

[Sixth Reprint]

**SENATE, No. 332**

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**STATE OF NEW JERSEY**  
**220th LEGISLATURE**

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PRE-FILED FOR INTRODUCTION IN THE 2022 SESSION

**Sponsored by:**

**Senator TROY SINGLETON**

**District 7 (Burlington)**

**Senator RICHARD J. CODEY**

**District 27 (Essex and Morris)**

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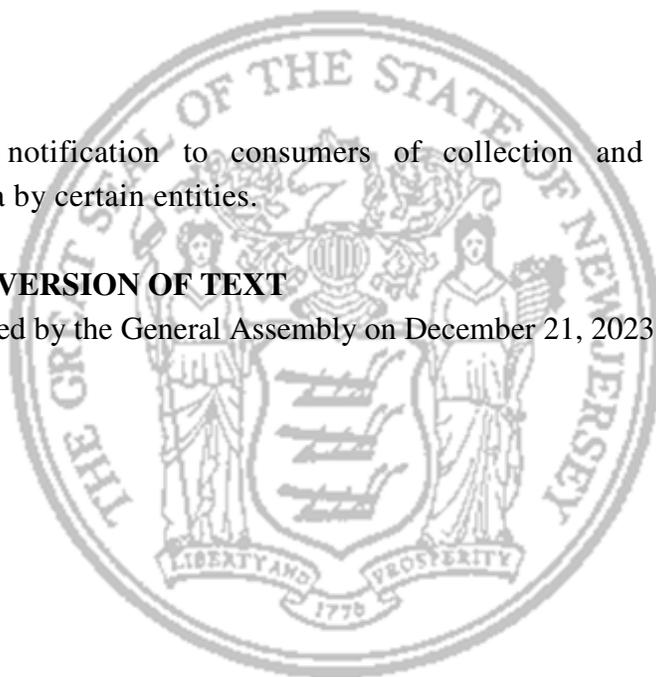
**Senators Greenstein, Madden, Pou, Assemblywoman McKnight,  
Assemblymen DeAngelo, Verrelli and Wimberly**

**SYNOPSIS**

Requires notification to consumers of collection and disclosure of personal data by certain entities.

**CURRENT VERSION OF TEXT**

As amended by the General Assembly on December 21, 2023.



**(Sponsorship Updated As Of: 1/8/2024)**

1 AN ACT concerning <sup>4</sup>**[commercial Internet websites]** online  
 2 services<sup>4</sup>, consumers, and <sup>5</sup>**[personally identifiable information]**  
 3 personal data<sup>5</sup> and supplementing Title 56 of the Revised  
 4 Statutes.

5  
 6 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
 7 *of New Jersey:*

8  
 9 <sup>5</sup>**[1. As used in P.L. , c. (C. ) (pending before the**  
 10 **Legislature as this bill):**

11 “Affiliate” means a legal entity that controls, is controlled by, or is  
 12 under common control with another legal entity.

13 <sup>4</sup>“Business” means a sole proprietorship, partnership, limited  
 14 liability company, corporation, association, or other legal entity that is  
 15 organized or operated for the profit or financial benefit of its  
 16 shareholders or other owners, that collects consumers’ personal  
 17 information. “Business” does not include non-profit organizations.<sup>4</sup>

18 <sup>4</sup>**[“Commercial Internet website” means a website operated for**  
 19 **business purposes, including, but not limited to, the sale of goods and**  
 20 **services, which collects and maintains personally identifiable**  
 21 **information from a consumer.]**<sup>4</sup>

22 “Consumer” means an identified person who is a resident of this  
 23 State acting <sup>2</sup>**[only]**<sup>2</sup> <sup>3</sup>**only**<sup>3</sup> in an individual <sup>3</sup>**[<sup>2</sup>, job seeking,<sup>2</sup>]**<sup>3</sup> or  
 24 household context. “Consumer” shall not include a person  
 25 <sup>3</sup>**[<sup>2</sup>otherwise<sup>2</sup>]**<sup>3</sup> acting in a commercial or employment context.

26 “De-identified data” means: data that cannot be linked to a  
 27 consumer without additional information that is kept separately; or  
 28 data that has been modified to a degree that the risk of re-  
 29 identification, consistent with guidance from the Federal Trade  
 30 Commission and the National Institute of Standards and Technology,  
 31 is small, as determined by the Director of the Division of Consumer  
 32 Affairs in the Department of Law and Public Safety pursuant to  
 33 section <sup>3</sup>**[8]** <sup>9</sup>**9**<sup>3</sup> of P.L. , c. (C. ) (pending before the Legislature  
 34 as this bill), that is subject to a public commitment by the operator not  
 35 to attempt to re-identify the data, and to which one or more  
 36 enforceable controls to prevent re-identification has been applied,  
 37 which may include legal, administrative, technical, or contractual  
 38 controls.

39 “Designated request address” means an electronic mail address,  
 40 Internet website, or toll-free telephone number that a consumer may  
 41 use to request the information required to be provided pursuant to  
 42 section 3 of P.L. , c. (C. ) (pending before the Legislature as this  
 43 bill).

**EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.**

**Matter underlined thus is new matter.**

**Matter enclosed in superscript numerals has been adopted as follows:**

<sup>1</sup>Senate floor amendments adopted August 8, 2022.

<sup>2</sup>Senate floor amendments adopted November 21, 2022.

<sup>3</sup>Senate floor amendments adopted December 19, 2022.

<sup>4</sup>Assembly AST committee amendments adopted May 11, 2023.

<sup>5</sup>Assembly AJU committee amendments adopted December 18, 2023.

<sup>6</sup>Assembly floor amendments adopted December 21, 2023.

