

[Sixth Reprint]

SENATE, No. 332

STATE OF NEW JERSEY
220th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2022 SESSION

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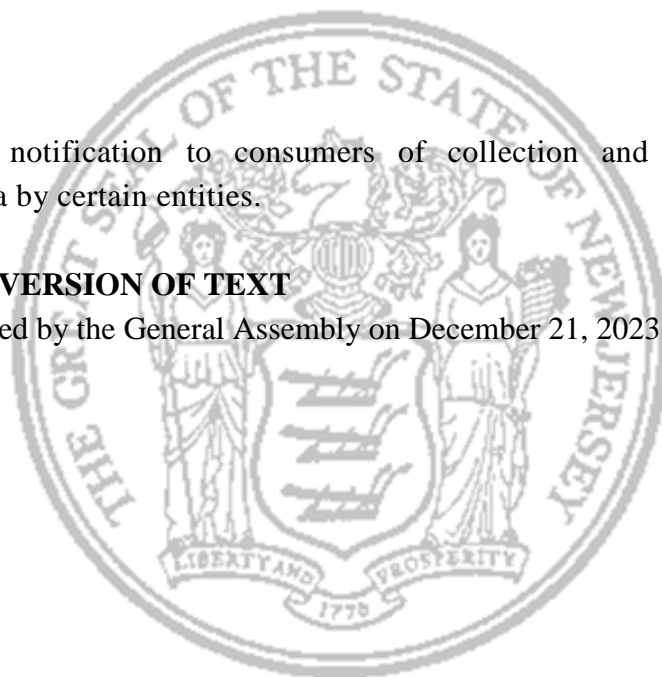
**Senators Greenstein, Madden, Pou, Assemblywoman McKnight,
Assemblymen DeAngelo, Verrelli and Wimberly**

SYNOPSIS

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

CURRENT VERSION OF TEXT

As amended by the General Assembly on December 21, 2023.



(Sponsorship Updated As Of: 1/8/2024)

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 ³**only**³ 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]** ⁹**9**³ 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
 36 enforceable controls to prevent re-identification has been applied,
 37 which may include legal, administrative, technical, or contractual
 38 controls.

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

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

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

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

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

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

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

34 “Operator” means a person or entity that operates ⁴[a commercial
35 Internet website or]⁴ an online service ³[², and includes any third
36 party that tracks or collects any information concerning a customer’s
37 usage of a commercial Internet website, regardless of whether the third
38 party owns or operates the website²]³. “Operator” shall not include
39 any third party that operates, hosts, or manages, but does not own, ⁴[a
40 commercial Internet website or] an⁴ online service on the operator’s
41 behalf, or processes information on behalf of the operator.

42 “Personally identifiable information” means any information that
43 is linked or reasonably linkable to an identified or identifiable person.
44 “Personally identifiable information” shall not include de-identified
45 data ²[or publicly available information.

46 “Publicly available information” means information that is
47 lawfully made available from federal, State, or local government

1 records, or widely-distributed media² ³or publically available
2 information.

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

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

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

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

19 the disclosure or transfer of personally identifiable information to
20 an affiliate of the operator; or

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

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

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

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

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

46 (1) the categories of the personally identifiable information that
47 the operator collects through the ⁴[commercial Internet website

1 or]⁴ online service about a consumer who uses or visits the
 2 ²[operator's]² ³operator's³ ⁴[commercial Internet website or]⁴
 3 online service;

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

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

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

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

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

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

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

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

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

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

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

1 information available to the consumer free of charge upon receipt of
2 a verified request from the consumer for this information through a
3 designated request address:

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

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

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

14 c. This section shall not apply to personally identifiable
15 information disclosed prior to the effective date of P.L. , c.
16 (C.) (pending before the Legislature as this bill). ⁴This section
17 shall not apply to personally identifiable information collected prior
18 to the effective date of P.L. , c. (C.) (pending before the
19 Legislature as this bill) unless the controller continues to store such
20 information thereafter.⁴⁵

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

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

1 of personally identifiable information that the consumer otherwise
2 has a right to opt out of⁴ **]**⁵.

