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Matthew Fazelpoor, 'Murphy takes action on slew of legislation', *NJBIZ*, 17 Jan 2024

CL/MM

P.L. 2023, CHAPTER 266, *approved January 16, 2024*
Senate, No. 332 (*Sixth Reprint*)

1 AN ACT concerning ⁴**[commercial Internet websites]** online
2 services⁴, consumers, and ⁵**[personally identifiable information]**
3 personal data⁵ and supplementing Title 56 of the Revised
4 Statutes.

5
6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:
8

9 ⁵**[1. As used in P.L. , c. (C.) (pending before the**
10 Legislature as this bill):

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

13 ⁴“Business” means a sole proprietorship, partnership, limited
14 liability company, corporation, association, or other legal entity that is
15 organized or operated for the profit or financial benefit of its
16 shareholders or other owners, that collects consumers’ personal
17 information. “Business” does not include non-profit organizations.⁴

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

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

26 “De-identified data” means: data that cannot be linked to a
27 consumer without additional information that is kept separately; or
28 data that has been modified to a degree that the risk of re-
29 identification, consistent with guidance from the Federal Trade
30 Commission and the National Institute of Standards and Technology,
31 is small, as determined by the Director of the Division of Consumer
32 Affairs in the Department of Law and Public Safety pursuant to
33 section ³**[8]** ⁹9³ of P.L. , c. (C.) (pending before the Legislature
34 as this bill), that is subject to a public commitment by the operator not
35 to attempt to re-identify the data, and to which one or more

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.

⁵Assembly AJU committee amendments adopted December 18, 2023.

⁶Assembly floor amendments adopted December 21, 2023.

1 enforceable controls to prevent re-identification has been applied,
2 which may include legal, administrative, technical, or contractual
3 controls.

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

9 “Disclose” means to release, transfer, share, disseminate, make
10 available, or otherwise communicate ²[orally,] ^{2 3}orally, ³ in writing, or
11 by electronic or any other means ³[^{2, 2}] ³ ⁴by an operator⁴ to a third
12 party a consumer’s personally identifiable information. “Disclose”
13 shall not include:

14 the disclosure of a consumer’s personally identifiable information
15 by an operator to a third party under a written contract authorizing the
16 third party to use the personally identifiable information to perform
17 services on behalf of the operator, including maintaining or servicing
18 accounts, providing customer service, processing or fulfilling orders
19 and transactions, verifying consumer information, processing
20 payments, providing financing, or similar services, but only if the
21 contract prohibits the third party from using the personally identifiable
22 information for any reason other than performing the specified service
23 on behalf of the operator and from disclosing personally identifiable
24 information to additional third parties unless expressly authorized by
25 the consumer;

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

30 the disclosure of personally identifiable information by an operator
31 to a third party that is reasonably necessary to address fraud, risk
32 management, security, or technical issues, to protect the operator’s
33 rights or property, or to protect a consumer or the public from illegal
34 activities as required by law; or

35 the disclosure of personally identifiable information by an operator
36 to a third party in connection with the proposed or actual sale or
37 merger of the operator, or sale of all or part of its assets, to a third
38 party.

39 “Online service” means ⁴[an information] any⁴ service provided
40 over the Internet that collects and maintains personally identifiable
41 information from a consumer.

42 “Operator” means a person or entity that operates ⁴[a commercial
43 Internet website or]⁴ an online service ³[², and includes any third
44 party that tracks or collects any information concerning a customer’s
45 usage of a commercial Internet website, regardless of whether the third
46 party owns or operates the website²]³. “Operator” shall not include
47 any third party that operates, hosts, or manages, but does not own, ⁴[a

1 commercial Internet website or] an⁴ online service on the operator’s
2 behalf, or processes information on behalf of the operator.

3 “Personally identifiable information” means any information that
4 is linked or reasonably linkable to an identified or identifiable person.
5 “Personally identifiable information” shall not include de-identified
6 data ²[or publicly available information.

7 “Publicly available information” means information that is
8 lawfully made available from federal, State, or local government
9 records, or widely-distributed media]² ³or publically available
10 information.

11 “Publicly available information” means information that is
12 lawfully made available from federal, State, or local government
13 records, or widely-distributed media³.

14 “Sale” means the exchange of personally identifiable information
15 for monetary consideration by the operator to a third party for
16 purposes of licensing or selling personally identifiable information at
17 the third party’s discretion to additional third parties. "Sale" shall not
18 include the following:

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

21 the disclosure of personally identifiable information to a third party
22 with whom the consumer has a direct relationship for purposes of
23 providing a product or service requested by the consumer or otherwise
24 in a manner that is consistent with a consumer’s reasonable
25 expectations considering the context in which the consumer provided
26 the personally identifiable information to the operator;

27 the disclosure or transfer of personally identifiable information to
28 an affiliate of the operator; or

29 the disclosure or transfer of personally identifiable information to a
30 third party as an asset that is part of a merger, acquisition, bankruptcy,
31 or other transaction in which the third party assumes control of all or
32 part of the operator’s assets.

33 “Service provider” means a person, private entity, public entity,
34 agency, or other entity that processes personally identifiable
35 information on behalf of the operator ³[²or on the operator’s
36 website²]³ and who shall provide sufficient guarantees to the operator
37 to implement appropriate technical and organizational measures in a
38 manner that processing shall ensure the protection of the consumer’s
39 personally identifiable information.

40 “Third party” means a person, private entity, public entity, agency,
41 or entity other than the consumer, operator, or affiliate or service
42 provider of the operator.

43 "Verified request" means the process through which a consumer
44 may submit a request to exercise a right or rights established in
45 P.L. , c. (C.) (pending before the Legislature as this bill), and
46 by which an operator can reasonably authenticate the request and the
47 consumer making the request using commercially reasonable means.]⁵

1 ⁵[2. a. An operator that collects the personally identifiable
2 information of a consumer through ⁴[a commercial Internet website
3 or] an⁴ online service shall provide on ²[its] the² ⁴[commercial
4 Internet website or]⁴ online service notification to a consumer that
5 shall include, but not be limited to:

6 (1) the categories of the personally identifiable information that
7 the operator collects through the ⁴[commercial Internet website
8 or]⁴ online service about a consumer who uses or visits the
9 ²[operator's]² ³operator's³ ⁴[commercial Internet website or]⁴
10 online service;

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

14 (3) whether a third party may collect personally identifiable
15 information about a consumer's online activities over time and
16 across different ⁴[commercial Internet websites or]⁴ online
17 services when the consumer uses the ⁴[Internet website or]⁴ online
18 service of the operator;

19 (4) a description of the process for an individual consumer who
20 uses or visits the ⁴[commercial Internet website or]⁴ online service
21 to review and request changes to any of the consumer's personally
22 identifiable information that is collected by ²[the commercial
23 Internet website or online service of]² ⁴[³the commercial Internet
24 website or] the⁴ online service of³ the operator;

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

30 (6) information concerning one or more designated request
31 addresses of the operator.

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

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

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

46 (a) the operator is legally obligated to retain the personally
47 identifiable information; or

1 (b) the changes cannot be verified through the submitted
2 documentation.²]³]⁵

3
4 ⁵[3. a. An operator that collects a consumer's personally
5 identifiable information through its ⁴[commercial Internet website
6 or]⁴ online service and discloses the consumer's personally
7 identifiable information to a third party shall make the following
8 information available to the consumer free of charge upon receipt of
9 a verified request from the consumer for this information through a
10 designated request address:

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

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

15 b. An operator that receives a verified request from a consumer
16 pursuant to subsection a. of this section shall provide a response to
17 the consumer within 60 days of the operator's verification of the
18 request and shall provide the information, pursuant to subsection a.
19 of this section, for all disclosures of personally identifiable
20 information that occurred in the prior 12 months.

21 c. This section shall not apply to personally identifiable
22 information disclosed prior to the effective date of P.L. , c.
23 (C.) (pending before the Legislature as this bill). ⁴This section
24 shall not apply to personally identifiable information collected prior
25 to the effective date of P.L. , c. (C.) (pending before the
26 Legislature as this bill) unless the controller continues to store such
27 information thereafter.⁴]⁵

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

44 b. An operator shall be prohibited from discriminating against
45 a consumer if the consumer chooses to opt out of the sale of the
46 consumer's personally identifiable information pursuant to
47 subsection a. of this section. The provisions of this section shall not

1 prohibit the operator’s ability to offer consumers discounts, loyalty
 2 programs, or other incentives for the sale of the consumer’s
 3 personally identifiable information, or to provide different services
 4 to consumers that are reasonably related to the value of the relevant
 5 data⁴, provided that the operator has clearly and conspicuously
 6 disclosed to the consumer that the offered discounts, programs,
 7 incentives, or services require consenting to the sale or processing
 8 of personally identifiable information that the consumer otherwise
 9 has a right to opt out of⁴ **】**⁵.

10

11 ⁵**【**5. A waiver of the requirements of, or an agreement that does
 12 not comply with, the provisions of P.L. , c. (C.) (pending
 13 before the Legislature as this bill) shall be void and
 14 unenforceable.**】**⁵

15

16 ⁵**【**6. Nothing in P.L. , c. (C.) (pending before the
 17 Legislature as this bill) shall apply to:

18 a. protected health information collected by a covered entity or
 19 business associate subject to the privacy, security, and breach
 20 notification rules issued by the United States Department of Health
 21 and Human Services, Parts 160 and 164 of Title 45 of the Code of
 22 Federal Regulations, established pursuant to the "Health Insurance
 23 Portability and Accountability Act of 1996," Pub.L.104-191, and the
 24 "Health Information Technology for Economic and Clinical Health
 25 Act," ⁴**【**(⁴42 U.S.C. s.17921 et seq.⁴)**】**⁴.

26 b. a financial institution or an affiliate of a financial institution
 27 that is subject to Title V of the federal "Gramm-Leach-Bliley Act ⁴**【**of
 28 1999**】**⁴," 15 U.S.C. s.6801 et seq., and the rules and implementing
 29 regulations promulgated thereunder;

30 c. the secondary market institutions identified in
 31 15 U.S.C. s.6809(3)(D) and 12 C.F.R. s.1016.3(1)(3)(iii); ⁴**【**or**】**⁴

32 d. an insurance institution subject to P.L.1985, c.179 (C.17:23A-1
 33 et seq.)⁴**【**.**】**⁴

34 e. the sale of a consumer’s personally identifiable information by
 35 the New Jersey Motor Vehicle Commission that is permitted by the
 36 federal "Drivers' Privacy Protection Act of 1994," 18 U.S.C. s.2721 et
 37 seq.; ⁴**【**and**】** or⁴

38 f. personally identifiable information collected, processed, sold,
 39 or disclosed by a consumer reporting agency, as defined in 15 U.S.C.
 40 s.1681a(f), if the collection, processing, sale, or disclosure of the
 41 personally identifiable information is limited by the federal "Fair
 42 Credit Reporting Act," 15 U.S.C. s.1681 et seq., and implementing
 43 regulations.**】**⁵

44

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

47 a. re-identify de-identified data;

1 b. collect, retain, use, link, or combine personally identifiable
2 information concerning a consumer that it would not otherwise
3 collect, retain, use, link, or combine in the ordinary course of
4 business.】⁵

5
6 ⁵【8. It shall be an unlawful practice and violation of P.L.1960,
7 c.39 (C.56:8-1 et seq.) for an operator to fail to notify a consumer of
8 the sale of personally identifiable information pursuant to sections 2
9 and 3 of P.L. , c. (C.) (pending before the Legislature as this
10 bill) or fail to allow a consumer to opt out of the sale of a
11 consumer’s personally identifiable information pursuant to section 4
12 of P.L. , c. (C.) (pending before the Legislature as this bill)
13 if the operator fails to cure any alleged violation of
14 P.L. , c. (C.) (pending before the Legislature as this bill)
15 within 30 days after receiving notice of alleged noncompliance
16 from the Attorney General. 】⁵

17
18 ⁵【9. The Director of the Division of Consumer Affairs in the
19 Department of Law and Public Safety shall promulgate rules and
20 regulations, pursuant to the “Administrative Procedure Act,”
21 P.L.1968, c.410 (C.52:14B-1 et seq.), necessary to effectuate the
22 purposes of P.L. , c. (C.) (pending before the Legislature as
23 this bill).】⁵

24
25 ⁵【10. The Office of the Attorney General shall have sole and
26 exclusive authority to enforce a violation of P.L. , c. (C.)
27 (pending before the Legislature as this bill). ¹Nothing in
28 P.L. , c. (C.) (pending before the Legislature as this bill)
29 shall be construed as providing the basis for, or subject to, a private
30 right of action for violations of P.L. , c. (C.) (pending before
31 the Legislature as this bill) or under any other law. ¹】⁵

32
33 ⁵【11. This act shall take effect on the 180th day following
34 the date of enactment, except that the Director of the Division of
35 Consumer Affairs may take any anticipatory administrative action in
36 advance as shall be necessary for the implementation of this act.】⁵

37
38 ⁵1. As used in P.L. , c. (C.) (pending before the Legislature
39 as this bill):

40 “Affiliate” means a legal entity that controls, is controlled by, or is
41 under common control with another legal entity. For the purposes of
42 this definition, “control” means: the ownership of or the power to vote,
43 more than 50 percent of the outstanding shares of any class of voting
44 security of a company; the control in any manner over the election of a
45 majority of the directors or individuals exercising similar functions; or
46 the power to exercise a controlling influence over the management or
47 policies of a company.

