STATE OF NEW YORK

3709

2021-2022 Regular Sessions

IN ASSEMBLY

January 28, 2021

Introduced by M. of A. GUNTHER, SAYEGH, ENGLEBRIGHT, THIELE, DICKENS, GALEF, DARLING, ZEBROWSKI, CRUZ, J. RIVERA, NIOU, HYNDMAN, FERNANDEZ, GLICK, JONES, GRIFFIN, DeSTEFANO, SMULLEN, J. M. GIGLIO, SCHMITT, McDONOUGH, MONTESANO, ASHBY -- Multi-Sponsored by -- M. of A. HAWLEY -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law and the state finance law, in relation to allowing consumers the right to request from businesses the categories of personal information the business has sold or disclosed to third parties

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The article heading of article 39-F of the general business law, as amended by chapter 117 of the laws of 2019, is amended to read as follows:

[~~NOTIFICATION OF UNAUTHORIZED~~] ACQUISITION **AND CONTROL** OF PRIVATE **AND PERSONAL** INFORMATION; DATA SECURITY PROTECTIONS

§ 2. The general business law is amended by adding a new section 899-cc to read as follows:

§ 899-cc. Consumer control of personal information. 1. For purposes of this section, the following definitions shall apply:

(a) "Biometric data" means an individual's physiological, biological or behavioral characteristics, including an individual's deoxyribonucleic acid that can be used, singly or in combination with each other or with other identifying data to establish individual identity. Biometric data includes but is not limited to imagery of the iris, retina, fingerprint, face, hand, palm, vein patterns, and voice recordings, from which an identifier template, such as a faceprint, a minutiae template, or a

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

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voiceprint, can be extracted, and keystroke patterns or rhythms, gait patterns or rhythms, and sleep, health, or exercise data that contain identifying information.

(b) "Business" means:

(1) a sole-proprietorship, partnership, limited-liability company, corporation, association, or other legal entity that is organized or operated for the profit or financial benefit of its shareholders or other owners, that collects consumers' personal information, that does business in the state, and that satisfies one or more of the following thresholds: (A) has annual gross revenues in excess of fifty million dollars, as adjusted pursuant to subparagraph five of paragraph (a) of subdivision fifteen of this section; or (B) annually sells, alone or in combination, the personal information of one hundred thousand or more consumers or devices; or (C) derives fifty percent or more of its annual revenues from selling consumers' personal information; and

(2) any entity that controls or is controlled by a business, as defined in paragraph one of this subdivision, and that shares common branding with the business. "Control" or "controlled" means ownership of, or the power to vote, more than fifty percent of the outstanding shares of any class of voting security of a business; control in any manner over the election of a majority of the directors, or of individuals exercising similar functions; or the power to exercise, directly or indirectly, a controlling influence over the management or policies of a company. "Common branding" means a shared name, servicemark, or trademark.

(c) "Business purpose" means the use of personal information for the business's operational purposes, provided that the use of personal information shall be reasonably necessary and proportionate to achieve the operational purpose for which it is specifically permitted. Unreasonable or disproportionate use shall not be considered a "business purpose". Business purposes are:

(1) Auditing related to a current interaction with the consumer and concurrent transactions, including but not limited to, counting ad impressions to unique visitors, verifying positioning and quality of ad impressions and auditing compliance with this specification and other standards;

(2) Detecting security incidents, protecting against malicious, deceptive, fraudulent, or illegal activity, and prosecuting those responsible for such activity;

(3) Debugging to identify and repair errors that impair existing intended functionality;

(4) Short-term, transient use, provided the personal information is not disclosed to another person and is not used to build a profile about a consumer or otherwise alter an individual consumer's experience outside the current interaction, including but not limited to, the contextual customization of ads shown as part of the same interaction; and

(5) Performing services on behalf of the business, including maintaining or servicing accounts, providing customer service, processing or fulfilling orders and transactions, verifying customer information, processing payments, providing financing, providing advertising or marketing services, providing analytical services, or providing similar services on behalf of the business.

(d) "Clear and conspicuous" means (1) in a color that contrasts with the background color or is otherwise distinguishable; (2) written in larger type than the surrounding text and in a fashion that calls atten-

tion to the language; and (3) prominently displayed so that a reasonable viewer would be able to notice, read, and understand it.