3

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

8

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

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

19 b. a financial institution or an affiliate of a financial institution
20 that is subject to Title V of the federal "Gramm-Leach-Bliley Act ⁴**[**of
21 1999⁴," 15 U.S.C. s.6801 et seq., and the rules and implementing
22 regulations promulgated thereunder;

23 c. the secondary market institutions identified in
24 15 U.S.C. s.6809(3)(D) and 12 C.F.R. s.1016.3(l)(3)(iii); ⁴**[**or⁴

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

27 e. the sale of a consumer's personally identifiable information by
28 the New Jersey Motor Vehicle Commission that is permitted by the
29 federal "Drivers' Privacy Protection Act of 1994," 18 U.S.C. s.2721 et
30 seq.; ⁴**[**and⁴ or⁴

31 f. personally identifiable information collected, processed, sold,
32 or disclosed by a consumer reporting agency, as defined in 15 U.S.C.
33 s.1681a(f), if the collection, processing, sale, or disclosure of the
34 personally identifiable information is limited by the federal "Fair
35 Credit Reporting Act," 15 U.S.C. s.1681 et seq., and implementing
36 regulations.**]**⁵

37

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

40 a. re-identify de-identified data;

41 b. collect, retain, use, link, or combine personally identifiable
42 information concerning a consumer that it would not otherwise
43 collect, retain, use, link, or combine in the ordinary course of
44 business.**]**⁵

45

46 ⁵**[**8. It shall be an unlawful practice and violation of P.L.1960,
47 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.]⁵

10
 11 ⁵[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).]⁵

17
 18 ⁵[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). ¹Nothing in
 21 P.L. , c. (C.) (pending before the Legislature as this bill)
 22 shall be construed as providing the basis for, or subject to, a private
 23 right of action for violations of P.L. , c. (C.) (pending before
 24 the Legislature as this bill) or under any other law.]⁵

25
 26 ⁵[11. This act shall take effect on the 180th day following
 27 the date of enactment, except that the Director of the Division of
 28 Consumer Affairs may take any anticipatory administrative action in
 29 advance as shall be necessary for the implementation of this act.]⁵

30
 31 ⁵1. As used in P.L. , c. (C.) (pending before the Legislature
 32 as this bill):

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

41 “Biometric data” means data generated by automatic or
 42 technological processing, measurements, or analysis of an individual’s
 43 biological, physical, or behavioral characteristics, including, but not
 44 limited to, fingerprint, voiceprint, eye retinas, irises, facial mapping,
 45 facial geometry, facial templates, or other unique biological, physical,
 46 or behavioral patterns or characteristics that are used or intended to be
 47 used, singularly or in combination with each other or with other

1 personal data, to identify a specific individual. “Biometric data” shall
2 not include: a digital or physical photograph; an audio or video
3 recording; or any data generated from a digital or physical photograph,
4 or an audio or video recording, unless such data is generated to
5 identify a specific individual.

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

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

17 “Consumer” means an identified person who is a resident of this
18 State acting only in an individual or household context. “Consumer”
19 shall not include a person acting in a commercial or employment
20 context.

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

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

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

32 “Decisions that produce legal or similarly significant effects
33 concerning the consumer” means decisions that result in the provision
34 or denial of financial or lending services, housing, insurance,
35 education enrollment or opportunity, criminal justice, employment
36 opportunities, health care services, or access to essential goods and
37 services.

38 “De-identified data” means: data that cannot be reasonably used to
39 infer information about, or otherwise be linked to, an identified or
40 6[reasonably]6 identifiable individual, or a device linked to such an
41 individual, if the controller that possesses the data: (1) takes
42 reasonable measures to ensure that the data cannot be associated with
43 an individual, (2) publicly commits to maintain and use the data only
44 in a de-identified fashion and not to attempt to re-identify the data, and
45 (3) contractually obligates any recipients of the information to comply
46 with the requirements of this paragraph.