1 “Biometric data” means data generated by automatic or
2 technological processing, measurements, or analysis of an individual’s
3 biological, physical, or behavioral characteristics, including, but not
4 limited to, fingerprint, voiceprint, eye retinas, irises, facial mapping,
5 facial geometry, facial templates, or other unique biological, physical,
6 or behavioral patterns or characteristics that are used or intended to be
7 used, singularly or in combination with each other or with other
8 personal data, to identify a specific individual. “Biometric data” shall
9 not include: a digital or physical photograph; an audio or video
10 recording; or any data generated from a digital or physical photograph,
11 or an audio or video recording, unless such data is generated to
12 identify a specific individual.

13 “Child” shall have the same meaning as provided in COPPA.

14 “Consent” means a clear affirmative act signifying a consumer’s
15 freely given, specific, informed and unambiguous agreement to allow
16 the processing of personal data relating to the consumer. “Consent”
17 may include a written statement, including by electronic means, or any
18 other unambiguous affirmative action. “Consent shall not include:
19 acceptance of a general or broad terms of use or similar document that
20 contains descriptions of personal data processing along with other,
21 unrelated information; hovering over, muting, pausing, or closing a
22 given piece of content; or agreement obtained through the use of dark
23 patterns.

24 “Consumer” means an identified person who is a resident of this
25 State acting only in an individual or household context. “Consumer”
26 shall not include a person acting in a commercial or employment
27 context.

28 “Controller” means an individual, or legal entity that, alone or
29 jointly with others determines the purpose and means of processing
30 personal data.

31 “COPPA” means the federal Children’s Online Privacy Protection
32 Act, 15 U.S.C. s.6501 et seq., and any rules, regulations, guidelines,
33 and exceptions thereto, as may be amended from time to time.

34 “Dark pattern” means a user interface designed or manipulated
35 with the substantial effect of subverting or impairing user autonomy,
36 decision-making, or choice, and includes, but is not limited to, any
37 practice the United States Federal Trade Commission refers to as a
38 “dark pattern.”

39 “Decisions that produce legal or similarly significant effects
40 concerning the consumer” means decisions that result in the provision
41 or denial of financial or lending services, housing, insurance,
42 education enrollment or opportunity, criminal justice, employment
43 opportunities, health care services, or access to essential goods and
44 services.

45 “De-identified data” means: data that cannot be reasonably used to
46 infer information about, or otherwise be linked to, an identified or
47 ‘[reasonably]’⁶ identifiable individual, or a device linked to such an
48 individual, if the controller that possesses the data: (1) takes

1 reasonable measures to ensure that the data cannot be associated with
2 an individual, (2) publicly commits to maintain and use the data only
3 in a de-identified fashion and not to attempt to re-identify the data, and
4 (3) contractually obligates any recipients of the information to comply
5 with the requirements of this paragraph.

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

11 “Personal data” means any information that is linked or reasonably
12 linkable to an identified or identifiable person. “Personal data” shall
13 not include de-identified data or publicly available information.

14 “Precise geolocation data” means information derived from
15 technology, including, but not limited to, global positioning system
16 level latitude and longitude coordinates or other mechanisms, that
17 directly identifies the specific location of an individual with precision
18 and accuracy within a radius of 1,750 feet. “Precise geolocation data”
19 does not include the content of communications, or any data generated
20 by or connected to advanced utility metering infrastructure systems or
21 equipment for use by a utility.

22 “Process” or “processing” means an operation or set of operations
23 performed, whether by manual or automated means, on personal data
24 or on sets of personal data, such as the collection, use, storage,
25 disclosure, analysis, deletion, or modification of personal data, and
26 also includes the actions of a controller directing a processor to
27 process personal data.

28 “Processor” means a person, private entity, public entity, agency,
29 or other entity that processes personal data on behalf of the controller.

30 “Profiling” means any form of automated processing performed on
31 personal data to evaluate, analyze or predict personal aspects related to
32 an identified or identifiable individual’s economic situation, health,
33 personal preferences, interests, reliability, behavior, location or
34 movements.

35 “Publicly available information” means information that is
36 lawfully made available from federal, State, or local government
37 records, or widely-distributed media or information that a controller
38 has a reasonable basis to believe a consumer has lawfully made
39 available to the general public and has not restricted to a specific
40 audience.

41 “Sale” means the sharing, disclosing, or transferring of personal
42 data for monetary or other valuable consideration by the controller to a
43 third party. “Sale” shall not include:

44 The disclosure of personal data to a processor that **‘[only]’**
45 processes the personal data on the controller’s behalf;

46 The disclosure of personal data to a third party for the purposes of
47 providing a product or service requested by the consumer;

1 The disclosure or transfer of personal data to an affiliate of the
2 controller;

3 The disclosure of personal data that the consumer intentionally
4 made available to the general public through a mass media channel
5 and did not restrict to a specific audience; or

6 The disclosure or transfer of personal data to a third party as an
7 asset that is part of a proposed or actual merger, acquisition,
8 bankruptcy, or other transaction in which the third party assumes
9 control of all or part of the controller's assets.

10 "Sensitive data" means personal data revealing racial or ethnic
11 origin; religious beliefs; mental or physical health condition, treatment,
12 or diagnosis; financial information ⁶, which shall include a consumer's
13 account number, account log-in, financial account, or credit or debit
14 card number, in combination with any required security code, access
15 code, or password that would permit access to a consumer's financial
16 account⁶; sex life or sexual orientation; citizenship or immigration
17 status; status as transgender or non-binary; genetic or biometric data
18 that may be processed for the purpose of uniquely identifying an
19 individual; personal data collected from a known child; or precise
20 geolocation data.

21 "Targeted advertising" means displaying ⁶[an]⁶ advertisements to
22 a consumer where the advertisement is selected based on personal data
23 obtained or inferred from that consumer's activities over time and
24 across nonaffiliated Internet web sites or online applications to predict
25 such consumer's preferences or interests. "Targeted advertising" shall
26 not include: advertisements based on activities within a controller's
27 own internet websites or online applications; advertisements based on
28 the context of a consumer's current search query, visit to an internet
29 website or online application; advertisements directed to a consumer in
30 response to the consumer's request for information or feedback; or
31 processing personal data solely to measure or report advertising
32 frequency, performance, or reach.

33 "Third party" means a person, private entity, public entity, agency,
34 or entity other than the consumer, controller, or affiliate or processor
35 of the controller.

36 "Trade secret" has the same meaning as section 2 of P.L.2011,
37 c.161 (C.56:15-2).

38 "Verified request" means the process through which a consumer
39 may submit a request to exercise a right or rights established in
40 P.L. , c. (C.) (pending before the Legislature as this bill), and
41 by which a controller can reasonably authenticate the request and the
42 consumer making the request using commercially reasonable means.⁵

43
44 ⁵2. Notwithstanding any State law, rule, regulation, or order to
45 the contrary, the provisions of P.L. , c. (C.) (pending
46 before the Legislature as this bill) shall only apply to controllers
47 that conduct business in the State or produce products or services

1 that are targeted to residents of the State, and that during a calendar
2 year either:

3 a. control or process the personal data of at least 100,000
4 consumers, excluding personal data processed solely for the
5 purpose of completing a payment transaction; or

6 b. control or process the personal data of at least 25,000
7 consumers and the controller derives revenue, or receives a discount
8 on the price of any goods or services, from the sale of personal
9 data.⁵

10

11 ⁵3. a. A controller shall provide to a consumer a reasonably
12 accessible, clear, and meaningful privacy notice that shall include, but
13 may not be limited to:

14 (1) the categories of the personal data that the controller processes;

15 (2) the purpose for processing personal data;

16 (3) the categories of all third parties to which the controller may
17 disclose a consumer's personal data;

18 (4) the categories of personal data that the controller shares with
19 third parties, if any;

20 (5) how consumers may exercise their consumer rights, including
21 the controller's contact information and how a consumer may appeal a
22 controller's decision with regard to the consumer's request;

23 (6) the process by which the controller notifies consumers of
24 material changes to the notification required to be made available
25 pursuant to this subsection, along with the effective date of the notice;
26 and

27 (7) an active electronic mail address or other online mechanism
28 that the consumer may use to contact the controller.

29 b. If a controller sells personal data to third parties or processes
30 personal data for the purposes of targeted advertising, the sale of
31 personal data, or profiling in furtherance of decisions that produce
32 legal or similarly significant effects concerning a consumer, the
33 controller shall clearly and conspicuously disclose such sale or
34 processing, as well as the manner in which a consumer may exercise
35 the right to opt out of such sale or processing⁶, a description of the
36 process for a consumer to review and make requests pursuant to
37 section 4 of this act, P.L. , c. (C.) (pending before the
38 Legislature as this bill)]⁶.

39 c. A controller shall not:

40 (1) require a consumer to create a new account in order to exercise
41 a right⁶, but may require a consumer to use an existing account to
42 submit a verified request⁶; or

43 (2) based solely on the exercise of a right and unrelated to
44 feasibility or the value of a service, increase the cost of, or decrease
45 the availability of, the product or service.⁵

1 ⁵4. a. A controller that receives a verified request from a consumer
2 shall provide a response to the consumer within 45 days of the
3 controller's receipt of the request. The controller may extend the
4 response period by 45 additional days where reasonably necessary,
5 considering the complexity and number of the consumer's requests,
6 provided that the controller informs the consumer of any such
7 extension within the initial 45-day response period and the reason for
8 the extension and shall provide the information for all disclosures of
9 personal data that occurred in the prior 12 months.

10 b. This section shall not apply to personal data collected prior to
11 the effective date of P.L. , c. (C.) (pending before the
12 Legislature as this bill) unless the controller continues to process such
13 information thereafter.

14 c. If a controller declines to take action regarding the consumer's
15 request, the controller shall inform the consumer without undue delay,
16 but not later than 45 days after receipt of the request, of the
17 justification for declining to take action and instructions for how to
18 appeal the decision.

19 d. Information provided in response to a consumer request shall be
20 provided by a controller, free of charge, once per consumer during any
21 twelve-month period ⁶ , except that, for a second or subsequent
22 identical request within a 12-month period, the controller may charge
23 an amount calculated pursuant to regulations] ⁶ . If requests from a
24 consumer are manifestly unfounded, excessive, or repetitive, the
25 controller may charge the consumer a reasonable fee to cover the
26 administrative costs of complying with the request or decline to act on
27 the request. The controller shall bear the burden of demonstrating the
28 manifestly unfounded, excessive or repetitive nature of the request.

29 e. If a controller is unable to authenticate a request to exercise any
30 of the rights afforded under section 5 of P.L. , c. (C.)
31 (pending before the Legislature as this bill) using commercially
32 reasonable efforts, the controller shall not be required to comply with a
33 request to initiate an action pursuant to this section and shall provide
34 notice to the consumer that the controller is unable to authenticate the
35 request to exercise such right or rights until such consumer provides
36 additional information reasonably necessary to authenticate such
37 consumer and such consumer's request to exercise such right or rights.
38 A controller shall not be required to authenticate an opt-out request
39 ⁶ [it honors] ⁶ , but a controller may deny an opt-out request if the
40 controller has a good faith, reasonable and documented belief that such
41 request is fraudulent. If a controller denies an opt-out request because
42 the controller believes such request is fraudulent, the controller shall
43 send a notice to the person who made such request disclosing that such
44 controller believes such request is fraudulent, why such controller
45 believes such request is fraudulent and that such controller shall not
46 comply with such request.

