STATE OF NEW YORK

3818

2021-2022 Regular Sessions

IN ASSEMBLY

January 28, 2021

Introduced by M. of A. VANEL -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law, in relation to enacting the New York data protection act

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

Section 1. Short title. This act shall be known and may be cited as the "New York data protection act".

§ 2. The executive law is amended by adding a new article 5-A to read as follows:

ARTICLE 5-A

NEW YORK DATA PROTECTION ACT

Section 81. Definitions.

82. Right to request disclosure.

83. Right to request deletion of personal information.

84. Personal information which may be requested.

85. Shared information; government entities or contractors.

86. Non-shareable personal information.

87. Right not to be discriminated against.

88. Accessibility.

89. Limitation on restrictions.

89-a. Relief.

89-b. Compliance guidance.

§ 81. Definitions. As used in this article, the following terms shall have the following meanings unless otherwise specified:

1. "Aggregate personal information" shall mean information that relates to a group or category of individuals, from which individual identities have been removed, that is not linked or reasonably linkable to any individual or household, including via a device. "Aggregate personal information" shall not mean one or more individual's records that have been de-identified.

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

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2. "Collects", "collected", or "collection" shall mean gathering, obtaining, receiving, or accessing any personal information pertaining to an individual by any means. This includes receiving information from such individual either actively or passively.

3. "Contractor" means a contractor, or subcontractor of a contractor, that contracts to process information on behalf of a government entity and to which such government entity discloses an individual's personal information for a legitimate government purpose pursuant to a written contract, provided that such contract prohibits such contractor or subcontractor receiving such personal information from retaining, using, or disclosing such personal information for any purpose other than for the specific purpose of performing the services specified in such contract, or as otherwise permitted by this article, including retaining, using, or disclosing such personal information for a commercial purpose other than providing the services specified in the contract.

4. "Deidentified" shall mean information that cannot reasonably identify, relate to, describe, be capable of being associated with, or be linked, directly or indirectly, to a particular individual, provided that a government entity that uses such deidentified information:

(a) has implemented technical safeguards and processes that prohibit reidentification of the individual to whom such information may pertain;

(b) has implemented processes to prevent inadvertent release of deidentified information; and

(c) makes no attempt to reidentify such information.

5. "Designated methods for submitting requests" shall mean a mailing address, email address, internet web page, internet web portal, toll-free telephone number, or other applicable contact information, whereby individuals may submit a request or direction under this article, and any new means of contacting a government entity, as approved by the attorney general.

6. "Device" shall mean any physical object that is capable of connecting to the internet, directly or indirectly, or to another device.

7. "Government entity" or "entity" shall mean any state agency or any part, body, or subdivision thereof.

8. "Homepage" shall mean the introductory page of an internet web site and any internet web page where personal information is collected.

9. "Individual" shall mean a person who is a resident of New York state.

10. (a) "Personal information" shall mean information that identifies, relates to, describes, is capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular individual or household. Personal information includes, but is not limited to, the following:

(i) identifiers such as a real name, alias, postal address, unique personal identifier, internet protocol address, email address, social security number, driver's license number, passport number, photograph, or other similar identifiers;

(ii) characteristics of protected classifications under New York or federal law;

(iii) commercial information, including records of real or personal property;

(iv) biometric information;

(v) audio, electronic, visual, or similar information;

(vi) professional or employment-related information;

(vii) education information, defined as information that is not publicly available personally identifiable information as defined in the family educational rights and privacy act (20 USC 1232g);

(viii) inferences drawn from any of the information identified in this subdivision to create a profile about an individual reflecting such individual's preferences, characteristics, psychological trends, predispositions, behavior, attitudes, intelligence, abilities, and aptitudes; and

(ix) financial or tax information.

(b) "Personal information" shall not include publicly available information. For these purposes, "publicly available" shall mean information that is lawfully made available from federal, state, or local government records, or any conditions associated with such information. "Publicly available" shall not include an individual's information that is deidentified or aggregate personal information.

