

5152

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I N A S S E M B L Y

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Introduced by M. of A. BRENNAN, PHEFFER, PARMENT, DINOWITZ, JOHN, PERRY, JAFFEE -- Multi-Sponsored by -- M. of A. BOYLAND, CAHILL, COLTON, COOK, DelMONTE, DESTITO, FIELDS, GABRYSZAK, GALEF, GOTTFRIED, HIKIND, JACOBS, LUPARDO, MARKEY, MAYERSOHN, McENENY, MILLMAN, REILLY, N. RIVERA, SWEENEY, TITONE, TOWNS, WRIGHT -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to protecting the privacy of internet users

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Short title. This act shall be known and may be cited as  
2 "New York state internet privacy law".  
3 S 2. Legislative intent. 1. The legislature finds that the internet is  
4 becoming a major part of the personal and commercial lives of Americans.  
5 The internet brings with it much good, such as increased personal know-  
6 ledge and communications, and increased and more efficient commercial  
7 opportunities.  
8 2. The privacy of personal information flowing over the internet is of  
9 concern. Vast amounts of personal information about individual internet  
10 users are collected on the internet and sold or otherwise transferred to  
11 third parties. Polls consistently show that individual internet users  
12 are highly troubled over their lack of control over their personal  
13 information. In fact, concern over personal privacy is one of the  
14 biggest factors holding back even greater commercial development of the  
15 internet.  
16 3. The right to privacy is a personal and fundamental right worthy of  
17 protection through appropriate legislation. Industry has developed  
18 several self-policing schemes, but none of them are enforceable in a  
19 meaningful way. Meaningful, enforceable internet privacy rules would  
20 protect New York citizens and would foster the growth of electronic  
21 commerce in New York.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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1 4. The legislature intends to establish strong privacy rules to which  
2 an operator of a website or online service may voluntarily choose to  
3 submit. The incentive for the operator to submit will be that it may  
4 publicize that it complies with the New York state internet privacy law.  
5 Any operator who does so advertise may be subject to an enforcement  
6 action.

7 S 3. Article 40 and sections 900 and 901 of the general business law,  
8 as renumbered by chapter 407 of the laws of 1973, are renumbered article  
9 41 and sections 1000 and 1001 and a new article 40 is added to read as  
10 follows:

11 ARTICLE 40

12 NEW YORK STATE INTERNET PRIVACY LAW

13 SECTION 900. DEFINITIONS.

14 901. APPLICABILITY OF ARTICLE.

15 902. DISCLOSURE OF PERSONAL INFORMATION.

16 903. THIRD PARTIES.

17 904. USER'S RIGHT TO INSPECT AND CORRECT INFORMATION.

18 905. DURATION OF OPERATOR'S RESPONSIBILITY.

19 906. ENFORCEMENT.

20 907. SEPARABILITY CLAUSE.

21 S 900. DEFINITIONS. AS USED IN THIS ARTICLE:

22 1. THE TERM "INTERNET" MEANS COLLECTIVELY THE MYRIAD OF COMPUTER AND  
23 TELECOMMUNICATIONS FACILITIES, INCLUDING EQUIPMENT AND OPERATING SOFT-  
24 WARE, WHICH COMPRISE THE INTERCONNECTED WORLD-WIDE NETWORK OF NETWORKS  
25 THAT EMPLOY THE TRANSMISSION CONTROL PROTOCOL/INTERNET PROTOCOL, OR ANY  
26 PREDECESSOR OR SUCCESSOR PROTOCOLS TO SUCH PROTOCOL, TO COMMUNICATE  
27 INFORMATION OF ALL KINDS BY WIRE OR RADIO.

28 2. THE TERM "OPERATOR" MEANS ANY PERSON WHO OPERATES A WEBSITE LOCATED  
29 ON THE INTERNET OR AN ONLINE SERVICE AND WHO COLLECTS OR MAINTAINS  
30 PERSONAL INFORMATION FROM OR ABOUT THE USERS OF OR VISITORS TO SUCH  
31 WEBSITE OR ONLINE SERVICE, OR ON WHOSE BEHALF SUCH INFORMATION IS  
32 COLLECTED OR MAINTAINED, WHERE SUCH WEBSITE OR ONLINE SERVICE IS OPER-  
33 ATED FOR COMMERCIAL PURPOSES, INCLUDING ANY PERSON OFFERING PRODUCTS OR  
34 SERVICES FOR SALE THROUGH THAT WEBSITE OR ONLINE SERVICE, INVOLVING  
35 COMMERCE.

36 3. THE TERM "USER" MEANS A PERSON WHO USES AN ONLINE SERVICE OR VISITS  
37 A WEBSITE.

