

[Fourth Reprint]

SENATE, No. 332

STATE OF NEW JERSEY
220th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2022 SESSION

Sponsored by:

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SYNOPSIS

Requires online services to notify consumers of collection and disclosure of personally identifiable information and allows consumers to opt in.

CURRENT VERSION OF TEXT

As reported by the Assembly Science, Innovation and Technology Committee on May 11, 2023, with amendments.



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

1 AN ACT concerning ⁴**[commercial Internet websites]** online
 2 services⁴, consumers, and personally identifiable information and
 3 supplementing Title 56 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 ⁴“Business” means a sole proprietorship, partnership, limited
 13 liability company, corporation, association, or other legal entity that is
 14 organized or operated for the profit or financial benefit of its
 15 shareholders or other owners, that collects consumers’ personal
 16 information. “Business” does not include non-profit organizations.⁴

17 ⁴**[“Commercial Internet website” means a website operated for**
 18 **business purposes, including, but not limited to, the sale of goods and**
 19 **services, which collects and maintains personally identifiable**
 20 **information from a consumer.]**⁴

21 “Consumer” means an identified person who is a resident of this
 22 State acting ²**[only]**² ³only³ in an individual ³**[², job seeking,²]**³ or
 23 household context. “Consumer” shall not include a person
 24 ³**[²otherwise²]**³ acting in a commercial or employment context.

25 “De-identified data” means: data that cannot be linked to a
 26 consumer without additional information that is kept separately; or
 27 data that has been modified to a degree that the risk of re-
 28 identification, consistent with guidance from the Federal Trade
 29 Commission and the National Institute of Standards and Technology,
 30 is small, as determined by the Director of the Division of Consumer
 31 Affairs in the Department of Law and Public Safety pursuant to
 32 section ³**[8]**⁹³ of P.L. , c. (C.) (pending before the Legislature
 33 as this bill), that is subject to a public commitment by the operator not
 34 to attempt to re-identify the data, and to which one or more
 35 enforceable controls to prevent re-identification has been applied,
 36 which may include legal, administrative, technical, or contractual
 37 controls.

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

43 “Disclose” means to release, transfer, share, disseminate, make
 44 available, or otherwise communicate ²**[orally,]**² ³orally,³ in writing, or

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.

⁴Assembly AST committee amendments adopted May 11, 2023.

1 by electronic or any other means ³~~["2, 2"]~~³ ⁴by an operator⁴ to a third
 2 party a consumer's personally identifiable information. "Disclose"
 3 shall not include:

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

16 the disclosure of personally identifiable information by an operator
 17 to a third party based on a good-faith belief that disclosure is required
 18 to comply with ⁴an⁴ applicable law, regulation, legal process, or court
 19 order;

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

25 the disclosure of personally identifiable information by an operator
 26 to a third party in connection with the proposed or actual sale or
 27 merger of the operator, or sale of all or part of its assets, to a third
 28 party.

29 "Online service" means ⁴~~["an information"]~~ any⁴ service provided
 30 over the Internet that collects and maintains personally identifiable
 31 information from a consumer.

32 "Operator" means a person or entity that operates ⁴~~["a commercial~~
 33 ~~Internet website or"]~~⁴ an online service ³~~["2, and includes any third~~
 34 ~~party that tracks or collects any information concerning a customer's~~
 35 ~~usage of a commercial Internet website, regardless of whether the third~~
 36 ~~party owns or operates the website"]~~²³. "Operator" shall not include
 37 any third party that operates, hosts, or manages, but does not own, ⁴~~["a~~
 38 ~~commercial Internet website or"]~~ an⁴ online service on the operator's
 39 behalf, or processes information on behalf of the operator.

40 "Personally identifiable information" means any information that
 41 is linked or reasonably linkable to an identified or identifiable person.
 42 "Personally identifiable information" shall not include de-identified
 43 data ²~~["or publicly available information.~~

44 "Publicly available information" means information that is
 45 lawfully made available from federal, State, or local government
 46 records, or widely-distributed media² ³or publically available
 47 information.

1 “Publicly available information” means information that is
 2 lawfully made available from federal, State, or local government
 3 records, or widely-distributed media³.

4 “Sale” means the exchange of personally identifiable information
 5 for monetary consideration by the operator to a third party for
 6 purposes of licensing or selling personally identifiable information at
 7 the third party's discretion to additional third parties. "Sale" shall not
 8 include the following:

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

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

17 the disclosure or transfer of personally identifiable information to
 18 an affiliate of the operator; or

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

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

30 “Third party” means a person, private entity, public entity, agency,
 31 or entity other than the consumer, operator, or affiliate or service
 32 provider of the operator.