47 f. A controller shall establish a process for a consumer to appeal the
48 controller's refusal to take action on a request within a reasonable

1 period of time after the consumer's receipt of the decision. The appeal
2 process shall be conspicuously available and similar to the process for
3 submitting requests to initiate action pursuant to this section. Not later
4 than 45 days after receipt of an appeal, a controller shall inform the
5 consumer in writing of any action taken or not taken in response to the
6 appeal, including a written explanation of the reasons for the decisions.
7 If the appeal is denied, the controller shall also provide the consumer
8 with an online mechanism, if available, or other method through which
9 the consumer may contact the Division of Consumer Affairs in the
10 Department of Law and Public Safety to submit a complaint.⁵

11

12 ⁵5. A controller shall be prohibited from discriminating against a
13 consumer if the consumer chooses to opt out of the processing for
14 sale, targeted advertising, or profiling in furtherance of decisions
15 that produce legal or similarly significant effects of the consumer's
16 personal data pursuant to P.L. , c. (C.) (pending before the
17 Legislature as this bill). The provisions of this section shall not
18 prohibit the controller's ability to offer consumers discounts, loyalty
19 programs, or other incentives for the sale of the consumer's personal
20 data, or to provide different services to consumers that are
21 reasonably related to the value of the relevant data, provided that
22 the controller has clearly and conspicuously disclosed to the
23 consumer that the offered discounts, programs, incentives, or
24 services include the sale or processing of personal data that the
25 consumer otherwise has a right to opt out of.⁵

26

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

30

31 ⁵7. a. A consumer shall have the right to:

32 (1) confirm whether a controller processes the consumer's
33 personal data and accesses such personal data, provided that
34 nothing in this paragraph shall require a controller to provide the
35 data to the consumer in a manner that would reveal the controller's
36 trade secrets;

37 (2) correct inaccuracies in the consumer's personal data, taking
38 into account the nature of the information and the purposes of the
39 processing of the information;

40 (3) delete personal data concerning the consumer;

41 (4) obtain a copy of the consumer's personal data held by the
42 controller in a portable and, to the extent technically feasible,
43 readily usable format that allows the consumer to transmit the data
44 to another entity without hindrance, provided that nothing in this
45 paragraph shall require a controller to provide the data to the
46 consumer in a manner that would reveal the controller's trade
47 secrets; and

1 (5) opt out of the processing of personal data for the purposes of
2 (a) targeted advertising; (b) the sale of personal data; or (c)
3 profiling in furtherance of decisions that produce legal or similarly
4 significant effects concerning the consumer.

5 b. A controller that has lawfully obtained personal data about a
6 consumer from a source other than the consumer shall be deemed in
7 compliance with a consumer's request to delete such data pursuant
8 to this subsection by:

9 (1) retaining a record of the deletion request and the minimum
10 data necessary for the purpose of ensuring the consumer's personal
11 data remains deleted from the controller's records and not using
12 such retained information for any other purpose pursuant to the
13 provisions of P.L. , c. (C.) (pending before the Legislature
14 as this bill); or

15 (2) deleting such personal data.⁵

16
17 ⁵8. a. A consumer may designate another person to serve as the
18 consumer's authorized agent and act on the consumer's behalf to opt
19 out of the processing and sale of the consumer's personal data. A
20 consumer may designate an authorized agent using technology,
21 including a link to an Internet website, an Internet browser setting or
22 extension, or a global setting on an electronic device, that allows the
23 consumer to indicate the consumer's intent to opt-out of the collection
24 and processing for the purpose of any sale of data or for the purpose of
25 targeted advertising or ⁶, when such technology exists, ⁶ for profiling
26 in furtherance of decisions that produce legal or similarly significant
27 effects concerning a consumer. A controller shall comply with an opt-
28 out request received from an authorized agent under this subsection if
29 the controller is able to verify, with commercially reasonable effort,
30 the identity of the consumer and the authorized agent's authority to act
31 on the consumer's behalf.

32 b. (1) Beginning not later than ⁶four ⁶six ⁶ months following the
33 effective date of P.L. , c. (C.) (pending before the Legislature
34 as this bill), a controller that processes personal data for purposes of
35 targeted advertising, ⁶or ⁶ the sale of personal data ⁶, or profiling in
36 furtherance of decisions that produce legal or similarly significant
37 effects concerning a consumer]⁶ shall allow consumers to exercise the
38 right to opt-out of such processing through a user-selected universal
39 opt-out mechanism.

40 (2) The platform, technology, or mechanism shall:

41 (a) not permit its manufacturer to unfairly disadvantage another
42 controller;

43 (b) not make use of a default setting that opts-in a consumer to the
44 processing or sale of personal data, unless the controller has
45 determined that the consumer has selected such default setting and the
46 selection clearly represents the consumer's ⁶an⁶ affirmative, freely
47 given, and unambiguous choice to ⁶opt-out of⁶ opt into⁶ any

1 processing of such consumer's personal data pursuant to P.L. , c.
2 (C.) (pending before the Legislature as this bill);

3 (c) be consumer-friendly, clearly described, and easy to use by the
4 average consumer;

5 (d) be as consistent as possible with any other similar platform,
6 technology, or mechanism required by any federal or state law or
7 regulation; and

8 (e) enable the controller to accurately determine whether the
9 consumer is a resident of this State and whether the consumer has
10 made a legitimate request to opt out of the processing of personal data
11 for the purposes of any sale of such consumer's personal data or
12 targeted advertising⁶]; and

13 (3) Controllers shall inform consumers about the opt-out choices
14 available under P.L. , c. (C.) (pending before the Legislature
15 as this bill)]⁶.

16 c. The Division of Consumer Affairs in the Department of Law and
17 Public Safety may adopt rules and regulations that detail the technical
18 specifications for one or more universal opt-out mechanisms that
19 clearly communicate a consumer's affirmative, freely given, and
20 unambiguous choice to opt out of the processing of personal data
21 pursuant to P.L. , c. (C.) (pending before the Legislature as
22 this bill), including regulations that permit the controller to accurately
23 authenticate the consumer as a resident of this state and determine that
24 the mechanism represents a legitimate request to opt out of the
25 processing of personal data pursuant to P.L. , c. (C.) (pending
26 before the Legislature as this bill). The division may update the rules
27 that detail the technical specifications for the mechanisms from time to
28 time to reflect the means by which consumers interact with
29 controllers.⁵

30
31 ⁵9. a. A controller shall:

32 (1) limit the collection of personal data to what is adequate,
33 relevant, and reasonably necessary in relation to the purposes for
34 which such data is processed, as disclosed to the consumer;

35 (2) except as otherwise provided in P.L. , c. (C.) (pending
36 before the Legislature as this bill), not process personal data for
37 purposes that are neither reasonably necessary to, nor compatible with,
38 the purposes for which such personal data is processed, as disclosed to
39 the consumer, unless the controller obtains the consumer's consent;

40 (3) take reasonable measures to establish, implement, and maintain
41 administrative, technical, and physical data security practices to
42 protect the confidentiality, integrity, and accessibility of personal data
43 and to secure personal data during both storage and use from
44 unauthorized acquisition. The data security practices shall be
45 appropriate to the volume and nature of the personal data at issue;

46 (4) not process sensitive data concerning a consumer without first
47 obtaining the consumer's consent, or, in the case of the processing of

1 personal data concerning a known child, without processing such data
2 in accordance with COPPA;

3 (5) not process personal data in violation of the laws of this State
4 and federal laws that prohibit unlawful discrimination against
5 consumers;

6 (6) provide an effective mechanism for a consumer to revoke the
7 consumer's consent under this section that is at least as easy as the
8 mechanism by which the consumer provided the consumer's consent
9 and, upon revocation of such consent, cease to process the data as soon
10 as practicable, but not later than 15 days after the receipt of such
11 request;

12 (7) not process the personal data of a consumer for purposes of
13 targeted advertising, the sale of the consumer's personal data, or
14 profiling in furtherance of decisions that produce legal or similarly
15 significant effects concerning a consumer without the consumer's
16 consent, under circumstances where a controller has actual knowledge,
17 or willfully disregards, that the consumer is at least 13 years of age but
18 younger than 17 years of age;

19 (8) specify the express purposes for which personal data are
20 processed; and

21 (9) not conduct processing that presents a heightened risk of harm
22 to a consumer without conducting and documenting a data protection
23 assessment of each of its processing activities that involve personal
24 data acquired on or after the effective date of
25 P.L. , c. (C.) (pending before the Legislature as this bill) that
26 present a heightened risk of harm to a consumer.

27 b. Data protection assessments shall identify and weigh the
28 benefits that may flow, directly and indirectly, from the processing to
29 the controller, the consumer, other stakeholders, and the public against
30 the potential risks to the rights of the consumer associated with the
31 processing, as mitigated by safeguards that the controller can employ
32 to reduce the risks. The controller shall factor into this assessment the
33 use of de-identified data and the reasonable expectations of consumers,
34 as well as the context of the processing and the relationship between
35 the controller and the consumer whose personal data will be processed.
36 A controller shall make the data protection assessment available to the
37 Division of Consumer Affairs in the Department of Law and Public
38 Safety upon request. The division may evaluate the data protection
39 assessment for compliance with the duties contained in this section and
40 with other laws. Data protection assessments shall be confidential and
41 exempt from public inspection under P.L.1963 c.3 (C.47:1A-1 et al.).
42 The disclosure of a data protection assessment pursuant to a request
43 from the division under this section shall not constitute a waiver of any
44 attorney-client privilege or work-product protection that might
45 otherwise exist with respect to the assessment and any information
46 contained in the assessment.

47 c. For the purposes of this section, "heightened risk" includes:

1 (1) processing personal data for purposes of targeted advertising
2 or for profiling if the profiling presents a reasonably foreseeable risk
3 of: unfair or deceptive treatment of, or unlawful disparate impact on,
4 consumers; financial or physical injury to consumers; a physical or
5 other intrusion upon the solitude or seclusion, or the private affairs or
6 concerns, of consumers if the intrusion would be offensive to a
7 reasonable person; or other substantial injury to consumers;

8 (2) selling personal data; and

9 (3) processing sensitive data.⁵

10 ⁶d. A single data protection assessment may address a comparable
11 set of processing operations that include similar activities.⁶

12
13 ⁵10. Nothing in P.L. _____, c. _____ (C. _____) (pending before the
14 Legislature as this bill) shall apply to:

15 a. protected health information collected by a covered entity or
16 business associate subject to the privacy, security, and breach
17 notification rules issued by the United States Department of Health
18 and Human Services, Parts 160 and 164 of Title 45 of the Code of
19 Federal Regulations, established pursuant to the "Health Insurance
20 Portability and Accountability Act of 1996," Pub.L.104-191, and the
21 "Health Information Technology for Economic and Clinical Health
22 Act," 42 U.S.C. s.17921 et seq.;

23 b. a financial institution⁶, data,⁶ or an affiliate of a financial
24 institution that is subject to Title V of the federal "Gramm-Leach-
25 Bliley Act," 15 U.S.C. s.6801 et seq., and the rules and implementing
26 regulations promulgated thereunder;

27 c. the secondary market institutions identified in
28 15 U.S.C. s.6809(3)(D) and 12 C.F.R. s.1016.3(l)(3)(iii);

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

31 e. the sale of a consumer's personal data by the New Jersey
32 Motor Vehicle Commission that is permitted by the federal "Drivers'
33 Privacy Protection Act of 1994," 18 U.S.C. s.2721 et seq.;

34 f. personal data collected, processed, sold, or disclosed by a
35 consumer reporting agency, as defined in 15 U.S.C. s.1681a(f), if the
36 collection, processing, sale, or disclosure of the personal data is
37 limited, governed, and collected, maintained, disclosed, sold,
38 communicated, or used only as authorized by the federal "Fair Credit
39 Reporting Act," 15 U.S.C. s.1681 et seq., and implementing
40 regulations;

41 g. any State agency as defined in section 2 of P.L.1971, c.182
42 (C.52:13D-13), any political subdivision, and any division, board,
43 bureau, office, commission, or other instrumentality created by a
44 political subdivision; or

45 h. personal data that is collected, processed, or disclosed, as part
46 of research conducted in accordance with the Federal Policy for the
47 protection of human subjects pursuant to 45 C.F.R. Part 46 or the
48 protection of human subjects pursuant to 21 C.F.R. Parts 50 and 56.⁵

1 ⁵11. Nothing in P.L. , c. (C.) (pending before the
2 Legislature as this bill) shall require ⁶[an operator] a controller⁶ to:

3 a. re-identify de-identified data;

4 b. collect, retain, use, link, or combine personal data concerning a
5 consumer that it would not otherwise collect, retain, use, link, or
6 combine in the ordinary course of business.⁵

7 ⁵12. a. Nothing in P.L. , c. (C.) (pending before the
8 Legislature as this bill) shall be construed to restrict a controller's
9 or processor's ability to:

10 (1) comply with federal or State law or regulations;

11 (2) comply with a civil, criminal or regulatory inquiry,
12 investigation, subpoena or summons by federal, State, municipal or
13 other governmental authorities;

14 (3) cooperate with law enforcement agencies concerning
15 conduct or activity that the controller or processor reasonably and in
16 good faith believes may violate federal, State or municipal
17 ordinances or regulations;

18 (4) investigate, establish, exercise, prepare for or defend legal
19 claims;

20 (5) provide a product or service specifically requested by a
21 consumer;

22 (6) perform under a contract to which a consumer is a party,
23 including fulfilling the terms of a written warranty;

24 (7) take steps at the request of a consumer prior to entering into
25 a contract;

26 (8) take immediate steps to protect an interest that is essential
27 for the life or physical safety of the consumer or another individual,
28 and where the processing cannot be manifestly based on another
29 legal basis;

30 (9) prevent, detect, protect against or respond to security
31 incidents, identity theft, fraud, harassment, malicious or deceptive
32 activities or any illegal activity, preserve the integrity or security of
33 systems or investigate, report or prosecute those responsible for any
34 such action;

35 (10) engage in public or peer-reviewed scientific or statistical
36 research in the public interest that adheres to all other applicable
37 ethics and privacy laws and is approved, monitored and governed
38 by an institutional review board that determines, or similar
39 independent oversight entities that determine,

40 (a) whether the deletion of the information is likely to provide
41 substantial benefits that do not exclusively accrue to the controller,

42 (b) the expected benefits of the research outweigh the privacy
43 risks, and

44 (c) whether the controller has implemented reasonable
45 safeguards to mitigate privacy risks associated with research,
46 including any risks associated with re-identification;

1 (11) assist another controller, processor, or third party with any
2 of the obligations under P.L. , c. (C.) (pending before the
3 Legislature as this bill); or

4 (12) personal data for reasons of public interest in the area of
5 public health, community health, or population health, but solely to
6 the extent that such processing is

7 (a) subject to suitable and specific measures to safeguard the
8 rights of the consumer whose personal data is being processed, and

9 (b) under the responsibility of a professional subject to
10 confidentiality obligations under federal, State or local law.