(e) "Commercial purposes" means to advance a person's commercial or economic interests, such as by inducing another person to buy, rent, lease, join, subscribe to, provide, or exchange products, goods, property, information, or services, or enabling or effecting, directly or indirectly, a commercial transaction. "Commercial purposes" does not include for the purpose of engaging in speech that state or federal courts have recognized as non-commercial speech, including political speech and journalism.

(f) "Collects", "collected" or "collection" means buying, renting, gathering, obtaining, storing, using, monitoring, accessing, or making inferences based upon, any personal information pertaining to a consumer by any means.

(g) "Consumer" means a natural person who is a resident of the state.

(h) "De-identified" means information that cannot reasonably identify, relate to, describe, reference, be capable of being associated with, or be linked, directly or indirectly, to a particular consumer or device, provided that a business that uses de-identified information: (1) has implemented technical safeguards that prohibit re-identification of the consumer or consumers to whom the information may pertain; (2) has implemented business processes that specifically prohibit re-identification of the information; (3) has implemented business processes to prevent inadvertent release of de-identified information; and (4) makes no attempt to re-identify the information.

(i) "Designated methods for submitting requests" means a mailing address, e-mail address, web page, web portal, toll-free telephone number, or other applicable contact information, whereby consumers may submit a request or direction under this section. If the consumer does not maintain an account with the business, the business shall provide an opportunity for the consumer to designate whether the consumer wishes to receive the information required to be disclosed pursuant to subdivisions two and three of this section by mail or electronically, at the consumer's option.

(j) "Homepage" means the introductory page of a website and any webpage where personal information is collected. In the case of an online service, such as a mobile application, homepage means the application's platform page, a link within the application, such as from the application configuration, "about", "information", or settings page, and any other location that allows consumers to review the notice required by paragraph (a) of subdivision seven of this section, including but not limited to, before downloading the application.

(k) "Infer" or "inference" means the derivation of information, data, assumptions, or conclusions from facts, evidence, or another source of information or data.

(l) "Person" means an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, limited liability company, association, committee, and any other organization or group of persons acting in concert.

(m) (1)"Personal information" means information that identifies, relates to, describes, references, is capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or device, including, but not limited to:

(A) any information that identifies, relates to, describes, or is capable of being associated with, a particular individual, including, but not limited to, his or her name, alias, signature, social security

number, physical characteristics or description, address, electronic mail address, internet protocol address, unique identifier, account name, telephone number, passport number, driver's license or state identification card number, insurance policy number, education, employment, employment history, bank account number, credit card number, debit card number, or any other financial information, medical information, or health insurance information;

(B) characteristics of protected classifications under state or federal law;

(C) commercial information, including records of property, products or services provided, obtained, or considered, or other purchasing or consuming histories or tendencies;

(D) biometric data;

(E) internet or other electronic network activity information, including but not limited to, browsing history, search history, and information regarding a consumer's interaction with a website, application, or advertisement;

(F) geolocation data;

(G) audio, electronic, visual, thermal, olfactory, or similar information;

(H) psychometric information;

(I) professional or employment-related information;

(J) inferences drawn from any of the information identified above; and

(K) any of the categories of information set forth in this subdivision as they pertain to the minor children of the consumer.

(2) "Personal information" does not include information that is publicly available or that is de-identified.

(n) "Probabilistic identifier" means the identification of a consumer or a device to a degree of certainty of more probable than not based on any categories of personal information included in, or similar to, the categories enumerated in subparagraph one of paragraph (m) of this subdivision.

(o) "Psychometric information" means information derived or created from the use or application of psychometric theory or psychometrics, whereby through the use of any method, model, tool, or formula, observable phenomena, such as actions or events, are connected, measured, assessed, or related to a consumer's attributes, including, but not limited to, psychological trends, preferences, predispositions, behavior, attitudes, intelligence, abilities, and aptitudes.

(p) "Publicly available" means information that is lawfully made available from federal, state, or local government records. "Publicly available" does not mean biometric information collected by a business about a consumer without the consumer's knowledge.

(q)(1) "Sell", "selling", "sale" or "sold" means: (A) selling, renting, releasing, disclosing, disseminating, making available, transferring, or otherwise communicating orally, in writing, or by electronic or other means, a consumer's personal information by the business to a third party for valuable consideration; or (B) sharing orally, in writing, or by electronic or other means, a consumer's personal information with a third party, whether for valuable consideration or for no consideration, for the third party's commercial purposes.

