

[Second Reprint]

**SENATE, No. 332**

---

**STATE OF NEW JERSEY**  
**220th LEGISLATURE**

---

PRE-FILED FOR INTRODUCTION IN THE 2022 SESSION

**Sponsored by:**

**Senator TROY SINGLETON**

**District 7 (Burlington)**

**Senator RICHARD J. CODEY**

**District 27 (Essex and Morris)**

**Co-Sponsored by:**

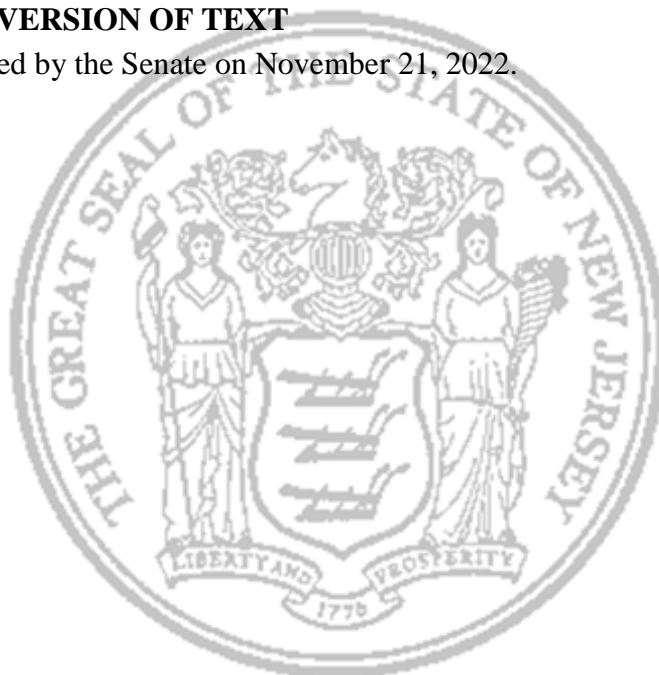
**Senators Greenstein and Madden**

**SYNOPSIS**

Requires commercial Internet websites and online services to notify consumers of collection and disclosure of personally identifiable information and allows consumers to opt out.

**CURRENT VERSION OF TEXT**

As amended by the Senate on November 21, 2022.



**(Sponsorship Updated As Of: 11/21/2022)**

1 AN ACT concerning commercial Internet websites, consumers, and  
2 personally identifiable information and supplementing Title 56  
3 of the 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 Legislature  
9 as this bill):

10 “Affiliate” means a legal entity that controls, is controlled by, or is  
11 under common control with another legal entity.

12 “Commercial Internet website” means a website operated for  
13 business purposes, including, but not limited to, the sale of goods and  
14 services, which collects and maintains personally identifiable  
15 information from a consumer.

16 “Consumer” means an identified person who is a resident of this  
17 State acting <sup>2</sup>[only]<sup>2</sup> in an individual <sup>2</sup>, job seeking,<sup>2</sup> or household  
18 context. “Consumer” shall not include a person <sup>2</sup>otherwise<sup>2</sup> acting in a  
19 commercial or employment context.

20 “De-identified data” means: data that cannot be linked to a  
21 consumer without additional information that is kept separately; or  
22 data that has been modified to a degree that the risk of re-  
23 identification, consistent with guidance from the Federal Trade  
24 Commission and the National Institute of Standards and Technology,  
25 is small, as determined by the Director of the Division of Consumer  
26 Affairs in the Department of Law and Public Safety pursuant to  
27 section 8 of P.L. , c. (C. ) (pending before the Legislature as this  
28 bill), that is subject to a public commitment by the operator not to  
29 attempt to re-identify the data, and to which one or more enforceable  
30 controls to prevent re-identification has been applied, which may  
31 include legal, administrative, technical, or contractual controls.

32 “Designated request address” means an electronic mail address,  
33 Internet website, or toll-free telephone number that a consumer may  
34 use to request the information required to be provided pursuant to  
35 section 3 of P.L. , c. (C. ) (pending before the Legislature as this  
36 bill).

