S T A T E O F N E W Y O R K

1393

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. BRODSKY, ORTIZ, WRIGHT, CLARK, LANCMAN, SCHROEDER, EDDINGTON, PERRY, MILLMAN, COLTON, MAISEL, TITUS, CAMARA, CHRISTENSEN, BRADLEY, GUNTHER, JACOBS, LUPARDO, JAFFEE, GREENE, O'DONNELL, GABRYSZAK, ROBINSON, CUSICK, ZEBROWSKI, KAVANAGH, FIELDS, BENEDETTO, GALEF, ESPAILLAT, KOON, CAHILL, PERALTA, BROOK-KRASNY, HOOPER -- Multi-Sponsored by -- M. of A. BOYLAND, BRENNAN, GOTTFRIED, HEASTIE, HEVESI, HYER-SPENCER, KELLNER, LATIMER, MARKEY, McENENY, PEOPLES, PHEFFER, REILLY, SWEENEY, WEISENBERG -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to establishing the online consumer protection act

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

Section 1. Short title. This act shall be known and may be cited as the "online consumer protection act".

S 2. Legislative findings. The state has the authority to enact consumer regulations to protect the people of the state. Recently, the state has enacted a series of laws to address problems arising from the ubiquity of the internet. From protecting consumers from electronic breaches of security to enacting laws prohibiting the practice of "phishing" -- an electronic form of identify theft -- the state has an obligation to enact sensible protections for the people.

The internet age has changed, often for the better, the way people work, enjoy entertainment and interact with one another. However, with the internet age new problems have arisen that must be addressed, chief among them, the loss of personal privacy. Recent examples, including one where search engine results were tracked to an individual, have illustrated that a person's privacy can be breached easily and with grave consequences. There is a fundamental rift between tracking technology and consumers' right to control what data is collected and where it

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

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goes. Action must be taken in order to prevent more egregious violations of privacy occurring including price discrimination, exposure of personal information to subpoenas and warrantless government access.

This act establishes provisions to allow consumers the ability to simply opt-out of being monitored on the internet. Such protections, akin to the do not call registry, are a fair, sensible and common sense way to give consumers a clear choice with respect to being monitored.

S 3. The general business law is amended by adding a new section 390-bb to read as follows:

S 390-BB. ONLINE CONSUMER PROTECTION. 1. FOR THE PURPOSES OF THIS SECTION THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) THE TERM "ONLINE PREFERENCE MARKETING" SHALL MEAN A TYPE OF ADVERTISEMENT DELIVERY AND REPORTING WHEREBY DATA IS COLLECTED TO DETERMINE OR PREDICT CONSUMER CHARACTERISTICS OR PREFERENCE FOR USE IN ADVERTISEMENT DELIVERY ON THE INTERNET.

(B) THE TERM "PERSONALLY IDENTIFIABLE INFORMATION" SHALL MEAN DATA THAT, BY ITSELF, CAN BE USED TO IDENTIFY, CONTACT OR LOCATE A PERSON, INCLUDING NAME, ADDRESS, TELEPHONE NUMBER, SENSITIVE MEDICAL OR FINANCIAL DATA, SEXUAL BEHAVIOR, SEXUAL ORIENTATION, OR EMAIL ADDRESS.

(C) THE TERM "PUBLISHER" SHALL MEAN ANY COMPANY, INDIVIDUAL OR OTHER GROUP THAT HAS A WEBSITE, WEBPAGE OR OTHER INTERNET PAGE.

(D) THE TERM "CONSUMER" SHALL MEAN ANY NATURAL PERSON USING OR ACCESSING A WEBSITE, WEBPAGE OR ONLINE SERVICE THAT INCLUDES THE DISPLAY OF ADVERTISEMENTS.

(E) THE TERM "ADVERTISING NETWORK" SHALL MEAN ANY COMPANY, INDIVIDUAL OR OTHER GROUP THAT IS COLLECTING ONLINE CONSUMER ACTIVITY FOR THE PURPOSES OF AD DELIVERY.