47 “Designated request address” means an electronic mail address,
48 Internet website, or toll-free telephone number that a consumer may

1 use to request the information required to be provided pursuant to
2 section 3 of P.L. , c. (C.) (pending before the Legislature as this
3 bill).

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

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

15 “Process” or “processing” means an operation or set of operations
16 performed, whether by manual or automated means, on personal data
17 or on sets of personal data, such as the collection, use, storage,
18 disclosure, analysis, deletion, or modification of personal data, and
19 also includes the actions of a controller directing a processor to
20 process personal data.

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

23 “Profiling” means any form of automated processing performed on
24 personal data to evaluate, analyze or predict personal aspects related to
25 an identified or identifiable individual’s economic situation, health,
26 personal preferences, interests, reliability, behavior, location or
27 movements.

28 “Publicly available information” means information that is
29 lawfully made available from federal, State, or local government
30 records, or widely-distributed media or information that a controller
31 has a reasonable basis to believe a consumer has lawfully made
32 available to the general public and has not restricted to a specific
33 audience.

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

37 The disclosure of personal data to a processor that ⁶[only]⁶
38 processes the personal data on the controller’s behalf;

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

41 The disclosure or transfer of personal data to an affiliate of the
42 controller;

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

46 The disclosure or transfer of personal data to a third party as an
47 asset that is part of a proposed or actual merger, acquisition,

1 bankruptcy, or other transaction in which the third party assumes
2 control of all or part of the controller’s assets.

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

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

26 “Third party” means a person, private entity, public entity, agency,
27 or entity other than the consumer, controller, or affiliate or processor
28 of the controller.

29 “Trade secret” has the same meaning as section 2 of P.L.2011,
30 c.161 (C.56:15-2).

31 "Verified request" means the process through which a consumer
32 may submit a request to exercise a right or rights established in
33 P.L. , c. (C.) (pending before the Legislature as this bill), and
34 by which a controller can reasonably authenticate the request and the
35 consumer making the request using commercially reasonable means.⁵
36

37 ⁵2. Notwithstanding any State law, rule, regulation, or order to
38 the contrary, the provisions of P.L. , c. (C.) (pending
39 before the Legislature as this bill) shall only apply to controllers
40 that conduct business in the State or produce products or services
41 that are targeted to residents of the State, and that during a calendar
42 year either:

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

46 b. control or process the personal data of at least 25,000
47 consumers and the controller derives revenue, or receives a discount

1 on the price of any goods or services, from the sale of personal
2 data.⁵

3

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

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

8 (2) the purpose for processing personal data;

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

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

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

16 (6) the process by which the controller notifies consumers of
17 material changes to the notification required to be made available
18 pursuant to this subsection, along with the effective date of the notice;
19 and

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

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

32 c. A controller shall not:

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

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

39

40 ⁵4. a. A controller that receives a verified request from a consumer
41 shall provide a response to the consumer within 45 days of the
42 controller's receipt of the request. The controller may extend the
43 response period by 45 additional days where reasonably necessary,
44 considering the complexity and number of the consumer's requests,
45 provided that the controller informs the consumer of any such
46 extension within the initial 45-day response period and the reason for

