

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 5254 and 4811

STATE OF NEW JERSEY
220th LEGISLATURE

ADOPTED MAY 11, 2023

Sponsored by:

Assemblyman WILLIAM F. MOEN, JR.

District 5 (Camden and Gloucester)

Assemblyman JOHN F. MCKEON

District 27 (Essex and Morris)

Assemblyman ROBERT J. KARABINCHAK

District 18 (Middlesex)

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District 37 (Bergen)

SYNOPSIS

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

CURRENT VERSION OF TEXT

Substitute as adopted by the Assembly Science, Innovation and Technology Committee.



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:

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

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

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

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

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

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

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

45 “Physical health record” means personal identifying information
46 that describes physical health care or that otherwise identifies an
47 individual patient as having a physical health condition or as
48 receiving care or treatment for a physical health condition.

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
46 implement the purposes of P.L. , c. (C.) (pending before
47 the Legislature as this bill).

1 d. (1) A business that collects and sells or licenses personal
2 identifying information shall not be considered a data broker for the
3 purposes of P.L. , c. (C.) (pending before the Legislature
4 as this bill) if:

5 (a) the full extent to which the business collects and sells or
6 licenses personal identifying information is incidental to conducting
7 one or more of the following activities:

8 (i) developing or maintaining a third-party e-commerce or
9 application platform;

10 (ii) providing 411 directory assistance or directory information
11 services, including name, address, and telephone number, on behalf
12 of or as a function of a telecommunications carrier;

13 (iii) providing publicly available information related to an
14 individual's business or profession; or

15 (iv) providing publicly available information via real-time or
16 near real-time alert services for health or safety purposes; or

17 (b) the business is a financial institution or an affiliate of a
18 financial institution that is subject to Title V of the federal
19 "Gramm-Leach-Bliley Act," 15 U.C.S. s.6801 et seq., and the rules
20 and regulations promulgated thereunder.

21 (2) A business that engages in one or more of the activities
22 described in sub-subparagraphs (i) through (iv) of subparagraph (a)
23 of paragraph 1 of this subsection shall be considered a data broker
24 for the purposes of P.L. , c. (C.) (pending before the
25 Legislature as this bill) if the business collects and sells or licenses
26 personal identifying information in any way that is not incidental to
27 an activity described in sub-subparagraphs (i) through (iv) of
28 subparagraph (a) of paragraph 1 of this subsection, unless the
29 business is exempt under subparagraph (b) of paragraph (1) of this
30 subsection.

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

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36 4. a. A data broker that fails to register with the division or to
37 submit the annual registration fee as required under subsection b. of
38 section 2 of P.L. , c. (C.) (pending before the Legislature
39 as this bill) shall be liable to a civil penalty of \$50 for each day the
40 data broker fails to register or submit the required fee.

41 b. A data broker that fails to submit the information required
42 under subsection c. of section 2 of P.L. , c. (C.) (pending
43 before the Legislature as this bill) or to update the information as
44 required under subsection c. of section 2 of P.L. , c. (C.)
45 (pending before the Legislature as this bill) shall be liable for a civil
46 penalty of \$50 for each day the data broker fails to submit or update
47 the information.

1 c. A data broker that sells, offers for sale, licenses, or
2 otherwise furnishes, provides, or transmits to any other individual
3 or entity a physical health record or a behavioral health record in
4 violation of section 3 of P.L. , c. (C.) (pending before the
5 Legislature as this bill) shall be liable to a civil penalty of \$1,000
6 for each physical or behavioral health record sold, offered for sale,
7 licensed, or otherwise furnished, provided, or transmitted.

8 d. A civil penalty assessed pursuant to this section shall be
9 collected and enforced by the division in summary proceedings
10 before a court of competent jurisdiction pursuant to the provisions
11 of the “Penalty Enforcement Law of 1999,” P.L.1999, c.274
12 (C.2A:58-10 et seq.).

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14 5. The Director of the Division of Consumer Affairs in the
15 Department of Law and Public Safety shall adopt rules and
16 regulations, pursuant to the “Administrative Procedure Act,”
17 P.L.1968, c.410 (C.52:14B-1 et seq.), as shall be necessary for the
18 implementation of P.L. , c. (C.) (pending before the
19 Legislature as this bill).

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