

[Third 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:

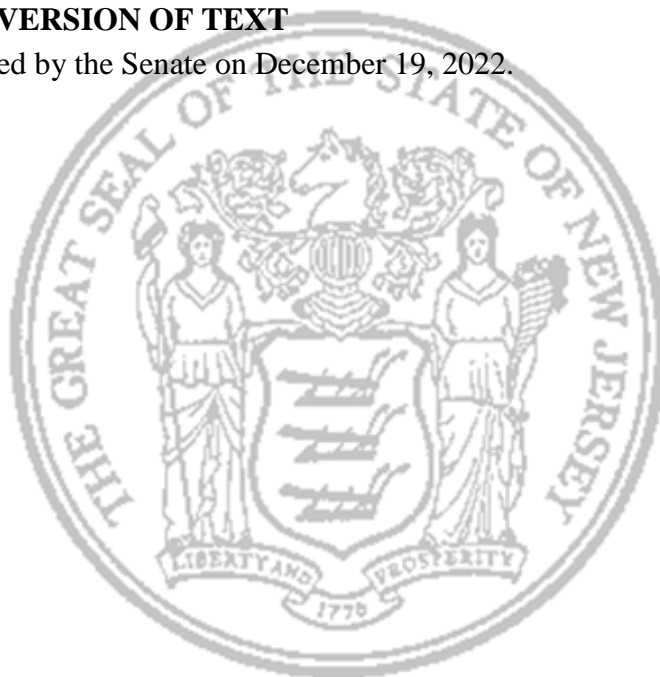
Senators Greenstein, Madden and Pou

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 December 19, 2022.



(Sponsorship Updated As Of: 2/2/2023)

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
9 Legislature as this bill):

10 “Affiliate” means a legal entity that controls, is controlled by, or
11 is 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
14 and 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 ²[only]² ³only³ in an individual ³[², job seeking,²]³ or
18 household context. “Consumer” shall not include a person
19 ³[²otherwise²]³ acting in a 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
25 Technology, is small, as determined by the Director of the Division
26 of Consumer Affairs in the Department of Law and Public Safety
27 pursuant to section ³[⁸] ⁹ of P.L. , c. (C.) (pending before
28 the Legislature as this bill), that is subject to a public commitment
29 by the operator not to attempt to re-identify the data, and to which
30 one or more enforceable controls to prevent re-identification has
31 been applied, which may include legal, administrative, technical, or
32 contractual controls.

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

38 “Disclose” means to release, transfer, share, disseminate, make
39 available, or otherwise communicate ²[orally,]² ³orally,³ in writing,
40 or by electronic or any other means ³[²,²]³ to a third party a
41 consumer’s personally identifiable information. “Disclose” shall not
42 include:

43 the disclosure of a consumer’s personally identifiable
44 information by an operator to a third party under a written contract

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:

¹Senate floor amendments adopted August 8, 2022.

²Senate floor amendments adopted November 21, 2022.

³Senate floor amendments adopted December 19, 2022.

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

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

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

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

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

27 "Operator" means a person or entity that operates a commercial
28 Internet website or an online service ³~~2~~, and includes any third
29 party that tracks or collects any information concerning a
30 customer's usage of a commercial Internet website, regardless of
31 whether the third party owns or operates the website²³. "Operator"
32 shall not include any third party that operates, hosts, or manages,
33 but does not own, a commercial Internet website or online service
34 on the operator's behalf, or processes information on behalf of the
35 operator.

36 "Personally identifiable information" means any information that
37 is linked or reasonably linkable to an identified or identifiable
38 person. "Personally identifiable information" shall not include de-
39 identified data ²~~1~~ or publicly available information.

40 "Publicly available information" means information that is
41 lawfully made available from federal, State, or local government
42 records, or widely-distributed media² ³or publicly available
43 information.

44 "Publicly available information" means information that is
45 lawfully made available from federal, State, or local government
46 records, or widely-distributed media³.