- 1 the extension and shall provide the information for all disclosures of
2 personal data that occurred in the prior 12 months.
- 3 b. This section shall not apply to personal data collected prior to
4 the effective date of P.L. , c. (C.) (pending before the
5 Legislature as this bill) unless the controller continues to process such
6 information thereafter.
- 7 c. If a controller declines to take action regarding the consumer's
8 request, the controller shall inform the consumer without undue delay,
9 but not later than 45 days after receipt of the request, of the
10 justification for declining to take action and instructions for how to
11 appeal the decision.
- 12 d. Information provided in response to a consumer request shall be
13 provided by a controller, free of charge, once per consumer during any
14 twelve-month period ⁶ , except that, for a second or subsequent
15 identical request within a 12-month period, the controller may charge
16 an amount calculated pursuant to regulations ⁶ . If requests from a
17 consumer are manifestly unfounded, excessive, or repetitive, the
18 controller may charge the consumer a reasonable fee to cover the
19 administrative costs of complying with the request or decline to act on
20 the request. The controller shall bear the burden of demonstrating the
21 manifestly unfounded, excessive or repetitive nature of the request.
- 22 e. If a controller is unable to authenticate a request to exercise any
23 of the rights afforded under section 5 of P.L. , c. (C.)
24 (pending before the Legislature as this bill) using commercially
25 reasonable efforts, the controller shall not be required to comply with a
26 request to initiate an action pursuant to this section and shall provide
27 notice to the consumer that the controller is unable to authenticate the
28 request to exercise such right or rights until such consumer provides
29 additional information reasonably necessary to authenticate such
30 consumer and such consumer's request to exercise such right or rights.
31 A controller shall not be required to authenticate an opt-out request
32 ⁶ [it honors] ⁶ , but a controller may deny an opt-out request if the
33 controller has a good faith, reasonable and documented belief that such
34 request is fraudulent. If a controller denies an opt-out request because
35 the controller believes such request is fraudulent, the controller shall
36 send a notice to the person who made such request disclosing that such
37 controller believes such request is fraudulent, why such controller
38 believes such request is fraudulent and that such controller shall not
39 comply with such request.
- 40 f. A controller shall establish a process for a consumer to appeal the
41 controller's refusal to take action on a request within a reasonable
42 period of time after the consumer's receipt of the decision. The appeal
43 process shall be conspicuously available and similar to the process for
44 submitting requests to initiate action pursuant to this section. Not later
45 than 45 days after receipt of an appeal, a controller shall inform the
46 consumer in writing of any action taken or not taken in response to the
47 appeal, including a written explanation of the reasons for the decisions.
48 If the appeal is denied, the controller shall also provide the consumer

1 with an online mechanism, if available, or other method through which
2 the consumer may contact the Division of Consumer Affairs in the
3 Department of Law and Public Safety to submit a complaint.⁵

4
5 ⁵5. A controller shall be prohibited from discriminating against a
6 consumer if the consumer chooses to opt out of the processing for
7 sale, targeted advertising, or profiling in furtherance of decisions
8 that produce legal or similarly significant effects of the consumer's
9 personal data pursuant to P.L. , c. (C.) (pending before the
10 Legislature as this bill). The provisions of this section shall not
11 prohibit the controller's ability to offer consumers discounts, loyalty
12 programs, or other incentives for the sale of the consumer's personal
13 data, or to provide different services to consumers that are
14 reasonably related to the value of the relevant data, provided that
15 the controller has clearly and conspicuously disclosed to the
16 consumer that the offered discounts, programs, incentives, or
17 services include the sale or processing of personal data that the
18 consumer otherwise has a right to opt out of.⁵

19
20 ⁵6. A waiver of the requirements of, or an agreement that does
21 not comply with, the provisions of P.L. , c. (C.) (pending
22 before the Legislature as this bill) shall be void and unenforceable.⁵

23
24 ⁵7. a. A consumer shall have the right to:

25 (1) confirm whether a controller processes the consumer's
26 personal data and accesses such personal data, provided that
27 nothing in this paragraph shall require a controller to provide the
28 data to the consumer in a manner that would reveal the controller's
29 trade secrets;

30 (2) correct inaccuracies in the consumer's personal data, taking
31 into account the nature of the information and the purposes of the
32 processing of the information;

33 (3) delete personal data concerning the consumer;

34 (4) obtain a copy of the consumer's personal data held by the
35 controller in a portable and, to the extent technically feasible,
36 readily usable format that allows the consumer to transmit the data
37 to another entity without hindrance, provided that nothing in this
38 paragraph shall require a controller to provide the data to the
39 consumer in a manner that would reveal the controller's trade
40 secrets; and