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

38
 39 2. a. An operator that collects the personally identifiable
 40 information of a consumer through ⁴~~a commercial Internet website~~
 41 ~~or~~ ⁴an online service shall provide on ²~~its~~ the² ⁴~~commercial~~
 42 ~~Internet website or~~ ⁴online service notification to a consumer that
 43 shall include, but not be limited to:

44 (1) the categories of the personally identifiable information that
 45 the operator collects through the ⁴~~commercial Internet website~~
 46 ~~or~~ ⁴online service about a consumer who uses or visits the

1 ²[operator's]² ³operator's³ ⁴[commercial Internet website or]⁴
2 online service;

3 (2) the categories of all third parties ⁴[with] to⁴ which the
4 operator may disclose a consumer's personally identifiable
5 information;

6 (3) whether a third party may collect personally identifiable
7 information about a consumer's online activities over time and
8 across different ⁴[commercial Internet websites or]⁴ online
9 services when the consumer uses the ⁴[Internet website or]⁴ online
10 service of the operator;

11 (4) a description of the process for an individual consumer who
12 uses or visits the ⁴[commercial Internet website or]⁴ online service
13 to review and request changes to any of the consumer's personally
14 identifiable information that is collected by ²[the commercial
15 Internet website or online service of]² ⁴[³the commercial Internet
16 website or] the⁴ online service of ³ the operator;

17 (5) the process by which the operator notifies consumers who
18 use or visit the ⁴[commercial Internet website or]⁴ online service of
19 material changes to the notification required to be made available
20 pursuant to this subsection, along with the effective date of the
21 notice; and

22 (6) information concerning one or more designated request
23 addresses of the operator.

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

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

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

38 (a) the operator is legally obligated to retain the personally
39 identifiable information; or

40 (b) the changes cannot be verified through the submitted
41 documentation.²]³

42
43 3. a. An operator that collects a consumer's personally
44 identifiable information through its ⁴[commercial Internet website
45 or]⁴ online service and discloses the consumer's personally
46 identifiable information to a third party shall make the following
47 information available to the consumer free of charge upon receipt of

1 a verified request from the consumer for this information through a
2 designated request address:

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

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

7 b. An operator that receives a verified request from a consumer
8 pursuant to subsection a. of this section shall provide a response to
9 the consumer within 60 days of the operator's verification of the
10 request and shall provide the information, pursuant to subsection a.
11 of this section, for all disclosures of personally identifiable
12 information that occurred in the prior 12 months.

13 c. This section shall not apply to personally identifiable
14 information disclosed prior to the effective date of P.L. , c.
15 (C.) (pending before the Legislature as this bill). ⁴This section
16 shall not apply to personally identifiable information collected prior
17 to the effective date of P.L. , c. (C.) (pending before the
18 Legislature as this bill) unless the controller continues to store such
19 information thereafter.⁴
20

21 4. a. An operator that collects the personally identifiable
22 information of a consumer through its ⁴**[commercial Internet website**
23 **or]**⁴ online service and sells the personally identifiable information
24 of the consumer ⁴**[through the Internet]**⁴ shall clearly and
25 conspicuously post a link, on its ⁴**[commercial Internet website or]**⁴
26 online service or in another prominently accessible location the
27 ⁴**[commercial Internet website]** online service⁴ maintains for
28 consumer privacy settings, to an Internet webpage maintained by the
29 operator, which enables a consumer, by verified request, to opt ⁴**[out**
30 **of]** into⁴ the sale of the consumer's personally identifiable
31 information. The method in which a consumer may opt ⁴**[out]** in⁴
32 shall be in a form and manner determined by the operator, provided
33 that a consumer shall not be required to establish an account with
34 the operator in order to opt ⁴**[out of]** into⁴ the sale of a consumer's
35 personally identifiable information.

36 b. An operator shall be prohibited from discriminating against
37 a consumer if the consumer chooses to opt out of the sale of the
38 consumer's personally identifiable information pursuant to
39 subsection a. of this section. The provisions of this section shall not
40 prohibit the operator's ability to offer consumers discounts, loyalty
41 programs, or other incentives for the sale of the consumer's
42 personally identifiable information, or to provide different services
43 to consumers that are reasonably related to the value of the relevant
44 data⁴, provided that the operator has clearly and conspicuously
45 disclosed to the consumer that the offered discounts, programs,
46 incentives, or services require consenting to the sale or processing

1 of personally identifiable information that the consumer otherwise
2 has a right to opt out of⁴ .