47 "Sale" means the exchange of personally identifiable information
48 for monetary consideration by the operator to a third party for

1 purposes of licensing or selling personally identifiable information
2 at the third party's discretion to additional third parties. "Sale" shall
3 not include the following:

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

6 the disclosure of personally identifiable information to a third
7 party with whom the consumer has a direct relationship for
8 purposes of providing a product or service requested by the
9 consumer or otherwise in a manner that is consistent with a
10 consumer's reasonable expectations considering the context in
11 which the consumer provided the personally identifiable
12 information to the operator;

13 the disclosure or transfer of personally identifiable information
14 to an affiliate of the operator; or

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

19 "Service provider" means a person, private entity, public entity,
20 agency, or other entity that processes personally identifiable
21 information on behalf of the operator ³or on the operator's
22 website²³ and who shall provide sufficient guarantees to the
23 operator to implement appropriate technical and organizational
24 measures in a manner that processing shall ensure the protection of
25 the consumer's personally identifiable information.

26 "Third party" means a person, private entity, public entity,
27 agency, or entity other than the consumer, operator, or affiliate or
28 service provider of the operator.

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

35
36 2. a. An operator that collects the personally identifiable
37 information of a consumer through a commercial Internet website
38 or online service shall provide on ²its the² commercial Internet
39 website or online service notification to a consumer that shall
40 include, but not be limited to:

41 (1) the categories of the personally identifiable information that
42 the operator collects through the commercial Internet website or
43 online service about a consumer who uses or visits the
44 ²operator's² ³operator's³ commercial Internet website or online
45 service;

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

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

6 (4) a description of the process for an individual consumer who
7 uses or visits the commercial Internet website or online service to
8 review and request changes to any of the consumer's personally
9 identifiable information that is collected by ²[the commercial
10 Internet website or online service of] ³the commercial Internet
11 website or online service of ³ the operator;

12 (5) the process by which the operator notifies consumers who
13 use or visit the commercial Internet website or online service of
14 material changes to the notification required to be made available
15 pursuant to this subsection, along with the effective date of the
16 notice; and

17 (6) information concerning one or more designated request
18 addresses of the operator.

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

22 ³[²c. (1) The process described in paragraph (4) of
23 subsection a. of this section shall consist of one or more methods
24 for submitting requests to the operator. The operator shall provide a
25 toll-free phone number, email address, or both, for the submission
26 of requests by a customer to review or change personally
27 identifiable information. The consumer shall submit verified
28 documents supporting the consumer's request to change personally
29 identifiable information. The operator shall take steps to promptly
30 verify the data and reply to the consumer's request.

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

33 (a) the operator is legally obligated to retain the personally
34 identifiable information; or

35 (b) the changes cannot be verified through the submitted
36 documentation.²]³

37
38 3. a. An operator that collects a consumer's personally
39 identifiable information through its commercial Internet website or
40 online service and discloses the consumer's personally identifiable
41 information to a third party shall make the following information
42 available to the consumer free of charge upon receipt of a verified
43 request from the consumer for this information through a designated
44 request address:

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

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

1 b. An operator that receives a verified request from a consumer
2 pursuant to subsection a. of this section shall provide a response to
3 the consumer within 60 days of the operator's verification of the
4 request and shall provide the information, pursuant to subsection a.
5 of this section, for all disclosures of personally identifiable
6 information that occurred in the prior 12 months.

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

10

11 4. a. An operator that collects the personally identifiable
12 information of a consumer through its commercial Internet website
13 or online service and sells the personally identifiable information of
14 the consumer through the Internet shall clearly and conspicuously
15 post a link, on its commercial Internet website or online service or
16 in another prominently accessible location the commercial Internet
17 website maintains for consumer privacy settings, to an Internet
18 webpage maintained by the operator, which enables a consumer, by
19 verified request, to opt out of the sale of the consumer's personally
20 identifiable information. The method in which a consumer may opt
21 out shall be in a form and manner determined by the operator,
22 provided that a consumer shall not be required to establish an
23 account with the operator in order to opt out of the sale of a
24 consumer's personally identifiable information.