11. "Probabilistic identifier" shall mean the identification of an individual 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 subdivision ten of this section.

12. "Process" or "processing" shall mean any operation or set of operations that are performed on personal data or on sets of personal data, whether or not by automated means.

13. "Pseudonymize" or "pseudonymization" shall mean the processing of personal information in a manner that renders such personal information no longer attributable to a specific individual without the use of additional information, provided that such additional information is kept separately and is subject to technical and organizational measures to ensure that such personal information is not attributed to an identified or identifiable individual.

14. (a) "Sell", "selling", "sale", or "sold" shall mean selling, renting, releasing, disclosing, disseminating, making available, transferring, or otherwise communicating orally, in writing, or by electronic or other means, an individual's personal information by a government entity or contractor to a third party for monetary or other valuable consideration.

(b) A government entity or contractor does not sell personal information within the meaning of this article when:

(i) An individual uses or directs such government entity or contractor to intentionally disclose personal information to a third party, provided such third party also does not sell such personal information, unless such disclosure would be consistent with the provisions of this article.

(ii) Such government entity or contractor uses or shares with a third party personal information of an individual that is necessary to perform a legitimate government purpose if both of the following conditions are met:

(1) the government entity or contractor has provided notice that information is being used or shared; and

(2) the third party does not further collect, sell, or use the personal information of such individual except as necessary to perform the business purpose for which it received such information.

(iii) A contractor who transfers to a third party an individual's personal information as an asset that is part of a merger, acquisition, bankruptcy, or other transaction in which such contractor or third party assumes control of all or part of such third party provided that such

information is used or shared consistently with this article. If a third party materially alters how it uses or shares personal information of an individual in a manner that is materially inconsistent with the promises made at the time of collection, it shall provide prior notice of the new or changed practice to such individual. Such notice shall be sufficiently prominent and robust to ensure that individuals can easily exercise their choices consistently with section eighty-three of this article.

15. "Service" or "services" shall mean work, labor, and services, including services furnished in connection with the sale or repair of goods.

16. "Third party" shall mean a person or business entity who is not another government entity or contractor thereof.

17. "Unique identifier" or "unique personal identifier" shall mean a persistent identifier that can be used to recognize an individual, a family, or a device that is linked to an individual or family, over time and across different services, including, but not limited to, a device identifier; an internet protocol address; cookies, beacons, pixel tags, or similar technology; unique pseudonym, or user alias; telephone numbers, or other forms of persistent or probabilistic identifiers that can be used to identify a particular individual or device. For purposes of this subdivision, "family" means a custodial parent or guardian and any minor children over which such parent or guardian has custody.

18. "Verifiable information request" shall mean a request to a government entity that is made by an individual, by an individual on behalf of such individual's minor child, or by a natural person or a person registered with the secretary of state, authorized by such individual to act on such individual's behalf, and that such government entity or contractor can reasonably verify, pursuant to regulations adopted by the attorney general to be such individual about whom such government entity or contractor has collected personal information. A government entity or contractor shall not be obligated to provide information to such individual pursuant to sections eighty-two and eighty-three of this article if such government entity or contractor cannot verify that such individual making such request is the same individual about whom such government entity has collected information, or is a person authorized by such individual to act on such individual's behalf.

§ 82. Right to request disclosure. 1. Any individual shall have the right to request that a government entity or contractor that collects personal information disclose to such individual the categories and specific pieces of personal information such government entity or contractor has collected.

2. A government entity that collects an individual's personal information shall, at or before the point of collection, inform such individual as to the categories of personal information to be collected and the purposes for which such categories of personal information shall be used. A government entity or contractor shall not collect additional categories of personal information or use personal information collected for additional purposes without providing such individual with notice consistent with this article.

3. A government entity or contractor shall provide the information specified in subdivision one of this section to an individual only upon receipt of a verifiable information request.