(2) For purposes of this section, a business does not sell personal information when:

(A) A consumer uses the business: (i) to intentionally disclose personal information, or (ii) to intentionally interact with a third party. An intentional interaction occurs when the consumer intends to

interact with the third party via one or more deliberate interactions. Hovering over, muting, pausing, or closing a given piece of content does not constitute a consumer's intent to interact with a third party; or

(B) The business uses an identifier for a consumer who has opted out of the sale of the consumer's personal information for the purposes of alerting third parties that the consumer has opted out of the sale of the consumer's personal information.

(r) "Service" or "services" means work, labor, and services, including services furnished in connection with the sale or repair of goods.

(s) "Third party" means any person who is not:

(1) The business that collects personal information from consumers under this section; or

(2) A person to whom the business discloses a consumer's personal information for a business purpose pursuant to a written contract, provided that the contract:

(A) Prohibits the person receiving the personal information from: (i) selling the personal information; (ii) retaining, using, or disclosing the personal information for any purpose other than for the specific purpose of performing the services specified in the contract, including retaining, using, or disclosing the personal information for a commercial purpose other than providing the services specified in the contract; and (iii) retaining, using, or disclosing the information outside of the direct business relationship between the person and the business; and

(B) Includes a certification made by the person receiving the personal information that the person understands the restrictions in clause (A) of this subparagraph and will comply with them. A person covered by this subparagraph that violates any of the restrictions set forth in this section shall be liable for such violations under this section. A business that discloses personal information to a person covered by this subparagraph in compliance with such subparagraph shall not be liable under this section if the person receiving the personal information uses it in violation of the restrictions set forth in this section, provided that, at the time of disclosing the personal information, the business does not have actual knowledge, or reason to believe, that the person intends to commit such a violation.

(t) "Unique identifier" means a persistent identifier that can be used to recognize a consumer or a device over time and across different services, including but not limited to, a device identifier; internet protocol address; cookies, beacons, pixel tags, mobile ad identifiers, or similar technology; customer number, unique pseudonym, or user alias; and telephone numbers, or other forms of persistent or probabilistic identifiers that can be used to identify a particular consumer or device.

(u) "Verifiable request" means a request that: (1) is made by a consumer, by a consumer on behalf of the consumer's minor child, or by a person authorized by the consumer to act on the consumer's behalf; and (2) the business has verified, pursuant to regulations adopted by the attorney general pursuant to subparagraph seven of paragraph (a) of subdivision fifteen of this section, to be the consumer about whom the business has collected personal information. A business is not obligated to provide information to the consumer pursuant to subdivisions two and three of this section if the business cannot verify, pursuant to this subdivision and regulations adopted by the attorney general pursuant to subparagraph seven of paragraph (a) of subdivision fifteen of this

section, that the consumer making the request is the consumer about whom the business has collected information.

2. (a) A consumer shall have the right to request that a business that collects personal information about the consumer disclose to the consumer the categories of personal information it has collected about that consumer.

(b) A business that collects personal information about a consumer shall disclose to the consumer, pursuant to subparagraph three of paragraph (a) of subdivision six of this section, the information specified in paragraph (a) of subdivision one of this section upon receipt of a verifiable request from the consumer.

(c) A business that collects personal information about consumers shall disclose, pursuant to clause (B) of subparagraph five of paragraph (a) of subdivision six of this section, the categories of personal information it has collected about consumers.

3. (a) A consumer shall have the right to request that a business that sells the consumer's personal information, or that discloses it for a business purpose, disclose to that consumer: (1) the categories of personal information that the business sold about the consumer and the identity of the third parties to whom such personal information was sold, by category or categories of personal information for each third party to whom such personal information was sold; and (2) the categories of personal information that the business disclosed about the consumer for a business purpose and the identity of the persons to whom such personal information was disclosed for a business purpose, by category or categories of personal information for each person to whom such personal information was disclosed for a business purpose.

(b) A business that sells personal information about a consumer, or that discloses a consumer's personal information for a business purpose, shall disclose, pursuant to subparagraph four of paragraph (a) of subdivision six of this section, the information specified in paragraph (a) of this subdivision to the consumer upon receipt of a verifiable request from the consumer.

(c) A business that sells consumers' personal information, or that discloses consumers' personal information for a business purpose, shall disclose, pursuant to clause (C) of subparagraph five of paragraph (a) of subdivision six of this section: (1) the category or categories of consumers' personal information it has sold; or if the business has not sold consumers' personal information, it shall disclose that fact; and (2) the category or categories of consumers' personal information it has disclosed for a business purpose; or if the business has not disclosed consumers' personal information for a business purpose, it shall disclose that fact.