25 b. An operator shall be prohibited from discriminating against
26 a consumer if the consumer chooses to opt out of the sale of the
27 consumer's personally identifiable information pursuant to
28 subsection a. of this section. The provisions of this section shall not
29 prohibit the operator's ability to offer consumers discounts, loyalty
30 programs, or other incentives for the sale of the consumer's
31 personally identifiable information, or to provide different services
32 to consumers that are reasonably related to the value of the relevant
33 data.

34

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

38

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

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

- 1 b. a financial institution or an affiliate of a financial institution
- 2 that is subject to Title V of the federal “Gramm-Leach-Bliley Act of
- 3 1999,” 15 U.S.C. s.6801 et seq., and the rules and implementing
- 4 regulations promulgated thereunder;
- 5 c. the secondary market institutions identified in
- 6 15 U.S.C. s.6809(3)(D) and 12 C.F.R. s.1016.3(l)(3)(iii); or
- 7 d. an insurance institution subject to P.L.1985, c.179
- 8 (C.17:23A-1 et seq.).
- 9 e. the sale of a consumer’s personally identifiable information
- 10 by the New Jersey Motor Vehicle Commission that is permitted by
- 11 the federal "Drivers' Privacy Protection Act of 1994," 18 U.S.C.
- 12 s.2721 et seq.; and
- 13 f. personally identifiable information collected, processed,
- 14 sold, or disclosed by a consumer reporting agency, as defined in 15
- 15 U.S.C. s.1681a(f), if the collection, processing, sale, or disclosure
- 16 of the personally identifiable information is limited by the federal
- 17 “Fair Credit Reporting Act,” 15 U.S.C. s.1681 et seq., and
- 18 implementing regulations.

19
20 7. Nothing in P.L. , c. (C.) (pending before the
21 Legislature as this bill) shall require an operator to:

- 22 a. re-identify de-identified data;
- 23 b. collect, retain, use, link, or combine personally identifiable
- 24 information concerning a consumer that it would not otherwise
- 25 collect, retain, use, link, or combine in the ordinary course of
- 26 business.

27
28 8. It shall be an unlawful practice and violation of P.L.1960,
29 c.39 (C.56:8-1 et seq.) for an operator to fail to notify a consumer of
30 the sale of personally identifiable information pursuant to sections 2
31 and 3 of P.L. , c. (C.) (pending before the Legislature as this
32 bill) or fail to allow a consumer to opt out of the sale of a
33 consumer’s personally identifiable information pursuant to section 4
34 of P.L. , c. (C.) (pending before the Legislature as this bill)
35 if the operator fails to cure any alleged violation of
36 P.L. , c. (C.) (pending before the Legislature as this bill)
37 within 30 days after receiving notice of alleged noncompliance
38 from the Attorney General.

39
40 9. The Director of the Division of Consumer Affairs in the
41 Department of Law and Public Safety shall promulgate rules and
42 regulations, pursuant to the “Administrative Procedure Act,”
43 P.L.1968, c.410 (C.52:14B-1 et seq.), necessary to effectuate the
44 purposes of P.L. , c. (C.) (pending before the Legislature as
45 this bill).

46
47 10. The Office of the Attorney General shall have sole and
48 exclusive authority to enforce a violation of P.L. , c. (C.)

1 (pending before the Legislature as this bill). ¹Nothing in
2 P.L. , c. (C.) (pending before the Legislature as this bill)
3 shall be construed as providing the basis for, or subject to, a private
4 right of action for violations of P.L. , c. (C.) (pending before
5 the Legislature as this bill) or under any other law.¹

6
7 11. This act shall take effect on the 180th day following the date
8 of enactment, except that the Director of the Division of Consumer
9 Affairs may take any anticipatory administrative action in advance as
10 shall be necessary for the implementation of this act.