11 b. The obligations imposed on controllers or processors under
12 P.L. , c. (C.) (pending before the Legislature as this bill)
13 shall not restrict a controller's or processor's ability to collect, use or
14 retain data for internal use to:

15 (1) conduct internal research to develop, improve, or repair
16 products, services, or technology;

17 (2) effectuate a product recall;

18 (3) identify and repair technical errors that impair existing or
19 intended functionality; or

20 (4) perform internal operations that are reasonably aligned with
21 the expectations of the consumer or reasonably anticipated based on
22 the consumer's existing relationship with the controller, or are
23 otherwise compatible with processing data in furtherance of the
24 provision of a product or service specifically requested by a
25 consumer or the performance of a contract to which the consumer is
26 a party. Personal data collected, used, or retained pursuant to this
27 subsection shall, where applicable, take into account the nature and
28 purpose or purposes of such collection, use or retention. Such data
29 shall be subject to reasonable administrative, technical, and physical
30 measures to protect the confidentiality, integrity, and accessibility
31 of the personal data and to reduce reasonably foreseeable risks of
32 harm to consumers relating to such collection, use, or retention of
33 personal data.

34 c. The obligations imposed on controllers or processors under
35 P.L. , c. (C.) (pending before the Legislature as this bill)
36 shall not apply where compliance by the controller or processor
37 with the provisions of law would violate an evidentiary privilege
38 under the laws of this State. Nothing in P.L. , c. (C.)
39 (pending before the Legislature as this bill) shall be construed to
40 prevent a controller or processor from providing personal data
41 concerning a consumer to a person covered by an evidentiary
42 privilege under the laws of the State as part of a privileged
43 communication.

44 d. Personal data that are processed by a controller pursuant to an
45 exception provided by this section:

46 (1) shall not be processed for any purpose other than a purpose
47 expressly listed in this section; and

1 (2) shall be processed solely to the extent that the processing is
2 necessary, reasonable, and proportionate to the specific purpose or
3 purposes listed in this section.

4 e. If a controller processes personal data pursuant to an
5 exemption in this section, the controller bears the burden of
6 demonstrating that such processing qualifies for the exemption and
7 complies with the requirements in this section.

8 f. Processing personal data for the purposes expressly identified
9 in this section shall not solely make a legal entity a controller with
10 respect to such processing if such entity would not otherwise meet
11 the definition of a controller.⁵

12
13 ⁵13. a. Controllers and processors shall meet their respective
14 obligations established under P.L. , c. (C.) (pending before
15 the Legislature as this bill).

16 b. Processors shall adhere to the instructions of the controller
17 and assist the controller to meet its obligations under this act.
18 Taking into account the nature of processing and the information
19 available to the processor, the processor shall assist the controller
20 by:

21 (1) taking appropriate technical and organizational measures,
22 insofar as possible, for the fulfillment of the controller's obligation
23 to respond to consumer requests to exercise their rights under this
24 act;

25 (2) helping to meet the controller's obligations in relation to the
26 security of processing the personal data and in relation to
27 notification of a breach of the security of the system; and

28 (3) providing information to the controller necessary to enable
29 the controller to conduct and document any data protection
30 assessments required by section 9 of P.L. , c. (C.)
31 (pending before the Legislature as this bill). The controller and
32 processor are each responsible for only the measures allocated to
33 them.

34 c. Notwithstanding the instructions of the controller, a
35 processor shall:

36 (1) ensure that each person processing the personal data is
37 subject to a duty of confidentiality with respect to the data; and

38 (2) engage a subcontractor pursuant to a written contract in
39 accordance with subsection e. of this section that requires the
40 subcontractor to meet the obligations of the processor with respect
41 to the personal data.

42 d. Taking into account the context of processing, the controller
43 and the processor shall implement appropriate technical and
44 organizational measures to ensure a level of security appropriate to
45 the risk and establish a clear allocation of the responsibilities
46 between them to implement the measures.

1 e. Processing by a processor shall be governed by a contract
2 between the controller and the processor that is binding on both
3 parties and that sets forth:

4 (1) the processing instructions to which the processor is bound,
5 including the nature and purpose of the processing;

6 (2) the type of personal data subject to the processing, and the
7 duration of the processing;

8 (3) the requirements imposed by this subsection and subsections
9 c. and d. of this section; and

10 (4) the following requirements:

11 (a) At the discretion of the controller, the processor shall delete
12 or return all personal data to the controller as requested at the end of
13 the provision of services, unless retention of the personal data is
14 required by law;

15 (b) (i) The processor shall make available to the controller all
16 information necessary to demonstrate compliance with the
17 obligations in this act; and

18 (ii) The processor shall allow for, and contribute to, reasonable
19 assessments and inspections by the controller or the controller's
20 designated assessor. Alternatively, the processor may, with the
21 controller's consent, arrange for a qualified and independent
22 assessor to conduct, at least annually and at the processor's expense,
23 an assessment of the processor's policies and technical and
24 organizational measures in support of the obligations under this act
25 using an appropriate and accepted control standard or framework
26 for the assessment as applicable. The processor shall provide a
27 report of the assessment to the controller upon request.

28 f. In no event may a contract relieve a controller or a processor
29 from the liabilities imposed on them by virtue of its role in the
30 processing relationship as defined by P.L. , c. (C.)
31 (pending before the Legislature as this bill).

32 g. Determining whether a person is acting as a controller or
33 processor with respect to a specific processing of data shall be a
34 fact-based determination that depends upon the context in which
35 personal data are to be processed. A person that is not limited in its
36 processing of personal data pursuant to a controller's instructions, or
37 that fails to adhere to the instructions, shall be deemed a controller
38 and not a processor with respect to a specific processing of data. A
39 processor that continues to adhere to a controller's instructions with
40 respect to a specific processing of personal data shall remain a
41 processor. If a processor begins, alone or jointly with others,
42 determining the purposes and means of the processing of personal
43 data, it shall be deemed a controller with respect to the processing.⁵

44
45 ⁵14. a. It shall be an unlawful practice and violation of
46 P.L.1960, c.39 (C.56:8-1 et seq.) for a controller to violate the
47 provisions of P.L. , c. (C.) (pending before the Legislature
48 as this bill).

1 b. Until the first day of the 18th month next following the
2 effective date of P.L. , c. (C.) (pending before the
3 Legislature as this bill), prior to bringing an enforcement action
4 before an administrative law judge or a court of competent
5 jurisdiction in this State, the Division of Consumer Affairs in the
6 Department of Law and Public Safety shall issue a notice to the
7 controller if a cure is deemed possible. If the operator controller
8 fails to cure the alleged violation of P.L. , c. (C.) (pending
9 before the Legislature as this bill) within 30 days after receiving
10 notice of alleged noncompliance from the division, such
11 enforcement action may be brought.⁵

12

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

19

20 ⁵16. The Office of the Attorney General shall have sole and
21 exclusive authority to enforce a violation of P.L. , c. (C.)
22 (pending before the Legislature as this bill). Nothing in
23 P.L. , c. (C.) (pending before the Legislature as this bill)
24 shall be construed as providing the basis for, or subject to, a private
25 right of action for violations of P.L. , c. (C.) (pending before
26 the Legislature as this bill) ⁶ [or under any other law] ^{6, 5}.

27

28 ⁵17. This act shall take effect on the 365th day following the date
29 of enactment, except that the Director of the Division of Consumer
30 Affairs may take any anticipatory administrative action in advance as
31 shall be necessary for the implementation of this act.⁵

32

33

34

35

36 Requires notification to consumers of collection and disclosure
37 of personal data by certain entities.

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)

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

Introduced Pending Technical Review by Legislative Counsel.



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 only in an individual or household context. “Consumer”
18 shall not include a person acting in a commercial or employment
19 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 8 of P.L. , c. (C.) (pending before the
28 Legislature as this bill), that is subject to a public commitment by
29 the operator not to attempt to re-identify the data, and to which one
30 or more enforceable controls to prevent re-identification has been
31 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 orally, in writing, or by
40 electronic or any other means to a third party a consumer’s
41 personally identifiable information. “Disclose” shall not include:

42 the disclosure of a consumer’s personally identifiable information
43 by an operator to a third party under a written contract authorizing
44 the third party to use the personally identifiable information to
45 perform services on behalf of the operator, including maintaining or
46 servicing accounts, providing customer service, processing or
47 fulfilling orders and transactions, verifying consumer information,
48 processing payments, providing financing, or similar services, but

1 only if the contract prohibits the third party from using the
2 personally identifiable information for any reason other than
3 performing the specified service on behalf of the operator and from
4 disclosing personally identifiable information to additional third
5 parties unless expressly authorized by the consumer;

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

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

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

19 "Online service" means an information service provided over the
20 Internet that collects and maintains personally identifiable information
21 from a consumer.

22 "Operator" means a person or entity that operates a commercial
23 Internet website or an online service. "Operator" shall not include
24 any third party that operates, hosts, or manages, but does not own, a
25 commercial Internet website or online service on the operator's
26 behalf, or processes information on behalf of the operator.

27 "Personally identifiable information" means any information that
28 is linked or reasonably linkable to an identified or identifiable
29 person. "Personally identifiable information" shall not include de-
30 identified data or publicly available information.

31 "Publicly available information" means information that is
32 lawfully made available from federal, State, or local government
33 records, or widely-distributed media.

34 "Sale" means the exchange of personally identifiable information
35 for monetary consideration by the operator to a third party for
36 purposes of licensing or selling personally identifiable information
37 at the third party's discretion to additional third parties. "Sale" shall
38 not include the following:

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

41 the disclosure of personally identifiable information to a third
42 party with whom the consumer has a direct relationship for
43 purposes of providing a product or service requested by the
44 consumer or otherwise in a manner that is consistent with a
45 consumer's reasonable expectations considering the context in
46 which the consumer provided the personally identifiable
47 information to the operator;

1 the disclosure or transfer of personally identifiable information
2 to an affiliate of the operator; or

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

7 "Service provider" means a person, private entity, public entity,
8 agency, or other entity that processes personally identifiable
9 information on behalf of the operator and who shall provide
10 sufficient guarantees to the operator to implement appropriate
11 technical and organizational measures in a manner that processing
12 shall ensure the protection of the consumer's personally identifiable
13 information.

14 "Third party" means a person, private entity, public entity, agency,
15 or entity other than the consumer, operator, or affiliate or service
16 provider of the operator.

