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

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I N A S S E M B L Y

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Introduced by M. of A. PHEFFER, MILLMAN, SWEENEY, BRODSKY, EDDINGTON, LUPARDO, GIANARIS, JAFFEE, GREENE, GALEF, CLARK, LAVINE, FIELDS -- Multi-Sponsored by -- M. of A. BENJAMIN, BING, BROOK-KRASNY, COLTON, DESTITO, DINOWITZ, GLICK, GOTTFRIED, GUNTHER, HEASTIE, HOOPER, JOHN, KOON, LATIMER, MAGEE, MAGNARELLI, MAISEL, MAYERSOHN, PERRY, ROBINSON, ROSENTHAL, WEISENBERG -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law and the executive law, in relation to protecting personal information collected and distributed by information brokers

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

Section 1. Legislative findings and declaration. The legislature hereby finds that individuals in today's society must engage in a wide variety of commercial, financial and other transactions with local and national businesses, educational institutions and other organizations. These transactions frequently involve the transfer of information that is inherently private, which the individual would prefer not to reveal. The legislature further finds that, when engaging in these transactions, many individuals appropriately assume that the information being provided will be treated as confidential and will not be disseminated to others. The information generally is necessary solely to complete the transaction and to deliver the necessary goods or services, and further sale or dissemination of that personal, private information to others is not a consequence anticipated or desired by the consumer. The legislature further finds that, despite the strong interest that individuals have in preserving confidentiality of this private information, details about their finances, habits, purchasing preferences and backgrounds are routinely sold or otherwise released for commercial or other purposes. The rapid evolution of information technology enables many individuals and entities to gain access to private, identifiable information without

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

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the knowledge and consent of the person to whom the information relates. As a result, there has been a dramatic proliferation of large electronic databases containing an array of sensitive details about New York residents. The existence of these databases and the disclosure of confidential personal information have led to numerous adverse consequences including: (1) the rapid increase in identity fraud crimes; (2) the proliferation of fraudulent, misleading, intrusive and deceptive telephone, direct mail and internet solicitations; (3) undue embarrassment for individuals who have had private information revealed without their consent; and (4) the dissemination of incorrect information which has led to the denial or refusal of housing, employment, insurance and other services and opportunities.

The legislature therefore finds and declares that there are insufficient controls on the entities that compile and disseminate this information and that it is in the public's and state's interest to establish protections limiting the collection and distribution of personal information. Although this could be accomplished by prohibiting all sale or disclosure of personal information by third parties, the legislature recognizes that such a broad prohibition would unduly restrict some legitimate uses of the information. The legislature finds that organizations that collect and sell personal information and lists for profit, present a significant threat to the protection of personal privacy, and that the restrictions imposed by this legislation on the activities of such information brokers will meaningfully and substantially advance the state's interest in protecting personal privacy in a manner that is narrowly tailored to avoid undue impact on other rights.

S 2. The general business law is amended by adding a new article 32-A to read as follows:

ARTICLE 32-A

PROTECTION OF CONFIDENTIAL PERSONAL INFORMATION

SECTION 676. DEFINITIONS.

676-A. COLLECTION AND DISTRIBUTION OF PERSONAL INFORMATION BY INDIVIDUAL REFERENCE SERVICES PROVIDERS.

676-B. COLLECTION AND DISTRIBUTION OF PERSONAL INFORMATION BY MARKETING LIST BROKERS.

676-C. EXCLUSION LISTS.

676-D. PENALTIES.

676-E. CIVIL LIABILITY.

S 676. DEFINITIONS. FOR PURPOSES OF THIS ARTICLE THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

1. "AFFILIATE" SHALL HAVE THE SAME MEANING AS PROVIDED IN SECTION NINE HUNDRED TWELVE OF THE BUSINESS CORPORATION LAW.

2. "BOARD" SHALL MEAN THE CONSUMER PROTECTION BOARD.

3. "CONFIDENTIAL PERSONAL INFORMATION" MEANS THE FOLLOWING INFORMATION RELATING TO AN IDENTIFIABLE DATA SUBJECT: (A) SOCIAL SECURITY INFORMATION INCLUDING, BUT NOT LIMITED TO, SOCIAL SECURITY NUMBER; (B) MOTHER'S FORMER AND CURRENT NAMES; (C) BIRTH DATE; (D) NON-PUBLISHED TELEPHONE NUMBERS; (E) RECORDS OF TELEPHONE CALLS MADE AND RECEIVED; (F) INCOME; (G) BANK ACCOUNT AND INVESTMENT INFORMATION; (H) TAX INFORMATION; (I) ORGANIZATION MEMBERSHIPS AND DONATIONS; (J) PURCHASING INFORMATION OR PREFERENCES; (K) MEDICAL INFORMATION INCLUDING, BUT NOT LIMITED TO, MEDICAL HISTORY; (L) DRIVING RECORD; (M) CRIMINAL RECORD; OR (N) HISTORY OF CIVIL ACTIONS.

