

**ASSEMBLY, No. 5254**

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**STATE OF NEW JERSEY**

**220th LEGISLATURE**

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INTRODUCED FEBRUARY 28, 2023

**Sponsored by:**

**Assemblyman JOHN F. MCKEON**

**District 27 (Essex and Morris)**

**Assemblyman ROBERT J. KARABINCHAK**

**District 18 (Middlesex)**

**Assemblywoman ELLEN J. PARK**

**District 37 (Bergen)**

**SYNOPSIS**

Requires registration of data brokers; prohibits brokering of certain health records.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 3/30/2023)**

1 AN ACT concerning data brokers and supplementing Title 56 of the  
2 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 this act:

8 “Behavioral health care” means procedures or services provided  
9 to a patient for the treatment of a mental illness, emotional disorder,  
10 or substance use disorder.

11 “Behavioral health record” means personal identifying  
12 information that describes behavioral health care or that otherwise  
13 identifies an individual patient as having a behavioral health  
14 condition or as receiving care or treatment for a behavioral health  
15 condition.

16 “Data broker” means a business, or a unit or units of a business,  
17 separately or together, that collects and sells or licenses to third  
18 parties the personal identifying information of an individual with  
19 whom the business does not have a direct relationship.

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

22 “Physical health care” means procedures or services provided to  
23 a patient in connection with the patient’s physical health, including,  
24 but not limited to, preventative care, reproductive care, and  
25 wellness care, as well as treatment for an illness, disorder, disease,  
26 or other acute or chronic physical health condition.

27 “Physical health record” means personal identifying information  
28 that describes physical health care or that otherwise identifies an  
29 individual patient as having a physical health condition or as  
30 receiving care or treatment for a physical health condition.

31 “Personal identifying information” means one or more of the  
32 following computerized data elements about an individual, if  
33 categorized or organized for dissemination to third parties: name;  
34 address; date of birth; place of birth; mother’s maiden name; unique  
35 biometric data generated from measurements or technical analysis  
36 of human body characteristics used by the owner or licensee of the  
37 data to identify or authenticate the individual, such as a fingerprint,  
38 retina or iris image, or other unique physical representation or  
39 digital representation of biometric data; name or address of a  
40 member of the individual’s immediate family or household; Social  
41 Security number or other government-issued identification number;  
42 or other information that, alone or in combination with the other  
43 information sold or licensed, would allow a reasonable person to  
44 identify the individual with reasonable certainty. “Personal  
45 identifying information” shall not include publicly available  
46 information to the extent that it is related to an individual’s business  
47 or profession.

1       2. a. The Division of Consumer Affairs in the Department of  
2 Law and Public Safety shall establish and maintain a public registry  
3 of data brokers doing business in this State. Using the information  
4 submitted pursuant to subsection c. of this section, the registry shall  
5 include, at a minimum, for each data broker doing business in this  
6 State: the data broker's name and physical address; a general email  
7 address that may be used to request information about the data  
8 broker's privacy policies and data collection practices; a general  
9 Internet website address for the data broker; an Internet website  
10 address specific to the data broker's privacy policies; and any  
11 relevant opt-out information. The division shall review and update  
12 the information contained in the registry at least annually.

13       b. Each data broker doing business in New Jersey shall  
14 annually register with, and pay a registration fee of \$100 to, the  
15 division. Registration fees collected pursuant to this subsection  
16 shall be used to establish and maintain the registry required  
17 pursuant to this section.

18       c. Each data broker shall submit the following information to  
19 the division at the time of registration, which information shall be  
20 updated by the data broker at least annually, or at such other  
21 frequency as the division may require:

22       (1) the data broker's name and primary physical, email, and  
23 Internet addresses;

24       (2) whether the data broker permits individuals to opt out of the  
25 data broker's collection practices, including the method for  
26 requesting an opt-out, the type of opt-out, whether the opt-out is  
27 limited to certain activities or sales, and whether the data broker  
28 permits individuals to authorize a third party to opt out on the  
29 individual's behalf;

30       (3) a statement specifying the data collection, databases, or sales  
31 activities from which an individual may not opt out;

