

ASSEMBLY, No. 2664

STATE OF NEW JERSEY

INTRODUCED JANUARY 23, 1997

By Assemblymen COTTRELL and MALONE

1 AN ACT concerning unauthorized sale of personal information about
2 children and supplementing Title 2C of the New Jersey Statutes.

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

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7 1. This act shall be known and may be cited as the "Children's
8 Privacy Protection and Parental Empowerment Act."

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10 2. As used in this act:

11 "Child" means a person who is under the age of 16 years.

12 "Parent" means a parent, guardian or other lawful custodian.

13 "Person" means a natural person, corporation, association,
14 partnership or governmental entity.

15 "Personal information" means information that identifies a person
16 including but not limited to his name, address, telephone number,
17 social security number, electronic mail address, physical description,
18 or photograph, that would be sufficient to locate and contact that
19 person who is a child.

20 "List broker" means a person who, in the course of business,
21 provides mailing lists, computerized or telephone reference services or
22 similar services containing personal information concerning children.

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24 3. It is unlawful for a list broker, as defined in section 2 of this act,
25 to:

26 a. Sell, purchase, resell, rent, or otherwise provide for
27 remuneration personal information about a child without having on file
28 a form bearing the signature of the parent authorizing the release; or

29 b. Condition any sale or service to a child or his parent on the
30 granting of consent for release; or

31 c. Knowingly fail to comply with the request of a parent to
32 disclose:

33 (1) the source of personal information about that parent's child;

34 (2) all information sold by the list broker about the child and all
35 other information in the possession of the list broker, except
36 information which under common law, statute or the State or federal
37 constitutions may not be disclosed; or

1 (3) the identity of all persons to whom personal information about
2 the child has been disclosed.

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4 4. It shall be unlawful for a person to:

5 a. Fail to comply with any parental request set forth in paragraphs
6 (1), (2) or (3) of subsection c. of section 3 of this act if a person, who
7 is not a list broker, uses personal information about a child, in the
8 course of commerce, that was obtained for commercial purposes, to
9 directly contact the child or a parent or guardian of the child to offer
10 a commercial product or service to the child.

11 b. Knowingly use personal information about a child that was
12 collected from the child by the user for commercial purposes in
13 connection with a game, contest or club, without the permission of a
14 parent or guardian of the child;

15 c. Knowingly use prison inmate labor or that of a person who is
16 registered as a sex offender pursuant to P.L.1994, c.133 (C.2C:7-1 et
17 seq.) for data processing of personal information about children; or

18 d. Knowingly distribute or receive any personal information about
19 a child, knowing or having reason to believe that the information will
20 be used to abuse or otherwise physically harm the child.

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22 5. Any person who violates section 3 or subsections a., b. or c. of
23 section 4 of this act is a disorderly person. Any person who violates
24 subsection d. of section 4 of this act is guilty of a crime of the fourth
25 degree. In addition to any other penalties which may be imposed for
26 these offenses, the person shall be subject to a fine not to exceed three
27 times the amount received for any unlawful sale, resale or rental of
28 personal information. Further, a person aggrieved by a violation of
29 this act may bring an action in the Superior Court, Special Civil Part,
30 Small Claims Division in the county of the child's residence, to enjoin
31 further violations and to recover the actual damages sustained by
32 reason of such violation, including costs and reasonable attorneys fees,
33 or an amount not to exceed \$2,000 for each occurrence, whichever is
34 greater.

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36 6. This act shall take effect on the first day of the fifth month after
37 enactment.

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40 STATEMENT

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42 This bill, the "Children's Privacy Protection and Parental
43 Empowerment Act," is patterned on H.R.3508 of 1996, which is
44 sponsored in the House of Representatives by Congressman Bob
45 Franks. It is designed to give parents and guardians greater control
46 over the use of personal information about their children.

1 As the information age continues to unfold, the Legislature has an
2 obligation to monitor the new technology and make sure that
3 reasonable safeguards are in place to protect the State's most
4 vulnerable residents -- its children. The safety and privacy of the
5 State's children are endangered by certain commercial practices. For
6 example, parents across the State sign up their children for birthday
7 clubs at fast food establishments. They also fill out consumer surveys
8 about their family's buying habits at the local supermarket in exchange
9 for a free product or discount coupons. These parents probably do not
10 know that the personal and sometimes sensitive information they have
11 innocently provided about their children may be offered for sale to a
12 list vendor. A list vendor is defined in the bill as those persons who
13 provide mailing lists and computerized or telephone reference services
14 containing personal information about children under age 16.

15 List vendors are free to sell this information to whomever wishes
16 to purchase it. Anyone with a mailing address can order a specific list
17 that might include names, ages, addresses, and phone numbers of all
18 children in a certain neighborhood, or perhaps a listing of all 10 year
19 old boys in a particular community who have video game systems.
20 Parents usually have no idea why their children are being solicited by
21 direct mail advertisers or tele-marketers. This bill addresses the
22 danger of this information reaching the wrong hands.

23 The most important provision of this bill is intended to limit the
24 extent of personal information that can be sold, resold or rented
25 without a parent's consent. Written permission from a parent or
26 guardian must be obtained and kept on file. This legislation would
27 give parents the right to compel list brokers to release to parents all
28 the information they have compiled about the parents' child.

29 In addition, the list vendor would be required to turn over to the
30 parents the name of anyone to whom they have distributed personal
31 information about their child. Furthermore, list brokers would need
32 to be more diligent about verifying the identity of companies and
33 individuals seeking to buy lists of children.

34 The bill also addresses a potentially dangerous practice that has
35 been used by various states. In Texas, convicted pedophiles were
36 being handed personal information about children for computer data
37 entry by a list vendor with a state contract. These practices would be
38 impermissible under the bill.

39 The bill makes it a crime of the fourth degree for a person to
40 distribute or receive personal information about children, with the
41 knowledge that this information would be used to harm a child.
42 Persons violating other provisions of the bill would be disorderly
43 persons. Also, the bill would permit actions to be brought in small
44 claims court by parents for actual damages of up to \$2,000.

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3 Designated the "Children's Privacy Protection and Parental

4 Empowerment Act.