1 “Disclose” means to release, transfer, share, disseminate, make  
2 available, or otherwise communicate <sup>2</sup>[orally,] <sup>2 3</sup>orally, <sup>3</sup> in writing, or  
3 by electronic or any other means <sup>3</sup>[<sup>2, 2</sup>]<sup>3</sup> <sup>4</sup>by an operator<sup>4</sup> to a third  
4 party a consumer’s personally identifiable information. “Disclose”  
5 shall not include:

6 the disclosure of a consumer’s personally identifiable information  
7 by an operator to a third party under a written contract authorizing the  
8 third party to use the personally identifiable information to perform  
9 services on behalf of the operator, including maintaining or servicing  
10 accounts, providing customer service, processing or fulfilling orders  
11 and transactions, verifying consumer information, processing  
12 payments, providing financing, or similar services, but only if the  
13 contract prohibits the third party from using the personally identifiable  
14 information for any reason other than performing the specified service  
15 on behalf of the operator and from disclosing personally identifiable  
16 information to additional third parties unless expressly authorized by  
17 the consumer;

18 the disclosure of personally identifiable information by an operator  
19 to a third party based on a good-faith belief that disclosure is required  
20 to comply with <sup>4</sup>an<sup>4</sup> applicable law, regulation, legal process, or court  
21 order;

22 the disclosure of personally identifiable information by an operator  
23 to a third party that is reasonably necessary to address fraud, risk  
24 management, security, or technical issues, to protect the operator’s  
25 rights or property, or to protect a consumer or the public from illegal  
26 activities as required by law; or

27 the disclosure of personally identifiable information by an operator  
28 to a third party in connection with the proposed or actual sale or  
29 merger of the operator, or sale of all or part of its assets, to a third  
30 party.

31 “Online service” means <sup>4</sup>[an information] any<sup>4</sup> service provided  
32 over the Internet that collects and maintains personally identifiable  
33 information from a consumer.

34 “Operator” means a person or entity that operates <sup>4</sup>[a commercial  
35 Internet website or]<sup>4</sup> an online service <sup>3</sup>[<sup>2</sup>, and includes any third  
36 party that tracks or collects any information concerning a customer’s  
37 usage of a commercial Internet website, regardless of whether the third  
38 party owns or operates the website<sup>2</sup>]<sup>3</sup>. “Operator” shall not include  
39 any third party that operates, hosts, or manages, but does not own, <sup>4</sup>[a  
40 commercial Internet website or] an<sup>4</sup> online service on the operator’s  
41 behalf, or processes information on behalf of the operator.

42 “Personally identifiable information” means any information that  
43 is linked or reasonably linkable to an identified or identifiable person.  
44 “Personally identifiable information” shall not include de-identified  
45 data <sup>2</sup>[or publicly available information.

46 “Publicly available information” means information that is  
47 lawfully made available from federal, State, or local government

1 records, or widely-distributed media]<sup>2</sup> <sup>3</sup>or publically available  
2 information.

3 “Publicly available information” means information that is  
4 lawfully made available from federal, State, or local government  
5 records, or widely-distributed media<sup>3</sup>.

6 “Sale” means the exchange of personally identifiable information  
7 for monetary consideration by the operator to a third party for  
8 purposes of licensing or selling personally identifiable information at  
9 the third party's discretion to additional third parties. "Sale" shall not  
10 include the following:

11 the disclosure of personally identifiable information to a service  
12 provider that processes that information on behalf of the operator;

13 the disclosure of personally identifiable information to a third party  
14 with whom the consumer has a direct relationship for purposes of  
15 providing a product or service requested by the consumer or otherwise  
16 in a manner that is consistent with a consumer's reasonable  
17 expectations considering the context in which the consumer provided  
18 the personally identifiable information to the operator;

19 the disclosure or transfer of personally identifiable information to  
20 an affiliate of the operator; or

21 the disclosure or transfer of personally identifiable information to a  
22 third party as an asset that is part of a merger, acquisition, bankruptcy,  
23 or other transaction in which the third party assumes control of all or  
24 part of the operator's assets.

25 “Service provider” means a person, private entity, public entity,  
26 agency, or other entity that processes personally identifiable  
27 information on behalf of the operator <sup>3</sup>[<sup>2</sup>or on the operator's  
28 website<sup>2</sup>]<sup>3</sup> and who shall provide sufficient guarantees to the operator  
29 to implement appropriate technical and organizational measures in a  
30 manner that processing shall ensure the protection of the consumer's  
31 personally identifiable information.

32 “Third party” means a person, private entity, public entity, agency,  
33 or entity other than the consumer, operator, or affiliate or service  
34 provider of the operator.

35 "Verified request" means the process through which a consumer  
36 may submit a request to exercise a right or rights established in  
37 P.L. , c. (C. ) (pending before the Legislature as this bill), and  
38 by which an operator can reasonably authenticate the request and the  
39 consumer making the request using commercially reasonable means. ]<sup>5</sup>  
40

41 <sup>5</sup>[<sup>2</sup>. a. An operator that collects the personally identifiable  
42 information of a consumer through <sup>4</sup>[a commercial Internet website  
43 or] an<sup>4</sup> online service shall provide on <sup>2</sup>[its] the<sup>2</sup> <sup>4</sup>[commercial  
44 Internet website or]<sup>4</sup> online service notification to a consumer that  
45 shall include, but not be limited to:

46 (1) the categories of the personally identifiable information that  
47 the operator collects through the <sup>4</sup>[commercial Internet website

1 or]<sup>4</sup> online service about a consumer who uses or visits the  
 2 <sup>2</sup>[operator's]<sup>2</sup> <sup>3</sup>operator's<sup>3</sup> <sup>4</sup>[commercial Internet website or]<sup>4</sup>  
 3 online service;

4 (2) the categories of all third parties <sup>4</sup>[with] to<sup>4</sup> which the  
 5 operator may disclose a consumer's personally identifiable  
 6 information;

7 (3) whether a third party may collect personally identifiable  
 8 information about a consumer's online activities over time and  
 9 across different <sup>4</sup>[commercial Internet websites or ]<sup>4</sup> online  
 10 services when the consumer uses the <sup>4</sup>[Internet website or]<sup>4</sup> online  
 11 service of the operator;

12 (4) a description of the process for an individual consumer who  
 13 uses or visits the <sup>4</sup>[commercial Internet website or]<sup>4</sup> online service  
 14 to review and request changes to any of the consumer's personally  
 15 identifiable information that is collected by <sup>2</sup>[the commercial  
 16 Internet website or online service of]<sup>2</sup> <sup>4</sup>[<sup>3</sup>the commercial Internet  
 17 website or] the<sup>4</sup> online service of <sup>3</sup> the operator;

18 (5) the process by which the operator notifies consumers who  
 19 use or visit the <sup>4</sup>[commercial Internet website or]<sup>4</sup> online service of  
 20 material changes to the notification required to be made available  
 21 pursuant to this subsection, along with the effective date of the  
 22 notice; and

23 (6) information concerning one or more designated request  
 24 addresses of the operator.

