

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

8631

I N A S S E M B L Y

January 29, 2014

Introduced by M. of A. DINOWITZ, GOTTFRIED, ROSENTHAL, GALEF, MILLMAN, CRESPO, CAHILL, JAFFEE, BRAUNSTEIN, ROBINSON, CLARK, COOK, MAYER, OTIS, ABINANTI, MONTESANO, RAIA -- Multi-Sponsored by -- M. of A. ARROYO, CAMARA, CROUCH, JACOBS, McDONOUGH, RIVERA, SCHIMEL, WEISENBERG -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to providing consumers with access to personal information retained by businesses

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
2 391-t to read as follows:
3 S 391-T. CONSUMER PRIVACY DISCLOSURE. 1. FOR THE PURPOSES OF THIS
4 SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:
5 (A) "BUSINESS" MEANS ANY PERSON, FIRM, CORPORATION, LIMITED LIABILITY
6 COMPANY, PARTNERSHIP OR ASSOCIATION, PROVIDED, HOWEVER, THAT "BUSINESS"
7 DOES NOT MEAN OR INCLUDE:
8 (I) ANY CHARITABLE ORGANIZATION REGISTERED PURSUANT TO SECTION ONE
9 HUNDRED SEVENTY-TWO OF THE EXECUTIVE LAW;
10 (II) ANY RELIGIOUS CORPORATION AS DEFINED IN SECTION TWO OF THE RELI-
11 GIOUS CORPORATIONS LAW;
12 (III) ANY PARTY AS DEFINED IN SUBDIVISION THREE OF SECTION 1-104 OF
13 THE ELECTION LAW;
14 (IV) ANY POLITICAL COMMITTEE AS DEFINED IN SUBDIVISION ONE OF SECTION
15 14-100 OF THE ELECTION LAW;
16 (V) ORGANIZATIONS THAT ARE CLASSIFIED AS CHARITABLE ORGANIZATIONS
17 UNDER SECTION 501 (C) (3) OF THE U.S. INTERNAL REVENUE CODE; AND
18 (VI) ANY CORPORATION FORMED UNDER THE NOT-FOR-PROFIT CORPORATION LAW.
19 (B) "CATEGORIES OF PERSONAL INFORMATION" SHALL INCLUDE, BUT NOT BE
20 LIMITED TO:
21 (I) IDENTITY INFORMATION, INCLUDING NAME, ALIAS, AND/OR USER NAME;
22 (II) ADDRESS INFORMATION, INCLUDING AN EMAIL ADDRESS OR EMAIL
23 ADDRESSES;
24 (III) TELEPHONE NUMBER OR NUMBERS;

