STATE OF NEW YORK

6797

2025-2026 Regular Sessions

IN SENATE

March 24, 2025

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 Consent may be withdrawn at any time, and a controller must provide clear, conspicuous, and consumer-friendly means to withdraw consent.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

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

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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

(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 or family members of a current or former servicemember.

(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) "Sale", "sell", or "sold" means the disclosure, transfer, conveyance, sharing, licensing, making available, processing, granting of permission or authorization to process, or other exchange of personal data, or providing access to personal data for monetary or other valuable consideration by the controller to a third party. "Sale" includes enabling, facilitating or providing access to personal data for targeted advertising. "Sale" 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.

(i) "Targeted advertising" means advertising based upon profiling.

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. It shall be unlawful for a data broker knowingly or recklessly to advertise a military servicemember list or personal data about any mili-

tary servicemember or member of their family without consent from such military servicemembers.

4. 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.

5. This section shall not apply to:

(a) personal data processed by state and local governments, and municipal corporations, for processes other than sale; provided, however, filing and processing fees shall not be considered a sale for the purposes of this paragraph;

(b) a national securities association registered pursuant to section 15A of the Securities Exchange Act of 1934, as amended, or regulations adopted thereunder or a registered futures association so designated pursuant to section 17 of the Commodity Exchange Act, as amended, or any regulations adopted thereunder;

(c) any nonprofit entity identified in section four hundred five of the financial services law to the extent such organization collects, processes, uses, or shares data solely in relation to identifying, investigating, or assisting:

(i) law enforcement agencies in connection with suspected insurance-related criminal or fraudulent acts; or

(ii) first responders in connection with catastrophic events;

(d) information that meets the following criteria:

(i) personal data collected, processed, sold, or disclosed pursuant to and in compliance with the federal Gramm-Leach-Bliley act (P.L. 106-102), and implementing regulations;

(ii) personal data collected, processed, sold, or disclosed pursuant to the federal Driver's Privacy Protection Act of 1994 (18 U.S.C. Sec. 2721 et seq.), if the collection, processing, sale, or disclosure is in compliance with that law;

(iii) personal data regulated by the federal Family Educational Rights and Privacy Act, U.S.C. Sec. 1232g and its implementing regulations;

(iv) personal data collected, processed, sold, or disclosed pursuant to the federal Farm Credit Act of 1971 (as amended in 12 U.S.C. Sec. 2001-2279cc) and its implementing regulations (12 C.F.R. Part 600 et seq.) if the collection, processing, sale, or disclosure is in compliance with that law;

(v) personal data regulated by section two-d of the education law;

(vi) data maintained as employment records, for purposes other than sale;

(vii) protected health information that is lawfully collected by a covered entity or business associate and is governed by the privacy, security, and breach notification rules issued by the United States 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 Accountability Act of 1996 (Public Law 104-191) ("HIPAA") and the Health Information Technology for Economic and Clinical Health Act (Public Law 111-5);

(viii) patient identifying information for purposes of 42 C.F.R. Part 2, established pursuant to 42 U.S.C. Sec. 290dd-2, as long as such data is not sold in violation of HIPAA or any state or federal law;

(ix) information and documents lawfully created for purposes of the federal Health Care Quality Improvement Act of 1986, and related regulations;

(x) patient safety work product created for purposes of 42 C.F.R. Part 3, established pursuant to 42 U.S.C. Sec. 299b-21 through 299b-26;

(xi) information that is treated in the same manner as information exempt under subparagraph (vii) of this paragraph that is maintained by a covered entity or business associate as defined by HIPAA or a program or a qualified service organization as defined by 42 U.S.C. § 290dd-2, as long as such data is not sold in violation of HIPAA or any state or federal law;

(xii) deidentified health information that meets all of the following conditions:

(A) it is deidentified in accordance with the requirements for deidentification set forth in Section 164.514 of Part 164 of Title 45 of the Code of Federal Regulations;

(B) it is derived from protected health information, individually identifiable health information, or identifiable private information compliant with the Federal Policy for the Protection of Human Subjects, also known as the Common Rule; and

(C) a covered entity or business associate does not attempt to reidentify the information nor do they actually reidentify the information except as otherwise allowed under state or federal law;

(xiii) information maintained by a covered entity or business associate governed by the privacy, security, and breach notification rules issued by the United States 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 Accountability Act of 1996 (Public Law 104-191), to the extent the covered entity or business associate maintains the information in the same manner as protected health information as described in subparagraph (vii) of this paragraph;

(xiv) data collected as part of human subjects research, including a clinical trial, conducted in accordance with the Federal Policy for the Protection of Human Subjects, also known as the Common Rule, pursuant to good clinical practice guidelines issued by the International Council for Harmonisation or pursuant to human subject protection requirements of the United States Food and Drug Administration;

(xv) personal data processed only for one or more of the following purposes:

(A) product registration and tracking consistent with applicable United States Food and Drug Administration regulations and guidance;

(B) public health activities and purposes as described in Section 164.512 of Title 45 of the Code of Federal Regulations; and/or

(C) activities related to quality, safety, or effectiveness regulated by the United States Food and Drug Administration; or

(xvi) personal data collected, processed, or disclosed pursuant to and in compliance with any opt-out program authorized by the public service commission or any other opt-out community distributed generation programs authorized in law; or

(e) (i) an activity involving the collection, maintenance, disclosure, sale, communication, or use of any personal data bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living by a consumer reporting agency, as defined in Title 15 U.S.C. Sec. 1681a(f), by a furnisher of information, as set forth in Title 15 U.S.C. Sec. 1681s-2, who provides information for use in a consumer report, as defined in Title 15 U.S.C. Sec. 1861a(d), and by a user of a consumer report, as set forth in Title 15 U.S.C. Sec. 1681b.; and

(ii) this paragraph shall apply only to the extent that such activity involving the collection, maintenance, disclosure, sale, communication,

or use of such data by that agency, furnisher, or user is subject to regulation under the Fair Credit Reporting Act, Title 15 U.S.C. Sec. 1681 et seq., and the data is not collected, maintained, used, communicated, disclosed, or sold except as authorized by the Fair Credit Reporting Act.

6. 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 to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations; 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 ten thousand dollars. 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.

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