37 “Disclose” means to release, transfer, share, disseminate, make  
38 available, or otherwise communicate <sup>2</sup>[orally,]<sup>2</sup> in writing, or by  
39 electronic or any other means <sup>2,2</sup> to a third party a consumer’s  
40 personally identifiable information. “Disclose” shall not include:

41 the disclosure of a consumer’s personally identifiable information  
42 by an operator to a third party under a written contract authorizing the  
43 third party to use the personally identifiable information to perform  
44 services on behalf of the operator, including maintaining or servicing

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Senate floor amendments adopted August 8, 2022.

<sup>2</sup>Senate floor amendments adopted November 21, 2022.

1 accounts, providing customer service, processing or fulfilling orders  
2 and transactions, verifying consumer information, processing  
3 payments, providing financing, or similar services, but only if the  
4 contract prohibits the third party from using the personally identifiable  
5 information for any reason other than performing the specified service  
6 on behalf of the operator and from disclosing personally identifiable  
7 information to additional third parties unless expressly authorized by  
8 the consumer;

9 the disclosure of personally identifiable information by an operator  
10 to a third party based on a good-faith belief that disclosure is required  
11 to comply with applicable law, regulation, legal process, or court  
12 order;

13 the disclosure of personally identifiable information by an operator  
14 to a third party that is reasonably necessary to address fraud, risk  
15 management, security, or technical issues, to protect the operator's  
16 rights or property, or to protect a consumer or the public from illegal  
17 activities as required by law; or

18 the disclosure of personally identifiable information by an operator  
19 to a third party in connection with the proposed or actual sale or  
20 merger of the operator, or sale of all or part of its assets, to a third  
21 party.

22 "Online service" means an information service provided over the  
23 Internet that collects and maintains personally identifiable information  
24 from a consumer.

25 "Operator" means a person or entity that operates a commercial  
26 Internet website or an online service <sup>2</sup>, and includes any third party  
27 that tracks or collects any information concerning a customer's usage  
28 of a commercial Internet website, regardless of whether the third party  
29 owns or operates the website<sup>2</sup>. "Operator" shall not include any third  
30 party that operates, hosts, or manages, but does not own, a commercial  
31 Internet website or online service on the operator's behalf, or  
32 processes information on behalf of the operator.

33 "Personally identifiable information" means any information that  
34 is linked or reasonably linkable to an identified or identifiable person.  
35 "Personally identifiable information" shall not include de-identified  
36 data <sup>2</sup> **[**or publicly available information.

37 "Publicly available information" means information that is  
38 lawfully made available from federal, State, or local government  
39 records, or widely-distributed media **]**<sup>2</sup>.

40 "Sale" means the exchange of personally identifiable information  
41 for monetary consideration by the operator to a third party for  
42 purposes of licensing or selling personally identifiable information at  
43 the third party's discretion to additional third parties. "Sale" shall not  
44 include the following:

45 the disclosure of personally identifiable information to a service  
46 provider that processes that information on behalf of the operator;

47 the disclosure of personally identifiable information to a third party  
48 with whom the consumer has a direct relationship for purposes of

1 providing a product or service requested by the consumer or otherwise  
2 in a manner that is consistent with a consumer's reasonable  
3 expectations considering the context in which the consumer provided  
4 the personally identifiable information to the operator;

5 the disclosure or transfer of personally identifiable information to  
6 an affiliate of the operator; or

7 the disclosure or transfer of personally identifiable information to a  
8 third party as an asset that is part of a merger, acquisition, bankruptcy,  
9 or other transaction in which the third party assumes control of all or  
10 part of the operator's assets.

11 "Service provider" means a person, private entity, public entity,  
12 agency, or other entity that processes personally identifiable  
13 information on behalf of the operator <sup>2</sup>or on the operator's website<sup>2</sup>  
14 and who shall provide sufficient guarantees to the operator to  
15 implement appropriate technical and organizational measures in a  
16 manner that processing shall ensure the protection of the consumer's  
17 personally identifiable information.