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

23

24 2. a. An operator that collects the personally identifiable
25 information of a consumer through a commercial Internet website or
26 online service shall provide on its commercial Internet website or
27 online service notification to a consumer that shall include, but not
28 be limited to:

29 (1) the categories of the personally identifiable information that
30 the operator collects through the commercial Internet website or
31 online service about a consumer who uses or visits the operator's
32 commercial Internet website or online service;

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

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

40 (4) a description of the process for an individual consumer who
41 uses or visits the commercial Internet website or online service to
42 review and request changes to any of the consumer's personally
43 identifiable information that is collected by the commercial Internet
44 website or online service of the operator;

45 (5) the process by which the operator notifies consumers who
46 use or visit the commercial Internet website or online service of
47 material changes to the notification required to be made available

1 pursuant to this subsection, along with the effective date of the
2 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
6 section, an operator shall include the notification as a separate
7 section of the operator's privacy policy.

8

9 3. a. An operator that collects a consumer's personally
10 identifiable information through its commercial Internet website or
11 online service and discloses the consumer's personally identifiable
12 information to a third party shall make the following information
13 available to the consumer free of charge upon receipt of a verified
14 request from the consumer for this information through a designated
15 request address:

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

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

20 b. An operator that receives a verified request from a consumer
21 pursuant to subsection a. of this section shall provide a response to
22 the consumer within 60 days of the operator's verification of the
23 request and shall provide the information, pursuant to subsection a.
24 of this section, for all disclosures of personally identifiable
25 information that occurred in the prior 12 months.

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

29

30 4. a. An operator that collects the personally identifiable
31 information of a consumer through its commercial Internet website
32 or online service and sells the personally identifiable information of
33 the consumer through the Internet shall clearly and conspicuously
34 post a link, on its commercial Internet website or online service or
35 in another prominently accessible location the commercial Internet
36 website maintains for consumer privacy settings, to an Internet
37 webpage maintained by the operator, which enables a consumer, by
38 verified request, to opt out of the sale of the consumer's personally
39 identifiable information. The method in which a consumer may opt
40 out shall be in a form and manner determined by the operator,
41 provided that a consumer shall not be required to establish an
42 account with the operator in order to opt out of the sale of a
43 consumer's personally identifiable information.

44 b. An operator shall be prohibited from discriminating against
45 a consumer if the consumer chooses to opt out of the sale of the
46 consumer's personally identifiable information pursuant to
47 subsection a. of this section. The provisions of this section shall not
48 prohibit the operator's ability to offer consumers discounts, loyalty

1 programs, or other incentives for the sale of the consumer's
2 personally identifiable information, or to provide different services
3 to consumers that are reasonably related to the value of the relevant
4 data.

5

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

9

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

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

20 b. a financial institution or an affiliate of a financial institution
21 that is subject to Title V of the federal "Gramm-Leach-Bliley Act of
22 1999," 15 U.S.C. s.6801 et seq., and the rules and implementing
23 regulations promulgated thereunder;

24 c. the secondary market institutions identified in
25 15 U.S.C. s.6809(3)(D) and 12 C.F.R. s.1016.3(l)(3)(iii); or

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

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

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

38

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

41 a. re-identify de-identified data;

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

46

47 8. It shall be an unlawful practice and violation of P.L.1960,
48 c.39 (C.56:8-1 et seq.) for an operator to fail to notify a consumer of

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

10

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

17

18 10. The Office of the Attorney General shall have sole and
19 exclusive authority to enforce a violation of P.L. , c. (C.)
20 (pending before the Legislature as this bill).

21

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

26

27

28

STATEMENT

29

30 This bill requires a commercial Internet website and online
31 service operator (operator) to notify consumers of the collection and
32 disclosure of "personally identifiable information," as that term is
33 defined in the bill, to third parties. An operator that collects through
34 the Internet the personally identifiable information of a consumer is
35 to provide on its Internet website or online service notification to a
36 consumer that includes, but is not limited to:

37 1) the categories of the personally identifiable information that
38 the operator collects through the Internet website or online service
39 about a consumer who uses or visits its commercial Internet website
40 or online service;

41 2) all third parties with which the operator may disclose a
42 consumer's personally identifiable information;

43 3) whether a third party may collect personally identifiable
44 information about a consumer's online activities over time and
45 across different commercial Internet websites or online services
46 when the consumer uses the Internet website or online service of the
47 operator;

- 1 4) a description of the process for an individual consumer who
2 uses or visits the commercial Internet website or online service to
3 review and request changes to any of his or her personally
4 identifiable information that is collected by the commercial Internet
5 website or online service of the operator;
- 6 5) the process by which the operator notifies consumers who
7 use or visit the commercial Internet website or online service of
8 material changes to the notification required to be made available
9 pursuant to this subsection, along with the effective date of the
10 notice; and
- 11 6) information concerning one or more designated request
12 addresses that a consumer may use to request information under the
13 bill.

14 This bill requires that an operator that discloses a consumer's
15 personally identifiable information to a third party is to make the
16 following information available to the consumer free of charge
17 upon receipt of a verified request from the consumer for this
18 information through a designated request address: the consumer's
19 personally identifiable information that was disclosed; and the
20 names and contact information of the third parties that received the
21 consumer's personally identifiable information. An operator that
22 receives a request from a consumer is to provide a response to the
23 consumer within 60 days of its verification and is to provide the
24 information for all disclosures of personally identifiable
25 information that occurred in the prior 12 months.

26 The bill provides that an operator that collects the personally
27 identifiable information of a consumer through its commercial
28 Internet website or online service and sells the personally
29 identifiable information of the consumer through the Internet is to
30 clearly and conspicuously post a link on its commercial Internet
31 website or online service, or in another prominently accessible
32 location the commercial Internet website maintains for consumer
33 privacy settings, to an Internet webpage maintained by the operator,
34 which enables a consumer, by verified request, to opt out of the sale
35 of the consumer's personally identifiable information. The method
36 in which a consumer may opt out shall be in a form and manner
37 determined by the operator, provided that a consumer is not to be
38 required to establish an account with the operator in order to opt out
39 of the sale of a consumer's personally identifiable information.

40 An operator is to be prohibited from discriminating against a
41 consumer if the consumer chooses to opt out of the sale of the
42 consumer's personally identifiable information. The provisions of
43 the bill are not to prohibit the operator's ability to offer consumers
44 discounts, loyalty programs, or other incentives for the sale of the
45 consumer's personally identifiable information, or to provide
46 different services to consumers that are reasonably related to the
47 value of the relevant data.

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1 Further, the bill prohibits an operator from discriminating against
2 or penalizing a consumer if the consumer chooses to opt out of the
3 disclosure of the consumer's personally identifiable information.

4 The provisions of the bill are not to apply to certain types of
5 information and institutions listed in the bill.

6 Nothing in the bill is to require an operator to re-identify de-
7 identified data or collect, retain, use, link, or combine personally
8 identifiable information concerning a consumer that it would not
9 otherwise collect, retain, use, link, or combine in the ordinary
10 course of business.

11 The Attorney General is to have sole authority to enforce a
12 violation of the bill.

ASSEMBLY SCIENCE, INNOVATION AND TECHNOLOGY
COMMITTEE

STATEMENT TO

[Third Reprint]
SENATE, No. 332

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 11, 2023

The Assembly Science, Innovation and Technology Committee reports favorably and with committee amendments Senate Bill No. 332 (3R).

As amended and reported, this bill requires an online service operator (operator) to notify consumers of the collection and disclosure of “personally identifiable information,” as that term is defined in the bill, to third parties. An operator that collects the personally identifiable information of a consumer through an online service is to provide on its online service notification to a consumer that includes, but is not limited to:

- 1) the categories of the personally identifiable information that the operator collects through the online service about a consumer who uses or visits the online service;
- 2) all third parties to which the operator may disclose a consumer’s personally identifiable information;
- 3) whether a third party may collect personally identifiable information about a consumer’s online activities over time and across different online services when the consumer uses the online service of the operator;
- 4) a description of the process for an individual consumer who uses or visits the online service to review and request changes to any of the consumer’s personally identifiable information that is collected by the online service of the operator;
- 5) the process by which the operator notifies consumers who use or visit the online service of material changes to the notification required to be made available pursuant to the bill, along with the effective date of the notice; and
- 6) information concerning one or more designated request addresses of the operator.

This bill requires that an operator that discloses a consumer’s personally identifiable information to a third party make the following information available to the consumer free of charge upon receipt of a verified request from the consumer for this information through a

designated request address: the category or categories of a consumer's personally identifiable information that were disclosed; and the category or categories of the third parties that received the consumer's personally identifiable information. An operator that receives a request from a consumer is to provide a response to the consumer within 60 days of its verification of the request and is to provide the information for all disclosures of personally identifiable information that occurred in the prior 12 months.

The bill provides that an operator that collects the personally identifiable information of a consumer through its online service and sells the personally identifiable information of the consumer is to clearly and conspicuously post a link on its online service, or in another prominently accessible location the online service maintains for consumer privacy settings, to an Internet webpage maintained by the operator which enables a consumer, by verified request, to opt into the sale of the consumer's personally identifiable information. The method by which a consumer may opt in is required to be in a form and manner determined by the operator, provided that a consumer is not to be required to establish an account with the operator in order to opt into the sale of a consumer's personally identifiable information.

An operator is prohibited from discriminating against a consumer if the consumer chooses to opt out of the sale of the consumer's personally identifiable information. The provisions of the bill are not to prohibit the operator from offering consumer discounts, loyalty programs, or other incentives for the sale of the consumer's personally identifiable information, or to provide different services to consumers that are reasonably related to the value of the relevant data, provided the operator has clearly and conspicuously disclosed to the consumer that the offered incentives require consenting to the sale or processing of personally identifiable information that the consumer otherwise has a right to opt out of.

The provisions of the bill are not to apply to certain types of information and institutions listed in the bill.

Nothing in the bill is to require an operator to re-identify de-identified data or to collect, retain, use, link, or combine personally identifiable information concerning a consumer that it otherwise would not.

Additionally, as amended and reported, nothing in this bill is to be construed as the basis for, or subject to, a private right of action.

The Attorney General is to have sole authority to enforce a violation of the bill.

As amended and reported by the committee, this bill is identical to Assembly Bill No. 1971, which was also amended and reported by the committee on this date.

COMMITTEE AMENDMENTS:

The committee amendments make the following changes to the definition section of this bill: add a definition for “business”; clarify that the definition of “disclose” means the disclosure of information by an operator; remove the definition of “commercial Internet website”; and remove the word “information” from the definition of “online service.”

The committee amendments remove all references to “commercial Internet website” from the bill. The committee amendments also apply section 3 of the bill to personally identifiable information collected prior to the effective date of this bill if the controller continues to store such information thereafter.

The committee amendments remove the language “through the internet” in section 4 of the bill, which broadens the scope of where operators may sell a consumer’s personally identifiable information. The amendments require an operator that collects personally identifiable information of a consumer through its online service and sells the information to enable a consumer to “opt into” the sale of the consumer’s personally identifiable information, rather than to “opt out of” the sale. The amendments provide that an operator may offer consumers discounts, loyalty programs, or other incentives for the sale of the consumer’s personally identifiable information so long as the operator clearly and conspicuously discloses to the customer that the incentives require consenting to the sale or processing of personally identifiable information the consumer otherwise may opt out of.

Additionally, the committee amendments replace the title and synopsis of the bill to reflect the changes made to the bill and make other grammatical changes.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

[Fourth Reprint]

SENATE, No. 332

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 18, 2023

The Assembly Judiciary Committee reports favorably and with committee amendments on Senate Bill No. 332 (4R).

As amended and reported, this bill imposes requirements on certain entities (i.e., controllers) that determine the purposes and means of processing personal data. However, the provisions of the bill would only apply to controllers, which conduct business in the State or produce products or services that are targeted to residents of the State, and which control or process the personal data of a minimum number of consumers each year.

The bill requires a controller to provide notice to consumers of the collection and disclosure of “personal data,” as that term is defined in the bill, to third parties. The bill also sets forth various requirements concerning the information that is required to be included in this notice. The bill also imposes other requirements and limitations on controllers regarding the processing of personal data, including limiting the collection and processing of personal data, taking reasonable measures to protect personal data, and obtaining consumer consent before processing certain data. Specifically, the bill imposes additional restrictions on the processing of sensitive data, as defined in the bill, or the processing of a child’s personal data.

Additionally, the bill requires a controller that processes personal data for purposes of targeted advertising, the sale of personal data, or profiling in furtherance of decisions that produce legal or similarly significant effects concerning a consumer to allow consumers to exercise the right to opt-out of such processing through a user-selected universal opt-out mechanism. The bill permits a consumer to authorize another person to act on the consumer’s behalf to opt out of the sale of personal data. The bill prohibits a controller from discriminating against a consumer if the consumer chooses to opt out of the processing for sale, targeted advertising, or profiling in furtherance of decisions that produce legal or similarly significant effects of the consumer’s personal data, provided certain exceptions.

The bill requires a controller to complete data protection assessments, as described in the bill, and to make such assessments available to the Division of Consumer Affairs.

