

1324

2011-2012 Regular Sessions

I N   A S S E M B L Y

(PREFILED)

January 5, 2011

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Introduced by M. of A. ORTIZ, DINOWITZ, HIKIND, CASTRO -- Multi-Sponsored by -- M. of A. GOTTFRIED, MAYERSOHN, McENENY -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to the collection and disclosure of certain information collected by on-line computer services

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

- 1     Section 1. The general business law is amended by adding a new section  
2     397-b to read as follows:  
3     S 397-B. ON-LINE COMPUTER SERVICES. 1. AS USED IN THIS SECTION, THE  
4     FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:  
5     (A) "ON-LINE COMPUTER SERVICE" MEANS THE OFFERING OF A CAPABILITY FOR  
6     GENERATING, ACQUIRING, STORING, TRANSFORMING, PROCESSING, RETRIEVING,  
7     UTILIZING OR MAKING AVAILABLE INFORMATION USING COMPUTER-BASED TELECOM-  
8     MUNICATIONS. ON-LINE COMPUTER SERVICE SHALL ALSO INCLUDE A SERVICE THAT  
9     PERMITS A SUBSCRIBER TO RETRIEVE STORED INFORMATION FROM OR FILE INFOR-  
10    MATION FOR STORAGE IN INFORMATION STORAGE FACILITIES, ELECTRONIC  
11    PUBLISHING OR AN ELECTRONIC MESSAGING SERVICE.  
12    (B) "PERSONAL INFORMATION" MEANS INFORMATION WHICH IDENTIFIES EITHER A  
13    SPECIFIC FILE OR SERVICE UTILIZED OR FROM AN ON-LINE COMPUTER SERVICE  
14    AND THE SUBSCRIBER AND/OR SUCH SUBSCRIBER'S ON-LINE COMPUTER ADDRESS WHO  
15    OBTAINED SUCH FILE OR SERVICE. PERSONAL INFORMATION SHALL NOT INCLUDE  
16    ANY RECORD OF AGGREGATE DATA WHICH DOES NOT IDENTIFY A FILE OR SERVICE  
17    UTILIZED AND A SUBSCRIBER AND/OR SUCH SUBSCRIBER'S ON-LINE COMPUTER  
18    ADDRESS.  
19    (C) "DISCLOSE" OR "DISCLOSURE" MEANS THE SALE, RENTAL OR OTHER DISSEM-  
20    INATION OF PERSONAL INFORMATION.  
21    (D) "FILE" MEANS A COLLECTION OF RELATED RECORDS TREATED AS A UNIT.

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

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1 (E) "RECORDS" MEANS A GROUP OF DISTINCT DATA ITEMS IN A COMPUTER  
2 SYSTEM, MANIPULATED AS A UNIT.

3 2. ANY PERSON, FIRM, PARTNERSHIP OR CORPORATION WHICH PROVIDES AN  
4 ON-LINE COMPUTER SERVICE MAY NOT DISCLOSE PERSONAL INFORMATION CONCERN-  
5 ING A SUBSCRIBER TO ANY OTHER PERSON, FIRM, PARTNERSHIP OR CORPORATION  
6 UNLESS SUCH SUBSCRIBER:

7 (A) HAS RECEIVED THE NOTICE PROVIDED FOR IN SUBDIVISION THREE OF THIS  
8 SECTION; AND

9 (B) HAS CONSENTED TO THE DISCLOSURE.