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

LBD13351-03-4

1 (IV) ACCOUNT NAME OR NAMES;
2 (V) SOCIAL SECURITY NUMBER OR OTHER GOVERNMENT-ISSUED IDENTIFICATION
3 NUMBER, DRIVER'S LICENSE NUMBER, IDENTIFICATION CARD NUMBER, OR PASSPORT
4 NUMBER;
5 (VI) BIRTHDATE OR AGE;
6 (VII) PHYSICAL CHARACTERISTIC INFORMATION;
7 (VIII) SEXUAL ORIENTATION OR GENDER IDENTITY INFORMATION;
8 (IX) RACE AND/OR ETHNICITY;
9 (X) RELIGIOUS AFFILIATION;
10 (XI) POLITICAL AFFILIATION;
11 (XII) EDUCATIONAL, PROFESSIONAL, OR EMPLOYMENT-RELATED INFORMATION;
12 (XIII) MEDICAL INFORMATION;
13 (XIV) FINANCIAL INFORMATION;
14 (XV) COMMERCIAL INFORMATION;
15 (XVI) LOCATION INFORMATION;
16 (XVII) INTERNET OR MOBILE ACTIVITY INFORMATION;
17 (XVIII) CONTENT, INCLUDING TEXT, PHOTOGRAPHS, AUDIO OR VIDEO
18 RECORDINGS, OR OTHER MATERIAL GENERATED BY OR PROVIDED BY THE CONSUMER;
19 AND
20 (XIX) ANY OF THE ABOVE CATEGORIES OF INFORMATION AS THEY PERTAIN TO
21 THE CHILDREN OF A CONSUMER.
22 (C) "CONSUMER" MEANS AN INDIVIDUAL WHO IS A RESIDENT OF NEW YORK WHO
23 PROVIDES PERSONAL INFORMATION TO A BUSINESS, WITH OR WITHOUT AN EXCHANGE
24 OF CONSIDERATION, IN THE COURSE OF PURCHASING, VIEWING, ACCESSING, RENT-
25 ING, LEASING, OR OTHERWISE USING REAL OR PERSONAL PROPERTY, OR ANY
26 INTEREST THEREIN, OR OBTAINING A PRODUCT OR SERVICE FROM THE BUSINESS
27 INCLUDING ADVERTISING OR ANY OTHER CONTENT.
28 (D) "DESIGNATED REQUEST ADDRESS" MEANS A MAILING ADDRESS, EMAIL
29 ADDRESS, WEB PAGE, TOLL-FREE TELEPHONE NUMBER, OR OTHER APPLICABLE
30 CONTACT INFORMATION, WHEREBY CONSUMERS MAY REQUEST OR OBTAIN THE INFOR-
31 MATION REQUIRED TO BE PROVIDED UNDER SUBDIVISION TWO OF THIS SECTION.
32 (E) "DISCLOSE" MEANS TO DISCLOSE, RELEASE, SHARE, TRANSFER, DISSEM-
33 INATE, MAKE AVAILABLE, OR OTHERWISE COMMUNICATE ORALLY, IN WRITING, OR
34 BY ELECTRONIC OR ANY OTHER MEANS TO ANY THIRD PARTY AS DEFINED IN THIS
35 SECTION, PROVIDED, HOWEVER, THAT "DISCLOSE" DOES NOT MEAN OR INCLUDE THE
36 DISCLOSURE OF PERSONAL INFORMATION BY A BUSINESS TO A THIRD PARTY:
37 (I) PURSUANT TO A WRITTEN CONTRACT AUTHORIZING THE THIRD PARTY TO
38 UTILIZE THE PERSONAL INFORMATION TO PERFORM SERVICES ON BEHALF OF THE
39 BUSINESS, INCLUDING MAINTAINING OR SERVICING ACCOUNTS, PROVIDING CONSUM-
40 ER SERVICE, PROCESSING OR FULFILLING ORDERS AND TRANSACTIONS, VERIFYING
41 CONSUMER INFORMATION, PROCESSING PAYMENTS, PROVIDING FINANCING, OR SIMI-
42 LAR SERVICES, BUT ONLY IF THE CONTRACT PROHIBITS THE THIRD PARTY FROM
43 USING THE PERSONAL INFORMATION FOR ANY REASON OTHER THAN PERFORMING THE
44 SPECIFIED SERVICE OR SERVICES ON BEHALF OF THE BUSINESS AND FROM
45 DISCLOSING ANY SUCH PERSONAL INFORMATION TO ADDITIONAL THIRD PARTIES;
46 (II) BASED ON A GOOD-FAITH BELIEF THAT DISCLOSURE IS REQUIRED TO
47 COMPLY WITH APPLICABLE LAW, REGULATION, LEGAL PROCESS, OR COURT ORDER;
48 (III) THAT IS REASONABLY NECESSARY TO:
49 (1) ADDRESS FRAUD, SECURITY, OR TECHNICAL ISSUES; OR
50 (2) PROTECT CONSUMERS OR THE PUBLIC FROM ILLEGAL ACTIVITIES AS
51 REQUIRED OR PERMITTED BY LAW;
52 (IV) THAT IS OTHERWISE LAWFULLY AVAILABLE TO THE GENERAL PUBLIC,
53 PROVIDED THAT THE BUSINESS DID NOT DIRECT THE THIRD PARTY TO THE
54 PERSONAL INFORMATION;
55 (V) WHERE SUCH DISCLOSURE IS REQUIRED FOR THE PROTECTION OF THE BUSI-
56 NESS'S RIGHTS OR PROPERTY.

1 (F) "PERSONAL INFORMATION" MEANS:

2 (I) ANY INFORMATION THAT IDENTIFIES OR REFERENCES A PARTICULAR INDIVIDUAL OR ELECTRONIC DEVICE, INCLUDING, BUT NOT LIMITED TO ANY AND ALL
3 OF THOSE DESCRIBED IN SUBPARAGRAPHS (I) THROUGH (XIX) OF PARAGRAPH (B)
4 OF THIS SUBDIVISION OR ANY OTHER IDENTIFIER INTENDED OR ABLE TO BE
5 UNIQUELY ASSOCIATED WITH A PARTICULAR INDIVIDUAL OR DEVICE;

6 (II) ANY INFORMATION THAT RELATES TO OR DESCRIBES AN INDIVIDUAL,
7 INCLUDING, BUT NOT LIMITED TO ANY AND ALL OF THOSE DESCRIBED IN SUBPARA-
8 GRAPHS (I) THROUGH (XIX) OF PARAGRAPH (B) OF THIS SUBDIVISION PROVIDED
9 THAT SUCH INFORMATION DOES NOT INCLUDE PUBLICLY AVAILABLE INFORMATION
10 THAT IS LAWFULLY MADE AVAILABLE TO THE GENERAL PUBLIC FROM FEDERAL,
11 STATE, OR LOCAL GOVERNMENT RECORDS.