18 "Third party" means a person, private entity, public entity, agency,  
19 or entity other than the consumer, operator, or affiliate or service  
20 provider of the operator.

21 "Verified request" means the process through which a consumer  
22 may submit a request to exercise a right or rights established in  
23 P.L. , c. (C. ) (pending before the Legislature as this bill), and  
24 by which an operator can reasonably authenticate the request and the  
25 consumer making the request using commercially reasonable means.

26

27 2. a. An operator that collects the personally identifiable  
28 information of a consumer through a commercial Internet website or  
29 online service shall provide on <sup>2</sup>[its] the<sup>2</sup> commercial Internet website  
30 or online service notification to a consumer that shall include, but not  
31 be limited to:

32 (1) the categories of the personally identifiable information that the  
33 operator collects through the commercial Internet website or online  
34 service about a consumer who uses or visits the <sup>2</sup>[operator's]<sup>2</sup>  
35 commercial Internet website or online service;

36 (2) the categories of all third parties with which the operator may  
37 disclose a consumer's personally identifiable information;

38 (3) whether a third party may collect personally identifiable  
39 information about a consumer's online activities over time and across  
40 different commercial Internet websites or online services when the  
41 consumer uses the Internet website or online service of the operator;

42 (4) a description of the process for an individual consumer who  
43 uses or visits the commercial Internet website or online service to  
44 review and request changes to any of the consumer's personally  
45 identifiable information that is collected by <sup>2</sup>[the commercial Internet  
46 website or online service of]<sup>2</sup> the operator;

47 (5) the process by which the operator notifies consumers who use  
48 or visit the commercial Internet website or online service of material

1 changes to the notification required to be made available pursuant to  
2 this subsection, along with the effective date of the notice; and

3 (6) information concerning one or more designated request  
4 addresses of the operator.

5 b. In addition to the requirements of subsection a. of this section,  
6 an operator shall include the notification as a separate section of the  
7 operator's privacy policy.

8 <sup>2</sup>c. (1) The process described in paragraph (4) of subsection a. of  
9 this section shall consist of one or more methods for submitting  
10 requests to the operator. The operator shall provide a toll-free phone  
11 number, email address, or both, for the submission of requests by a  
12 customer to review or change personally identifiable information. The  
13 consumer shall submit verified documents supporting the consumer's  
14 request to change personally identifiable information. The operator  
15 shall take steps to promptly verify the data and reply to the consumer's  
16 request.

17 (2) An operator may deny an individual consumer's request to  
18 change the consumer's personally identifiable information if:

19 (a) the operator is legally obligated to retain the personally  
20 identifiable information; or

21 (b) the changes cannot be verified through the submitted  
22 documentation.<sup>2</sup>

23

24 3. a. An operator that collects a consumer's personally  
25 identifiable information through its commercial Internet website or  
26 online service and discloses the consumer's personally identifiable  
27 information to a third party shall make the following information  
28 available to the consumer free of charge upon receipt of a verified  
29 request from the consumer for this information through a designated  
30 request address:

31 (1) the category or categories of a consumer's personally  
32 identifiable information that were disclosed; and

33 (2) the category or categories of the third parties that received the  
34 consumer's personally identifiable information.

35 b. An operator that receives a verified request from a consumer  
36 pursuant to subsection a. of this section shall provide a response to  
37 the consumer within 60 days of the operator's verification of the  
38 request and shall provide the information, pursuant to subsection a.  
39 of this section, for all disclosures of personally identifiable  
40 information that occurred in the prior 12 months.

41 c. This section shall not apply to personally identifiable  
42 information disclosed prior to the effective date of  
43 P.L. , c. (C. ) (pending before the Legislature as this bill).

44

45 4. a. An operator that collects the personally identifiable  
46 information of a consumer through its commercial Internet website  
47 or online service and sells the personally identifiable information of  
48 the consumer through the Internet shall clearly and conspicuously

1 post a link, on its commercial Internet website or online service or  
2 in another prominently accessible location the commercial Internet  
3 website maintains for consumer privacy settings, to an Internet  
4 webpage maintained by the operator, which enables a consumer, by  
5 verified request, to opt out of the sale of the consumer's personally  
6 identifiable information. The method in which a consumer may opt  
7 out shall be in a form and manner determined by the operator,  
8 provided that a consumer shall not be required to establish an  
9 account with the operator in order to opt out of the sale of a  
10 consumer's personally identifiable information.