38 4. THE TERM "PERSONAL INFORMATION" MEANS INDIVIDUALLY IDENTIFIABLE  
39 INFORMATION ABOUT AN INDIVIDUAL COLLECTED ONLINE, INCLUDING:

40 (A) A FIRST AND LAST NAME;

41 (B) A HOME OR OTHER PHYSICAL ADDRESS INCLUDING STREET NAME AND NAME OF  
42 A CITY OR TOWN;

43 (C) AN E-MAIL ADDRESS;

44 (D) A TELEPHONE NUMBER;

45 (E) A SOCIAL SECURITY NUMBER;

46 (F) ANY OTHER IDENTIFIER THAT PERMITS THE PHYSICAL OR ONLINE CONTACT-  
47 ING OF A SPECIFIC INDIVIDUAL; OR

48 (G) INFORMATION CONCERNING A CHILD OR THE PARENTS OF THAT CHILD THAT  
49 THE OPERATOR COLLECTS ONLINE FROM THE CHILD AND COMBINES WITH ANOTHER  
50 IDENTIFIER SET FORTH IN THIS SUBDIVISION.

51 5. THE TERM "DISCLOSURE" MEANS, WITH RESPECT TO PERSONAL INFORMATION:

52 (A) THE RELEASE OF PERSONAL INFORMATION COLLECTED IN IDENTIFIABLE FORM  
53 BY AN OPERATOR FOR ANY PURPOSE, EXCEPT WHERE SUCH INFORMATION IS  
54 PROVIDED TO A PERSON OTHER THAN THE OPERATOR WHO PROVIDES SUPPORT FOR  
55 THE INTERNAL OPERATIONS OF THE WEBSITE AND DOES NOT DISCLOSE OR USE THAT  
56 INFORMATION FOR ANY OTHER PURPOSE; AND

1 (B) MAKING PERSONAL INFORMATION COLLECTED FROM A CHILD BY A WEBSITE OR  
2 ONLINE SERVICE DIRECTED TO CHILDREN OR WITH ACTUAL KNOWLEDGE THAT SUCH  
3 INFORMATION WAS COLLECTED FROM A CHILD, PUBLICLY AVAILABLE IN IDENTIFI-  
4 ABLE FORM, BY ANY MEANS INCLUDING BY A PUBLIC POSTING, THROUGH THE  
5 INTERNET, OR THROUGH:

6 (I) A HOME PAGE OF A WEBSITE;

7 (II) A PEN PAL SERVICE;

8 (III) AN ELECTRONIC MAIL SERVICE;

9 (IV) A MESSAGE BOARD; OR

10 (V) A CHAT ROOM.

11 6. THE TERM "THIRD PARTY" MEANS A PERSON OTHER THAN THE USER OR THE  
12 OPERATOR, OR AN EMPLOYEE OF THE OPERATOR.

13 S 901. APPLICABILITY OF ARTICLE. AN OPERATOR IS SUBJECT TO THIS ARTI-  
14 CLE IF IT ADVERTISES OR OTHERWISE PUBLICLY STATES THAT IT COMPLIES WITH  
15 THE "NEW YORK STATE INTERNET PRIVACY LAW".

16 S 902. DISCLOSURE OF PERSONAL INFORMATION. 1. AN OPERATOR SHALL NOT  
17 DISCLOSE TO A THIRD PARTY ANY PERSONALLY IDENTIFIABLE INFORMATION  
18 OBTAINED FROM A USER WITHOUT THE USER'S PRIOR INFORMED, AFFIRMATIVE  
19 WRITTEN CONSENT.

20 2. INFORMED CONSENT REQUIRES THAT THE OPERATOR NOTIFY THE USER OF THE  
21 IDENTITY OF ANY THIRD PARTY WHICH WILL RECEIVE HIS OR HER PERSONAL  
22 INFORMATION, AND FOR WHAT PURPOSE THE INFORMATION WILL BE USED.

23 3. INFORMED WRITTEN CONSENT MAY BE OBTAINED ONLY UPON NOTICE TO A USER  
24 OF HIS OR HER RIGHTS UNDER THIS LAW. SUCH NOTICE MUST BE IN WRITING,  
25 CLEAR AND CONSPICUOUS, AND IN PLAIN ENGLISH.

26 4. AN OPERATOR SHALL PERMIT A PERSON TO REVOKE THE CONSENT GRANTED  
27 UNDER SUBDIVISION ONE OF THIS SECTION AT ANY TIME, AND UPON SUCH REVOC-  
28 ATION, SUCH OPERATOR SHALL CEASE DISCLOSING SUCH INFORMATION TO A THIRD  
29 PARTY.