The bill provides that a processor, in addition to a controller, has certain duties under the bill. A processor is required to cooperate with a controller so that a controller remains in compliance with the bill.

Under the bill, the consumers of a controller may submit a verified request to exercise any rights established under the bill. The bill requires a controller to respond to each verified request within 45 days, except as extended in certain circumstances. Any information provided in response to a verified request would be provided free of charge, except that a controller may charge a fee for a second or subsequent request submitted within a 12-month period. The bill also requires a controller to establish a process for consumers to appeal the controller's refusal to take action on a request.

The bill also establishes certain consumer rights concerning personal data, including the right to: confirm whether a controller may process or access the consumer's personal data; correct inaccuracies in the consumer's personal data; delete personal data concerning the consumer; obtain a copy of the consumer's personal data held by the controller in a portable format; and opt out of the processing of personal data for the purposes of (i) targeted advertising; (ii) the sale of personal data; or (iii) profiling in furtherance of decisions that produce legal or similarly significant effects concerning the consumer.

As amended and reported by the committee, this bill is identical to Assembly Bill No. 1971 (1R), which was also amended and reported by the committee on this date.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

(1) add the definitions of the terms "biometric data," "child," "consent," "controller," "COPPA," "dark pattern," "decisions that produce legal or similarly significant effects concerning the consumer," "precise geolocation data," "process," "processor," "profiling," "sensitive data," "targeted advertising," and "trade secret" to the bill;

(2) remove the definitions of the terms "business," "disclose," "online service," "operator," and "service provider" from the bill;

(3) revise certain definitions in the bill and replace the term "personally identifiable information" with the term "personal data";

(4) provide that the bill's provisions apply to controllers that conduct business in the State or target products and services to residents of the State, and that control or process a minimum number of consumers' personal data;

(5) require a controller to provide on the online service a reasonably accessible, clear, and meaningful privacy notice to the consumer, which privacy notice is required to contain certain

information, including the disclosure of a controller's sale of personal data to third parties for certain purposes in the privacy notice posted on its Internet website;

(6) prohibit a controller from requiring a consumer to create a new account in order to exercise a right or increasing the cost of, or decreasing the availability of, a product or service based solely upon the exercise of a right;

(7) provide that a controller is required to respond to a consumer's request for certain information, collected or processed after the effective date of this bill, within 45 days, and to permit a 45-day extension of this period, if necessary, with notice to the consumer;

(8) provide for a controller's process for responding to a consumer request for information, for certain conditions which permit the controller to deny a request, and for a consumer's ability to appeal the denial;

(9) prohibit a controller from discriminating against consumers who opt out of the processing of their personal data;

(10) outline consumer rights under the bill;

(11) provide a description of compliant deletion of personal data by a controller upon a consumer's request;

(12) permit a consumer to authorize another person to act on the consumer's behalf to opt out of the sale of personal data;

(13) provide that within four months of the bill's effective date, a controller is required to provide a mechanism by which a consumer may opt out of the collection of personal data for certain reasons;

(14) outline certain restrictions on a controller's collection and processing of personal data, including restrictions on the processing of sensitive data or the processing of a child's personal data;

(15) require a controller to complete data protection assessments and make such assessments available to the Division of Consumer Affairs;

(16) place certain duties previously created by the bill for an operator instead upon a controller, as defined in the bill as amended;

(17) provide that a processor, in addition to a controller, has certain duties under the bill and is required to cooperate so that a controller remains in compliance with the bill;

(18) provide that the bill is to take effect on the 365th day following the date of enactment, instead of the 180th day; and

(19) make technical changes to the bill.

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE, No. 332

STATE OF NEW JERSEY

DATED: JUNE 9, 2022

The Senate Commerce Committee reports favorably Senate Bill No. 332.

This bill requires a commercial Internet website and online service operator (operator) to notify consumers of the collection and disclosure of “personally identifiable information,” as that term is defined in the bill, to third parties. An operator that collects through the Internet the personally identifiable information of a consumer is to provide on its Internet website or online service notification to a consumer that includes, but is not limited to:

- 1) the categories of the personally identifiable information that the operator collects through the Internet website or online service about a consumer who uses or visits its commercial Internet website or online service;
- 2) all third parties with which the operator may disclose a consumer’s personally identifiable information;
- 3) whether a third party may collect personally identifiable information about a consumer’s online activities over time and across different commercial Internet websites or online services when the consumer uses the Internet website or online service of the operator;
- 4) a description of the process for an individual consumer who uses or visits the commercial Internet website or online service to review and request changes to any of his or her personally identifiable information that is collected by the commercial Internet website or online service of the operator;
- 5) the process by which the operator notifies consumers who use or visit the commercial Internet website or online service of material changes to the notification required to be made available pursuant to this subsection, along with the effective date of the notice; and
- 6) information concerning one or more designated request addresses that a consumer may use to request information under the bill.

This bill requires that an operator that discloses a consumer’s personally identifiable information to a third party is to make the following information available to the consumer free of charge upon receipt of a verified request from the consumer for this information through a designated request address: the consumer’s

personally identifiable information that was disclosed; and the names and contact information of the third parties that received the consumer's personally identifiable information. An operator that receives a request from a consumer is to provide a response to the consumer within 60 days of its verification and is to provide the information for all disclosures of personally identifiable information that occurred in the prior 12 months.

The bill provides that an operator that collects the personally identifiable information of a consumer through its commercial Internet website or online service and sells the personally identifiable information of the consumer through the Internet is to clearly and conspicuously post a link on its commercial Internet website or online service, or in another prominently accessible location the commercial Internet website maintains for consumer privacy settings, to an Internet webpage maintained by the operator, which enables a consumer, by verified request, to opt out of the sale of the consumer's personally identifiable information. The method in which a consumer may opt out shall be in a form and manner determined by the operator, provided that a consumer is not to be required to establish an account with the operator in order to opt out of the sale of a consumer's personally identifiable information.

An operator is to be prohibited from discriminating against a consumer if the consumer chooses to opt out of the sale of the consumer's personally identifiable information. The provisions of the bill are not to prohibit the operator's ability to offer consumers discounts, loyalty programs, or other incentives for the sale of the consumer's personally identifiable information, or to provide different services to consumers that are reasonably related to the value of the relevant data.

Further, the bill prohibits an operator from discriminating against or penalizing a consumer if the consumer chooses to opt out of the disclosure of the consumer's personally identifiable information.

The provisions of the bill are not to apply to certain types of information and institutions listed in the bill.

Nothing in the bill is to require an operator to re-identify de-identified data or collect, retain, use, link, or combine personally identifiable information concerning a consumer that it would not otherwise collect, retain, use, link, or combine in the ordinary course of business.

The Attorney General is to have sole authority to enforce a violation of the bill.

This bill was pre-filed for introduction in the 2022-2023 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

STATEMENT TO

SENATE, No. 332

with Senate Floor Amendments
(Proposed by Senator SINGLETON)

ADOPTED: AUGUST 8, 2022

This floor amendment provides that nothing in the bill is subject to, or to be construed as providing the basis for, a private right of action for a violation of the bill or any other law.

STATEMENT TO
[First Reprint]
SENATE, No. 332

with Senate Floor Amendments
(Proposed by SINGLETON)

ADOPTED: NOVEMBER 21, 2022

These floor amendments change the definition of “consumer” to include individuals acting within a job-seeking context. The amendments also removes “oral” from the definition of “disclosures.”. Additionally, the amendments remove the term “publicly available information” from the definition of “personally identifiable information,” and the definition of “publicly available information” has been removed from the bill. The amendments also add language to include certain third parties that track or collect information concerning a customer’s usage of a commercial Internet website, such as third party cookies, in the definition of “operators.”

The amendments also clarify the process for a consumer who uses or visits a commercial Internet website or online service to review and request changes to the consumer’s personally identifiable information that is collected by the operator. The amendments also set forth provisions concerning the methods for a consumer to submit requests, the obligations of operators, and the circumstances under which an operator may deny a request.

STATEMENT TO
[Second Reprint]
SENATE, No. 332

with Senate Floor Amendments
(Proposed by Senator SINGLETON)

ADOPTED: DECEMBER 19, 2022

These floor amendments remove individuals acting within a job-seeking context from the definition of “consumer.” The amendments provide that personally identifiable information may be disclosed orally by adding “oral” to the definition of “disclose.” Additionally, the amendments provide that publically available information is included in the definition of personally identifiable information and add a definition of “publically available information” to the bill. The amendments also remove language that includes third parties that track or collect information concerning a customer’s usage of a commercial Internet website from the definition of “operator.”

The amendments remove the process for a consumer who uses or visits a commercial Internet website or online service to review and request changes to the consumer’s personally identifiable information that is collected by the operator and correct a cross-reference to another section in the bill.

STATEMENT TO
[Fifth Reprint]
SENATE, No. 332

with Assembly Floor Amendments
(Proposed by Assemblyman MUKHERJI)

ADOPTED: DECEMBER 21, 2023

These floor amendments:

- (1) revise certain definitions within the bill;
- (2) clarify that a controller may require a consumer to use an existing account to submit a verified request;
- (3) remove a redundant component from the privacy notice provisions of the bill;
- (4) remove a provision allowing a controller to charge escalated amounts for second or subsequent identical consumer requests for information;
- (5) clarify that a controller is not required to authenticate an opt-out request;
- (6) clarify that a consumer's option to opt-out applies to the sale of data or targeted advertising;
- (7) extend the deadline for controllers to comply with the provisions of the bill from four months to six months after the bill's effective date;
- (8) modify the requirement for controllers regarding default settings, requiring a consumer's affirmative, freely given, and unambiguous choice to opt into the processing of their personal data;
- (10) remove a redundant component from the opt-out provisions of the bill;
- (11) add a provision, which requires a single data protection assessment;
- (12) include an exemption for data subject to Title V of the federal "Gramm-Leach-Bliley Act," 15 U.S.C. s.6801 et seq.; and
- (13) make certain technical changes.

ASSEMBLY, No. 1971

STATE OF NEW JERSEY

220th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2022 SESSION

Sponsored by:

Assemblyman RAJ MUKHERJI

District 33 (Hudson)

Assemblyman DANIEL R. BENSON

District 14 (Mercer and Middlesex)

Assemblyman PAUL D. MORIARTY

District 4 (Camden and Gloucester)

Co-Sponsored by:

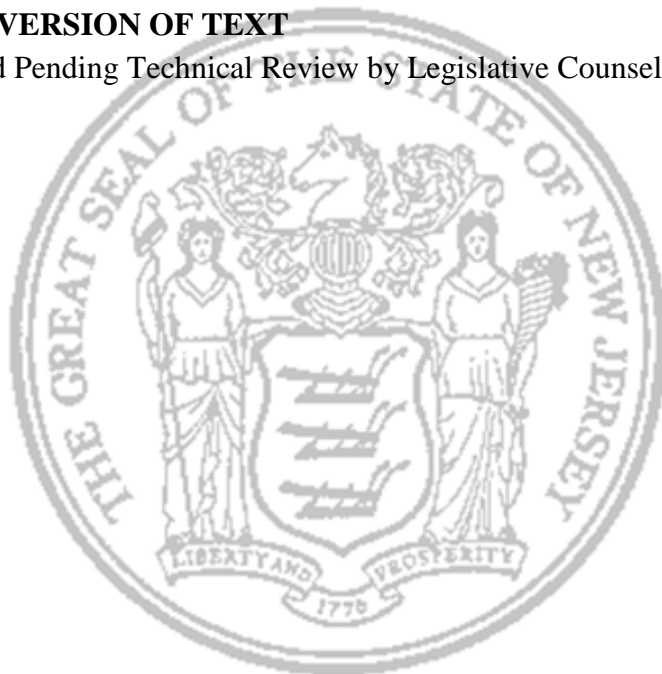
Assemblywoman McKnight, Assemblymen DeAngelo and Verrelli

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

Introduced Pending Technical Review by Legislative Counsel.



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 only in an individual or household context. “Consumer”
18 shall not include a person acting in a commercial or employment
19 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 8 of P.L. , c. (C.) (pending before the
28 Legislature as this bill), that is subject to a public commitment by
29 the operator not to attempt to re-identify the data, and to which one
30 or more enforceable controls to prevent re-identification has been
31 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 orally, in writing, or by
40 electronic or any other means to a third party a consumer’s
41 personally identifiable information. “Disclose” shall not include:

42 the disclosure of a consumer’s personally identifiable information
43 by an operator to a third party under a written contract authorizing
44 the third party to use the personally identifiable information to
45 perform services on behalf of the operator, including maintaining or
46 servicing accounts, providing customer service, processing or
47 fulfilling orders and transactions, verifying consumer information,
48 processing payments, providing financing, or similar services, but

1 only if the contract prohibits the third party from using the
2 personally identifiable information for any reason other than
3 performing the specified service on behalf of the operator and from
4 disclosing personally identifiable information to additional third
5 parties unless expressly authorized by the consumer;

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

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

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

19 "Online service" means an information service provided over the
20 Internet that collects and maintains personally identifiable information
21 from a consumer.

