

# ASSEMBLY, No. 5075

## STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED JANUARY 19, 2023

**Sponsored by:**

**Assemblyman PAUL D. MORIARTY**

**District 4 (Camden and Gloucester)**

**Assemblywoman PAMELA R. LAMPITT**

**District 6 (Burlington and Camden)**

**SYNOPSIS**

Prohibits acquisition or disclosure of certain personal health information without consent.

**CURRENT VERSION OF TEXT**

As introduced.



(Sponsorship Updated As Of: 1/19/2023)

1 AN ACT concerning the acquisition and disclosure of certain  
2 personal health information and supplementing Title 26 of the  
3 Revised Statutes.

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

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

10 “Acquire” or “acquisition” means to collect, obtain, generate, or  
11 store any information from a person through any means.

12 “Biometric data” means individually identifiable information  
13 concerning the physical, physiological, or behavioral characteristics  
14 of a person, including, but not limited to, heart rate, blood type,  
15 menstrual or ovulation cycle, sleep patterns, fingerprint, voice print,  
16 retina or iris image, or any other physical characteristics.

17 “Consent” means an informed and unambiguous affirmative  
18 authorization freely given by a person through a written statement  
19 or any other clear affirmative action.

20 “Disclose” or “disclosure” means to transmit, release, transfer,  
21 share, disseminate, distribute, make available, rent, sell, or  
22 otherwise communicate any information to a third party.

23 “Health care provider” means a physician, advanced practice  
24 nurse, or physician assistant acting within the scope of a valid  
25 license or certification issued pursuant to Title 45 of the Revised  
26 Statutes.

27 “Health data” means information that relates to a past, present, or  
28 future physical or mental health condition or diagnosis of a person  
29 or the past, present, or future payment for the provision of health  
30 care to a person.

31 “HIPAA” means the federal “Health Insurance Portability and  
32 Accountability Act of 1996,” Pub.L.104-191, and any regulations  
33 promulgated thereunder by the Secretary of the United States  
34 Department of Health and Human Services.

35 “Mobile application” means a software program that runs on the  
36 operating system of a mobile device.

37 “Mobile application developer” means any person or entity that  
38 owns or maintains a mobile application and makes that application  
39 available for the use of customers, whether for a fee or otherwise.

40 “Person” means a natural person, estate of a natural person, or a  
41 child in the custody of a natural person.

42 “Protected health information” has the same meaning as defined  
43 under the federal “Health Insurance Portability and Accountability  
44 Act of 1996,” Pub.L.104-191, and any regulations promulgated  
45 thereunder by the Secretary of the United States Department of  
46 Health and Human Services.

1       “Third party” means any person or entity other than the person  
2 from whom the biometric data, health data, or protected health  
3 information was acquired.

4       “Wearable device” means an electronic device that is worn by a  
5 person, that tracks, analyzes, or transmits the person’s biometric  
6 data or health data, or both, that is capable of collecting the  
7 person’s location data.

8

9       2. a. No health care provider, mobile application developer, or  
10 third party shall acquire or disclose the biometric data, health data,  
11 or protected health information of a person who is a resident of this  
12 State, which information is acquired through the use of in-person or  
13 telephone communication, a mobile application, an Internet website,  
14 or a wearable device, without obtaining the consent of the person  
15 pursuant to subsection b. of this section.

16       b. (1) Before acquiring the biometric data, health data, or  
17 protected health information of a person who is a resident of this  
18 State, a health care provider, mobile application developer, or third  
19 party shall obtain consent from the person to acquire such  
20 information. After obtaining the consent of the person, a health  
21 care provider, mobile application developer, or third party shall not  
22 be required to obtain a separate and distinct form of consent before  
23 each subsequent acquisition of biometric data, health data, or  
24 protected health information from the person, provided that the  
25 consent obtained from the person has explicitly authorized such  
26 acquisition.