30 5. AN OPERATOR OR AN EMPLOYEE OF SUCH OPERATOR SHALL NOT KNOWINGLY  
31 DISCLOSE TO A THIRD PARTY ANY PERSONALLY IDENTIFIABLE INFORMATION  
32 PROVIDED BY A SUBSCRIBER TO SUCH SERVICE THAT SUCH SERVICE, OR SUCH  
33 EMPLOYEE, HAS KNOWINGLY FALSIFIED.

34 6. NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION ONE OF THIS SECTION,  
35 NEITHER AN OPERATOR NOR THE OPERATOR'S AGENT SHALL BE HELD TO BE LIABLE  
36 FOR ANY DISCLOSURE MADE IN GOOD FAITH AND FOLLOWING REASONABLE PROCE-  
37 DURES IN RESPONDING TO A REQUEST FOR DISCLOSURE OF PERSONAL INFORMATION  
38 UNDER THE FEDERAL CHILDREN'S ONLINE PRIVACY PROTECTION ACT TO THE PARENT  
39 OF A CHILD.

40 7. NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION ONE OF THIS SECTION,  
41 AN OPERATOR MAY DISCLOSE PERSONAL INFORMATION, WITHOUT NOTICE TO THE  
42 USER, WHEN NECESSARY TO RESPOND TO A COURT ORDER, SUBPOENA, OR OTHER  
43 LEGAL PROCESS.

44 S 903. THIRD PARTIES. 1. PRIOR TO DISCLOSING PERSONAL INFORMATION TO A  
45 THIRD PARTY, AN OPERATOR SHALL INFORM THE THIRD PARTY OF THE PROVISIONS  
46 OF THIS ARTICLE, AND OBTAIN FROM THE THIRD PARTY A WRITTEN CERTIFICATION  
47 THAT THE THIRD PARTY WILL COMPLY WITH THIS ARTICLE.

48 2. A THIRD PARTY WHICH RECEIVES PERSONAL INFORMATION PURSUANT TO THIS  
49 ARTICLE MAY USE SUCH INFORMATION ONLY FOR THE PURPOSE OF WHICH THE USER  
50 HAS BEEN NOTIFIED.

51 S 904. USER'S RIGHT TO INSPECT AND CORRECT INFORMATION. 1. UPON  
52 REQUEST AN OPERATOR SHALL (A) PROVIDE A PERSON WITH HIS OR HER PERSONAL  
53 INFORMATION MAINTAINED BY THE OPERATOR; (B) PERMIT THE USER TO VERIFY  
54 SUCH INFORMATION MAINTAINED BY THE SERVICE; AND (C) PERMIT THE USER TO  
55 CORRECT ANY ERROR IN SUCH INFORMATION.

1 2. UPON REQUEST, AN OPERATOR SHALL PROVIDE TO THE USER THE IDENTITY OF  
2 THE THIRD PARTY RECIPIENTS OF HIS OF HER PERSONAL INFORMATION.

3 3. AN OPERATOR SHALL NOT CHARGE A FEE FOR ONE ANNUAL REQUEST THAT A  
4 PERSON MAKES FOR THE INFORMATION SET FORTH IN SUBDIVISION FOUR OR FIVE  
5 OF SECTION NINE HUNDRED OF THIS ARTICLE. FOR ADDITIONAL REQUESTS, AN  
6 OPERATOR MAY CHARGE A FEE CONSISTING OF THE OPERATOR'S ACTUAL COST OF  
7 PROVIDING THE INFORMATION. AN OPERATOR SHALL PROVIDE AN ABILITY FOR A  
8 USER TO ELECTRONICALLY REQUEST AND RECEIVE THE INFORMATION SET FORTH IN  
9 THIS SECTION.

10 S 905. DURATION OF OPERATOR'S RESPONSIBILITY. ANY PERSONAL INFORMATION  
11 WHICH AN OPERATOR OBTAINS WITHIN THIRTY DAYS OF THE OPERATOR'S LAST  
12 ADVERTISEMENT OR PUBLIC STATEMENT PURSUANT TO SECTION NINE HUNDRED ONE  
13 OF THIS ARTICLE SHALL BE SUBJECT TO THIS ARTICLE.