4. "CONSUMER REPORTING AGENCY" SHALL HAVE THE SAME MEANING AS PROVIDED IN SUBDIVISION (E) OF SECTION THREE HUNDRED EIGHTY-A OF THIS CHAPTER.

5. "DATA SUBJECT" MEANS ANY NATURAL PERSON ABOUT WHOM CONFIDENTIAL PERSONAL INFORMATION HAS BEEN COLLECTED OR IS MAINTAINED.

6. "EXCLUSION LISTS" MEANS THE LISTS ESTABLISHED AND MAINTAINED BY THE BOARD OF DATA SUBJECTS RESIDING IN THIS STATE WHO HAVE REQUESTED THAT THEIR CONFIDENTIAL PERSONAL INFORMATION NOT BE DISCLOSED BY AN INFORMATION BROKER.

7. (A) "INFORMATION BROKER" MEANS ANY INDIVIDUAL REFERENCE SERVICES PROVIDER OR A MARKETING LIST BROKER.

(B) "INDIVIDUAL REFERENCE SERVICES PROVIDER" MEANS ANY PERSON WHO PRIMARILY ENGAGES IN THE BUSINESS OF COLLECTING, ASSEMBLING OR MAINTAINING CONFIDENTIAL PERSONAL INFORMATION FOR THE PURPOSE OF PROVIDING, DIRECTLY OR INDIRECTLY, REPORTS CONTAINING SUCH INFORMATION ABOUT INDIVIDUAL DATA SUBJECTS TO THIRD PARTIES FOR MONETARY COMPENSATION OR OTHER CONSIDERATION. A PERSON OR ENTITY THAT ENGAGES IN INDIVIDUAL REFERENCE SERVICES PROVIDER ACTIVITIES SHALL BE PRESUMED TO BE PRIMARILY ENGAGED IN SUCH PRACTICE IF THE REVENUE SUCH PERSON OR ENTITY DERIVES FROM SUCH PRACTICE REPRESENTS MORE THAN TWENTY PERCENT OF SUCH PERSON'S OR ENTITY'S PROFESSIONAL SERVICE-RELATED REVENUE.

(C) "MARKETING LIST BROKER" MEANS ANY PERSON WHO, FOR MONETARY COMPENSATION OR OTHER CONSIDERATION, PRIMARILY ENGAGES IN THE BUSINESS OF CREATING, ASSEMBLING, EVALUATING OR PROVIDING, DIRECTLY OR INDIRECTLY, MARKETING REPORTS. A PERSON OR ENTITY THAT ENGAGES IN MARKETING LIST BROKER ACTIVITIES SHALL BE PRESUMED TO BE PRIMARILY ENGAGED IN SUCH PRACTICE IF THE REVENUE SUCH PERSON OR ENTITY DERIVES FROM SUCH PRACTICE REPRESENTS MORE THAN TWENTY PERCENT OF SUCH PERSON'S OR ENTITY'S PROFESSIONAL SERVICE-RELATED REVENUE. FOR THE PURPOSES OF THIS ARTICLE, THE TERMS "INFORMATION BROKER", "INDIVIDUAL REFERENCE SERVICES PROVIDER" AND "MARKETING LIST BROKER" SHALL NOT INCLUDE THE FOLLOWING:

(I) THE FEDERAL OR STATE GOVERNMENT OR ANY POLITICAL SUBDIVISION THEREOF;

(II) ANY PERSON, WHEN FURNISHING INFORMATION TO THE FEDERAL OR STATE GOVERNMENT, OR ANY POLITICAL SUBDIVISION THEREOF;

(III) A CONSUMER REPORTING AGENCY, WHEN ENGAGED IN THE PRACTICE OF CREATING, ASSEMBLING, EVALUATING, OR PROVIDING A CONSUMER REPORT OR INVESTIGATIVE CONSUMER REPORT PURSUANT TO ARTICLE TWENTY-FIVE OF THIS CHAPTER;

(IV) ANY PERSON, WHEN FURNISHING INFORMATION TO A CONSUMER REPORTING AGENCY TO BE INCLUDED IN A CONSUMER REPORT OR AN INVESTIGATIVE CONSUMER REPORT PURSUANT TO ARTICLE TWENTY-FIVE OF THIS CHAPTER;

(V) ANY PERSON, OTHER THAN A NATURAL PERSON, WHEN COMMUNICATING INFORMATION SOLELY AMONG AFFILIATES;

(VI) ANY PERSON WITH AN ESTABLISHED BUSINESS RELATIONSHIP WITH THE DATA SUBJECT;

(VII) NEWS MEDIA ORGANIZATIONS;

(VIII) LICENSED PRIVATE INVESTIGATORS WHEN ENGAGED IN THE BUSINESS OF PRIVATE INVESTIGATOR AS DEFINED IN SECTION SEVENTY-ONE OF THIS CHAPTER, EXCEPT WHEN PROVIDING INFORMATION SET FORTH IN PARAGRAPH (A), (D), (E), (G), (H) OR (K) OF SUBDIVISION THREE OF THIS SECTION; OR

(IX) ANY LABOR UNION ENGAGED IN A PRACTICE OR PURSUANT TO A PURPOSE AUTHORIZED BY THE FEDERAL NATIONAL LABOR RELATIONS ACT.