4. A government entity or contractor that receives a verifiable information request from an individual to access personal information shall promptly take steps to disclose and deliver, free of charge to such

individual, such personal information required by this section. Such information may be delivered by mail or electronically. A government entity or contractor may provide personal information to an individual at any time, but shall not be required to provide personal information to any individual more than twice in a twelve-month period.

5. This section shall not require a government entity or contractor to:

(a) retain any personal information collected for a single, one-time transaction if such information is not shared or retained by such government entity or contractor; or

(b) re-identify or otherwise link information that is not maintained in a manner that would be considered personal information.

§ 83. Right to request deletion of personal information. 1. Any individual shall have the right to request that a government entity or contractor delete any personal information about such individual which such government entity or contractor has collected from such individual.

2. A government entity or contractor that collects personal information about individuals shall notify such individuals of their rights to request the deletion of their personal information.

3. A government entity or contractor that receives a verifiable information request from an individual to delete such individual's personal information shall delete such individual's personal information from its records and direct any contractors to delete such individual's personal information from their records.

4. Notwithstanding other provisions under this article, a government entity or contractor shall not be required to comply with an individual's request to delete such individual's personal information if it is necessary for the government entity or contractor to maintain such individual's personal information in order to:

(a) complete the purpose for which the personal information was collected;

(b) comply with a legal obligation;

(c) otherwise use such individual's personal information, internally, in a lawful manner that is compatible with the scope of such government entity or contractor's duties.

§ 84. Personal information which may be requested. 1. An individual who requests disclosure of information pursuant to section eighty-two of this article may request the following information:

(a) the categories of personal information such government entity or contractor has collected about such individual;

(b) the categories of sources from which such personal information has been collected;

(c) the purpose for collecting or sharing such personal information;

(d) any other government entities, contractors, or third parties with whom such government entity or contractor shares such personal information; and

(e) the specific pieces of personal information such government entity or contractor has collected about such individual.

2. A government entity or contractor possessing personal information about an individual shall disclose to such individual such information upon receipt of a verifiable information request submitted by such individual. Within five days of receipt of such verifiable information request, such government entity or contractor shall send a response to such requestor acknowledging receipt of such request.

3. (a) A government entity or contractor that collects personal information about individuals from another government entity or contractor shall disclose to such individuals the following:

(i) the categories of personal information it has collected about such individual;

(ii) the categories of sources from which such personal information is collected;

(iii) the purpose for collecting or sharing such personal information;

(iv) any other government entities or contractors with whom such government entity or contractor shares personal information; and

(v) the specific pieces of personal information it has collected about such individual.

(b) Such government entity or contractor shall disclose the information required by paragraph (a) of this subdivision to such individuals immediately upon receipt of such information, without the need for a request to first be submitted.

4. This section shall not require a government entity or contractor to do the following:

(a) retain any personal information about an individual collected for a single one-time transaction if, in the ordinary course of business, such information about such individual is not retained; or

(b) re-identify or otherwise link any data that, in the ordinary course of business, is not maintained in a manner that would be considered personal information.

§ 85. Shared information; government entities or contractors. Any individual shall have the right to request that a government entity that shares such individual's personal information, disclose to such individual:

(1) the categories of personal information that such government entity collected about such individual; and

(2) the categories of personal information that such government entity or contractor has shared about such individual and the other government entities or contractors with whom such personal information was shared, by category or categories of personal information for each government entity or contractor to whom such personal information was shared.

§ 86. Non-shareable personal information. 1. No government entity or contractor shall share any individual's personal information with a contractor or subcontractor unless such information is crucial to the purpose for which such government entity or contractor has contracted such contractor or subcontractor's services.

2. No government entity or contractor shall share any individual's personal information with another government entity or contractor unless such information is crucial to the performance of such other government entity or contractor's duties, and such other government entity or contractor cannot procure such personal information on its own without serious hardship.

3. No government entity or contractor shall sell personal information about an individual that has been shared with such government entity or contractor.

§ 87. Right not to be discriminated against. No government entity or contractor shall discriminate against any individual in any way in response to such individual exercising any of his or her rights under this article.