27       (2) No more than three calendar days before each disclosure of  
28 the biometric data, health data, or protected health information of a  
29 person who is a resident of this State, a health care provider, mobile  
30 application developer, or third party shall obtain consent from the  
31 person to disclose such information. Each disclosure of the  
32 biometric data, health data, or protected health information of a  
33 person shall constitute a separate and distinct disclosure, which  
34 shall require a health care provider, mobile application developer,  
35 or third party to obtain a separate and distinct form of consent from  
36 the person from whom the biometric data, health data, or protected  
37 health information was acquired.

38       (3) The provisions of this subsection shall not apply to a health  
39 care provider that discloses or acquires the biometric data, health  
40 data, or protected health information of a person, who is a resident  
41 of this State, to or from another health care provider for the  
42 purposes of medical treatment or medical diagnosis.

43       c. Nothing contained herein shall be construed to limit,  
44 diminish, or abrogate the rights of a person under HIPAA or the  
45 obligations of a health care provider or third party under HIPAA.

46       d. (1) If a court of competent jurisdiction finds that a health  
47 care provider, mobile application developer, or third party has  
48 violated this section, the court may award damages, computed at a

1 rate of \$1,000 per violation, reasonable attorney’s fees, and the  
2 costs incurred in maintaining that civil action.

3 (2) The private right of action authorized pursuant to this  
4 section does not supplant any other claim or cause of action  
5 available to a person under common law or by statute. The  
6 provisions of this subsection apply in addition to any other common  
7 law and statutory remedies.

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9 3. This act shall take effect immediately.

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STATEMENT

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14 This bill prohibits a health care provider, mobile application  
15 developer, or third party from acquiring or disclosing a person’s  
16 biometric data, health data, or protected health information  
17 (collectively hereinafter referred to as “personal health  
18 information”), which information is acquired through the use of in-  
19 person or telephone communication, a mobile application, an  
20 Internet website, or a wearable device, without obtaining the  
21 person’s consent.

22 The bill requires the health care provider, mobile application  
23 developer, or third party to obtain the person’s consent before  
24 acquiring a person’s personal health information and no more than  
25 three calendar days before each disclosure of the person’s personal  
26 health information. After obtaining the consent of the person, a  
27 health care provider, mobile application developer, or third party  
28 would not be required to obtain a separate and distinct form of  
29 consent before each subsequent acquisition of personal health  
30 information, provided that the consent obtained from the person has  
31 explicitly authorized such acquisition. However, each disclosure of  
32 the personal health information would constitute a separate and  
33 distinct disclosure, which would require a separate and distinct  
34 grant of consent from the person from whom the personal health  
35 information was acquired.

36 Under the bill, the term “acquire” means to collect, obtain,  
37 generate, or store any information from a person through any  
38 means. In contrast, the term “disclose” means to transmit, release,  
39 transfer, share, disseminate, distribute, make available, rent, sell, or  
40 otherwise communicate any information to a third party.

41 The provisions of this bill would not apply to a health care  
42 provider that discloses or acquires the personal health information  
43 of a person to or from another health care provider for the purposes  
44 of medical treatment or medical diagnosis. Moreover, nothing  
45 contained in the bill may be construed to limit, diminish, or  
46 abrogate the rights of a person under the “Health Insurance  
47 Portability and Accountability Act of 1996,” and any regulations  
48 promulgated thereunder by the Secretary of the U.S. Department of

1 Health and Human Services (HIPAA) or the obligations of a health  
2 care provider or third party under HIPAA.

3 The bill further provides that if a court of competent jurisdiction  
4 finds a health care provider, mobile application developer, or third  
5 party has violated the provisions of the bill, the court may award  
6 damages, computed at a rate of \$1,000 per violation, reasonable  
7 attorney's fees, and costs incurred in maintaining that civil action;  
8 and the private right of action authorized pursuant to this bill does  
9 not supplant any other claim or cause of action available to a person  
10 under common law or by statute.