25 b. In addition to the requirements of subsection a. of this  
 26 section, an operator shall include the notification as a separate  
 27 section of the operator's privacy policy.

28 <sup>3</sup>[<sup>2</sup>c. (1) The process described in paragraph (4) of  
 29 subsection a. of this section shall consist of one or more methods  
 30 for submitting requests to the operator. The operator shall provide a  
 31 toll-free phone number, email address, or both, for the submission  
 32 of requests by a customer to review or change personally  
 33 identifiable information. The consumer shall submit verified  
 34 documents supporting the consumer's request to change personally  
 35 identifiable information. The operator shall take steps to promptly  
 36 verify the data and reply to the consumer's request.

37 (2) An operator may deny an individual consumer's request to  
 38 change the consumer's personally identifiable information if:

39 (a) the operator is legally obligated to retain the personally  
 40 identifiable information; or

41 (b) the changes cannot be verified through the submitted  
 42 documentation.<sup>2</sup>]<sup>3</sup>]<sup>5</sup>

43  
 44 <sup>5</sup>[3. a. An operator that collects a consumer's personally  
 45 identifiable information through its <sup>4</sup>[commercial Internet website  
 46 or]<sup>4</sup> online service and discloses the consumer's personally  
 47 identifiable information to a third party shall make the following

1 information available to the consumer free of charge upon receipt of  
 2 a verified request from the consumer for this information through a  
 3 designated request address:

4 (1) the category or categories of a consumer's personally  
 5 identifiable information that were disclosed; and

6 (2) the category or categories of the third parties that received the  
 7 consumer's personally identifiable information.

8 b. An operator that receives a verified request from a consumer  
 9 pursuant to subsection a. of this section shall provide a response to  
 10 the consumer within 60 days of the operator's verification of the  
 11 request and shall provide the information, pursuant to subsection a.  
 12 of this section, for all disclosures of personally identifiable  
 13 information that occurred in the prior 12 months.

14 c. This section shall not apply to personally identifiable  
 15 information disclosed prior to the effective date of P.L. , c.  
 16 (C. ) (pending before the Legislature as this bill). <sup>4</sup>This section  
 17 shall not apply to personally identifiable information collected prior  
 18 to the effective date of P.L. , c. (C. ) (pending before the  
 19 Legislature as this bill) unless the controller continues to store such  
 20 information thereafter.<sup>4</sup><sup>5</sup>

21

22 <sup>5</sup>[4. a. An operator that collects the personally identifiable  
 23 information of a consumer through its <sup>4</sup>[commercial Internet website  
 24 or]<sup>4</sup> online service and sells the personally identifiable information  
 25 of the consumer <sup>4</sup>[through the Internet]<sup>4</sup> shall clearly and  
 26 conspicuously post a link, on its <sup>4</sup>[commercial Internet website or]<sup>4</sup>  
 27 online service or in another prominently accessible location the  
 28 <sup>4</sup>[commercial Internet website] online service<sup>4</sup> maintains for  
 29 consumer privacy settings, to an Internet webpage maintained by the  
 30 operator, which enables a consumer, by verified request, to opt <sup>4</sup>[out  
 31 of] into<sup>4</sup> the sale of the consumer's personally identifiable  
 32 information. The method in which a consumer may opt <sup>4</sup>[out] in<sup>4</sup>  
 33 shall be in a form and manner determined by the operator, provided  
 34 that a consumer shall not be required to establish an account with  
 35 the operator in order to opt <sup>4</sup>[out of] into<sup>4</sup> the sale of a consumer's  
 36 personally identifiable information.

37 b. An operator shall be prohibited from discriminating against  
 38 a consumer if the consumer chooses to opt out of the sale of the  
 39 consumer's personally identifiable information pursuant to  
 40 subsection a. of this section. The provisions of this section shall not  
 41 prohibit the operator's ability to offer consumers discounts, loyalty  
 42 programs, or other incentives for the sale of the consumer's  
 43 personally identifiable information, or to provide different services  
 44 to consumers that are reasonably related to the value of the relevant  
 45 data<sup>4</sup>, provided that the operator has clearly and conspicuously  
 46 disclosed to the consumer that the offered discounts, programs,  
 47 incentives, or services require consenting to the sale or processing

1 of personally identifiable information that the consumer otherwise  
2 has a right to opt out of<sup>4</sup> **]**<sup>5</sup>.

3

4 <sup>5</sup>**[**5. A waiver of the requirements of, or an agreement that does  
5 not comply with, the provisions of P.L. , c. (C. ) (pending  
6 before the Legislature as this bill) shall be void and  
7 unenforceable.**]**<sup>5</sup>

8

9 <sup>5</sup>**[**6. Nothing in P.L. , c. (C. ) (pending before the  
10 Legislature as this bill) shall apply to:

11 a. protected health information collected by a covered entity or  
12 business associate subject to the privacy, security, and breach  
13 notification rules issued by the United States Department of Health  
14 and Human Services, Parts 160 and 164 of Title 45 of the Code of  
15 Federal Regulations, established pursuant to the "Health Insurance  
16 Portability and Accountability Act of 1996," Pub.L.104-191, and the  
17 "Health Information Technology for Economic and Clinical Health  
18 Act," <sup>4</sup>**[**(<sup>4</sup>42 U.S.C. s.17921 et seq.<sup>4</sup>)**]**<sup>4</sup>.