3
4 5. A waiver of the requirements of, or an agreement that does
5 not comply with, the provisions of P.L. , c. (C.) (pending
6 before the Legislature as this bill) shall be void and unenforceable.

7
8 6. Nothing in P.L. , c. (C.) (pending before the Legislature
9 as this bill) shall apply to:

10 a. protected health information collected by a covered entity or
11 business associate subject to the privacy, security, and breach
12 notification rules issued by the United States Department of Health
13 and Human Services, Parts 160 and 164 of Title 45 of the Code of
14 Federal Regulations, established pursuant to the "Health Insurance
15 Portability and Accountability Act of 1996," Pub.L.104-191, and the
16 "Health Information Technology for Economic and Clinical Health
17 Act," ⁴[(⁴42 U.S.C. s.17921 et seq.⁴)]⁴.

18 b. a financial institution or an affiliate of a financial institution
19 that is subject to Title V of the federal "Gramm-Leach-Bliley Act ⁴[of
20 1999]⁴," 15 U.S.C. s.6801 et seq., and the rules and implementing
21 regulations promulgated thereunder;

22 c. the secondary market institutions identified in
23 15 U.S.C. s.6809(3)(D) and 12 C.F.R. s.1016.3(l)(3)(iii); ⁴[or]⁴

24 d. an insurance institution subject to P.L.1985, c.179 (C.17:23A-1
25 et seq.)⁴[.];⁴

26 e. the sale of a consumer's personally identifiable information by
27 the New Jersey Motor Vehicle Commission that is permitted by the
28 federal "Drivers' Privacy Protection Act of 1994," 18 U.S.C. s.2721 et
29 seq.; ⁴[and] or⁴

30 f. personally identifiable information collected, processed, sold,
31 or disclosed by a consumer reporting agency, as defined in 15 U.S.C.
32 s.1681a(f), if the collection, processing, sale, or disclosure of the
33 personally identifiable information is limited by the federal "Fair
34 Credit Reporting Act," 15 U.S.C. s.1681 et seq., and implementing
35 regulations.

36
37 7. Nothing in P.L. , c. (C.) (pending before the
38 Legislature as this bill) shall require an operator to:

39 a. re-identify de-identified data;

40 b. collect, retain, use, link, or combine personally identifiable
41 information concerning a consumer that it would not otherwise
42 collect, retain, use, link, or combine in the ordinary course of
43 business.

44
45 8. It shall be an unlawful practice and violation of P.L.1960,
46 c.39 (C.56:8-1 et seq.) for an operator to fail to notify a consumer of
47 the sale of personally identifiable information pursuant to sections 2
48 and 3 of P.L. , c. (C.) (pending before the Legislature as this

1 bill) or fail to allow a consumer to opt out of the sale of a
2 consumer's personally identifiable information pursuant to section 4
3 of P.L. , c. (C.) (pending before the Legislature as this bill)
4 if the operator fails to cure any alleged violation of
5 P.L. , c. (C.) (pending before the Legislature as this bill)
6 within 30 days after receiving notice of alleged noncompliance
7 from the Attorney General.

8
9 9. The Director of the Division of Consumer Affairs in the
10 Department of Law and Public Safety shall promulgate rules and
11 regulations, pursuant to the "Administrative Procedure Act,"
12 P.L.1968, c.410 (C.52:14B-1 et seq.), necessary to effectuate the
13 purposes of P.L. , c. (C.) (pending before the Legislature as
14 this bill).

15
16 10. The Office of the Attorney General shall have sole and
17 exclusive authority to enforce a violation of P.L. , c. (C.)
18 (pending before the Legislature as this bill). ¹Nothing in
19 P.L. , c. (C.) (pending before the Legislature as this bill)
20 shall be construed as providing the basis for, or subject to, a private
21 right of action for violations of P.L. , c. (C.) (pending before
22 the Legislature as this bill) or under any other law.¹

23
24 11. This act shall take effect on the 180th day following the date
25 of enactment, except that the Director of the Division of Consumer
26 Affairs may take any anticipatory administrative action in advance as
27 shall be necessary for the implementation of this act.