STATE OF NEW YORK

9540

IN SENATE

May 16, 2024

Introduced by Sen. SKOUFIS -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business law, in relation to prohibiting data brokers from selling the personal information of current and former military servicemembers

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

Section 1. The general business law is amended by adding a new section 399-jj to read as follows:

§ 399-jj. Sale of personal information of servicemembers. 1. As used in this section:

(a) "Consent" means a clear affirmative act signifying a freely given, specific, informed, and unambiguous indication of a consumer's agreement to the processing of data relating to the consumer. Consent may be withdrawn at any time, and a controller must provide clear, conspicuous, and consumer-friendly means to withdraw consent. The burden of establishing consent is on the controller. Consent does not include: (i) an agreement of general terms of use or a similar document that references unrelated information in addition to personal data processing; (ii) an agreement obtained through fraud, deceit or deception; (iii) any act that does not constitute a user's intent to interact with another party such as hovering over, pausing or closing any content; or (iv) a pre-checked box or similar default.

(b) "Consumer" means a natural person who is a New York resident acting only in an individual or household context. It does not include a natural person known to be acting in a professional or employment context.

(c) "Data broker" means a person, or unit or units of a legal entity, separately or together, that does business in the state of New York and knowingly collects, and sells to other controllers or third parties, the personal data of a consumer with whom it does not have a direct relationship. "Data broker" does not include any of the following:

(i) a consumer reporting agency to the extent that it is covered by the federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681 et seq.); or

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

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(ii) a financial institution to the extent that it is covered by the Gramm-Leach-Bliley Act (Public Law 106-102) and implementing regulations.

(d) "Household" means a group, however identified, of consumers who cohabitate with one another at the same residential address and may share use of common devices or services.

(e) "Military servicemember" means a person who is serving or has served:

(i) on active duty in the army, navy, marine corps, air force, space force, or coast guard of the United States;

(ii) in the army national guard or air national guard;

(iii) as a commissioned officer in the public health service or of the national oceanic and atmospheric administration or environmental sciences services administration; or

(iv) as a cadet at a United States armed forces service academy.

(f) "Military servicemember list" means a list that includes personal information, other than public record information, about one or more individuals or households which is created for the express or implied purpose of compiling information about individuals who are current or former servicemembers.

(g) "Personal data" means any data that identifies or could reasonably be linked, directly or indirectly, with a specific natural person, or household. Personal data does not include deidentified data, information that is lawfully made publicly available from federal, state or local government records, or information that a controller has a reasonable basis to believe is lawfully made available to the general public by the consumer or from widely distributed media.

(h) "Sell" means selling, reselling, disclosing, transferring, conveying, sharing, licensing, trading, making available, processing, granting of permission or authorization to process, or otherwise exchanging or providing access to personal data for monetary or other valuable consideration. "Sell" includes enabling, facilitating or providing access to personal data for targeted advertising. "Sell" does not include the following:

(i) the disclosure of data to a processor who processes the data on behalf of the controller and which is contractually prohibited from using it for any purpose other than as instructed by the controller;

(ii) the disclosure or transfer of data as an asset that is part of a merger, acquisition, bankruptcy, or other transaction in which another entity assumes control or ownership of all or a majority of the controller's assets; or

(iii) the disclosure of personal data to a third party necessary for purposes of providing a product, service, or interaction with such third party, when the consumer intentionally and unambiguously requests such disclosure.

2. It shall be unlawful for a data broker knowingly or recklessly to sell a military servicemember list or personal data about any military servicemember without consent from such military servicemembers.

3. This section applies to legal persons that conduct business in New York or produce products or services that are targeted to residents of New York.

§ 2. This act shall take effect on the ninetieth day after it shall have become a law.