19 b. a financial institution or an affiliate of a financial institution  
20 that is subject to Title V of the federal "Gramm-Leach-Bliley Act <sup>4</sup>**[**of  
21 1999<sup>4</sup>," 15 U.S.C. s.6801 et seq., and the rules and implementing  
22 regulations promulgated thereunder;

23 c. the secondary market institutions identified in  
24 15 U.S.C. s.6809(3)(D) and 12 C.F.R. s.1016.3(l)(3)(iii); <sup>4</sup>**[**or<sup>4</sup>

25 d. an insurance institution subject to P.L.1985, c.179 (C.17:23A-1  
26 et seq.)<sup>4</sup>**[**.<sup>4</sup>

27 e. the sale of a consumer's personally identifiable information by  
28 the New Jersey Motor Vehicle Commission that is permitted by the  
29 federal "Drivers' Privacy Protection Act of 1994," 18 U.S.C. s.2721 et  
30 seq.; <sup>4</sup>**[**and<sup>4</sup> or<sup>4</sup>

31 f. personally identifiable information collected, processed, sold,  
32 or disclosed by a consumer reporting agency, as defined in 15 U.S.C.  
33 s.1681a(f), if the collection, processing, sale, or disclosure of the  
34 personally identifiable information is limited by the federal "Fair  
35 Credit Reporting Act," 15 U.S.C. s.1681 et seq., and implementing  
36 regulations.**]**<sup>5</sup>

37

38 <sup>5</sup>**[**7. Nothing in P.L. , c. (C. ) (pending before the  
39 Legislature as this bill) shall require an operator to:

40 a. re-identify de-identified data;

41 b. collect, retain, use, link, or combine personally identifiable  
42 information concerning a consumer that it would not otherwise  
43 collect, retain, use, link, or combine in the ordinary course of  
44 business.**]**<sup>5</sup>

45

46 <sup>5</sup>**[**8. It shall be an unlawful practice and violation of P.L.1960,  
47 c.39 (C.56:8-1 et seq.) for an operator to fail to notify a consumer of

1 the sale of personally identifiable information pursuant to sections 2  
 2 and 3 of P.L. , c. (C. ) (pending before the Legislature as this  
 3 bill) or fail to allow a consumer to opt out of the sale of a  
 4 consumer’s personally identifiable information pursuant to section 4  
 5 of P.L. , c. (C. ) (pending before the Legislature as this bill)  
 6 if the operator fails to cure any alleged violation of  
 7 P.L. , c. (C. ) (pending before the Legislature as this bill)  
 8 within 30 days after receiving notice of alleged noncompliance  
 9 from the Attorney General. **1**<sup>5</sup>

10  
 11 **5**<sup>1</sup>[9. The Director of the Division of Consumer Affairs in the  
 12 Department of Law and Public Safety shall promulgate rules and  
 13 regulations, pursuant to the “Administrative Procedure Act,”  
 14 P.L.1968, c.410 (C.52:14B-1 et seq.), necessary to effectuate the  
 15 purposes of P.L. , c. (C. ) (pending before the Legislature as  
 16 this bill).**1**<sup>5</sup>

17  
 18 **5**<sup>1</sup>[10. The Office of the Attorney General shall have sole and  
 19 exclusive authority to enforce a violation of P.L. , c. (C. )  
 20 (pending before the Legislature as this bill). <sup>1</sup>Nothing in  
 21 P.L. , c. (C. ) (pending before the Legislature as this bill)  
 22 shall be construed as providing the basis for, or subject to, a private  
 23 right of action for violations of P.L. , c. (C. ) (pending before  
 24 the Legislature as this bill) or under any other law.**1**<sup>5</sup>

25  
 26 **5**<sup>1</sup>[11. This act shall take effect on the 180th day following  
 27 the date of enactment, except that the Director of the Division of  
 28 Consumer Affairs may take any anticipatory administrative action in  
 29 advance as shall be necessary for the implementation of this act.**1**<sup>5</sup>

30  
 31 **5**<sup>1</sup>1. As used in P.L. , c. (C. ) (pending before the Legislature  
 32 as this bill):

33 “Affiliate” means a legal entity that controls, is controlled by, or is  
 34 under common control with another legal entity. For the purposes of  
 35 this definition, “control” means: the ownership of or the power to vote,  
 36 more than 50 percent of the outstanding shares of any class of voting  
 37 security of a company; the control in any manner over the election of a  
 38 majority of the directors or individuals exercising similar functions; or  
 39 the power to exercise a controlling influence over the management or  
 40 policies of a company.

41 “Biometric data” means data generated by automatic or  
 42 technological processing, measurements, or analysis of an individual’s  
 43 biological, physical, or behavioral characteristics, including, but not  
 44 limited to, fingerprint, voiceprint, eye retinas, irises, facial mapping,  
 45 facial geometry, facial templates, or other unique biological, physical,  
 46 or behavioral patterns or characteristics that are used or intended to be  
 47 used, singularly or in combination with each other or with other

1 personal data, to identify a specific individual. “Biometric data” shall  
2 not include: a digital or physical photograph; an audio or video  
3 recording; or any data generated from a digital or physical photograph,  
4 or an audio or video recording, unless such data is generated to  
5 identify a specific individual.

6 “Child” shall have the same meaning as provided in COPPA.

7 “Consent” means a clear affirmative act signifying a consumer’s  
8 freely given, specific, informed and unambiguous agreement to allow  
9 the processing of personal data relating to the consumer. “Consent”  
10 may include a written statement, including by electronic means, or any  
11 other unambiguous affirmative action. “Consent shall not include:  
12 acceptance of a general or broad terms of use or similar document that  
13 contains descriptions of personal data processing along with other,  
14 unrelated information; hovering over, muting, pausing, or closing a  
15 given piece of content; or agreement obtained through the use of dark  
16 patterns.

17 “Consumer” means an identified person who is a resident of this  
18 State acting only in an individual or household context. “Consumer”  
19 shall not include a person acting in a commercial or employment  
20 context.

21 “Controller” means an individual, or legal entity that, alone or  
22 jointly with others determines the purpose and means of processing  
23 personal data.

24 “COPPA” means the federal Children’s Online Privacy Protection  
25 Act, 15 U.S.C. s.6501 et seq., and any rules, regulations, guidelines,  
26 and exceptions thereto, as may be amended from time to time.

27 “Dark pattern” means a user interface designed or manipulated  
28 with the substantial effect of subverting or impairing user autonomy,  
29 decision-making, or choice, and includes, but is not limited to, any  
30 practice the United States Federal Trade Commission refers to as a  
31 “dark pattern.”