14 S 906. ENFORCEMENT. 1. ANY PERSON FOUND TO HAVE VIOLATED THIS ARTICLE,  
15 KNOWINGLY OR RECKLESSLY, SHALL BE LIABLE TO THE AGGRIEVED USER FOR ALL  
16 ACTUAL DAMAGES SUSTAINED BY SUCH USER AS A DIRECT RESULT OF THE  
17 VIOLATION, PROVIDED THAT ANY SUBSCRIBER WHO PREVAILS OR SUBSTANTIALLY  
18 PREVAILS IN ANY ACTION BROUGHT UNDER THIS SECTION SHALL RECEIVE NOT LESS  
19 THAN FIVE HUNDRED DOLLARS IN DAMAGES, REGARDLESS OF THE AMOUNT OF ACTUAL  
20 DAMAGE PROVED, PLUS COSTS, DISBURSEMENTS AND REASONABLE ATTORNEY'S FEES.  
21 AN ACTION BROUGHT PURSUANT TO THIS SECTION MAY BE MAINTAINED AS A CLASS  
22 ACTION.

23 2. WHENEVER THERE SHALL BE A VIOLATION OF THIS ARTICLE, AN APPLICATION  
24 MAY BE MADE BY THE ATTORNEY GENERAL IN THE NAME OF THE PEOPLE OF THE  
25 STATE OF NEW YORK TO A COURT OR JUSTICE HAVING JURISDICTION BY A SPECIAL  
26 PROCEEDING TO ISSUE AN INJUNCTION, AND UPON NOTICE TO THE DEFENDANT OF  
27 NOT LESS THAN FIVE DAYS, TO ENJOIN AND RESTRAIN THE CONTINUATION OF SUCH  
28 VIOLATION; AND IF IT SHALL APPEAR TO THE SATISFACTION OF THE COURT OR  
29 JUSTICE THAT THE DEFENDANT HAS, IN FACT, VIOLATED THIS ARTICLE, AN  
30 INJUNCTION MAY BE ISSUED BY SUCH COURT OR JUSTICE, ENJOINING AND  
31 RESTRAINING ANY FURTHER VIOLATION, WITHOUT REQUIRING PROOF THAT ANY  
32 PERSON HAS, IN FACT, BEEN INJURED OR DAMAGED THEREBY. IN ANY SUCH  
33 PROCEEDING, THE COURT MAY MAKE ALLOWANCES TO THE ATTORNEY GENERAL AS  
34 PROVIDED IN PARAGRAPH SIX OF SUBDIVISION (A) OF SECTION EIGHTY-THREE  
35 HUNDRED THREE OF THE CIVIL PRACTICE LAW AND RULES AND DIRECT RESTITU-  
36 TION. WHENEVER THE COURT SHALL DETERMINE THAT A GROSSLY NEGLIGENT  
37 VIOLATION OF THIS ARTICLE HAS OCCURRED, THE COURT MAY IMPOSE A CIVIL  
38 PENALTY OF NOT MORE THAN ONE THOUSAND DOLLARS FOR SUCH VIOLATION. IN  
39 CONNECTION WITH ANY SUCH PROPOSED APPLICATION, THE ATTORNEY GENERAL IS  
40 AUTHORIZED TO TAKE PROOF AND MAKE A DETERMINATION OF THE RELEVANT FACTS  
41 AND TO ISSUE SUBPOENAS IN ACCORDANCE WITH THE CIVIL PRACTICE LAW AND  
42 RULES.

43 3. THE REMEDIES PROVIDED BY THIS ARTICLE SHALL BE IN ADDITION TO ANY  
44 OTHER LAWFUL REMEDY AVAILABLE TO A SUBSCRIBER.

45 4. NO ACTION MAY BE BROUGHT UNDER THE PROVISIONS OF THIS SECTION  
46 UNLESS SUCH ACTION IS COMMENCED WITHIN THE TWO YEARS FROM THE DATE OF  
47 THE ACT COMPLAINED OF OR THE DATE OF DISCOVERY OF SUCH ACT.

48 S 907. SEPARABILITY CLAUSE. IF ANY CLAUSE, PARAGRAPH, SECTION OR PART  
49 OF THIS ARTICLE SHALL BE ADJUDGED BY ANY COURT OF COMPETENT JURISDICTION  
50 TO BE INVALID OR UNCONSTITUTIONAL, SUCH JUDGMENT SHALL NOT AFFECT,  
51 IMPAIR OR INVALIDATE THE REMAINDER THEREOF, BUT SHALL BE CONFINED IN ITS  
52 OPERATION TO THE CLAUSE, SENTENCE, PARAGRAPH, SECTION OR PART THEREOF  
53 DIRECTLY INVOLVED IN THE CONTROVERSY IN WHICH SUCH JUDGMENT SHALL HAVE  
54 BEEN RENDERED.

55 S 4. This act shall take effect on the one hundred eightieth day after  
56 it shall have become a law.