10 3. AT THE TIME OF ENTERING INTO AN AGREEMENT TO PROVIDE AN ON-LINE  
11 COMPUTER SERVICE TO A SUBSCRIBER AND AT SUCH TIME WHEN A SERVICE IS  
12 OBTAINED EACH AND EVERY ON-LINE COMPUTER SERVICE SHALL PROVIDE NOTICE IN  
13 THE FORM OF A SEPARATE STATEMENT TO THE SUBSCRIBER THAT CLEARLY AND  
14 CONSPICUOUSLY DISCLOSE THE FOLLOWING TO SUCH SUBSCRIBER:

15 (A) THE NATURE OF PERSONAL INFORMATION COLLECTED OR TO BE COLLECTED  
16 WITH RESPECT TO THE SUBSCRIBER AND THE NATURE AND USE OF THE INFORMATION  
17 IF ANY;

18 (B) THE NATURE, FREQUENCY AND PURPOSE OF ANY DISCLOSURE WHICH MAY BE  
19 MADE OF SUCH INFORMATION, INCLUDING AN IDENTIFICATION OF THE TYPES OF  
20 PERSONS OR PERSON TO WHOM SUCH DISCLOSURE MAY BE MADE;

21 (C) THE PERIOD OF TIME THE INFORMATION WILL BE MAINTAINED; AND

22 (D) A DESCRIPTION OF THE PROCEDURES BY WHICH THE SUBSCRIBER MAY GAIN  
23 ACCESS TO THE INFORMATION.

24 SUCH NOTICES MAY BE PROVIDED ELECTRONICALLY BY USING COMPUTER-BASED  
25 TELECOMMUNICATIONS.

26 4. UPON REQUEST A SUBSCRIBER SHALL BE PROVIDED ACCESS TO ALL PERSONAL  
27 INFORMATION REGARDING SUCH SUBSCRIBER THAT IS COLLECTED AND MAINTAINED  
28 BY AN ON-LINE COMPUTER SERVICE. SUCH INFORMATION SHALL BE MADE AVAILABLE  
29 AT REASONABLE TIMES AND AT A CONVENIENT LOCATION TO THE SUBSCRIBER.  
30 COMPUTER-BASED TELECOMMUNICATIONS MAY BE THE MEANS BY WHICH SUCH INFOR-  
31 MATION IS PROVIDED TO THE SUBSCRIBER. THE SUBSCRIBER SHALL BE PROVIDED  
32 REASONABLE OPPORTUNITY BY THE ON-LINE COMPUTER SERVICE TO CORRECT ERRORS  
33 IN PERSONAL INFORMATION AND THE ON-LINE COMPUTER SERVICE SHALL PROMPTLY  
34 CORRECT SUCH INFORMATION. IF THE ON-LINE COMPUTER SERVICE IS UNABLE TO  
35 RESOLVE ANY REMAINING DIFFERENCES, A SUBSCRIBER SHALL ALSO BE PROVIDED  
36 WITH THE OPPORTUNITY TO FILE A STATEMENT OF EXPLANATION CONCERNING THE  
37 NATURE OF ANY DISPUTE.

38 5. NOTWITHSTANDING SUBDIVISION TWO OF THIS SECTION, AN ON-LINE COMPUT-  
39 ER SERVICE MAY DISCLOSE PERSONAL INFORMATION IF THE DISCLOSURE IS:

40 (A) NECESSARY TO RENDER OR CONDUCT BUSINESS OR PROVIDE SERVICE TO THE  
41 SUBSCRIBER;

42 (B) MADE PURSUANT TO A COURT ORDER;

43 (C) FOR THE PURPOSE OF EXTENDING CREDIT TO THE SUBSCRIBER OR FOR A  
44 CHECK OR CREDIT CARD TRANSACTION WHEN IT IS INCIDENTAL TO THE SALE OR  
45 OTHER TRANSFER OF THE ACCOUNTS RECEIVABLE OF THE ON-LINE COMPUTER  
46 SERVICE; AND

47 (D) FOR THE PURPOSE OF VALIDATING A CHECK WRITTEN BY THE SUBSCRIBER.