4. (a) A consumer shall have the right, at any time, to direct a business that sells personal information about the consumer not to sell the consumer's personal information. This right may be referred to as the right to opt out.

(b) Notwithstanding paragraph (a) of this subdivision, a business shall not sell the personal information of consumers if the business has actual knowledge, or willfully disregards, that the consumer is less than sixteen years of age, unless the consumer, in the case of consumers thirteen, fourteen and fifteen years of age, or the consumer's parent or guardian, in the case of consumers who are less than thirteen years of age, has affirmatively authorized the sale of the consumer's personal information. This right may be referred to as the right to opt in.

(c) A business that sells consumers' personal information shall provide notice to consumers, pursuant to paragraph (a) of subdivision seven of this section, that such information may be sold and that consumers have the right to opt out of the sale of their personal information.

(d) A business that has received direction from a consumer not to sell the consumer's personal information, or, in the case of a minor consumer's personal information, has not received consent to sell the minor consumer's personal information, shall be prohibited, pursuant to subparagraph four of paragraph (a) of subdivision seven of this section, from selling the consumer's personal information after its receipt of the consumer's direction, unless the consumer subsequently provides express authorization for the sale of the consumer's personal information.

5. A business shall be prohibited from discriminating against a consumer because the consumer requested information pursuant to subdivisions two and three of this section, or because the consumer directed the business not to sell the consumer's personal information pursuant to subdivision four of this section, or because the consumer otherwise exercised rights under this title, or exercised the consumer's rights to enforce this section, including but not limited to, by: (a) denying goods or services to the consumer; (b) charging different prices or rates for goods or services, including through the use of discounts or other benefits or imposing penalties; (c) providing a different level or quality of goods or services to the consumer; or (d) suggesting that the consumer will receive a different price or rate for goods or services, or a different level or quality of goods or services, if the consumer exercises the consumer's rights under this section.

6. (a) In order to comply with subdivisions two, three and five of this section, a business shall:

(1) Make available to consumers two or more designated methods for submitting requests for information required to be disclosed pursuant to subdivisions two and three of this section, including, at a minimum, a toll-free telephone number, and if the business maintains a website, a website address.

(2) Disclose and deliver the required information to a consumer free of charge within forty-five days of receiving a verifiable request from the consumer. The business shall promptly take steps to determine whether the request is a verifiable request, but this shall not extend the business's duty to disclose and deliver the information within forty-five days of receipt of the consumer's request. The disclosure shall cover the twelve-month period preceding the business's receipt of the verifiable request and shall be made in writing and delivered through the consumer's account with the business, if the consumer maintains an account with the business, or by mail or electronically at the consumer's option if the consumer does not maintain an account with the business. The business shall not require the consumer to create an account with the business in order to make a verifiable request.

(3) For purposes of paragraph (b) of subdivision two of this section: (A) identify the consumer, associate the information provided by the consumer in the verifiable request to any personal information previously collected by the business about the consumer; and (B) identify by category or categories the personal information collected about the consumer in the preceding twelve months by reference to the enumerated category or categories in paragraph (c) of this subdivision that most closely describes the personal information collected.

(4) For purposes of paragraph (b) of subdivision three of this section: (A) identify the consumer, associate the information provided by the consumer in the verifiable request to any personal information previously collected by the business about the consumer; (B) identify by category or categories the personal information of the consumer that the business sold in the preceding twelve months by reference to the enumerated category or categories in paragraph (c) of this subdivision that most closely describes the personal information, and provide accurate names and contact information for the third parties to whom the consumer's personal information was sold in the preceding twelve months by reference to the enumerated category or categories in paragraph (c) of this subdivision that most closely describes the personal information sold for each third party; and (C) identify by category or categories the personal information of the consumer that the business disclosed for a business purpose in the preceding twelve months by reference to the enumerated category or categories in paragraph (c) of this subdivision that most closely describes the personal information, and provide accurate names and contact information for the persons to whom the consumer's personal information was disclosed for a business purpose in the preceding twelve months by reference to the enumerated category or categories in paragraph (c) of this subdivision of this section that most closely describes the personal information disclosed for each person. The business shall disclose the information required by clauses (B) and (C) of this subparagraph in two separate lists.