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

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

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

7 (2) deleting such personal data.⁵

8
9 ⁵8. a. A consumer may designate another person to serve as the
10 consumer's authorized agent and act on the consumer's behalf to opt
11 out of the processing and sale of the consumer's personal data. A
12 consumer may designate an authorized agent using technology,
13 including a link to an Internet website, an Internet browser setting or
14 extension, or a global setting on an electronic device, that allows the
15 consumer to indicate the consumer's intent to opt-out of the collection
16 and processing for the purpose of any sale of data or for the purpose of
17 targeted advertising or ⁶, when such technology exists, ⁶ for profiling
18 in furtherance of decisions that produce legal or similarly significant
19 effects concerning a consumer. A controller shall comply with an opt-
20 out request received from an authorized agent under this subsection if
21 the controller is able to verify, with commercially reasonable effort,
22 the identity of the consumer and the authorized agent's authority to act
23 on the consumer's behalf.

24 b. (1) Beginning not later than ⁶[four] ⁶six⁶ months following the
25 effective date of P.L. , c. (C.) (pending before the Legislature
26 as this bill), a controller that processes personal data for purposes of
27 targeted advertising, ⁶or⁶ the sale of personal data ⁶[, or profiling in
28 furtherance of decisions that produce legal or similarly significant
29 effects concerning a consumer]⁶ shall allow consumers to exercise the
30 right to opt-out of such processing through a user-selected universal
31 opt-out mechanism.

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

33 (a) not permit its manufacturer to unfairly disadvantage another
34 controller;

35 (b) not make use of a default setting that opts-in a consumer to the
36 processing or sale of personal data, unless the controller has
37 determined that the consumer has selected such default setting and the
38 selection clearly represents the consumer's ⁶[an]⁶ affirmative, freely
39 given, and unambiguous choice to ⁶[opt-out of] opt into⁶ any
40 processing of such consumer's personal data pursuant to P.L. , c.
41 (C.) (pending before the Legislature as this bill);

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

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

1 (e) enable the controller to accurately determine whether the
2 consumer is a resident of this State and whether the consumer has
3 made a legitimate request to opt out of the processing of personal data
4 for the purposes of any sale of such consumer's personal data or
5 targeted advertising ⁶]; and

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

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

23
24 ⁵9. a. A controller shall:

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

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

33 (3) take reasonable measures to establish, implement, and maintain
34 administrative, technical, and physical data security practices to
35 protect the confidentiality, integrity, and accessibility of personal data
36 and to secure personal data during both storage and use from
37 unauthorized acquisition. The data security practices shall be
38 appropriate to the volume and nature of the personal data at issue;

39 (4) not process sensitive data concerning a consumer without first
40 obtaining the consumer's consent, or, in the case of the processing of
41 personal data concerning a known child, without processing such data
42 in accordance with COPPA;

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

46 (6) provide an effective mechanism for a consumer to revoke the
47 consumer's consent under this section that is at least as easy as the
48 mechanism by which the consumer provided the consumer's consent

1 and, upon revocation of such consent, cease to process the data as soon
2 as practicable, but not later than 15 days after the receipt of such
3 request;

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

11 (8) specify the express purposes for which personal data are
12 processed; and

13 (9) not conduct processing that presents a heightened risk of harm
14 to a consumer without conducting and documenting a data protection
15 assessment of each of its processing activities that involve personal
16 data acquired on or after the effective date of
17 P.L. , c. (C.) (pending before the Legislature as this bill) that
18 present a heightened risk of harm to a consumer.

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

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

40 (1) processing personal data for purposes of targeted advertising
41 or for profiling if the profiling presents a reasonably foreseeable risk
42 of: unfair or deceptive treatment of, or unlawful disparate impact on,
43 consumers; financial or physical injury to consumers; a physical or
44 other intrusion upon the solitude or seclusion, or the private affairs or
45 concerns, of consumers if the intrusion would be offensive to a
46 reasonable person; or other substantial injury to consumers;

47 (2) selling personal data; and

48 (3) processing sensitive data.⁵

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

3
4 ⁵10. Nothing in P.L. _____, c. _____ (C. _____) (pending before the
5 Legislature as this bill) shall apply to:

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

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

18 c. the secondary market institutions identified in
19 15 U.S.C. s.6809(3)(D) and 12 C.F.R. s.1016.3(l)(3)(iii);