8. "INDIVIDUAL REFERENCE SERVICES REPORT" MEANS A REPORT OR PRESENTATION CONTAINING CONFIDENTIAL PERSONAL INFORMATION PROVIDED BY AN INDIVIDUAL REFERENCE SERVICES PROVIDER TO ANOTHER PERSON FOR MONETARY COMPENSATION OR OTHER CONSIDERATION.

9. "MARKETING LIST INFORMATION" MEANS THE NAMES, MAILING ADDRESSES OR ELECTRONIC MAIL ADDRESSES OF DATA SUBJECTS.

10. "MARKETING REPORT" MEANS A REPORT OR LIST CONTAINING MARKETING LIST INFORMATION REGARDING DATA SUBJECTS CATEGORIZED OR GROUPED BY CHARACTERISTICS, CONDITIONS, CIRCUMSTANCES, TRAITS, PREFERENCES OR MODE OF LIVING.

11. "PERSON" MEANS ANY NATURAL PERSON AND ANY FIRM, ORGANIZATION, PARTNERSHIP, ASSOCIATION, CORPORATION OR OTHER ENTITY, EXCEPT A NOT-FOR-PROFIT ORGANIZATION.

S 676-A. COLLECTION AND DISTRIBUTION OF PERSONAL INFORMATION BY INDIVIDUAL REFERENCE SERVICES PROVIDERS. 1. RIGHT OF INDIVIDUALS TO PROTECT CONFIDENTIAL PERSONAL INFORMATION. EVERY DATA SUBJECT SHALL HAVE THE RIGHT TO REQUIRE THAT CONFIDENTIAL PERSONAL INFORMATION ABOUT SUCH DATA SUBJECT IS EXCLUDED FROM ANY INDIVIDUAL REFERENCE SERVICES REPORT BY PROVIDING NOTICE EITHER THROUGH A NOTIFICATION SYSTEM ESTABLISHED BY THE INDIVIDUAL REFERENCE SERVICES PROVIDER PURSUANT TO SUBDIVISION THREE OF THIS SECTION, OR THROUGH THE NOTIFICATION SYSTEM MAINTAINED BY THE BOARD PURSUANT TO SECTION SIX HUNDRED SEVENTY-SIX-C OF THIS ARTICLE.

2. WITHHOLDING CONFIDENTIAL PERSONAL INFORMATION. UPON RECEIPT OF NOTICE THAT A DATA SUBJECT DOES NOT WANT CONFIDENTIAL PERSONAL INFORMATION REVEALED, WHETHER NOTIFICATION IS PROVIDED THROUGH THE SYSTEM ESTABLISHED PURSUANT TO SUBDIVISION THREE OF THIS SECTION OR THROUGH THE SYSTEM MAINTAINED PURSUANT TO SECTION SIX HUNDRED SEVENTY-SIX-C OF THIS ARTICLE, EVERY INDIVIDUAL REFERENCE SERVICES PROVIDER SHALL BE PROHIBITED FROM DISCLOSING CONFIDENTIAL PERSONAL INFORMATION ABOUT THAT DATA SUBJECT, UNLESS THE DATA SUBJECT PROVIDES WRITTEN CONSENT TO THE DISCLOSURE. AN ELECTION BY A DATA SUBJECT UNDER THIS SECTION SHALL BE EFFECTIVE WITH RESPECT TO THE INDIVIDUAL REFERENCE SERVICES PROVIDER AND EVERY AFFILIATE, AGENT AND EMPLOYEE OF THE INDIVIDUAL REFERENCE SERVICES PROVIDER, ON THE DATE ON WHICH THE DATA SUBJECT NOTIFIES THE INDIVIDUAL REFERENCE SERVICES PROVIDER. NOTIFICATION FROM A DATA SUBJECT THAT ALL CONFIDENTIAL PERSONAL INFORMATION MUST BE WITHHELD SHALL REMAIN IN EFFECT FOR A PERIOD OF FIVE YEARS.