32       (4) whether the data broker uses a credentialing process for  
33 purchasers of data and, if applicable, a general explanation of that  
34 process;

35       (5) a history of data breaches and other cybersecurity events  
36 affecting the data broker and personal identifying information in the  
37 data broker's possession, including the number of individuals  
38 affected by each such data breach or cybersecurity event;

39       (6) a separate statement detailing the data collection practices,  
40 databases, sales activities, and opt-out methods that are applicable  
41 to the personal identifying information of persons under the age of  
42 18 and whether the data broker has actual knowledge that it  
43 possesses the personal identifying information of persons under the  
44 age of 18; and

45       (7) any information the division deems appropriate to implement  
46 the purposes of this act.

47       d. (1) A business that collects and sells or licenses personal  
48 identifying information shall not be considered a data broker for the

1 purposes of this act if the full extent to which the business collects  
2 and sells or licenses personal identifying information is incidental  
3 to conducting one or more of the following activities:

4 (a) developing or maintaining a third-party e-commerce or  
5 application platform;

6 (b) providing 411 directory assistance or directory information  
7 services, including name, address, and telephone number, on behalf  
8 of or as a function of a telecommunications carrier;

9 (c) providing publicly available information related to an  
10 individual's business or profession; or

11 (d) providing publicly available information via real-time or  
12 near real-time alert services for health or safety purposes.

13 (2) A business that engages in one or more of the activities  
14 described in subparagraphs (a) through (d) of paragraph (1) of this  
15 subsection shall be considered a data broker for the purposes of this  
16 act if the business collects and sells or licenses personal identifying  
17 information in any way that is not incidental to an activity described  
18 in subparagraphs (a) through (d) of paragraph (1) of this subsection.  
19

20 3. In no case shall a data broker sell, offer for sale, license, or  
21 otherwise furnish, provide, or transmit to any other individual or  
22 entity a physical health record or a behavioral health record.  
23

24 4. a. A data broker that fails to register with the division or to  
25 submit the annual registration fee as required under subsection b. of  
26 section 2 of this act shall be liable to a civil penalty of \$50 per day  
27 for each day the data broker fails to register or submit the required  
28 fee.

29 b. A data broker that fails to submit the information required  
30 under subsection c. of section 2 of this act or to update the  
31 information as required under subsection c. of section 2 of this act  
32 shall be liable to a civil penalty of \$50 per day for each day the data  
33 broker fails to submit or update the information.

34 c. A data broker that sells, offers for sale, licenses, or  
35 otherwise furnishes, provides, or transmits to any other individual  
36 or entity a physical health record or a behavioral health record in  
37 violation of section 3 of this act shall be liable to a civil penalty of  
38 \$1,000 for each behavioral health record sold, offered for sale,  
39 licensed, or otherwise furnished, provided, or transmitted.

40 d. A civil penalty assessed pursuant to this section shall be  
41 collected and enforced by the division in summary proceedings  
42 before a court of competent jurisdiction pursuant to the provisions  
43 of the "Penalty Enforcement Law of 1999," P.L.1999, c.274  
44 (C.2A:58-10 et seq.).  
45

46 5. The Director of the Division of Consumer Affairs in the  
47 Department of Law and Public Safety shall adopt rules and  
48 regulations, pursuant to the "Administrative Procedure Act,"

1 P.L.1968, c.410 (C.52:14B-1 et seq.), as shall be necessary for the  
2 implementation of this act.

3

4 6. This act shall take effect immediately, except that  
5 subsections a. and b. of section 4 of this act shall remain inoperative  
6 for 180 days following the date of enactment.

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#### STATEMENT

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11 This bill requires data brokers to register with Division of  
12 Consumer Affairs in the Department of Law and Public Safety, and  
13 prohibits the brokering of behavioral health records.

14 Data brokers are businesses that collect and sell or license to  
15 third parties the personal identifying information of an individual  
16 with whom the business does not have a direct relationship. As  
17 used in the bill, “personal identifying information” means one or  
18 more computerized data elements about an individual that are  
19 categorized or organized for dissemination to third parties and that,  
20 alone or in combination with other information sold or licensed,  
21 would allow a reasonable person to identify the individual with  
22 reasonable certainty. These data elements include, but are not  
23 limited to, an individual’s: 1) name; 2) address; 3) date of birth; 4)  
24 place of birth; 5) mother’s maiden name; 6) biometric data; 7)  
25 immediate family members’ names or addresses; or 8) Social  
26 Security number or other government-issued identification number.