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

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

25 f. personal data collected, processed, sold, or disclosed by a
26 consumer reporting agency, as defined in 15 U.S.C. s.1681a(f), if the
27 collection, processing, sale, or disclosure of the personal data is
28 limited, governed, and collected, maintained, disclosed, sold,
29 communicated, or used only as authorized by the federal "Fair Credit
30 Reporting Act," 15 U.S.C. s.1681 et seq., and implementing
31 regulations;

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

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

40
41 ⁵11. Nothing in P.L. _____, c. _____ (C. _____) (pending before the
42 Legislature as this bill) shall require ⁶[an operator] a controller⁶ to:

43 a. re-identify de-identified data;

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

- 1 ⁵12. a. Nothing in P.L. , c. (C.) (pending before the
2 Legislature as this bill) shall be construed to restrict a controller’s
3 or processor’s ability to:
- 4 (1) comply with federal or State law or regulations;
5 (2) comply with a civil, criminal or regulatory inquiry,
6 investigation, subpoena or summons by federal, State, municipal or
7 other governmental authorities;
8 (3) cooperate with law enforcement agencies concerning
9 conduct or activity that the controller or processor reasonably and in
10 good faith believes may violate federal, State or municipal
11 ordinances or regulations;
12 (4) investigate, establish, exercise, prepare for or defend legal
13 claims;
14 (5) provide a product or service specifically requested by a
15 consumer;
16 (6) perform under a contract to which a consumer is a party,
17 including fulfilling the terms of a written warranty;
18 (7) take steps at the request of a consumer prior to entering into
19 a contract;
20 (8) take immediate steps to protect an interest that is essential
21 for the life or physical safety of the consumer or another individual,
22 and where the processing cannot be manifestly based on another
23 legal basis;
24 (9) prevent, detect, protect against or respond to security
25 incidents, identity theft, fraud, harassment, malicious or deceptive
26 activities or any illegal activity, preserve the integrity or security of
27 systems or investigate, report or prosecute those responsible for any
28 such action;
29 (10) engage in public or peer-reviewed scientific or statistical
30 research in the public interest that adheres to all other applicable
31 ethics and privacy laws and is approved, monitored and governed
32 by an institutional review board that determines, or similar
33 independent oversight entities that determine,
34 (a) whether the deletion of the information is likely to provide
35 substantial benefits that do not exclusively accrue to the controller,
36 (b) the expected benefits of the research outweigh the privacy
37 risks, and
38 (c) whether the controller has implemented reasonable
39 safeguards to mitigate privacy risks associated with research,
40 including any risks associated with re-identification;
41 (11) assist another controller, processor, or third party with any
42 of the obligations under P.L. , c. (C.) (pending before the
43 Legislature as this bill); or
44 (12) personal data for reasons of public interest in the area of
45 public health, community health, or population health, but solely to
46 the extent that such processing is
47 (a) subject to suitable and specific measures to safeguard the
48 rights of the consumer whose personal data is being processed, and

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

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

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

9 (2) effectuate a product recall;

10 (3) identify and repair technical errors that impair existing or
11 intended functionality; or

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

26 c. The obligations imposed on controllers or processors under
27 P.L. , c. (C.) (pending before the Legislature as this bill)
28 shall not apply where compliance by the controller or processor
29 with the provisions of law would violate an evidentiary privilege
30 under the laws of this State. Nothing in P.L. , c. (C.)
31 (pending before the Legislature as this bill) shall be construed to
32 prevent a controller or processor from providing personal data
33 concerning a consumer to a person covered by an evidentiary
34 privilege under the laws of the State as part of a privileged
35 communication.

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

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

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

43 e. If a controller processes personal data pursuant to an
44 exemption in this section, the controller bears the burden of
45 demonstrating that such processing qualifies for the exemption and
46 complies with the requirements in this section.

47 f. Processing personal data for the purposes expressly identified
48 in this section shall not solely make a legal entity a controller with

1 respect to such processing if such entity would not otherwise meet
2 the definition of a controller.⁵

3
4 ⁵13. a. Controllers and processors shall meet their respective
5 obligations established under P.L. , c. (C.) (pending before
6 the Legislature as this bill).