3. NOTIFICATION OF ELECTION TO HAVE CONFIDENTIAL PERSONAL INFORMATION WITHHELD. EVERY INDIVIDUAL REFERENCE SERVICES PROVIDER SHALL ESTABLISH AND MAINTAIN A NOTIFICATION SYSTEM THROUGH WHICH A DATA SUBJECT MAY ELECT TO HAVE ALL CONFIDENTIAL PERSONAL INFORMATION ON SUCH DATA SUBJECT EXCLUDED FROM ANY INDIVIDUAL REFERENCE SERVICES REPORT PROVIDED BY THE INDIVIDUAL REFERENCE SERVICES PROVIDER. THE INDIVIDUAL REFERENCE SERVICES PROVIDER SHALL ACCEPT REQUESTS IN WRITING OR BY TELEPHONE AND SHALL ESTABLISH A TOLL-FREE TELEPHONE NUMBER FOR THIS PURPOSE. EACH INDIVIDUAL REFERENCE SERVICES PROVIDER THAT MAINTAINS FILES ON DATA SUBJECTS ON A NATIONWIDE BASIS SHALL ESTABLISH AND MAINTAIN SUCH NOTIFICATION SYSTEM JOINTLY WITH AFFILIATED INDIVIDUAL REFERENCE SERVICES PROVIDERS. UNDER NO CIRCUMSTANCES MAY ANY INFORMATION ABOUT AN INDIVIDUAL ACQUIRED THROUGH THE NOTIFICATION SYSTEM BE DISCLOSED IN ANY INDIVIDUAL REFERENCE SERVICES REPORT OR OTHERWISE, EXCEPT TO A GOVERNMENT AGENCY OR PURSUANT TO A COURT ORDER.

4. NOTICE OF REQUEST FOR AND DISCLOSURE OF CONFIDENTIAL PERSONAL INFORMATION. (A) EVERY INDIVIDUAL REFERENCE SERVICES PROVIDER SHALL SEND A WRITTEN NOTICE TO A DATA SUBJECT WHENEVER THE INDIVIDUAL REFERENCE SERVICES PROVIDER HAS PROVIDED AN INDIVIDUAL REFERENCE SERVICES REPORT CONCERNING THE DATA SUBJECT; EXCEPT THAT NO SUCH NOTICE SHALL BE GIVEN WHEN A REPORT IS PROVIDED TO A GOVERNMENTAL AGENCY OR PURSUANT TO A COURT ORDER. THE NOTICE SHALL CLEARLY AND CONSPICUOUSLY DESCRIBE THE FOLLOWING: (1) THE NAME, ADDRESS AND THE TELEPHONE NUMBER OF THE PERSON WHO REQUESTED THE INDIVIDUAL REFERENCE SERVICES REPORT; (2) THE DATE OF SUCH REQUEST; (3) THE DATA SUBJECT HAS THE RIGHT TO RECEIVE A COPY OF

THE REPORT FREE OF CHARGE ANNUALLY AND TO RECEIVE ADDITIONAL COPIES AT A FEE NOT EXCEEDING EIGHT DOLLARS; (4) THE DATA SUBJECT HAS THE RIGHT TO REQUEST THAT CONFIDENTIAL PERSONAL INFORMATION BE WITHHELD FROM FUTURE REPORTS; AND (5) THE DATA SUBJECT'S RIGHTS UNDER THIS SECTION AND SECTION SIX HUNDRED SEVENTY-SIX-C OF THIS ARTICLE. SUCH NOTICE SHALL BE PRINTED IN NO SMALLER THAN TWELVE POINT TYPE AND SHALL BE SENT NO LATER THAN THE DATE WHEN SUCH INDIVIDUAL REFERENCE SERVICES REPORT IS SENT TO THE REQUESTING PERSON.

(B) EVERY INDIVIDUAL REFERENCE SERVICES PROVIDER SHALL CLEARLY AND CONSPICUOUSLY POST ON ANY WEBSITE MAINTAINED BY SAID INDIVIDUAL REFERENCE SERVICES PROVIDER A NOTICE OUTLINING THE DATA SUBJECT RIGHTS AND LIABILITIES; AND SUCH NOTICE SHALL BE PRINTED IN NO SMALLER THAN TWELVE POINT TYPE AND SHALL BE PERMANENTLY DISPLAYED ON SUCH WEBSITES.

5. DISCLOSURE OF INDIVIDUAL REFERENCE SERVICES REPORT TO DATA SUBJECT. EVERY DATA SUBJECT SHALL HAVE THE RIGHT TO OBTAIN ALL INFORMATION ABOUT SUCH DATA SUBJECT IN THE FILES OF AN INDIVIDUAL REFERENCE SERVICES PROVIDER PURSUANT TO THE PROCEDURES SET FORTH IN THIS SUBDIVISION.