32 “Decisions that produce legal or similarly significant effects  
33 concerning the consumer” means decisions that result in the provision  
34 or denial of financial or lending services, housing, insurance,  
35 education enrollment or opportunity, criminal justice, employment  
36 opportunities, health care services, or access to essential goods and  
37 services.

38 “De-identified data” means: data that cannot be reasonably used to  
39 infer information about, or otherwise be linked to, an identified or  
40 6[reasonably]6 identifiable individual, or a device linked to such an  
41 individual, if the controller that possesses the data: (1) takes  
42 reasonable measures to ensure that the data cannot be associated with  
43 an individual, (2) publicly commits to maintain and use the data only  
44 in a de-identified fashion and not to attempt to re-identify the data, and  
45 (3) contractually obligates any recipients of the information to comply  
46 with the requirements of this paragraph.

47 “Designated request address” means an electronic mail address,  
48 Internet website, or toll-free telephone number that a consumer may

1 use to request the information required to be provided pursuant to  
2 section 3 of P.L. , c. (C. ) (pending before the Legislature as this  
3 bill).

4 “Personal data” means any information that is linked or reasonably  
5 linkable to an identified or identifiable person. “Personal data” shall  
6 not include de-identified data or publicly available information.

7 “Precise geolocation data” means information derived from  
8 technology, including, but not limited to, global positioning system  
9 level latitude and longitude coordinates or other mechanisms, that  
10 directly identifies the specific location of an individual with precision  
11 and accuracy within a radius of 1,750 feet. “Precise geolocation data”  
12 does not include the content of communications, or any data generated  
13 by or connected to advanced utility metering infrastructure systems or  
14 equipment for use by a utility.

15 “Process” or “processing” means an operation or set of operations  
16 performed, whether by manual or automated means, on personal data  
17 or on sets of personal data, such as the collection, use, storage,  
18 disclosure, analysis, deletion, or modification of personal data, and  
19 also includes the actions of a controller directing a processor to  
20 process personal data.

21 “Processor” means a person, private entity, public entity, agency,  
22 or other entity that processes personal data on behalf of the controller.

23 “Profiling” means any form of automated processing performed on  
24 personal data to evaluate, analyze or predict personal aspects related to  
25 an identified or identifiable individual’s economic situation, health,  
26 personal preferences, interests, reliability, behavior, location or  
27 movements.

28 “Publicly available information” means information that is  
29 lawfully made available from federal, State, or local government  
30 records, or widely-distributed media or information that a controller  
31 has a reasonable basis to believe a consumer has lawfully made  
32 available to the general public and has not restricted to a specific  
33 audience.

34 “Sale” means the sharing, disclosing, or transferring of personal  
35 data for monetary or other valuable consideration by the controller to a  
36 third party. “Sale” shall not include:

37 The disclosure of personal data to a processor that <sup>6</sup>[only]<sup>6</sup>  
38 processes the personal data on the controller’s behalf;

39 The disclosure of personal data to a third party for the purposes of  
40 providing a product or service requested by the consumer;

41 The disclosure or transfer of personal data to an affiliate of the  
42 controller;

43 The disclosure of personal data that the consumer intentionally  
44 made available to the general public through a mass media channel  
45 and did not restrict to a specific audience; or

46 The disclosure or transfer of personal data to a third party as an  
47 asset that is part of a proposed or actual merger, acquisition,

1 bankruptcy, or other transaction in which the third party assumes  
2 control of all or part of the controller’s assets.

3 “Sensitive data” means personal data revealing racial or ethnic  
4 origin; religious beliefs; mental or physical health condition, treatment,  
5 or diagnosis; financial information <sup>6</sup>, which shall include a consumer’s  
6 account number, account log-in, financial account, or credit or debit  
7 card number, in combination with any required security code, access  
8 code, or password that would permit access to a consumer’s financial  
9 account<sup>6</sup>; sex life or sexual orientation; citizenship or immigration  
10 status; status as transgender or non-binary; genetic or biometric data  
11 that may be processed for the purpose of uniquely identifying an  
12 individual; personal data collected from a known child; or precise  
13 geolocation data.

14 “Targeted advertising” means displaying <sup>6</sup>[an]<sup>6</sup> advertisements to  
15 a consumer where the advertisement is selected based on personal data  
16 obtained or inferred from that consumer’s activities over time and  
17 across nonaffiliated Internet web sites or online applications to predict  
18 such consumer’s preferences or interests. “Targeted advertising” shall  
19 not include: advertisements based on activities within a controller’s  
20 own internet websites or online applications; advertisements based on  
21 the context of a consumer’s current search query, visit to an internet  
22 website or online application; advertisements directed to a consumer in  
23 response to the consumer’s request for information or feedback; or  
24 processing personal data solely to measure or report advertising  
25 frequency, performance, or reach.

26 “Third party” means a person, private entity, public entity, agency,  
27 or entity other than the consumer, controller, or affiliate or processor  
28 of the controller.

29 “Trade secret” has the same meaning as section 2 of P.L.2011,  
30 c.161 (C.56:15-2).

31 "Verified request" means the process through which a consumer  
32 may submit a request to exercise a right or rights established in  
33 P.L. , c. (C. ) (pending before the Legislature as this bill), and  
34 by which a controller can reasonably authenticate the request and the  
35 consumer making the request using commercially reasonable means.<sup>5</sup>  
36

37 <sup>5</sup>2. Notwithstanding any State law, rule, regulation, or order to  
38 the contrary, the provisions of P.L. , c. (C. ) (pending  
39 before the Legislature as this bill) shall only apply to controllers  
40 that conduct business in the State or produce products or services  
41 that are targeted to residents of the State, and that during a calendar  
42 year either:

43 a. control or process the personal data of at least 100,000  
44 consumers, excluding personal data processed solely for the  
45 purpose of completing a payment transaction; or

46 b. control or process the personal data of at least 25,000  
47 consumers and the controller derives revenue, or receives a discount

1 on the price of any goods or services, from the sale of personal  
2 data.<sup>5</sup>

3

4 <sup>5</sup>3. a. A controller shall provide to a consumer a reasonably  
5 accessible, clear, and meaningful privacy notice that shall include, but  
6 may not be limited to:

7 (1) the categories of the personal data that the controller processes;

8 (2) the purpose for processing personal data;

9 (3) the categories of all third parties to which the controller may  
10 disclose a consumer's personal data;

11 (4) the categories of personal data that the controller shares with  
12 third parties, if any;

13 (5) how consumers may exercise their consumer rights, including  
14 the controller's contact information and how a consumer may appeal a  
15 controller's decision with regard to the consumer's request;

16 (6) the process by which the controller notifies consumers of  
17 material changes to the notification required to be made available  
18 pursuant to this subsection, along with the effective date of the notice;  
19 and

20 (7) an active electronic mail address or other online mechanism  
21 that the consumer may use to contact the controller.