12 (G) "RETAINS" MEANS TO STORE OR OTHERWISE HOLD INFORMATION, WHETHER
13 THE INFORMATION IS COLLECTED OR OBTAINED DIRECTLY FROM THE SUBJECT OF
14 THE INFORMATION OR FROM ANY THIRD PARTY, PROVIDED, HOWEVER, THAT
15 "RETAINS" DOES NOT INCLUDE INFORMATION THAT IS STORED OR OTHERWISE HELD
16 SOLELY FOR ONE OR MORE OF THE FOLLOWING PURPOSES, SO LONG AS THE INFOR-
17 MATION IS DELETED AS SOON AS IT IS NO LONGER NEEDED FOR SUCH PURPOSE OR
18 PURPOSES:

19 (I) TO PERFORM A SERVICE OR COMPLETE A TRANSACTION INITIATED BY OR ON
20 BEHALF OF THE CONSUMER, INCLUDING MAINTAINING OR SERVICING ACCOUNTS,
21 PROVIDING CUSTOMER SERVICE, PROCESSING OR FULFILLING ORDERS AND TRANS-
22 ACTIONS, VERIFYING CONSUMER INFORMATION, PROCESSING PAYMENTS, PROVIDING
23 FINANCING, OR SIMILAR SERVICES;

24 (II) TO ADDRESS FRAUD, SECURITY OR TECHNICAL ISSUES;

25 (III) TO PROTECT CONSUMERS OR THE PUBLIC FROM ILLEGAL ACTIVITIES AS
26 REQUIRED OR PERMITTED BY LAW; AND

27 (IV) TO COMPLY WITH APPLICABLE LAW OR REGULATION WITH A COURT ORDER OR
28 OTHER LEGAL PROCESS WHERE THE BUSINESS HAS A GOOD-FAITH BELIEF THAT THE
29 LAW, REGULATION, COURT ORDER, OR LEGAL PROCESS REQUIRES SUCH SPECIFIC
30 INFORMATION TO BE STORED OR HELD.

31 (H) "THIRD PARTY" OR "THIRD PARTIES" MEANS ONE OR MORE OF THE FOLLOW-
32 ING:

33 (I) A BUSINESS THAT IS A SEPARATE LEGAL ENTITY FROM THE BUSINESS THAT
34 HAS DISCLOSED PERSONAL INFORMATION;

35 (II) A BUSINESS THAT DOES NOT SHARE COMMON OWNERSHIP OR COMMON CORPO-
36 RATE CONTROL WITH THE BUSINESS THAT HAS DISCLOSED PERSONAL INFORMATION;
37 OR

38 (III) A BUSINESS THAT DOES NOT SHARE A BRAND NAME OR COMMON BRANDING
39 WITH THE BUSINESS THAT HAS DISCLOSED PERSONAL INFORMATION SUCH THAT THE
40 AFFILIATE RELATIONSHIP IS CLEAR TO THE CONSUMER.

41 2. (A) A BUSINESS THAT RETAINS A CONSUMER'S PERSONAL INFORMATION SHALL
42 MAKE AVAILABLE TO THE CONSUMER FREE OF CHARGE ACCESS TO, OR COPIES OF,
43 ALL OF THE CONSUMER'S PERSONAL INFORMATION RETAINED BY THE BUSINESS.

44 (B) A BUSINESS THAT DISCLOSES A CONSUMER'S PERSONAL INFORMATION TO A
45 THIRD PARTY SHALL MAKE THE FOLLOWING INFORMATION AVAILABLE TO THE
46 CONSUMER FREE OF CHARGE:

47 (I) ALL CATEGORIES OF THE CONSUMER'S PERSONAL INFORMATION THAT WERE
48 DISCLOSED, INCLUDING THE CATEGORIES SET FORTH IN PARAGRAPH (B) OF SUBDI-
49 VISION ONE OF THIS SECTION; AND

50 (II) THE NAMES AND CONTACT INFORMATION OF ALL OF THE THIRD PARTIES
51 THAT RECEIVED THE CONSUMER'S PERSONAL INFORMATION FROM THE BUSINESS,
52 INCLUDING THE THIRD PARTY'S DESIGNATED REQUEST ADDRESS OR ADDRESSES, IF
53 AVAILABLE;
54