(5) Disclose the following information in its online privacy policy or policies if the business has an online privacy policy or policies and in any New York-specific description of consumers' privacy rights, or if the business does not maintain such policies, on its website, and update such information at least once every twelve months:

(A) A description of a consumer's rights pursuant to subdivisions two, three and five of this section, and one or more designated methods for submitting requests;

(B) For purposes of paragraph (c) of subdivision two of this section, a list of the categories of personal information it has collected about consumers in the preceding twelve months by reference to the enumerated category or categories in paragraph (c) of this subdivision that most closely describes the personal information collected; and

(C) For purposes of subparagraphs one and two of paragraph (c) of subdivision three of this section, two separate lists: (i) a list of the categories of personal information it has sold about consumers in the preceding twelve months by reference to the enumerated category or categories in paragraph (c) of this subdivision that most closely describes the personal information sold, or if the business has not sold consumers' personal information in the preceding twelve months, the business shall disclose that fact; and (ii) a list of the categories of personal information it has disclosed about consumers for a business purpose in the preceding twelve months by reference to the enumerated category or categories in paragraph (c) of this subdivision that most closely describes the personal information disclosed, or if the business has not disclosed consumers' personal information for a business purpose in the preceding twelve months, the business shall disclose that fact.

(6) Ensure that all individuals responsible for handling consumer inquiries about the business's privacy practices or the business's compliance with this section are informed of all requirements in this subdivision, as well as in subdivisions two, three and five of this

section, and how to direct consumers to exercise their rights under those sections; and

(7) Use any personal information collected from the consumer in connection with the business's verification of the consumer's request solely for the purposes of verification.

(b) A business is not obligated to provide the information required by subdivisions two and three of this section to the same consumer more than once in a twelve-month period.

(c) The categories of personal information required to be disclosed pursuant to subdivisions two and three of this section are all of the following:

(1) Identifiers such as a real name, alias, postal address, unique identifier, internet protocol address, electronic mail address, account name, social security number, driver's license number, passport number, or other similar identifiers;

(2) All categories of personal information enumerated in paragraph (a) of subdivision one of this section;

(3) All categories of personal information relating to characteristics of protected classifications under state or federal law, with specific reference to the category of information that has been collected, such as race, ethnicity, or gender;

(4) Commercial information, including records of property, products or services provided, obtained, or considered, or other purchasing or consuming histories or tendencies;

(5) Biometric data;

(6) Internet or other electronic network activity information, including but not limited to, browsing history, search history, and information regarding a consumer's interaction with a website, application, or advertisement;

(7) Geolocation data;

(8) Audio, electronic, visual, thermal, olfactory, or similar information;

(9) Psychometric information;

(10) Professional or employment-related information;

(11) Inferences drawn from any of the information identified above; and

(12) Any of the categories of information set forth in this paragraph as they pertain to the minor children of the consumer.

7. (a) A business that is required to comply with subdivision four of this section shall:

(1) Provide a clear and conspicuous link on the business's homepage, titled "Do Not Sell My Personal Information", to a webpage that enables a consumer, or a person authorized by the consumer, to opt out of the sale of the consumer's personal information. A business shall not require a consumer to create an account in order to direct the business not to sell the consumer's personal information;

(2) Include a description of a consumer's rights pursuant to subdivision four of this section, along with a separate link to the "Do Not Sell My Personal Information" webpage in: (A) its online privacy policy or policies if the business has an online privacy policy or policies, and (B) any state specific description of consumers' privacy rights;

(3) Ensure that all individuals responsible for handling consumer inquiries about the business's privacy practices or the business's compliance with this section are informed of all requirements in this subdivision as well as subdivision four of this section, and how to direct consumers to exercise their rights under those sections;

(4) For consumers who exercise their right to opt out of the sale of their personal information, refrain from selling personal information collected by the business about the consumer;

(5) For a consumer who has opted out of the sale of the consumer's personal information, respect the consumer's decision to opt out for at least twelve months before requesting that the consumer authorize the sale of the consumer's personal information; and

(6) Use any personal information collected from the consumer in connection with the submission of the consumer's opt out request solely for the purposes of complying with the opt out request.

(b) A consumer may authorize another person to opt out on the consumer's behalf, and a business shall comply with an opt out request received from a person authorized by the consumer to act on the consumer's behalf.