48 6. NO ON-LINE COMPUTER SERVICE SHALL BE DEEMED TO HAVE VIOLATED THE  
49 PROVISIONS OF THIS SECTION, IF SUCH ON-LINE COMPUTER SERVICE SHOWS BY A  
50 PREPONDERANCE OF THE EVIDENCE THAT THE VIOLATION WAS NOT INTENTIONAL AND  
51 THAT IT RESULTED FROM A BONA FIDE ERROR MADE NOTWITHSTANDING THE MAINTENANCE  
52 OF PROCEDURES REASONABLY ADOPTED TO AVOID ANY SUCH ERROR.

53 7. ANY SUBSCRIBER WHO HAS BEEN INJURED BY REASON OF ANY VIOLATION OF  
54 THIS SECTION MAY BRING AN ACTION IN HIS OR HER OWN NAME TO ENJOIN SUCH  
55 UNLAWFUL ACT OR PRACTICE, AN ACTION TO RECOVER HIS ACTUAL DAMAGES OR ONE  
56 HUNDRED DOLLARS, WHICHEVER IS GREATER, OR BOTH SUCH ACTIONS. THE COURT

1 MAY, IN ITS DISCRETION, INCREASE THE AWARD OF DAMAGES TO AN AMOUNT NOT  
2 TO EXCEED THREE TIMES THE ACTUAL DAMAGES UP TO ONE THOUSAND DOLLARS, IF  
3 THE COURT FINDS THE DEFENDANT WILLFULLY OR KNOWINGLY VIOLATED THIS  
4 SECTION. THE COURT MAY AWARD REASONABLE ATTORNEY'S FEES TO A PREVAILING  
5 PLAINTIFF.

6 8. WHENEVER THERE SHALL BE A VIOLATION OF THIS SECTION, AN APPLICATION  
7 MAY BE MADE BY THE ATTORNEY GENERAL IN THE NAME OF THE PEOPLE OF THE  
8 STATE OF NEW YORK TO A COURT OR JUSTICE HAVING JURISDICTION TO ISSUE AN  
9 INJUNCTION, AND UPON NOTICE TO THE DEFENDANT OF NOT LESS THAN FIVE DAYS,  
10 TO ENJOIN AND RESTRAIN THE CONTINUANCE OF SUCH VIOLATIONS; AND IF IT  
11 SHALL APPEAR TO THE SATISFACTION OF THE COURT OR JUSTICE THAT THE  
12 DEFENDANT HAS, IN FACT, VIOLATED THIS SECTION, AN INJUNCTION MAY BE  
13 ISSUED BY SUCH COURT OR JUSTICE, ENJOINING AND RESTRAINING ANY FURTHER  
14 VIOLATION, WITHOUT REQUIRING PROOF THAT ANY PERSON HAS, IN FACT, BEEN  
15 INJURED OR DAMAGED THEREBY. IN ANY SUCH PROCEEDING THE COURT MAY MAKE  
16 ALLOWANCES TO THE ATTORNEY GENERAL AS PROVIDED IN PARAGRAPH SIX OF  
17 SUBDIVISION (A) OF SECTION EIGHTY-THREE HUNDRED THREE OF THE CIVIL PRAC-  
18 TICE LAW AND RULES, AND DIRECT RESTITUTION. WHENEVER THE COURT SHALL  
19 DETERMINE THAT A VIOLATION OF THIS SECTION HAS OCCURRED, THE COURT MAY  
20 IMPOSE A CIVIL PENALTY OF NOT MORE THAN ONE THOUSAND DOLLARS FOR EACH  
21 VIOLATION. IN CONNECTION WITH ANY SUCH PROPOSED APPLICATION, THE ATTOR-  
22 NEY GENERAL IS AUTHORIZED TO TAKE PROOF AND MAKE A DETERMINATION OF THE  
23 RELEVANT FACTS AND TO ISSUE SUBPOENAS IN ACCORDANCE WITH THE CIVIL PRAC-  
24 TICE LAW AND RULES.

25 S 2. This act shall take effect on the first of November next succeed-  
26 ing the date on which it shall have become a law.