(A) EVERY INDIVIDUAL REFERENCE SERVICES PROVIDER SHALL, UPON REQUEST AND PROPER IDENTIFICATION OF ANY DATA SUBJECT, CLEARLY AND ACCURATELY DISCLOSE TO THE DATA SUBJECT THE NATURE, CONTENTS, AND SUBSTANCE OF ALL INFORMATION IN ITS FILE PERTAINING TO THE DATA SUBJECT, OR DELIVER TO THE DATA SUBJECT A COPY OF ALL SUCH INFORMATION, INCLUDING ANY CODES OR KEYS NECESSARY TO INTERPRET SUCH INFORMATION. IN ADDITION, THE INDIVIDUAL REFERENCE SERVICES PROVIDER SHALL PROVIDE THE DATA SUBJECT WITH THE NAME AND ADDRESS OF THE RECIPIENTS OF ANY INDIVIDUAL REFERENCE SERVICES REPORTS REGARDING THE DATA SUBJECT PROVIDED WITHIN THE TWELVE-MONTH PERIOD PRECEDING THE REQUEST, OTHER THAN REPORTS PROVIDED TO A GOVERNMENTAL AGENCY OR PURSUANT TO A COURT ORDER. THE INDIVIDUAL REFERENCE SERVICES PROVIDER MAY NOT IMPOSE ANY FEE OR CHARGE UPON THE DATA SUBJECT FOR THE DISCLOSURE REQUIRED BY THIS SUBDIVISION, PROVIDED THAT A FEE OF NOT MORE THAN EIGHT DOLLARS MAY BE CHARGED IF THE DATA SUBJECT HAS REQUESTED AND RECEIVED SUCH A REPORT WITHIN THE PRIOR TWELVE MONTHS.

(B) IF A DATA SUBJECT REQUESTS DISCLOSURE OF INFORMATION IN THE FILES OF AN INDIVIDUAL REFERENCE SERVICES PROVIDER WITHOUT PROVIDING SUFFICIENT PROOF OF IDENTITY, THE INDIVIDUAL REFERENCE SERVICES PROVIDER SHALL ADVISE THE DATA SUBJECT OF THE INFORMATION REQUIRED TO ESTABLISH SUCH PROOF OF IDENTITY. NO INFORMATION SHALL BE DISCLOSED TO A DATA SUBJECT UNLESS AND UNTIL THE DATA SUBJECT PROVIDES SUFFICIENT PROOF OF IDENTITY. INFORMATION RECEIVED BY AN INDIVIDUAL REFERENCE SERVICES PROVIDER FOR THE PURPOSE OF ESTABLISHING PROOF OF IDENTITY MAY NOT BE USED FOR ANY OTHER PURPOSE AND MAY NOT BE DISCLOSED IN AN INDIVIDUAL REFERENCE SERVICES REPORT OR OTHERWISE, EXCEPT TO A GOVERNMENT AGENCY OR PURSUANT TO COURT ORDER.

6. NOTICE OF RIGHTS OF DATA SUBJECTS. EVERY INDIVIDUAL REFERENCE SERVICES PROVIDER, UPON CONTACT BY A DATA SUBJECT BY TELEPHONE, REGULAR MAIL, ELECTRONIC MAIL OR IN PERSON REGARDING INFORMATION WHICH MAY BE CONTAINED IN THE INDIVIDUAL REFERENCE SERVICES PROVIDER'S FILES REGARDING THAT DATA SUBJECT, SHALL NOTIFY THE DATA SUBJECT OF THE RIGHTS ESTABLISHED BY THIS SECTION AND SECTION SIX HUNDRED SEVENTY-SIX-C OF THIS ARTICLE. IF THE CONTACT IS MADE BY TELEPHONE OR IN PERSON, THE INDIVIDUAL REFERENCE SERVICES PROVIDER SHALL PROVIDE SUCH NOTICE ORALLY AT THE TIME OF SUCH CONVERSATION OR IF CONTACT IS BY ELECTRONIC MAIL OR IN WRITING, SUCH NOTICE SHALL BE IN WRITING, IN A CLEAR AND CONSPICUOUS FORMAT IN NO SMALLER THAN TWELVE POINT TYPE.

7. PROTECTION OF CONFIDENTIAL PERSONAL INFORMATION. EVERY INDIVIDUAL REFERENCE SERVICES PROVIDER SHALL ESTABLISH APPROPRIATE ADMINISTRATIVE,

TECHNICAL AND PHYSICAL SAFEGUARDS TO ENSURE THE SECURITY AND CONFIDENTIALITY OF RECORDS AND TO PROTECT AGAINST ANY ANTICIPATED THREATS OR HAZARDS TO THEIR SECURITY OR INTEGRITY WHICH COULD RESULT IN SUBSTANTIAL HARM, EMBARRASSMENT, INCONVENIENCE OR UNFAIRNESS TO ANY DATA SUBJECT ABOUT WHOM INFORMATION IS MAINTAINED.

S 676-B. COLLECTION AND DISTRIBUTION OF PERSONAL INFORMATION BY MARKETING LIST BROKERS. 1. RIGHT OF EXCLUSION FROM MARKETING REPORTS. EVERY DATA SUBJECT SHALL HAVE THE RIGHT TO HAVE MARKETING LIST INFORMATION ABOUT THE DATA SUBJECT EXCLUDED FROM MARKETING REPORTS ISSUED BY MARKETING LIST BROKERS BY PROVIDING NOTICE EITHER DIRECTLY TO THE MARKETING LIST BROKER OR THROUGH THE NOTIFICATION SYSTEM MAINTAINED BY THE BOARD PURSUANT TO SECTION SIX HUNDRED SEVENTY-SIX-C OF THIS ARTICLE.