8. (a) The obligations imposed on businesses by subdivisions two and seven of this section shall not restrict a business's ability to:

(1) comply with federal, state, or local laws;

(2) comply with a civil, criminal, or regulatory investigation or subpoena or summons by federal, state, or local authorities;

(3) cooperate with law enforcement agencies concerning conduct or activity that the business reasonably and in good faith believes may violate federal, state, or local law; or

(4) collect and sell a consumer's personal information if every aspect of such commercial conduct takes place wholly outside of the state. For purposes of this section, commercial conduct takes place wholly outside of the state if the business collected such information while the consumer was outside of the state, no part of the sale of the consumer's personal information occurred in the state, and no personal information collected while the consumer was in the state is sold.

(b) The obligations imposed on businesses by subdivisions two and seven of this section shall not apply where compliance by the business with this section would violate an evidentiary privilege under state law and shall not prevent a business from providing the personal information of a consumer to a person covered by an evidentiary privilege under state law as part of a privileged communication.

(c) This section shall not apply to protected health information that is collected by a covered entity governed by the medical privacy and security rules issued by the Federal Department of Health and Human Services, Parts 160 and 164 of Title 45 of the Code of Federal Regulations, established pursuant to the Health Insurance Portability and Availability Act of 1996 (HIPAA). For purposes of this subdivision, the definitions of "protected health information" and "covered entity" from the federal privacy rule shall apply.

(d) This section shall not apply to the sale of personal information to or from a consumer reporting agency if that information is to be reported in, or used to generate, a consumer report as defined by subdivision (d) of Section 1681(a) of Title 15 of the United States Code, and use of that information is limited by the federal Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq.

9. (a) A consumer who has suffered a violation of this section may bring an action for statutory damages. A violation of this section shall be deemed to constitute an injury in fact to the consumer who has suffered the violation, and the consumer need not suffer a loss of money or property as a result of the violation in order to bring an action for a violation of this section.

(b)(1) Any consumer who suffers an injury in fact, as described in paragraph (a) of this subdivision, shall recover statutory damages in the amount of one thousand dollars or actual damages, whichever is greater, for each violation from the business or person responsible for the violation, except that in the case of a knowing and willful violation by a business or person, an individual shall recover statutory damages of not less than one thousand dollars and not more than three thousand dollars, or actual damages, whichever is greater, for each violation from the business or person responsible for the violation.

(2) In assessing the amount of statutory damages, the court shall consider any one or more of the relevant circumstances presented by any of the parties to the case, including, but not limited to, the following: the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth.

(c) Notwithstanding any other law, whenever a judgment, including any consent judgment, decree, or settlement agreement, is approved by the court in a class action based on a violation of this section, any cy pres award, unpaid cash residue, or unclaimed or abandoned class member funds attributable to a violation of this section shall be distributed exclusively to one or more nonprofit organizations to support projects that will benefit the class or similarly situated persons, further the objectives and purposes of the underlying class action or cause of action, or promote the law consistent with the objectives and purposes of the underlying class action or cause of action, unless for good cause shown the court makes a specific finding that an alternative distribution would better serve the public interest or the interests of the class. If not specified in the judgment, the court shall set a date when the parties shall submit a report to the court regarding a plan for the distribution of any moneys pursuant to this subdivision.

(d) The remedies provided by this subdivision are cumulative to each other and to the remedies or penalties available under all other laws of the state.

10. (a) Any business or person that violates this section shall be liable for a civil penalty in a civil action brought in the name of the people of the state of New York by the attorney general.

(b) Notwithstanding any other law to the contrary, any person or business that intentionally violates this section may be liable for a civil penalty of up to seven thousand five hundred dollars for each violation.

(c) Notwithstanding any other law to the contrary, any civil penalty assessed for a violation of this section, and the proceeds of any settlement of an action brought pursuant to paragraph (a) of this subdivision, shall be allocated as follows:

(1) twenty percent to the consumer privacy fund, created pursuant to section ninety-nine-ii of the state finance law, with the intent to fully offset any costs incurred by the state courts and the attorney general in connection with this section; and

(2) eighty percent to the jurisdiction on whose behalf the action leading to the civil penalty was brought.

(d) The legislature shall adjust the percentages specified in paragraph (c) of this subdivision and in subdivision eleven of this section, as necessary to ensure that any civil penalties assessed for a violation of this section fully offset any costs incurred by the state courts and the attorney general in connection with this section, including a sufficient amount to cover any deficit from a prior fiscal year. The legisla-

ture shall not direct a greater percentage of assessed civil penalties to the consumer privacy fund than reasonably necessary to fully offset any costs incurred by the state courts and the attorney general in connection with this section.