§ 88. Accessibility. 1. In order to comply with the requirements of this article, in a method that is reasonably accessible to individuals, government entities shall:

(a) Make available to individuals two or more designated methods for submitting verifiable information requests which include, at a minimum, a toll-free telephone number, and if such government entity maintains an internet website, a website address.

(b) If such government entity maintains an internet website, provide on such website information instructing individuals of their rights to request disclosure or deletion of personal information under this article, and all methods available for making such a request. Such information shall not be required to be on the homepage of such government entity's website.

2. In order to comply with the requirements of this article, government entities and contractors shall:

(a) Disclose and deliver any information requested in a verifiable information request free of charge within forty-five days of receiving such request from an individual. The time period to provide the required information may be extended once by an additional forty-five days when reasonably necessary, provided the requesting individual is provided notice of such extension within the first forty-five day period. Such disclosure shall cover the twelve-month period preceding such government entity or contractor's receipt of the verifiable information request, and shall be made in writing and delivered by mail or electronically at the requestor's option.

(b) Disclose and deliver the information requested in a manner that covers all disclosure requirements under subdivision one of section eighty-four of this article.

(c) Disclose and deliver any information shared pursuant to section eighty-six of this article by such government entity or contractor within the twelve months preceding such request.

(d) Ensure that any employees of such government entity or contractor who are responsible for handling inquiries about disclosure requirements prescribed by this article are informed of all disclosure requirements under this article, and that such employees are informed of how to direct individuals of how to exercise their rights under this article.

(e) Use any personal information collected from an individual in a verifiable information request in connection with such government entity or contractor's verification of such request solely for the purposes of such verification.

(f) Not be required to respond to more than two verifiable information requests from the same individual within the same twelve-month period.

§ 89. Limitation on restrictions. 1. The obligations imposed on government entities and contractors by this article shall not restrict any government entity or contractor's ability to:

(a) otherwise comply with federal, state, or local laws;

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

(c) comply with a request made under the freedom of information law; or

(d) exercise or defend legal claims.

2. This article shall not apply to the sale of personal information to or from a consumer reporting agency if such information is to be reported in, or used to generate, a consumer report as defined by the federal fair credit reporting act (15 USC 1681), and use of that information is limited by such act.

3. If requests from an individual are manifestly unfounded or excessive, in particular because of their repetitive character, a government entity or contractor may either charge a reasonable fee, taking into

account the administrative costs of providing such information or communication or taking the action requested, or refuse to act on such request and notify such individual of the reason for refusing such request. Such government entity or contractor shall bear the burden of demonstrating that such verified consumer request is manifestly unfounded or excessive.

4. A government entity that discloses personal information to a contractor shall not be liable under this article if such contractor uses such personal information in violation of the restrictions set forth in this article, provided that, at the time of disclosing such personal information, such government entity does not have actual knowledge or reason to believe that such contractor intends to commit such a violation. No contractor shall be liable under this article for the obligations of a government entity for which it provides services as set forth in this article.

5. This article shall not be construed to require a government entity to reidentify or otherwise link information that is not maintained in a manner that would be considered personal information.

6. The rights afforded to individuals and the obligations imposed on government entities and contractors by this article shall not adversely affect the rights and freedoms of any other person.

§ 89-a. Relief. 1. Any individual whose personal information is subject to an unauthorized access and exfiltration, theft, or disclosure as a result of a government entity or contractor's violation of the duty to implement and maintain reasonable security procedures and practices appropriate to the nature of the information to protect such personal information request action by the attorney general in response to such violation.

2. Nothing in this article shall be interpreted to serve as the basis for a private right of action under any other law. This shall not be construed to relieve any party from any duties or obligations imposed under other law or the United States or New York constitution.

§ 89-b. Compliance guidance. Any government entity or contractor may seek the opinion of the attorney general for guidance on how to comply with the provisions of this article.

§ 3. This act shall take effect one year after it shall have become a law.