2. REMOVAL OF DATA SUBJECTS FROM MARKETING REPORTS. UPON RECEIPT OF NOTICE THAT A DATA SUBJECT DOES NOT WANT MARKETING LIST INFORMATION INCLUDED IN ANY MARKETING REPORT, EVERY MARKETING LIST BROKER SHALL BE PROHIBITED FROM INCLUDING SUCH MARKETING LIST INFORMATION IN ANY MARKETING REPORT, UNLESS THE DATA SUBJECT PROVIDES WRITTEN CONSENT TO THE INCLUSION OF SUCH INFORMATION. AN ELECTION BY A DATA SUBJECT UNDER THIS SECTION SHALL BE EFFECTIVE WITH RESPECT TO THE MARKETING LIST BROKER, AND EVERY AFFILIATE, AGENT AND EMPLOYEE OF SUCH MARKETING LIST BROKER, THIRTY DAYS AFTER THE DATE ON WHICH THE DATA SUBJECT NOTIFIES THE MARKETING LIST BROKER. NOTIFICATION FROM A DATA SUBJECT THAT MARKETING LIST INFORMATION MUST BE WITHHELD SHALL REMAIN IN EFFECT FOR FIVE YEARS.

3. DISCLOSURE OF MARKETING LIST REPORT TO DATA SUBJECT. EVERY DATA SUBJECT SHALL HAVE THE RIGHT TO OBTAIN ALL INFORMATION ABOUT SUCH DATA SUBJECT IN THE FILES OF A MARKETING LIST BROKER PURSUANT TO THE PROCEDURES SET FORTH IN THIS SUBDIVISION. (A) EVERY MARKETING LIST BROKER SHALL, UPON REQUEST AND PROPER IDENTIFICATION OF ANY DATA SUBJECT, CLEARLY AND ACCURATELY DISCLOSE TO THE DATA SUBJECT THE NATURE, CONTENTS, AND SUBSTANCE OF ALL INFORMATION IN ITS FILE PERTAINING TO THE DATA SUBJECT, OR DELIVER TO THE DATA SUBJECT A COPY OF ALL SUCH INFORMATION, INCLUDING ANY CODES OR KEYS NECESSARY TO INTERPRET SUCH INFORMATION. IN ADDITION, THE MARKETING LIST BROKER SHALL PROVIDE THE DATA SUBJECT WITH THE NAME AND ADDRESSES OF THE RECIPIENTS OF ANY MARKETING REPORTS REGARDING THE DATA SUBJECT PROVIDED WITHIN THE TWELVE-MONTH PERIOD PRECEDING THE REQUEST, OTHER THAN REPORTS PROVIDED TO A GOVERNMENTAL AGENCY OR PURSUANT TO A COURT ORDER. THE MARKETING LIST BROKER MAY NOT IMPOSE ANY FEE OR CHARGE UPON THE DATA SUBJECT FOR THE DISCLOSURE REQUIRED BY THIS SUBDIVISION, PROVIDED THAT A FEE OF NOT MORE THAN EIGHT DOLLARS MAY BE CHARGED IF THE DATA SUBJECT HAS REQUESTED AND RECEIVED SUCH A REPORT WITHIN THE PRIOR TWELVE MONTHS.

(B) IF A DATA SUBJECT REQUESTS DISCLOSURE OF INFORMATION IN THE FILES OF A MARKETING LIST BROKER WITHOUT PROVIDING SUFFICIENT PROOF OF IDENTITY, THE MARKETING LIST BROKER SHALL ADVISE THE DATA SUBJECT OF THE INFORMATION REQUIRED TO ESTABLISH SUCH PROOF OF IDENTITY. NO INFORMATION SHALL BE DISCLOSED TO A DATA SUBJECT UNLESS AND UNTIL THE DATA SUBJECT PROVIDES SUFFICIENT PROOF OF IDENTITY. INFORMATION RECEIVED BY A MARKETING LIST BROKER FOR THE PURPOSE OF ESTABLISHING PROOF OF IDENTITY MAY NOT BE USED FOR ANY OTHER PURPOSE AND MAY NOT BE DISCLOSED IN A MARKETING REPORT OR OTHERWISE, EXCEPT TO A GOVERNMENT AGENCY OR PURSUANT TO A COURT ORDER.