22 "Operator" means a person or entity that operates a commercial
23 Internet website or an online service. "Operator" shall not include
24 any third party that operates, hosts, or manages, but does not own, a
25 commercial Internet website or online service on the operator's
26 behalf, or processes information on behalf of the operator.

27 "Personally identifiable information" means any information that
28 is linked or reasonably linkable to an identified or identifiable
29 person. "Personally identifiable information" shall not include de-
30 identified data or publicly available information.

31 "Publicly available information" means information that is
32 lawfully made available from federal, State, or local government
33 records, or widely-distributed media.

34 "Sale" means the exchange of personally identifiable information
35 for monetary consideration by the operator to a third party for
36 purposes of licensing or selling personally identifiable information
37 at the third party's discretion to additional third parties. "Sale" shall
38 not include the following:

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

41 the disclosure of personally identifiable information to a third
42 party with whom the consumer has a direct relationship for
43 purposes of providing a product or service requested by the
44 consumer or otherwise in a manner that is consistent with a
45 consumer's reasonable expectations considering the context in
46 which the consumer provided the personally identifiable
47 information to the operator;

1 the disclosure or transfer of personally identifiable information
2 to an affiliate of the operator; or

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

7 "Service provider" means a person, private entity, public entity,
8 agency, or other entity that processes personally identifiable
9 information on behalf of the operator and who shall provide
10 sufficient guarantees to the operator to implement appropriate
11 technical and organizational measures in a manner that processing
12 shall ensure the protection of the consumer's personally identifiable
13 information.

14 "Third party" means a person, private entity, public entity, agency,
15 or entity other than the consumer, operator, or affiliate or service
16 provider of the operator.

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

23

24 2. a. An operator that collects the personally identifiable
25 information of a consumer through a commercial Internet website or
26 online service shall provide on its commercial Internet website or
27 online service notification to a consumer that shall include, but not
28 be limited to:

29 (1) the categories of the personally identifiable information that
30 the operator collects through the commercial Internet website or
31 online service about a consumer who uses or visits the operator's
32 commercial Internet website or online service;

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

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

40 (4) a description of the process for an individual consumer who
41 uses or visits the commercial Internet website or online service to
42 review and request changes to any of the consumer's personally
43 identifiable information that is collected by the commercial Internet
44 website or online service of the operator;

45 (5) the process by which the operator notifies consumers who
46 use or visit the commercial Internet website or online service of
47 material changes to the notification required to be made available

1 pursuant to this subsection, along with the effective date of the
2 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
6 section, an operator shall include the notification as a separate
7 section of the operator's privacy policy.

8

9 3. a. An operator that collects a consumer's personally
10 identifiable information through its commercial Internet website or
11 online service and discloses the consumer's personally identifiable
12 information to a third party shall make the following information
13 available to the consumer free of charge upon receipt of a verified
14 request from the consumer for this information through a designated
15 request address:

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

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

20 b. An operator that receives a verified request from a consumer
21 pursuant to subsection a. of this section shall provide a response to
22 the consumer within 60 days of the operator's verification of the
23 request and shall provide the information, pursuant to subsection a.
24 of this section, for all disclosures of personally identifiable
25 information that occurred in the prior 12 months.

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

29

30 4. a. An operator that collects the personally identifiable
31 information of a consumer through its commercial Internet website
32 or online service and sells the personally identifiable information of
33 the consumer through the Internet shall clearly and conspicuously
34 post a link, on its commercial Internet website or online service or
35 in another prominently accessible location the commercial Internet
36 website maintains for consumer privacy settings, to an Internet
37 webpage maintained by the operator, which enables a consumer, by
38 verified request, to opt out of the sale of the consumer's personally
39 identifiable information. The method in which a consumer may opt
40 out shall be in a form and manner determined by the operator,
41 provided that a consumer shall not be required to establish an
42 account with the operator in order to opt out of the sale of a
43 consumer's personally identifiable information.

44 b. An operator shall be prohibited from discriminating against
45 a consumer if the consumer chooses to opt out of the sale of the
46 consumer's personally identifiable information pursuant to
47 subsection a. of this section. The provisions of this section shall not
48 prohibit the operator's ability to offer consumers discounts, loyalty

1 programs, or other incentives for the sale of the consumer's
2 personally identifiable information, or to provide different services
3 to consumers that are reasonably related to the value of the relevant
4 data.

5

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

9

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

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

20 b. a financial institution or an affiliate of a financial institution
21 that is subject to Title V of the federal "Gramm-Leach-Bliley Act of
22 1999," 15 U.S.C. s.6801 et seq., and the rules and implementing
23 regulations promulgated thereunder;

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

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

28 e. the sale of a consumer's personally identifiable information
29 by the New Jersey Motor Vehicle Commission that is permitted by
30 the federal "Drivers' Privacy Protection Act of 1994,"
31 18 U.S.C. s.2721 et seq.; and

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

38

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

41 a. re-identify de-identified data;

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

46

47 8. It shall be an unlawful practice and violation of P.L.1960,
48 c.39 (C.56:8-1 et seq.) for an operator to fail to notify a consumer of

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

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

17
18 10. The Office of the Attorney General shall have sole and
19 exclusive authority to enforce a violation of P.L. , c. (C.)
20 (pending before the Legislature as this bill).

21
22 11. This act shall take effect on the 180th day following the date
23 of enactment, except that the Director of the Division of Consumer
24 Affairs may take any anticipatory administrative action in advance as
25 shall be necessary for the implementation of this act.

26
27
28 STATEMENT

29
30 This bill requires a commercial Internet website and online
31 service operator (operator) to notify consumers of the collection and
32 disclosure of "personally identifiable information," as that term is
33 defined in the bill, to third parties. An operator that collects through
34 the Internet the personally identifiable information of a consumer is
35 to provide on its Internet website or online service notification to a
36 consumer that includes, but is not limited to:

37 1) the categories of the personally identifiable information that
38 the operator collects through the Internet website or online service
39 about a consumer who uses or visits its commercial Internet website
40 or online service;

41 2) all third parties with which the operator may disclose a
42 consumer's personally identifiable information;

43 3) whether a third party may collect personally identifiable
44 information about a consumer's online activities over time and
45 across different commercial Internet websites or online services
46 when the consumer uses the Internet website or online service of the
47 operator;

- 1 4) a description of the process for an individual consumer who
2 uses or visits the commercial Internet website or online service to
3 review and request changes to any of his or her personally
4 identifiable information that is collected by the commercial Internet
5 website or online service of the operator;
- 6 5) the process by which the operator notifies consumers who
7 use or visit the commercial Internet website or online service of
8 material changes to the notification required to be made available
9 pursuant to this subsection, along with the effective date of the
10 notice; and
- 11 6) information concerning one or more designated request
12 addresses that a consumer may use to request information under the
13 bill.

14 This bill requires that an operator that discloses a consumer's
15 personally identifiable information to a third party is to make the
16 following information available to the consumer free of charge
17 upon receipt of a verified request from the consumer for this
18 information through a designated request address: the consumer's
19 personally identifiable information that was disclosed; and the
20 names and contact information of the third parties that received the
21 consumer's personally identifiable information. An operator that
22 receives a request from a consumer is to provide a response to the
23 consumer within 60 days of its verification and is to provide the
24 information for all disclosures of personally identifiable
25 information that occurred in the prior 12 months.

26 The bill provides that an operator that collects the personally
27 identifiable information of a consumer through its commercial
28 Internet website or online service and sells the personally
29 identifiable information of the consumer through the Internet is to
30 clearly and conspicuously post a link on its commercial Internet
31 website or online service, or in another prominently accessible
32 location the commercial Internet website maintains for consumer
33 privacy settings, to an Internet webpage maintained by the operator,
34 which enables a consumer, by verified request, to opt out of the sale
35 of the consumer's personally identifiable information. The method
36 in which a consumer may opt out shall be in a form and manner
37 determined by the operator, provided that a consumer is not to be
38 required to establish an account with the operator in order to opt out
39 of the sale of a consumer's personally identifiable information.

40 An operator is to be prohibited from discriminating against a
41 consumer if the consumer chooses to opt out of the sale of the
42 consumer's personally identifiable information. The provisions of
43 the bill are not to prohibit the operator's ability to offer consumers
44 discounts, loyalty programs, or other incentives for the sale of the
45 consumer's personally identifiable information, or to provide
46 different services to consumers that are reasonably related to the
47 value of the relevant data.

1 Further, the bill prohibits an operator from discriminating against
2 or penalizing a consumer if the consumer chooses to opt out of the
3 disclosure of the consumer's personally identifiable information.

4 The provisions of the bill are not to apply to certain types of
5 information and institutions listed in the bill.

6 Nothing in the bill is to require an operator to re-identify de-
7 identified data or collect, retain, use, link, or combine personally
8 identifiable information concerning a consumer that it would not
9 otherwise collect, retain, use, link, or combine in the ordinary
10 course of business.

11 The Attorney General is to have sole authority to enforce a
12 violation of the bill.

ASSEMBLY SCIENCE, INNOVATION AND TECHNOLOGY
COMMITTEE

STATEMENT TO
ASSEMBLY, No. 1971

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 11, 2023

The Assembly Science, Innovation and Technology Committee reports favorably and with committee amendments Assembly Bill No. 1971.

As amended and reported, this bill requires an online service operator (operator) to notify consumers of the collection and disclosure of “personally identifiable information,” as that term is defined in the bill, to third parties. An operator that collects the personally identifiable information of a consumer through an online service is to provide on its online service notification to a consumer that includes, but is not limited to:

1) the categories of the personally identifiable information that the operator collects through the online service about a consumer who uses or visits the online service;

2) all third parties to which the operator may disclose a consumer’s personally identifiable information;

3) whether a third party may collect personally identifiable information about a consumer’s online activities over time and across different online services when the consumer uses the online service of the operator;

4) a description of the process for an individual consumer who uses or visits the online service to review and request changes to any of the consumer’s personally identifiable information that is collected by the online service of the operator;

5) the process by which the operator notifies consumers who use or visit the online service of material changes to the notification required to be made available pursuant to the bill, along with the effective date of the notice; and

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

This bill requires that an operator that discloses a consumer’s personally identifiable information to a third party make the following information available to the consumer free of charge upon receipt of a verified request from the consumer for this information through a designated request address: the category or categories of a consumer’s

personally identifiable information that were disclosed; and the category or categories of the third parties that received the consumer's personally identifiable information. An operator that receives a request from a consumer is to provide a response to the consumer within 60 days of its verification of the request and is to provide the information for all disclosures of personally identifiable information that occurred in the prior 12 months.

The bill provides that an operator that collects the personally identifiable information of a consumer through its online service and sells the personally identifiable information of the consumer is to clearly and conspicuously post a link on its online service, or in another prominently accessible location the online service maintains for consumer privacy settings, to an Internet webpage maintained by the operator which enables a consumer, by verified request, to opt in to the sale of the consumer's personally identifiable information. The method by which a consumer may opt in is required to be in a form and manner determined by the operator, provided that a consumer is not to be required to establish an account with the operator in order to opt into the sale of a consumer's personally identifiable information.

An operator is prohibited from discriminating against a consumer if the consumer chooses to opt out of the sale of the consumer's personally identifiable information. The provisions of the bill are not to prohibit the operator from offering consumer discounts, loyalty programs, or other incentives for the sale of the consumer's personally identifiable information, or to provide different services to consumers that are reasonably related to the value of the relevant data, provided the operator has clearly and conspicuously disclosed to the consumer that the offered incentives require consenting to the sale or processing of personally identifiable information that the consumer otherwise has a right to opt out of.

The provisions of the bill are not to apply to certain types of information and institutions listed in the bill.

Nothing in the bill is to require an operator to re-identify de-identified data or to collect, retain, use, link, or combine personally identifiable information concerning a consumer that it otherwise would not.

Additionally, as amended and reported, nothing in this bill is to be construed as the basis for, or subject to, a private right of action.

The Attorney General is to have sole authority to enforce a violation of the bill.

This bill was prefiled for introduction in the 2022-2023 session, pending technical review. As amended and reported, the bill includes changes required by technical review, which has been performed.

As reported and amended by the committee, this bill is identical to Senate Bill No. 332 (3R), which was also amended and reported by the committee on this date.