22 b. If a controller sells personal data to third parties or processes  
23 personal data for the purposes of targeted advertising, the sale of  
24 personal data, or profiling in furtherance of decisions that produce  
25 legal or similarly significant effects concerning a consumer, the  
26 controller shall clearly and conspicuously disclose such sale or  
27 processing, as well as the manner in which a consumer may exercise  
28 the right to opt out of such sale or processing<sup>6</sup>], a description of the  
29 process for a consumer to review and make requests pursuant to  
30 section 4 of this act, P.L. , c. (C. ) (pending before the  
31 Legislature as this bill)]<sup>6</sup>.

32 c. A controller shall not:

33 (1) require a consumer to create a new account in order to exercise  
34 a right<sup>6</sup>, but may require a consumer to use an existing account to  
35 submit a verified request<sup>6</sup>; or

36 (2) based solely on the exercise of a right and unrelated to  
37 feasibility or the value of a service, increase the cost of, or decrease  
38 the availability of, the product or service.<sup>5</sup>

39

40 <sup>5</sup>4. a. A controller that receives a verified request from a consumer  
41 shall provide a response to the consumer within 45 days of the  
42 controller's receipt of the request. The controller may extend the  
43 response period by 45 additional days where reasonably necessary,  
44 considering the complexity and number of the consumer's requests,  
45 provided that the controller informs the consumer of any such  
46 extension within the initial 45-day response period and the reason for

- 1 the extension and shall provide the information for all disclosures of  
2 personal data that occurred in the prior 12 months.
- 3 b. This section shall not apply to personal data collected prior to  
4 the effective date of P.L. , c. (C. ) (pending before the  
5 Legislature as this bill) unless the controller continues to process such  
6 information thereafter.
- 7 c. If a controller declines to take action regarding the consumer's  
8 request, the controller shall inform the consumer without undue delay,  
9 but not later than 45 days after receipt of the request, of the  
10 justification for declining to take action and instructions for how to  
11 appeal the decision.
- 12 d. Information provided in response to a consumer request shall be  
13 provided by a controller, free of charge, once per consumer during any  
14 twelve-month period <sup>6</sup>], except that, for a second or subsequent  
15 identical request within a 12-month period, the controller may charge  
16 an amount calculated pursuant to regulations] <sup>6</sup>. If requests from a  
17 consumer are manifestly unfounded, excessive, or repetitive, the  
18 controller may charge the consumer a reasonable fee to cover the  
19 administrative costs of complying with the request or decline to act on  
20 the request. The controller shall bear the burden of demonstrating the  
21 manifestly unfounded, excessive or repetitive nature of the request.
- 22 e. If a controller is unable to authenticate a request to exercise any  
23 of the rights afforded under section 5 of P.L. , c. (C. )  
24 (pending before the Legislature as this bill) using commercially  
25 reasonable efforts, the controller shall not be required to comply with a  
26 request to initiate an action pursuant to this section and shall provide  
27 notice to the consumer that the controller is unable to authenticate the  
28 request to exercise such right or rights until such consumer provides  
29 additional information reasonably necessary to authenticate such  
30 consumer and such consumer's request to exercise such right or rights.  
31 A controller shall not be required to authenticate an opt-out request  
32 <sup>6</sup>[it honors] <sup>6</sup>, but a controller may deny an opt-out request if the  
33 controller has a good faith, reasonable and documented belief that such  
34 request is fraudulent. If a controller denies an opt-out request because  
35 the controller believes such request is fraudulent, the controller shall  
36 send a notice to the person who made such request disclosing that such  
37 controller believes such request is fraudulent, why such controller  
38 believes such request is fraudulent and that such controller shall not  
39 comply with such request.
- 40 f. A controller shall establish a process for a consumer to appeal the  
41 controller's refusal to take action on a request within a reasonable  
42 period of time after the consumer's receipt of the decision. The appeal  
43 process shall be conspicuously available and similar to the process for  
44 submitting requests to initiate action pursuant to this section. Not later  
45 than 45 days after receipt of an appeal, a controller shall inform the  
46 consumer in writing of any action taken or not taken in response to the  
47 appeal, including a written explanation of the reasons for the decisions.  
48 If the appeal is denied, the controller shall also provide the consumer

1 with an online mechanism, if available, or other method through which  
2 the consumer may contact the Division of Consumer Affairs in the  
3 Department of Law and Public Safety to submit a complaint.<sup>5</sup>

4  
5 <sup>5</sup>5. A controller shall be prohibited from discriminating against a  
6 consumer if the consumer chooses to opt out of the processing for  
7 sale, targeted advertising, or profiling in furtherance of decisions  
8 that produce legal or similarly significant effects of the consumer's  
9 personal data pursuant to P.L. , c. (C. ) (pending before the  
10 Legislature as this bill). The provisions of this section shall not  
11 prohibit the controller's ability to offer consumers discounts, loyalty  
12 programs, or other incentives for the sale of the consumer's personal  
13 data, or to provide different services to consumers that are  
14 reasonably related to the value of the relevant data, provided that  
15 the controller has clearly and conspicuously disclosed to the  
16 consumer that the offered discounts, programs, incentives, or  
17 services include the sale or processing of personal data that the  
18 consumer otherwise has a right to opt out of.<sup>5</sup>

