opinion of the
14 Attorney General for guidance on how to comply with the
15 provisions of P.L. , c. (C.) (pending before the Legislature
16 as this bill).

17 b. A business shall be in violation of P.L. , c. (C.)
18 (pending before the Legislature as this bill) if it fails to cure any
19 alleged violation within 30 days after being notified of alleged
20 noncompliance.

21

22 14. It shall be an unlawful practice and violation of P.L.1960,
23 c.39 (C.56:8-1 et seq.) for a business or service provider to violate
24 any provision of P.L. , c. (C.) (pending before the
25 Legislature as this bill).

26

27 15. The Attorney General, in consultation with the Director of
28 the Division of Consumer Affairs in the Department of Law and
29 Public Safety, shall promulgate rules and regulations, pursuant to
30 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1
31 et seq.), necessary to effectuate the purposes of P.L. , c. (C.)
32 (pending before the Legislature as this bill).

33

34 16. This act shall take effect immediately.

35

36

37

STATEMENT

38

39 This bill requires that certain businesses, as defined in the bill,
40 are to follow certain requirements concerning the collection of a
41 consumer's personally identifiable information, as defined in the
42 bill. A business is to be prohibited from collecting a consumer's
43 personally identifiable information unless a consumer affirmatively
44 opts in to the collection,. A business is not to require a consumer to
45 create an account in order to direct the business not to sell the
46 consumer's personally identifiable information. A consumer is to
47 have the right to request that a business that collects a consumer's
48 personally identifiable information disclose to that consumer the

1 categories and specific pieces of personally identifiable information
2 the business has collected. A business that collects a consumer's
3 personally identifiable information is to, at or before the point of
4 collection, inform consumers as to the categories of personally
5 identifiable information to be collected and the purposes for which
6 the categories of personally identifiable information shall be used.
7 A business is not to collect additional categories of personally
8 identifiable information or use personally identifiable information
9 collected for additional purposes without providing the consumer
10 with notice consistent with this section.

11 The bill provides that a business that receives a verifiable
12 consumer request from a consumer to access personally identifiable
13 information is to promptly take steps to disclose and deliver, free of
14 charge to the consumer, the personally identifiable information
15 required by this section. The information may be delivered by mail
16 or electronically, and if provided electronically, the information is
17 to be in a portable and, to the extent technically feasible, readily
18 useable format that allows the consumer to transmit this information
19 to another entity without hindrance. A business may provide
20 personally identifiable information to a consumer at any time, but is
21 not to be required to provide personally identifiable information to a
22 consumer more than twice in a 12-month period.

23 The bill provides that a consumer is to have the right to request
24 that a business delete any personally identifiable information about
25 the consumer that the business has collected from the consumer. A
26 business that receives a verifiable consumer request from a
27 consumer to delete the consumer's personally identifiable
28 information is to delete the consumer's personally identifiable
29 information from its records and direct any service providers to
30 delete the consumer's personally identifiable information from their
31 records.

32 A business or a service provider is not to be required to comply
33 with a consumer's request to delete the consumer's personally
34 identifiable information if it is necessary for the business or service
35 provider to maintain the consumer's personally identifiable
36 information in order to perform certain tasks listed in the bill.

37 The bill provides that a consumer is to have the right to request
38 that a business that collects and sells personally identifiable
39 information about the consumer disclose to the consumer certain
40 information listed in the bill.

41 The bill provides that a third party is not to sell personally
42 identifiable information about a consumer that has been sold to the
43 third party by a business unless the consumer has received explicit
44 notice and is provided an opportunity to exercise the right to opt-in
45 pursuant to the bill.

46 The bill provides that a business that sells consumers' personally
47 identifiable information to third parties shall provide notice to
48 consumers that this information may be sold and that consumers

1 have the “right not to opt-in” to the sale of their personally
2 identifiable information. A consumer shall have the right, at any
3 time, to direct a business that sells personally identifiable
4 information about the consumer to third parties not to sell the
5 consumer’s personally identifiable information. This right may be
6 referred to as the “right to opt-out.”

7 The bill provides that a business shall not discriminate against a
8 consumer because the consumer exercised any of the consumer’s
9 rights pursuant to the bill.

10 A business may charge a consumer a different price or rate, or
11 provide a different level or quality of goods or services to the
12 consumer, if that difference is reasonably related to the value
13 provided to the business by the consumer’s personally identifiable
14 information. A business may also offer financial incentives,
15 including payments to consumers as compensation, for the
16 collection of personally identifiable information, the sale of
17 personally identifiable. A business is to notify consumers of
18 financial incentives.

19 The bill provides that a business is to, in a form that is
20 reasonably accessible to a consumer, make available certain
21 information concerning how a consumer may submit a request to a
22 business for information concerning their personally identifiable
23 information. A business is not obligated to provide the information
24 required by the bill to the same consumer more than twice in a 12-
25 month period.

26 The bill provides that a business subject to the provisions of the
27 bill provide to consumers certain information as described in the
28 bill.

29 The bill provides that the obligations imposed on businesses
30 pursuant to the bill are not to restrict a business’ ability to undertake
31 certain action as provided in the bill.

32 The bill provides that the obligations imposed on businesses
33 pursuant to the bill are not to apply in certain instances listed in the
34 bill.

35 The bill provides that a business or third party may seek the
36 opinion of the Attorney General for guidance on how to comply
37 with the provisions of the bill. A business is to be in violation of the
38 bill if it fails to cure any alleged violation within 30 days after
39 being notified of alleged noncompliance.

40 The bill requires that, on or before six months after the date of
41 enactment of the bill, the Attorney General shall solicit broad public
42 participation and adopt regulations to further the purposes of the
43 bill, including certain actions as provided in the bill.

44 The bill prohibits any provision of a contract or agreement of any
45 kind from waiving or limiting in any way a consumer’s rights
46 pursuant to the bill, including, but not limited to, any right to a
47 remedy or means of enforcement, and is to be deemed contrary to
48 public policy and shall be void and unenforceable.

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1 The bill provides that it is to be an unlawful practice and
2 violation of the consumer fraud act for a business or service
3 provider to violate any provision of the bill, which is punishable by
4 a monetary penalty of not more than \$10,000 for a first offense and
5 not more than \$20,000 for a subsequent offense.