2. NO PUBLISHER OF A WEBPAGE OR ADVERTISING NETWORK CONTRACTED WITH A PUBLISHER SHALL COLLECT PERSONALLY IDENTIFIABLE INFORMATION FOR THE PURPOSES OF ONLINE PREFERENCE MARKETING. THIS SUBDIVISION SHALL NOT APPLY TO THE COLLECTION OF PERSONALLY IDENTIFIABLE INFORMATION PROVIDED TO A PUBLISHER OF A WEBPAGE OR ADVERTISING NETWORK CONTRACTED WITH A PUBLISHER BY THE CONSUMER WITH HIS OR HER CONSENT.

3. NO PUBLISHER OF A WEBPAGE OR ADVERTISING NETWORK CONTRACTED WITH A PUBLISHER SHALL COLLECT ANY OTHER INFORMATION FROM A CONSUMER THAT IS NOT DEFINED AS PERSONALLY IDENTIFIABLE INFORMATION PURSUANT TO SUBDIVISION ONE OF THIS SECTION FOR THE PURPOSES OF ONLINE PREFERENCE MARKETING UNLESS THE CONSUMER IS GIVEN AN OPPORTUNITY TO OPT-OUT OF THE USE OF SUCH INFORMATION FOR ONLINE MARKETING PURPOSES.

4. AN ADVERTISING NETWORK SHALL POST CLEAR AND CONSPICUOUS NOTICE ON THE HOME PAGE OF ITS OWN WEBSITE ABOUT ITS PRIVACY POLICY AND ITS DATA COLLECTION AND USE PRACTICES RELATED TO ITS ADVERTISING DELIVERY ACTIVITIES. IF A PUBLISHER HAS CONTRACTED WITH AN ADVERTISING NETWORK, THE PUBLISHER SHALL POST CLEAR AND CONSPICUOUS NOTICE ON ITS WEBSITE THAT DESCRIBES THE COLLECTION AND USE OF INFORMATION BY THE ADVERTISING NETWORK. IF THE ADVERTISING NETWORK ENGAGES IN ONLINE PREFERENCE MARKETING, THE PRIVACY POLICIES OF BOTH THE ADVERTISING NETWORK AND THE PUBLISHER SHALL DESCRIBE THE ABILITY TO OPT-OUT OF ONLINE PREFERENCE MARKETING BY SUCH NETWORK.

5. AN ADVERTISING NETWORK SHALL MAKE REASONABLE EFFORTS TO PROTECT THE DATA IT COLLECTS OR LOGS AS A RESULT OF AD DELIVERY AND REPORTING FROM LOSS, MISUSE, ALTERATION, DESTRUCTION OR IMPROPER ACCESS.

6. THE ATTORNEY GENERAL MAY BRING AN ACTION AGAINST A PERSON WHO VIOLATES THE PROVISIONS OF THIS SECTION:

(A) TO ENJOIN FURTHER VIOLATION OF THE PROVISIONS OF THIS SECTION; AND

(B) TO RECOVER UP TO TWO HUNDRED FIFTY DOLLARS FOR EACH INSTANCE IN WHICH IDENTIFYING INFORMATION IS COLLECTED FROM A PERSON IN VIOLATION OF THE PROVISIONS OF SUBDIVISION TWO OR THREE OF THIS SECTION.

IN AN ACTION UNDER PARAGRAPH (B) OF THIS SUBDIVISION, A COURT MAY INCREASE THE DAMAGES UP TO THREE TIMES THE DAMAGES ALLOWED BY SUCH PARAGRAPH WHERE THE DEFENDANT HAS BEEN FOUND TO HAVE ENGAGED IN A PATTERN AND PRACTICE OF VIOLATING THE PROVISIONS OF SUBDIVISION TWO OR THREE OF THIS SECTION.

7. NOTHING IN THIS SECTION SHALL IN ANY WAY LIMIT RIGHTS OR REMEDIES WHICH ARE OTHERWISE AVAILABLE UNDER LAW TO THE ATTORNEY GENERAL OR ANY OTHER PERSON AUTHORIZED TO BRING AN ACTION UNDER SUBDIVISION FIVE OF THIS SECTION.

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