11 b. An operator shall be prohibited from discriminating against  
12 a consumer if the consumer chooses to opt out of the sale of the  
13 consumer's personally identifiable information pursuant to  
14 subsection a. of this section. The provisions of this section shall not  
15 prohibit the operator's ability to offer consumers discounts, loyalty  
16 programs, or other incentives for the sale of the consumer's  
17 personally identifiable information, or to provide different services  
18 to consumers that are reasonably related to the value of the relevant  
19 data.

20

21 5. A waiver of the requirements of, or an agreement that does  
22 not comply with, the provisions of P.L. , c. (C. ) (pending  
23 before the Legislature as this bill) shall be void and unenforceable.

24

25 6. Nothing in P.L. , c. (C. ) (pending before the  
26 Legislature as this bill) shall apply to:

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

35 b. a financial institution or an affiliate of a financial institution  
36 that is subject to Title V of the federal "Gramm-Leach-Bliley Act of  
37 1999," 15 U.S.C. s.6801 et seq., and the rules and implementing  
38 regulations promulgated thereunder;

39 c. the secondary market institutions identified in  
40 15 U.S.C. s.6809(3)(D) and 12 C.F.R. s.1016.3(l)(3)(iii); or

41 d. an insurance institution subject to P.L.1985, c.179  
42 (C.17:23A-1 et seq.).

43 e. the sale of a consumer's personally identifiable information  
44 by the New Jersey Motor Vehicle Commission that is permitted by  
45 the federal "Drivers' Privacy Protection Act of 1994," 18 U.S.C.  
46 s.2721 et seq.; and

47 f. personally identifiable information collected, processed,  
48 sold, or disclosed by a consumer reporting agency, as defined in 15

1 U.S.C. s.1681a(f), if the collection, processing, sale, or disclosure  
2 of the personally identifiable information is limited by the federal  
3 “Fair Credit Reporting Act,” 15 U.S.C. s.1681 et seq., and  
4 implementing regulations.

5

6 7. Nothing in P.L. , c. (C. ) (pending before the  
7 Legislature as this bill) shall require an operator to:

8 a. re-identify de-identified data;

9 b. collect, retain, use, link, or combine personally identifiable  
10 information concerning a consumer that it would not otherwise  
11 collect, retain, use, link, or combine in the ordinary course of  
12 business.

13

14 8. It shall be an unlawful practice and violation of P.L.1960,  
15 c.39 (C.56:8-1 et seq.) for an operator to fail to notify a consumer of  
16 the sale of personally identifiable information pursuant to sections 2  
17 and 3 of P.L. , c. (C. ) (pending before the Legislature as this  
18 bill) or fail to allow a consumer to opt out of the sale of a  
19 consumer’s personally identifiable information pursuant to section 4  
20 of P.L. , c. (C. ) (pending before the Legislature as this bill)  
21 if the operator fails to cure any alleged violation of  
22 P.L. , c. (C. ) (pending before the Legislature as this bill)  
23 within 30 days after receiving notice of alleged noncompliance  
24 from the Attorney General.

25

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

32

33 10. The Office of the Attorney General shall have sole and  
34 exclusive authority to enforce a violation of P.L. , c. (C. )  
35 (pending before the Legislature as this bill). <sup>1</sup>Nothing in  
36 P.L. , c. (C. ) (pending before the Legislature as this bill)  
37 shall be construed as providing the basis for, or subject to, a private  
38 right of action for violations of P.L. , c. (C. ) (pending before  
39 the Legislature as this bill) or under any other law.<sup>1</sup>

40

41 11. This act shall take effect on the 180th day following the date  
42 of enactment, except that the Director of the Division of Consumer  
43 Affairs may take any anticipatory administrative action in advance as  
44 shall be necessary for the implementation of this act.