(C) A BUSINESS REQUIRED TO COMPLY WITH PARAGRAPHS (A) AND (B) OF THIS SUBDIVISION SHALL MAKE THE REQUIRED INFORMATION AVAILABLE IN A CLEAR AND CONSPICUOUS MANNER BY ONE OR MORE OF THE FOLLOWING MEANS:

(I) BY PROVIDING A DESIGNATED REQUEST ADDRESS AND, UPON RECEIPT OF A REQUEST UNDER THIS SECTION TO THE DESIGNATED REQUEST ADDRESS, PROVIDING THE CONSUMER, WITHIN THIRTY DAYS, WITH THE REQUIRED INFORMATION FOR ALL DISCLOSURES OCCURRING WITHIN THE PAST TWELVE MONTHS, PROVIDED THAT:

(1) IF THE BUSINESS HAS AN ONLINE PRIVACY POLICY, EACH POLICY INCLUDES A DESCRIPTION OF A CONSUMER'S RIGHTS PURSUANT TO THIS SECTION ACCOMPANIED BY ONE OR MORE DESIGNATED REQUEST ADDRESSES;

(2) THE BUSINESS PROVIDES INFORMATION PERTAINING TO THE SPECIFIC CONSUMER IF THAT INFORMATION IS REASONABLY AVAILABLE TO THE BUSINESS; AND

(3) THE BUSINESS PROVIDES INFORMATION IN A STANDARDIZED FORMAT IF INFORMATION PERTAINING TO THE SPECIFIC CONSUMER IS NOT REASONABLY AVAILABLE;

(II) FOR INFORMATION REQUIRED TO BE PROVIDED BY PARAGRAPH (B) OF THIS SUBDIVISION, BY PROVIDING THE CONSUMER WITH A NOTICE INCLUDING THE REQUIRED INFORMATION PRIOR TO OR IMMEDIATELY FOLLOWING A DISCLOSURE;

(III) BY PROVIDING THE CONSUMER WITH A DISCLOSURE REQUIRED BY FEDERAL LAW, BUT ONLY IF THE DISCLOSURE IS AT LEAST AS STRINGENT AS PROVIDED FOR IN THIS SECTION.

(D) (I) A BUSINESS IS NOT OBLIGATED TO PROVIDE MORE THAN ONE NOTICE UNDER PARAGRAPH (B) OF THIS SUBDIVISION TO THE SAME CONSUMER IN A TWELVE-MONTH PERIOD ABOUT THE DISCLOSURE OF THE SAME PERSONAL INFORMATION TO THE SAME THIRD PARTY AND IS NOT OBLIGATED UNDER SUBPARAGRAPH (I) OF PARAGRAPH (C) OF THIS SUBDIVISION TO RESPOND TO A REQUEST BY THE SAME CONSUMER MORE THAN ONCE WITHIN A GIVEN TWELVE-MONTH PERIOD.

(II) A BUSINESS IS NOT OBLIGATED TO PROVIDE INFORMATION TO THE CONSUMER PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH IF THE BUSINESS CANNOT REASONABLY VERIFY THAT THE INDIVIDUAL MAKING THE REQUEST IS THE CONSUMER.

