

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:

1 Section 1. Short title. This act shall be known and may be cited as  
2 the "online consumer protection act".  
3 S 2. Legislative findings. The state has the authority to enact  
4 consumer regulations to protect the people of the state. Recently, the  
5 state has enacted a series of laws to address problems arising from the  
6 ubiquity of the internet. From protecting consumers from electronic  
7 breaches of security to enacting laws prohibiting the practice of  
8 "phishing" -- an electronic form of identify theft -- the state has an  
9 obligation to enact sensible protections for the people.  
10 The internet age has changed, often for the better, the way people  
11 work, enjoy entertainment and interact with one another. However, with  
12 the internet age new problems have arisen that must be addressed, chief  
13 among them, the loss of personal privacy. Recent examples, including one  
14 where search engine results were tracked to an individual, have illus-  
15 trated that a person's privacy can be breached easily and with grave  
16 consequences. There is a fundamental rift between tracking technology  
17 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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1 goes. Action must be taken in order to prevent more egregious violations  
2 of privacy occurring including price discrimination, exposure of  
3 personal information to subpoenas and warrantless government access.

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

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

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

12 (A) THE TERM "ONLINE PREFERENCE MARKETING" SHALL MEAN A TYPE OF ADVER-  
13 TISEMENT DELIVERY AND REPORTING WHEREBY DATA IS COLLECTED TO DETERMINE  
14 OR PREDICT CONSUMER CHARACTERISTICS OR PREFERENCE FOR USE IN ADVERTISE-  
15 MENT DELIVERY ON THE INTERNET.

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

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

22 (D) THE TERM "CONSUMER" SHALL MEAN ANY NATURAL PERSON USING OR ACCESS-  
23 ING A WEBSITE, WEBPAGE OR ONLINE SERVICE THAT INCLUDES THE DISPLAY OF  
24 ADVERTISEMENTS.

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

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

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

40 4. AN ADVERTISING NETWORK SHALL POST CLEAR AND CONSPICUOUS NOTICE ON  
41 THE HOME PAGE OF ITS OWN WEBSITE ABOUT ITS PRIVACY POLICY AND ITS DATA  
42 COLLECTION AND USE PRACTICES RELATED TO ITS ADVERTISING DELIVERY ACTIV-  
43 ITIES. IF A PUBLISHER HAS CONTRACTED WITH AN ADVERTISING NETWORK, THE  
44 PUBLISHER SHALL POST CLEAR AND CONSPICUOUS NOTICE ON ITS WEBSITE THAT  
45 DESCRIBES THE COLLECTION AND USE OF INFORMATION BY THE ADVERTISING  
46 NETWORK. IF THE ADVERTISING NETWORK ENGAGES IN ONLINE PREFERENCE MARKET-  
47 ING, THE PRIVACY POLICIES OF BOTH THE ADVERTISING NETWORK AND THE  
48 PUBLISHER SHALL DESCRIBE THE ABILITY TO OPT-OUT OF ONLINE PREFERENCE  
49 MARKETING BY SUCH NETWORK.

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

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

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

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

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

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

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