4. NOTICE OF RIGHTS OF DATA SUBJECTS. EVERY MARKETING LIST BROKER UPON CONTACT BY A DATA SUBJECT BY TELEPHONE, REGULAR MAIL, ELECTRONIC MAIL OR IN PERSON REGARDING INFORMATION WHICH MAY BE CONTAINED IN THE MARKETING LIST BROKER'S FILES REGARDING THAT DATA SUBJECT, SHALL NOTIFY THE DATA SUBJECT OF THE RIGHTS ESTABLISHED BY THIS SECTION AND SECTION SIX

HUNDRED SEVENTY-SIX-C OF THIS ARTICLE. IF THE CONTACT IS MADE BY TELEPHONE OR IN PERSON, THE MARKETING LIST BROKER SHALL PROVIDE SUCH NOTICE ORALLY AT THE TIME OF SUCH CONVERSATION, OR IF THE CONTACT IS MADE BY ELECTRONIC MAIL OR IN WRITING, SUCH NOTICE SHALL BE IN WRITING IN A CLEAR AND CONSPICUOUS FORMAT AND IN NO SMALLER THAN TWELVE POINT TYPE.

5. PROTECTION OF MARKETING LIST INFORMATION. EVERY MARKETING LIST BROKER SHALL ESTABLISH, MAINTAIN AND UPDATE APPROPRIATE WRITTEN ADMINISTRATIVE, TECHNICAL AND PHYSICAL SAFEGUARDS TO ENSURE THE SECURITY AND CONFIDENTIALITY OF RECORDS AND TO PROTECT AGAINST ANY UNANTICIPATED THREATS OR HAZARDS TO THEIR SECURITY OR INTEGRITY WHICH COULD RESULT IN SUBSTANTIAL HARM, EMBARRASSMENT, INCONVENIENCE OR UNFAIRNESS TO ANY DATA SUBJECT ABOUT WHOM INFORMATION IS MAINTAINED.

S 676-C. EXCLUSION LISTS. 1. THE BOARD SHALL ESTABLISH, MANAGE AND OPERATE, OR ENTER INTO AN AGREEMENT WITH ANOTHER PERSON WHO IS NOT AN INFORMATION BROKER TO ESTABLISH, MANAGE AND OPERATE, THE FOLLOWING TWO EXCLUSION LISTS:

(A) AN INDIVIDUAL REFERENCE SERVICES PROVIDER EXCLUSION LIST CONSISTING OF THE DATA SUBJECTS WHO DO NOT WANT THEIR CONFIDENTIAL PERSONAL INFORMATION DISCLOSED IN ANY INFORMATION REFERENCE SERVICES REPORT; AND

(B) A MARKETING BROKER EXCLUSION LIST CONSISTING OF THE DATA SUBJECTS WHO DO NOT WANT THEIR MARKETING LIST INFORMATION INCLUDED IN ANY MARKETING REPORT.

2. EACH EXCLUSION LIST SHALL INCLUDE ALL DATA SUBJECTS WHO HAVE NOTIFIED THE BOARD THAT THEY WISH TO BE INCLUDED ON THE LIST OR HAVE OTHERWISE INDICATED THAT THEY DO NOT WISH TO HAVE THEIR CONFIDENTIAL PERSONAL INFORMATION DISCLOSED IN ANY INFORMATION REFERENCE SERVICES REPORT OR TO HAVE THEIR MARKETING LIST INFORMATION INCLUDED IN ANY MARKETING REPORT. THE NAME AND OTHER IDENTIFYING INFORMATION OF EACH DATA SUBJECT SHALL REMAIN ON THE EXCLUSION LISTS FOR FIVE YEARS, AND THE BOARD MAY BY REGULATION PROVIDE FOR OTHER CIRCUMSTANCES UNDER WHICH REMOVAL MAY BE MADE. THE EXCLUSION LISTS SHALL BE PUBLISHED EVERY THIRTY-ONE DAYS IN HARD COPY AND MAY BE MADE AVAILABLE IN OTHER FORMATS AS PRESCRIBED BY THE BOARD.

3. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, NO INFORMATION BROKER, OR ANY AFFILIATE, AGENT OR EMPLOYEE OF SUCH INFORMATION BROKER, SHALL ISSUE OR CAUSE TO BE ISSUED ANY REPORT CONTAINING CONFIDENTIAL PERSONAL INFORMATION OR MARKETING LIST INFORMATION RELATING TO ANY DATA SUBJECT LISTED IN THE MOST RECENT RELEVANT EXCLUSION LIST PUBLISHED BY THE BOARD.

4. (A) THE BOARD SHALL PROMULGATE RULES OR REGULATIONS WHICH SPECIFY:

(1) THE METHODS BY WHICH MEMBERS OF THE PUBLIC WILL BE ADVISED THAT THE EXCLUSION LISTS HAVE BEEN CREATED AND THAT DATA SUBJECTS HAVE THE RIGHT TO BE ADDED TO THE LISTS;

(2) THE METHODS BY WHICH A DATA SUBJECT MAY GIVE NOTICE TO THE BOARD OR OTHER ENTITY OPERATING THE EXCLUSION LIST THAT SUCH DATA SUBJECT MUST BE LISTED ON THE EXCLUSION LIST;

(3) THE METHODS BY WHICH A DATA SUBJECT MAY REVOKE A NOTICE PREVIOUSLY GIVEN AND BE REMOVED FROM THE EXCLUSION LIST;

(4) THE METHODS BY WHICH ANY INFORMATION BROKER MAY OBTAIN ACCESS TO THE EXCLUSION LIST; AND

(5) SUCH OTHER MATTERS THAT THE BOARD DEEMS NECESSARY TO IMPLEMENT THIS SECTION.