3. (A) WHEREVER THERE SHALL BE A VIOLATION OF THIS SECTION, AN APPLICATION MAY BE MADE BY THE ATTORNEY GENERAL IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK TO A COURT OR JUSTICE HAVING JURISDICTION BY A SPECIAL PROCEEDING TO ISSUE AN INJUNCTION, AND UPON NOTICE TO THE DEFENDANT OF NOT LESS THAN FIVE DAYS, TO ENJOIN OR RESTRAIN THE CONTINUANCE OF SUCH VIOLATION; AND IF IT SHALL APPEAR TO THE SATISFACTION OF THE COURT OR JUSTICE THAT THE DEFENDANT HAS, IN FACT, VIOLATED THIS SECTION, AN INJUNCTION MAY BE ISSUED BY SUCH COURT OR JUSTICE, ENJOINING AND RESTRAINING ANY FURTHER VIOLATION, WITHOUT REQUIRING PROOF THAT ANY PERSON HAS, IN FACT, BEEN INJURED OR DAMAGED THEREBY. IN ANY SUCH PROCEEDING, THE COURT MAY MAKE ALLOWANCES TO THE ATTORNEY GENERAL AS PROVIDED IN PARAGRAPH SIX OF SUBDIVISION (A) OF SECTION EIGHTY-THREE HUNDRED THREE OF THE CIVIL PRACTICE LAW AND RULES, AND DIRECT RESTITUTION. WHENEVER THE COURT SHALL DETERMINE THAT A VIOLATION OF THIS SECTION HAS OCCURRED, THE COURT MAY IMPOSE A CIVIL PENALTY OF NOT MORE THAN FIVE HUNDRED DOLLARS FOR EACH VIOLATION, EXCEPT THAT THE COURT MAY IMPOSE A CIVIL PENALTY OF NOT MORE THAN THREE THOUSAND DOLLARS IF THE VIOLATION IS KNOWING, INTENTIONAL, OR WILLFUL. IN CONNECTION WITH ANY SUCH PROPOSED APPLICATION, THE ATTORNEY GENERAL IS AUTHORIZED TO TAKE PROOF AND MAKE A DETERMINATION OF THE RELEVANT FACTS AND TO ISSUE SUBPOENAS IN ACCORDANCE WITH THE CIVIL PRACTICE LAW AND RULES. A PREVAILING PLAINTIFF IN ANY ACTION COMMENCED UNDER THIS SECTION MAY ALSO BE ENTITLED TO RECOVER HIS OR HER REASONABLE ATTORNEY'S FEES AND COSTS.

1 THE RIGHTS AND REMEDIES AVAILABLE UNDER THIS SECTION ARE CUMULATIVE TO
2 EACH OTHER AND TO ANY OTHER RIGHTS AND REMEDIES AVAILABLE UNDER LAW.

3 (B) UNLESS THE VIOLATION IS KNOWING, INTENTIONAL, OR WILLFUL, A BUSI-
4 NESS THAT IS ALLEGED TO HAVE NOT PROVIDED ALL THE INFORMATION REQUIRED,
5 PROVIDED INACCURATE INFORMATION, OR FAILED TO PROVIDE INFORMATION IN THE
6 TIME PERIOD REQUIRED BY SUBPARAGRAPH (I) OF PARAGRAPH (C) OF SUBDIVISION
7 TWO OF THIS SECTION, MAY ASSERT AS A COMPLETE DEFENSE IN ANY ACTION IN
8 LAW OR EQUITY THAT IT THEREAFTER PROVIDED THE INFORMATION THAT WAS
9 ALLEGED TO BE INCOMPLETE, NOT PROVIDED AT ALL, INACCURATE, OR UNTIMELY
10 TO ALL NECESSARY CONSUMERS WITHIN NINETY DAYS OF THE DATE THE BUSINESS
11 KNEW IT HAD FAILED TO PROVIDE ANY OR ALL OF THE INFORMATION, ACCURATE
12 INFORMATION, OR TIMELY INFORMATION.

13 (C) NO BUSINESS SHALL BE DEEMED TO HAVE VIOLATED THE PROVISIONS OF
14 THIS SECTION IF SUCH PERSON SHOWS, BY A PREPONDERANCE OF THE EVIDENCE,
15 THAT THE VIOLATION WAS NOT INTENTIONAL AND RESULTED FROM A BONA FIDE
16 ERROR MADE NOTWITHSTANDING THE MAINTENANCE OF PROCEDURES REASONABLY
17 ADOPTED TO AVOID SUCH ERROR.

18 (D) THE PROVISIONS OF THIS SECTION MAY BE ENFORCED CONCURRENTLY BY THE
19 DIRECTOR OF A MUNICIPAL CONSUMER AFFAIRS OFFICE, OR BY THE TOWN ATTOR-
20 NEY, CITY CORPORATION COUNSEL, OR OTHER LAWFUL DESIGNEE OF A MUNICI-
21 PALITY OR LOCAL GOVERNMENT, AND ALL MONEYS COLLECTED UNDER THIS SECTION
22 SHALL BE RETAINED BY SUCH MUNICIPALITY OR LOCAL GOVERNMENT.

23 S 2. If any clause, sentence, paragraph or part of this section shall
24 be adjudged by any court of competent jurisdiction to be invalid, such
25 judgment shall not affect, impair or invalidate the remainder thereof,
26 but shall be confined in its operation to the clause, sentence, para-
27 graph or part thereof directly involved in the controversy in which such
28 judgment shall have been rendered.

29 S 3. This act shall take effect one year after it shall have become a
30 law; provided, however, that effective immediately, the addition, amend-
31 ment, and/or repeal of any rule or regulation necessary for the imple-
32 mentation of this act on its effective date are authorized and directed
33 to be made and completed on or before such effective date.