COMMITTEE AMENDMENTS:

The committee amendments make the following changes to the definition section of this bill: add a definition for “business”; clarify that the definition of “disclose” means the disclosure of information by an operator; remove the definition of “commercial Internet website”; and remove the word “information” from the definition of “online service.”

The committee amendments remove all references to “commercial Internet website” from the bill. The committee amendments also apply section 3 of the bill to personally identifiable information collected prior to the effective date of this bill if the controller continues to store such information thereafter.

The committee amendments remove the language “through the internet” in section 4 of the bill, which broadens the scope of where operators may sell a consumer’s personally identifiable information. The amendments require an operator that collects personally identifiable information of a consumer through its online service and sells the information to enable a consumer to “opt into” the sale of the consumer’s personally identifiable information, rather than to “opt out of” the sale. The amendments provide that an operator may offer consumer discounts, loyalty programs, or other incentives for the sale of the consumer’s personally identifiable information so long as the operator clearly and conspicuously discloses to the customer that the incentives require consenting to the sale or processing of personally identifiable information the consumer otherwise may opt out of.

Additionally, the committee amendments add language to ensure that nothing in this bill is construed as the basis for, or subject to, a private right of action, replace the title and synopsis of the bill to reflect the changes made to the bill, correct a reference to a section of law and make other grammatical changes.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 1971

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 18, 2023

The Assembly Judiciary Committee reports favorably and with committee amendments on Assembly Bill No. 1971 (1R).

As amended and reported, this bill imposes requirements on certain entities (i.e., controllers) that determine the purposes and means of processing personal data. However, the provisions of the bill would only apply to controllers, which conduct business in the State or produce products or services that are targeted to residents of the State, and which control or process the personal data of a minimum number of consumers each year.

The bill requires a controller to provide notice to consumers of the collection and disclosure of “personal data,” as that term is defined in the bill, to third parties. The bill also sets forth various requirements concerning the information that is required to be included in this notice. The bill also imposes other requirements and limitations on controllers regarding the processing of personal data, including limiting the collection and processing of personal data, taking reasonable measures to protect personal data, and obtaining consumer consent before processing certain data. Specifically, the bill imposes additional restrictions on the processing of sensitive data, as defined in the bill, or the processing of a child’s personal data.

Additionally, the bill requires a controller that processes personal data for purposes of targeted advertising, the sale of personal data, or profiling in furtherance of decisions that produce legal or similarly significant effects concerning a consumer to allow consumers to exercise the right to opt-out of such processing through a user-selected universal opt-out mechanism. The bill permits a consumer to authorize another person to act on the consumer’s behalf to opt out of the sale of personal data. The bill prohibits a controller from discriminating against a consumer if the consumer chooses to opt out of the processing for sale, targeted advertising, or profiling in furtherance of decisions that produce legal or similarly significant effects of the consumer’s personal data, provided certain exceptions.

The bill requires a controller to complete data protection assessments, as described in the bill, and to make such assessments available to the Division of Consumer Affairs.

The bill provides that a processor, in addition to a controller, has certain duties under the bill. A processor is required to cooperate with a controller so that a controller remains in compliance with the bill.

Under the bill, the consumers of a controller may submit a verified request to exercise any rights established under the bill. The bill requires a controller to respond to each verified request within 45 days, except as extended in certain circumstances. Any information provided in response to a verified request would be provided free of charge, except that a controller may charge a fee for a second or subsequent request submitted within a 12-month period. The bill also requires a controller to establish a process for consumers to appeal the controller's refusal to take action on a request.

The bill also establishes certain consumer rights concerning personal data, including the right to: confirm whether a controller may process or access the consumer's personal data; correct inaccuracies in the consumer's personal data; delete personal data concerning the consumer; obtain a copy of the consumer's personal data held by the controller in a portable format; and opt out of the processing of personal data for the purposes of (i) targeted advertising; (ii) the sale of personal data; or (iii) profiling in furtherance of decisions that produce legal or similarly significant effects concerning the consumer.

As amended and reported by the committee, this bill is identical to Senate Bill No. 332 (4R), which was also reported by the committee on this date.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

(1) add the definitions of the terms "biometric data," "child," "consent," "controller," "COPPA," "dark pattern," "decisions that produce legal or similarly significant effects concerning the consumer," "precise geolocation data," "process," "processor," "profiling," "sensitive data," "targeted advertising," and "trade secret" to the bill;

(2) remove the definitions of the terms "business," "disclose," "online service," "operator," and "service provider" from the bill;

(3) revise certain definitions in the bill and replace the term "personally identifiable information" with the term "personal data";

(4) provide that the bill's provisions apply to controllers that conduct business in the State or target products and services to residents of the State, and that control or process a minimum number of consumers' personal data;

(5) require a controller to provide on the online service a reasonably accessible, clear, and meaningful privacy notice to the consumer, which privacy notice is required to contain certain

information, including the disclosure of a controller's sale of personal data to third parties for certain purposes in the privacy notice posted on its Internet website;

(6) prohibit a controller from requiring a consumer to create a new account in order to exercise a right or increasing the cost of, or decreasing the availability of, a product or service based solely upon the exercise of a right;

(7) provide that a controller is required to respond to a consumer's request for certain information, collected or processed after the effective date of this bill, within 45 days, and to permit a 45-day extension of this period, if necessary, with notice to the consumer;

(8) provide for a controller's process for responding to a consumer request for information, for certain conditions which permit the controller to deny a request, and for a consumer's ability to appeal the denial;

(9) prohibit a controller from discriminating against consumers who opt out of the processing of their personal data;

(10) outline consumer rights under the bill;

(11) provide a description of compliant deletion of personal data by a controller upon a consumer's request;

(12) permit a consumer to authorize another person to act on the consumer's behalf to opt out of the sale of personal data;

(13) provide that within four months of the bill's effective date, a controller is required to provide a mechanism by which a consumer may opt out of the collection of personal data for certain reasons;

(14) outline certain restrictions on a controller's collection and processing of personal data, including restrictions on the processing of sensitive data or the processing of a child's personal data;

(15) require a controller to complete data protection assessments and make such assessments available to the Division of Consumer Affairs;

(16) place certain duties previously created by the bill for an operator instead upon a controller, as defined in the bill as amended;

(17) provide that a processor, in addition to a controller, has certain duties under the bill and is required to cooperate so that a controller remains in compliance with the bill;

(18) provide that the bill is to take effect on the 365th day following the date of enactment, instead of the 180th day; and

(19) make technical changes to the bill.

STATEMENT TO
[Second Reprint]
ASSEMBLY, No. 1971

with Assembly Floor Amendments
(Proposed by Assemblyman MUKHERJI)

ADOPTED: DECEMBER 21, 2023

These floor amendments:

- (1) revise certain definitions within the bill;
- (2) clarify that a controller may require a consumer to use an existing account to submit a verified request;
- (3) remove a redundant component from the privacy notice provisions of the bill;
- (4) remove a provision allowing a controller to charge escalated amounts for second or subsequent identical consumer requests for information;
- (5) clarify that a controller is not required to authenticate an opt-out request;
- (6) clarify that a consumer's option to opt-out applies to the sale of data or targeted advertising;
- (7) extend the deadline for controllers to comply with the provisions of the bill from four months to six months after the bill's effective date;
- (8) modify the requirement for controllers regarding default settings, requiring a consumer's affirmative, freely given, and unambiguous choice to opt into the processing of their personal data;
- (10) remove a redundant component from the opt-out provisions of the bill;
- (11) add a provision, which requires a single data protection assessment;
- (12) include an exemption for data subject to Title V of the federal "Gramm-Leach-Bliley Act," 15 U.S.C. s.6801 et seq.; and
- (13) make certain technical changes.

Governor Murphy Signs Legislation Protecting Consumer Data

01/16/2024

TRENTON – Governor Phil Murphy today signed legislation (S332/A1971) protecting consumer privacy by requiring the notification to consumers of collection and disclosure of personal data by certain entities, including internet websites and online providers. Under the legislation, these entities are required to notify customers of the collection and disclosure of personal information to other third parties and to provide customers with an ability to opt-out of that collection or disclosure.

“In a rapidly growing digital age, our society has become increasingly dependent on the internet to complete day-to-day tasks from shopping and working to deeply personal tasks as managing finances and medical care,” **said Governor Murphy**. “However, far too often consumer privacy is exploited without consumers knowing that their data is being shared and sold. This important legislation will help consumers reclaim control over their own personal data, and allow them the choice to share information that is personal to them.”

S332/A1971 requires an operator that collects a consumer’s information through its site for the purpose of selling the consumer’s information to post a link clearly and conspicuously on its site, or in another prominently accessible location that allows them to opt-out of the collection of the personal data. The bill also entitles the consumer to know what data is held by the operator, so they have the ability to correct or delete incorrect information. The operator also must limit the collection of personal data to what is adequate, relevant, and reasonably necessary to their business and they must specify the express purposes for which personal data are processed.

“Today New Jersey is standing up for the privacy rights of its residents by empowering them with the ability to direct and know how their personal information is used,” **said Attorney General Matthew J. Platkin**. “This legislation provides some of the strongest data protections in the nation and helps ensure the security of New Jersey consumers and their interests.”

Primary sponsors of S332/A1971 include Senator Troy Singleton, former Governor and Senator Richard J. Codey, now-Senator and former Assemblyman Raj Mukherji, now-Senator and former Assemblyman Paul D. Moriarty, and former Assemblyman Daniel R. Benson.

“Unauthorized access to our personal information is an invasion of privacy and can result in identity theft,” **said Senator Troy Singleton**. “This law will ensure that consumers are in control of their data, especially by allowing them to opt-out of the sale of their data.”

“Most New Jerseyans would be alarmed by how the most intimate, invasive details about their families are routinely sold for profit without any disclosure or accountability, let alone consent,” **said Senator and former Assemblyman Raj Mukherji**. “In an era when cyber threats are increasingly prevalent, this legislation is both vital and timely. Our data privacy and security law grants consumers the right to access, correct, and delete their data that is being collected, used, and sold; enacts the strongest universal opt-out mechanism in the country as well as more stringent restrictions on sensitive data, including data collected on children; and puts consumers back in control of their own data.”

“Enforcing the requirement for consumers to be notified by certain entities about the collection and disclosure of their personal data marks a shift towards a digital community that is better-informed and better-protected,” **said Senator and former Assemblyman Paul Moriarty**. “In a time when personal data is a valuable commodity, safeguarding personal data has become more important than ever.”

This legislation underscores the importance of giving consumers control over their personal data, particularly in an era where our digital presence is highly personalized,” **said former Assemblyman Dan Benson**. “Mandating certain entities to inform individuals about the management of their personal data represents a crucial step towards enhancing data privacy and security.”

For a copy of the Governor’s Signing Statement, click [here](#).

**GOVERNOR'S STATEMENT UPON SIGNING
SENATE BILL NO. 332
(Sixth Reprint)**

Today I am signing Senate Bill No. 332 (Sixth Reprint), which requires certain businesses, or "controllers" under the bill, to notify consumers of the collection, disclosure, and sale of their personal information and to provide consumers with an ability to opt-out of that in certain circumstances. This bill imbues rights to the consumer relating to their personal data, specifically, the right to access, correct, and delete information, and to opt-out of the collection, disclosure, or sale of their information under certain circumstances. The bill further outlines the controller's obligations as relating to personal data retention, sale, and use, including mandating that the controller must limit the collection of personal data to what is adequate, relevant, and reasonably necessary and requiring that the controller specify the express purposes for which personal data is processed.

I am encouraged that the Legislature has passed this measure to help protect consumers from the unauthorized use and sale of their personal information. Other states, including California, Colorado, Connecticut, Delaware, Indiana, Iowa, Montana, Oregon, Tennessee, Texas, Utah, and Virginia, have already enacted similar measures, and I am proud New Jersey will join that contingent of states to better protect our residents.

Late amendments were made to the enforcement provision of the bill removing language that stated the bill should not be construed as providing a basis for a private right of action "under any other law". I understand that concerns have been raised that removing that language thereby establishes a private right of action under other laws for violations of this bill. However, nothing in this bill expressly establishes such a private right of action, and the provision as amended states that the bill shall not be "construed as providing the basis for . . . a private right of action for violations of [the bill]." Moreover, while this bill does not create a private right of action under this law or under any other law, it should not be construed to supersede or otherwise impact other laws that include a provision creating a private right of action separate and apart from this bill.

I am heartened that consumers will now be given a say in the distribution of their personal information, and I have full confidence that the Attorney General will fully and appropriately enforce the law to ensure a transparent process that allows consumers to maintain control over how their personal data is collected and used.

Date: January 16, 2024

/s/ Philip D. Murphy

Governor

Attest:

/s/ Parimal Garg

Chief Counsel to the Governor