11. (a) Any person who becomes aware, based on non-public information, that a person or business has violated this section may file a civil action for civil penalties pursuant to subdivision ten of this section, if prior to filing such action, the person files with the attorney general a written request for the attorney general to commence the action. The request shall include a clear and concise statement of the grounds for believing a cause of action exists. The person shall make the non-public information available to the attorney general upon request.

(1) If the attorney general files suit within ninety days from receipt of the written request to commence the action, no other action may be brought unless the action brought by the attorney general is dismissed without prejudice.

(2) If the attorney general does not file suit within ninety days from receipt of the written request to commence the action, the person requesting the action may proceed to file a civil action.

(3) The time period within which a civil action shall be commenced shall be tolled from the date of receipt by the attorney general of the written request to either the date that the civil action is dismissed without prejudice, or for one hundred fifty days, whichever is later, but only for a civil action brought by the person who requested the attorney general to commence the action.

(b) Notwithstanding paragraph (c) of subdivision ten of this section, if a judgment is entered against the defendant or defendants in an action brought pursuant to this subdivision, or the matter is settled, amounts received as civil penalties or pursuant to a settlement of the action shall be allocated as follows:

(1) If the action was brought by the attorney general upon a request made by a person pursuant to paragraph (a) of this subdivision, the person who made the request shall be entitled to fifteen percent of the civil penalties, and the remaining proceeds shall be deposited in the consumer privacy fund pursuant to section ninety-nine-ii of the state finance law.

(2) If the action was brought by the person who made the request pursuant to paragraph (a) of this subdivision, that person shall receive an amount the court determines is reasonable for collecting the civil penalties on behalf of the government. The amount shall be not less than twenty-five percent and not more than fifty percent of the proceeds of the action and shall be paid out of the proceeds. The remaining proceeds shall be deposited in the consumer privacy fund pursuant to section ninety-nine-ii of the state finance law.

(c) For purposes of this section, "non-public information" means information that has not been disclosed in a criminal, civil, or administrative proceeding, in a government investigation, report, or audit, or by the news media or other public source of information, and that was not obtained in violation of the law.

12. A business that suffers a breach of the security of the system involving consumers' personal information shall be deemed to have violated this section and may be held liable for such violation or violations under subdivisions nine, ten and eleven of this section, if the business has failed to implement and maintain reasonable security

procedures and practices, appropriate to the nature of the information, to protect the personal information from unauthorized disclosure.

13. This section is intended to further the constitutional right of privacy and to supplement existing laws relating to consumers' personal information. The provisions of this section are not limited to information collected electronically or over the internet, but apply to the collection and sale of all personal information collected by a business from consumers. Wherever possible, existing law relating to consumers' personal information should be construed to harmonize with the provisions of this section, but in the event of conflict between existing law and the provisions of this section, the provisions of the law that afford the greatest protection for the right of privacy for consumers shall control.

14. Nothing in this section shall prevent a city, county, city and county, municipality, or local agency from safeguarding the constitutional right of privacy by imposing additional requirements on businesses regarding the collection and sale of consumers' personal information by businesses provided that the requirement does not prevent a person or business from complying with this section.

15. (a) The attorney general shall adopt regulations in the following areas to further the purposes of this section:

(1) Adding additional categories to those enumerated in paragraph (c) of subdivision six and paragraph (m) of subdivision one of this section in order to address changes in technology, data collection practices, obstacles to implementation, and privacy concerns. In addition, upon receipt of a request made by a city attorney or district attorney to add a new category or categories, the attorney general shall promulgate a regulation to add such category or categories unless the attorney general concludes, based on factual or legal findings, that there is a compelling reason not to add the category or categories. The attorney general may also add additional categories to those enumerated in paragraph (c) of subdivision six and paragraph (m) of subdivision one of this section in response to a petition filed;

(2) Adding additional items to the definition of "unique identifiers" to address changes in technology, data collection, obstacles to implementation, and privacy concerns, and additional categories to the definition of "designated methods for submitting requests" to facilitate a consumer's ability to obtain information from a business pursuant to subdivision six of this section;

(3) Establishing any exceptions necessary to comply with state or federal law;

(4) Establishing rules and procedures: (A) to facilitate and govern the submission of a request by a consumer, and by an authorized agent of the consumer, to opt out of the sale of personal information pursuant to subparagraph one of paragraph (a) of subdivision seven of this section; (B) to govern a business's compliance with a consumer's opt out request; and (C) for the development and use of a recognizable and uniform opt out logo or button by all businesses to promote consumer awareness of the opportunity to opt out of the sale of personal information;