19  
20 <sup>5</sup>6. A waiver of the requirements of, or an agreement that does  
21 not comply with, the provisions of P.L. , c. (C. ) (pending  
22 before the Legislature as this bill) shall be void and unenforceable.<sup>5</sup>

23  
24 <sup>5</sup>7. a. A consumer shall have the right to:

25 (1) confirm whether a controller processes the consumer's  
26 personal data and accesses such personal data, provided that  
27 nothing in this paragraph shall require a controller to provide the  
28 data to the consumer in a manner that would reveal the controller's  
29 trade secrets;

30 (2) correct inaccuracies in the consumer's personal data, taking  
31 into account the nature of the information and the purposes of the  
32 processing of the information;

33 (3) delete personal data concerning the consumer;

34 (4) obtain a copy of the consumer's personal data held by the  
35 controller in a portable and, to the extent technically feasible,  
36 readily usable format that allows the consumer to transmit the data  
37 to another entity without hindrance, provided that nothing in this  
38 paragraph shall require a controller to provide the data to the  
39 consumer in a manner that would reveal the controller's trade  
40 secrets; and

41 (5) opt out of the processing of personal data for the purposes of  
42 (a) targeted advertising; (b) the sale of personal data; or (c)  
43 profiling in furtherance of decisions that produce legal or similarly  
44 significant effects concerning the consumer.

45 b. A controller that has lawfully obtained personal data about a  
46 consumer from a source other than the consumer shall be deemed in  
47 compliance with a consumer's request to delete such data pursuant  
48 to this subsection by:

1       (1) retaining a record of the deletion request and the minimum  
2 data necessary for the purpose of ensuring the consumer’s personal  
3 data remains deleted from the controller’s records and not using  
4 such retained information for any other purpose pursuant to the  
5 provisions of P.L. , c. (C. ) (pending before the Legislature  
6 as this bill); or

7       (2) deleting such personal data.<sup>5</sup>

8  
9       <sup>5</sup>8. a. A consumer may designate another person to serve as the  
10 consumer’s authorized agent and act on the consumer’s behalf to opt  
11 out of the processing and sale of the consumer’s personal data. A  
12 consumer may designate an authorized agent using technology,  
13 including a link to an Internet website, an Internet browser setting or  
14 extension, or a global setting on an electronic device, that allows the  
15 consumer to indicate the consumer’s intent to opt-out of the collection  
16 and processing for the purpose of any sale of data or for the purpose of  
17 targeted advertising or <sup>6</sup>, when such technology exists, <sup>6</sup> for profiling  
18 in furtherance of decisions that produce legal or similarly significant  
19 effects concerning a consumer. A controller shall comply with an opt-  
20 out request received from an authorized agent under this subsection if  
21 the controller is able to verify, with commercially reasonable effort,  
22 the identity of the consumer and the authorized agent’s authority to act  
23 on the consumer’s behalf.

24       b. (1) Beginning not later than <sup>6</sup>[four] <sup>6</sup>six<sup>6</sup> months following the  
25 effective date of P.L. , c. (C. ) (pending before the Legislature  
26 as this bill), a controller that processes personal data for purposes of  
27 targeted advertising, <sup>6</sup>or<sup>6</sup> the sale of personal data <sup>6</sup>[, or profiling in  
28 furtherance of decisions that produce legal or similarly significant  
29 effects concerning a consumer]<sup>6</sup> shall allow consumers to exercise the  
30 right to opt-out of such processing through a user-selected universal  
31 opt-out mechanism.

32       (2) The platform, technology, or mechanism shall:

33       (a) not permit its manufacturer to unfairly disadvantage another  
34 controller;

35       (b) not make use of a default setting that opts-in a consumer to the  
36 processing or sale of personal data, unless the controller has  
37 determined that the consumer has selected such default setting and the  
38 selection clearly represents the consumer’s <sup>6</sup>[an]<sup>6</sup> affirmative, freely  
39 given, and unambiguous choice to <sup>6</sup>[opt-out of] opt into<sup>6</sup> any  
40 processing of such consumer’s personal data pursuant to P.L. , c.  
41 (C. ) (pending before the Legislature as this bill);

42       (c) be consumer-friendly, clearly described, and easy to use by the  
43 average consumer;

44       (d) be as consistent as possible with any other similar platform,  
45 technology, or mechanism required by any federal or state law or  
46 regulation; and

1 (e) enable the controller to accurately determine whether the  
2 consumer is a resident of this State and whether the consumer has  
3 made a legitimate request to opt out of the processing of personal data  
4 for the purposes of any sale of such consumer's personal data or  
5 targeted advertising <sup>6</sup>]; and

6 (3) Controllers shall inform consumers about the opt-out choices  
7 available under P.L. , c. (C. ) (pending before the Legislature  
8 as this bill)] <sup>6</sup>.

9 c. The Division of Consumer Affairs in the Department of Law and  
10 Public Safety may adopt rules and regulations that detail the technical  
11 specifications for one or more universal opt-out mechanisms that  
12 clearly communicate a consumer's affirmative, freely given, and  
13 unambiguous choice to opt out of the processing of personal data  
14 pursuant to P.L. , c. (C. ) (pending before the Legislature as  
15 this bill), including regulations that permit the controller to accurately  
16 authenticate the consumer as a resident of this state and determine that  
17 the mechanism represents a legitimate request to opt out of the  
18 processing of personal data pursuant to P.L. , c. (C. ) (pending  
19 before the Legislature as this bill). The division may update the rules  
20 that detail the technical specifications for the mechanisms from time to  
21 time to reflect the means by which consumers interact with  
22 controllers. <sup>5</sup>

23  
24 <sup>5</sup>9. a. A controller shall:

25 (1) limit the collection of personal data to what is adequate,  
26 relevant, and reasonably necessary in relation to the purposes for  
27 which such data is processed, as disclosed to the consumer;

28 (2) except as otherwise provided in P.L. , c. (C. ) (pending  
29 before the Legislature as this bill), not process personal data for  
30 purposes that are neither reasonably necessary to, nor compatible with,  
31 the purposes for which such personal data is processed, as disclosed to  
32 the consumer, unless the controller obtains the consumer's consent;