27 Specifically, the bill requires the division to establish and  
28 maintain a public registry of data brokers doing business in New  
29 Jersey. Data brokers will be required to register with the division,  
30 pay an annual registration fee of \$100, and provide the division  
31 with certain information about the data broker’s business.  
32 Collected registration fees will be used to implement the provisions  
33 of the bill.

34 The information data brokers will be required to submit to the  
35 division at the time of registration will include: 1) the data broker’s  
36 name and primary physical, email, and Internet addresses; 2) the  
37 data broker’s policies for opting out of the data broker’s collection  
38 practices; 3) whether the data broker uses a credentialing process  
39 for purchasers of data and, if applicable, a general explanation of  
40 that process; 4) a history of data breaches and other cybersecurity  
41 events affecting the data broker, including the number of  
42 individuals affected by each such data breach or cybersecurity  
43 event; 5) a separate statement detailing the data collection practices,  
44 databases, sales activities, and opt-out methods that are applicable  
45 to the personal identifying information of persons under the age of  
46 18 and whether the data broker has actual knowledge that it  
47 possesses the personal identifying information of persons under the  
48 age of 18; and 6) any other information the division deems

1 appropriate. Data brokers will be required to update this  
2 information annually, or at such other intervals as the division  
3 requires.

4 Using the information submitted by data brokers, the division  
5 will include in the registry, at a minimum, each data broker's name  
6 and physical address, a general email address that may be used to  
7 request information about the data broker's privacy policies and  
8 data collection practices, a general Internet website address for the  
9 data broker, an Internet website address specific to the data broker's  
10 privacy policies, and any relevant opt-out information. The  
11 division will be required to review and update this information at  
12 least annually.

13 Data brokers that fail to submit and update information as  
14 required under the bill, or that fail to register and pay the  
15 registration fee required under the bill, will be liable to a civil  
16 penalty of \$50 per day for each day the data broker is not in  
17 compliance.

18 A business will not be considered a data broker for the purposes  
19 of the bill if the business collects and sells or licenses personal  
20 identifying information, but the collection and sale or licensing of  
21 personal identifying information is incidental to one or more of the  
22 following activities: developing or maintaining a third-party e-  
23 commerce or application platform; providing 411 directory  
24 assistance or directory information services on behalf of or as a  
25 function of a telecommunications carrier; providing publicly  
26 available information related to an individual's business or  
27 profession; or providing publicly available information via real-  
28 time or near real-time alert services for health or safety purposes. A  
29 business that engages in these activities will still be considered a  
30 data broker for the purposes of the bill if the business collects and  
31 sells or licenses personal identifying information in any way that is  
32 not incidental to one or more of those activities.

33 The bill provides that in no case may a data broker sell, offer for  
34 sale, license, or otherwise furnish, provide, or transmit to any other  
35 individual or entity any physical or behavioral health record  
36 pertaining to an individual, including records describing physical or  
37 behavioral health care provided to an individual and records that  
38 otherwise identify an individual as having a physical or behavioral  
39 health condition or as receiving care or treatment for a physical or  
40 behavioral health condition. A data broker that violates this  
41 prohibition will be liable to a civil penalty of \$1,000 for each  
42 physical health record and for each behavioral health record sold,  
43 offered for sale, licensed, or otherwise furnished, provided, or  
44 transmitted in violation of this prohibition.

45 For the purposes of the bill, "behavioral health care" includes  
46 procedures or services provided to a patient for the treatment of a  
47 mental illness, emotional disorder, or substance use disorder.  
48 "Physical health care" means procedures or services provided to a

- 1 patient in connection with the patient's physical health, including,
- 2 but not limited to, preventative care, reproductive care, and
- 3 wellness care, as well as treatment for an illness, disorder, disease,
- 4 or other acute or chronic physical health condition.