7 b. Processors shall adhere to the instructions of the controller
8 and assist the controller to meet its obligations under this act.
9 Taking into account the nature of processing and the information
10 available to the processor, the processor shall assist the controller
11 by:

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

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

19 (3) providing information to the controller necessary to enable
20 the controller to conduct and document any data protection
21 assessments required by section 9 of P.L. , c. (C.)
22 (pending before the Legislature as this bill). The controller and
23 processor are each responsible for only the measures allocated to
24 them.

25 c. Notwithstanding the instructions of the controller, a
26 processor shall:

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

29 (2) engage a subcontractor pursuant to a written contract in
30 accordance with subsection e. of this section that requires the
31 subcontractor to meet the obligations of the processor with respect
32 to the personal data.

33 d. Taking into account the context of processing, the controller
34 and the processor shall implement appropriate technical and
35 organizational measures to ensure a level of security appropriate to
36 the risk and establish a clear allocation of the responsibilities
37 between them to implement the measures.

38 e. Processing by a processor shall be governed by a contract
39 between the controller and the processor that is binding on both
40 parties and that sets forth:

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

43 (2) the type of personal data subject to the processing, and the
44 duration of the processing;

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

47 (4) the following requirements:

1 (a) At the discretion of the controller, the processor shall delete
2 or return all personal data to the controller as requested at the end of
3 the provision of services, unless retention of the personal data is
4 required by law;

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

8 (ii) The processor shall allow for, and contribute to, reasonable
9 assessments and inspections by the controller or the controller's
10 designated assessor. Alternatively, the processor may, with the
11 controller's consent, arrange for a qualified and independent
12 assessor to conduct, at least annually and at the processor's expense,
13 an assessment of the processor's policies and technical and
14 organizational measures in support of the obligations under this act
15 using an appropriate and accepted control standard or framework
16 for the assessment as applicable. The processor shall provide a
17 report of the assessment to the controller upon request.

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

22 g. Determining whether a person is acting as a controller or
23 processor with respect to a specific processing of data shall be a
24 fact-based determination that depends upon the context in which
25 personal data are to be processed. A person that is not limited in its
26 processing of personal data pursuant to a controller's instructions, or
27 that fails to adhere to the instructions, shall be deemed a controller
28 and not a processor with respect to a specific processing of data. A
29 processor that continues to adhere to a controller's instructions with
30 respect to a specific processing of personal data shall remain a
31 processor. If a processor begins, alone or jointly with others,
32 determining the purposes and means of the processing of personal
33 data, it shall be deemed a controller with respect to the processing.⁵

34
35 ⁵14. a. It shall be an unlawful practice and violation of
36 P.L.1960, c.39 (C.56:8-1 et seq.) for a controller to violate the
37 provisions of P.L. , c. (C.) (pending before the Legislature
38 as this bill).

39 b. Until the first day of the 18th month next following the
40 effective date of P.L. , c. (C.) (pending before the
41 Legislature as this bill), prior to bringing an enforcement action
42 before an administrative law judge or a court of competent
43 jurisdiction in this State, the Division of Consumer Affairs in the
44 Department of Law and Public Safety shall issue a notice to the
45 controller if a cure is deemed possible. If the operator controller
46 fails to cure the alleged violation of P.L. , c. (C.) (pending
47 before the Legislature as this bill) within 30 days after receiving

1 notice of alleged noncompliance from the division, such
2 enforcement action may be brought.⁵

3

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

10

11 ⁵16. The Office of the Attorney General shall have sole and
12 exclusive authority to enforce a violation of P.L. , c. (C.)
13 (pending before the Legislature as this bill). Nothing in
14 P.L. , c. (C.) (pending before the Legislature as this bill)
15 shall be construed as providing the basis for, or subject to, a private
16 right of action for violations of P.L. , c. (C.) (pending before
17 the Legislature as this bill) ⁶【or under any other law】⁶.⁵

18

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