(B) THE BOARD MAY IMPOSE A CHARGE ON INFORMATION BROKERS IN AN AMOUNT CALCULATED TO DEFRAY THE COSTS OF COMPILING AND MAINTAINING THE EXCLUSION LISTS. IF SUCH EXCLUSION LISTS ARE COMPILED AND MAINTAINED BY AN ENTITY OTHER THAN THE BOARD, THE AGREEMENT ENTERED INTO SHALL SPECIFY

THE AMOUNT THAT SUCH ENTITY SHALL BE PERMITTED TO CHARGE INFORMATION BROKERS FOR OBTAINING ACCESS TO THE EXCLUSION LISTS. IN NO CASE MAY A DATA SUBJECT BE CHARGED FOR BEING INCLUDED IN THE EXCLUSION LIST.

(C) INFORMATION OBTAINED FOR THE PURPOSE OF COMPILING THE EXCLUSION LISTS, INCLUDING BUT NOT LIMITED TO THE NAMES, ADDRESSES, ELECTRONIC MAIL ADDRESSES AND TELEPHONE NUMBERS OF DATA SUBJECTS WHO REQUEST TO BE ADDED TO THE EXCLUSION LIST, MAY BE USED ONLY FOR THE PURPOSE OF COMPLIANCE WITH THIS SECTION OR IN A PROCEEDING OR ACTION COMMENCED PURSUANT TO THIS SECTION. SUCH INFORMATION SHALL NOT BE SUBJECT TO PUBLIC INSPECTION OR ANY OTHER DISCLOSURE.

S 676-D. PENALTIES. 1. WHERE IT IS DETERMINED AFTER HEARING THAT ANY PERSON HAS VIOLATED ONE OR MORE PROVISIONS OF THIS SECTION, THE CHAIRPERSON OF THE BOARD, OR ANY PERSON DEPUTIZED OR SO DESIGNATED BY HIM OR HER MAY ASSESS A FINE NOT TO EXCEED FIVE THOUSAND DOLLARS FOR EACH VIOLATION.

2. ANY PROCEEDING CONDUCTED PURSUANT TO SUBDIVISION ONE OF THIS SECTION SHALL BE SUBJECT TO THE STATE ADMINISTRATIVE PROCEDURE ACT.

3. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO RESTRICT ANY RIGHT WHICH ANY PERSON MAY HAVE UNDER ANY OTHER STATUTE OR AT COMMON LAW.

S 676-E. CIVIL LIABILITY. 1. IN ADDITION TO THE RIGHT OF ACTION GRANTED TO THE BOARD PURSUANT TO THIS ARTICLE, ANY PERSON WHO HAS HAD CONFIDENTIAL PERSONAL INFORMATION OR MARKETING LIST INFORMATION DISCLOSED IN VIOLATION OF THIS ARTICLE MAY BRING AN ACTION IN HIS OR HER OWN NAME TO ENJOIN SUCH UNLAWFUL ACT OR PRACTICE, AN ACTION TO RECOVER HIS OR HER ACTUAL DAMAGES OR ONE THOUSAND DOLLARS, WHICHEVER IS GREATER, OR BOTH SUCH ACTIONS. THE COURT MAY, IN ITS DISCRETION, INCREASE THE AWARD OF DAMAGES TO AN AMOUNT NOT TO EXCEED THREE TIMES THE ACTUAL DAMAGES OR FIVE THOUSAND DOLLARS, WHICHEVER IS GREATER, FOR EACH WILLFUL OR KNOWING VIOLATION. THE COURT MAY AWARD REASONABLE ATTORNEY'S FEES TO A PREVAILING PLAINTIFF. THE REMEDIES, DUTIES, PROHIBITIONS AND PENALTIES PROVIDED IN THIS ARTICLE ARE NOT EXCLUSIVE AND ARE IN ADDITION TO ALL OTHER CAUSES OF ACTION, REMEDIES, AND PENALTIES PROVIDED BY LAW.

S 3. Section 553 of the executive law is amended by adding a new subdivision 4 to read as follows:

4. THE CONSUMER PROTECTION BOARD SHALL ESTABLISH AND MAINTAIN TWO EXCLUSION LISTS PURSUANT TO ARTICLE THIRTY-TWO-A OF THE GENERAL BUSINESS LAW.

S 4. Severability. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

S 5. This act shall take effect May 1, 2011. The consumer protection board shall promulgate such rules or regulations as are necessary to implement this act within 120 days after such effective date.