(5) Adjusting the monetary threshold in clause (A) of subparagraph one of paragraph (b) of subdivision one of this section in January of every odd-numbered year to reflect any increase in the Consumer Price Index;

(6) Establishing rules, procedures, and any exceptions necessary to ensure that the notices and information that businesses are required to provide pursuant to this section are provided in a manner so as to be easily understood by the average consumer, are accessible to consumers

with disabilities, and are available in the language primarily used to interact with the consumer;

(7) Establishing rules and procedures to further the purposes of subdivisions two and three of this section and to facilitate a consumer's or the consumer's authorized agent's ability to obtain information pursuant to subdivision six of this section, with the goal of minimizing the administrative burden on consumers, taking into account available technology, security concerns, and the burden on the business, to govern a business's determination that a request for information received by a consumer is a verifiable request, including treating a request submitted through a password protected account maintained by the consumer with the business while the consumer is logged into the account as a verifiable request and providing a mechanism for a consumer who does not maintain an account with the business to request information through the business's authentication of the consumer's identity;

(8) Defining the term "valuable consideration" as used in subparagraph one of paragraph (q) of subdivision one of this section to ensure that a business that discloses, except as permitted by this section, a consumer's personal information to a third party, including through a series of transactions involving multiple third parties, in exchange for any economic benefit is subject to this section, and to include business practices involving the disclosure of personal information in exchange for something of value. Valuable consideration does not include the exchange of value in a transaction involving non-commercial speech, such as journalism and political speech; and

(9) Further interpret the terms "de-identified", "sell", "third party", and "business purpose" as set forth in subdivision one of this section, to address changes in technology, data collection, obstacles to implementation, and privacy concerns and to ensure compliance with the purposes of this section, provided that such regulations do not reduce consumer privacy or the ability of consumers to stop the sale of their personal information.

(b) The attorney general shall be precluded from adopting regulations that limit or reduce the number or scope of categories of personal information enumerated in paragraph (c) of subdivision six and paragraph (m) of subdivision one of this section, or that limit or reduce the number or scope of categories added pursuant to subparagraph one of paragraph (a) of this subdivision, except as necessary to comply with subparagraph three of paragraph (a) of this subdivision. The attorney general shall also be precluded from reducing the scope of the definition of "unique identifiers", except as necessary to comply with subparagraph three of paragraph (a) of this subdivision.

(c) To the extent the attorney general determines that it is necessary to adopt certain regulations in order to implement this section, the attorney general shall adopt any such regulations within six months of the date this section is adopted.

(d) The attorney general may adopt additional regulations as necessary to further the purposes of this section.

16. If a series of steps or transactions were component parts of a single transaction intended from the beginning to be taken with the intention of avoiding the reach of this section, including the disclosure of information by a business to a third party in order to avoid the definition of "sell", a court shall disregard the intermediate steps or transactions for purposes of effectuating the purposes of this section.

17. Any provision of a contract or agreement of any kind that purports to waive or limit in any way a consumer's rights under this section,

including but not limited to any right to a remedy or means of enforcement, shall be deemed contrary to public policy and shall be void and unenforceable. This section shall not prevent a consumer from: declining to request information from a business; declining to opt out of a business's sale of the consumer's personal information; or authorizing a business to sell the consumer's personal information after previously opting out.

18. If any provision of this section 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 provision directly involved in the controversy in which such judgment shall have been rendered.

§ 3. The state finance law is amended by adding a new section 99-ii to read as follows:

§ 99-ii. Consumer privacy fund. 1. There is hereby established in the joint custody of the state comptroller and the commissioner of taxation and finance an account within the general fund to be known as the "consumer privacy fund".

2. Such account shall consist of all penalties received by the department of state pursuant to section eight hundred ninety-nine-cc of the general business law and any additional monies appropriated, credited or transferred to such account by the legislature. Any interest earned by the investment of monies in such account shall be added to such account, become part of such account, and be used for the purposes of such account.

3. Monies in the account shall be available to the office of court administration and the attorney general to offset any costs incurred by the state courts in connection with actions brought to enforce section eight hundred ninety-nine-cc of the general business law and any costs incurred by the attorney general in carrying out his or her duties under such section of law.

4. Monies in the account shall be paid out of the account on the audit and warrant of the state comptroller on vouchers certified or approved by the office of court administration and/or the attorney general.

§ 4. This act shall take effect on the one hundred eightieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made on or before such effective date.