33 (3) take reasonable measures to establish, implement, and maintain  
34 administrative, technical, and physical data security practices to  
35 protect the confidentiality, integrity, and accessibility of personal data  
36 and to secure personal data during both storage and use from  
37 unauthorized acquisition. The data security practices shall be  
38 appropriate to the volume and nature of the personal data at issue;

39 (4) not process sensitive data concerning a consumer without first  
40 obtaining the consumer's consent, or, in the case of the processing of  
41 personal data concerning a known child, without processing such data  
42 in accordance with COPPA;

43 (5) not process personal data in violation of the laws of this State  
44 and federal laws that prohibit unlawful discrimination against  
45 consumers;

46 (6) provide an effective mechanism for a consumer to revoke the  
47 consumer's consent under this section that is at least as easy as the  
48 mechanism by which the consumer provided the consumer's consent

1 and, upon revocation of such consent, cease to process the data as soon  
2 as practicable, but not later than 15 days after the receipt of such  
3 request;

4 (7) not process the personal data of a consumer for purposes of  
5 targeted advertising, the sale of the consumer's personal data, or  
6 profiling in furtherance of decisions that produce legal or similarly  
7 significant effects concerning a consumer without the consumer's  
8 consent, under circumstances where a controller has actual knowledge,  
9 or willfully disregards, that the consumer is at least 13 years of age but  
10 younger than 17 years of age;

11 (8) specify the express purposes for which personal data are  
12 processed; and

13 (9) not conduct processing that presents a heightened risk of harm  
14 to a consumer without conducting and documenting a data protection  
15 assessment of each of its processing activities that involve personal  
16 data acquired on or after the effective date of  
17 P.L. , c. (C. ) (pending before the Legislature as this bill) that  
18 present a heightened risk of harm to a consumer.

19 b. Data protection assessments shall identify and weigh the  
20 benefits that may flow, directly and indirectly, from the processing to  
21 the controller, the consumer, other stakeholders, and the public against  
22 the potential risks to the rights of the consumer associated with the  
23 processing, as mitigated by safeguards that the controller can employ  
24 to reduce the risks. The controller shall factor into this assessment the  
25 use of de-identified data and the reasonable expectations of consumers,  
26 as well as the context of the processing and the relationship between  
27 the controller and the consumer whose personal data will be processed.  
28 A controller shall make the data protection assessment available to the  
29 Division of Consumer Affairs in the Department of Law and Public  
30 Safety upon request. The division may evaluate the data protection  
31 assessment for compliance with the duties contained in this section and  
32 with other laws. Data protection assessments shall be confidential and  
33 exempt from public inspection under P.L.1963 c.3 (C.47:1A-1 et al.).  
34 The disclosure of a data protection assessment pursuant to a request  
35 from the division under this section shall not constitute a waiver of any  
36 attorney-client privilege or work-product protection that might  
37 otherwise exist with respect to the assessment and any information  
38 contained in the assessment.

39 c. For the purposes of this section, "heightened risk" includes:

40 (1) processing personal data for purposes of targeted advertising  
41 or for profiling if the profiling presents a reasonably foreseeable risk  
42 of: unfair or deceptive treatment of, or unlawful disparate impact on,  
43 consumers; financial or physical injury to consumers; a physical or  
44 other intrusion upon the solitude or seclusion, or the private affairs or  
45 concerns, of consumers if the intrusion would be offensive to a  
46 reasonable person; or other substantial injury to consumers;

47 (2) selling personal data; and

48 (3) processing sensitive data.<sup>5</sup>

1 <sup>6</sup>d. A single data protection assessment may address a comparable  
2 set of processing operations that include similar activities.<sup>6</sup>

3  
4 <sup>5</sup>10. Nothing in P.L. \_\_\_\_\_, c. \_\_\_\_\_ (C. \_\_\_\_\_) (pending before the  
5 Legislature as this bill) shall apply to:

6 a. protected health information collected by a covered entity or  
7 business associate subject to the privacy, security, and breach  
8 notification rules issued by the United States Department of Health  
9 and Human Services, Parts 160 and 164 of Title 45 of the Code of  
10 Federal Regulations, established pursuant to the "Health Insurance  
11 Portability and Accountability Act of 1996," Pub.L.104-191, and the  
12 "Health Information Technology for Economic and Clinical Health  
13 Act," 42 U.S.C. s.17921 et seq.;

14 b. a financial institution<sup>6</sup>, data,<sup>6</sup> or an affiliate of a financial  
15 institution that is subject to Title V of the federal "Gramm-Leach-  
16 Bliley Act," 15 U.S.C. s.6801 et seq., and the rules and implementing  
17 regulations promulgated thereunder;

18 c. the secondary market institutions identified in  
19 15 U.S.C. s.6809(3)(D) and 12 C.F.R. s.1016.3(l)(3)(iii);

20 d. an insurance institution subject to P.L.1985, c.179 (C.17:23A-1  
21 et seq.);

22 e. the sale of a consumer's personal data by the New Jersey  
23 Motor Vehicle Commission that is permitted by the federal "Drivers'  
24 Privacy Protection Act of 1994," 18 U.S.C. s.2721 et seq.;

25 f. personal data collected, processed, sold, or disclosed by a  
26 consumer reporting agency, as defined in 15 U.S.C. s.1681a(f), if the  
27 collection, processing, sale, or disclosure of the personal data is  
28 limited, governed, and collected, maintained, disclosed, sold,  
29 communicated, or used only as authorized by the federal "Fair Credit  
30 Reporting Act," 15 U.S.C. s.1681 et seq., and implementing  
31 regulations;

32 g. any State agency as defined in section 2 of P.L.1971, c.182  
33 (C.52:13D-13), any political subdivision, and any division, board,  
34 bureau, office, commission, or other instrumentality created by a  
35 political subdivision; or

36 h. personal data that is collected, processed, or disclosed, as part  
37 of research conducted in accordance with the Federal Policy for the  
38 protection of human subjects pursuant to 45 C.F.R. Part 46 or the  
39 protection of human subjects pursuant to 21 C.F.R. Parts 50 and 56.<sup>5</sup>

40  
41 <sup>5</sup>11. Nothing in P.L. \_\_\_\_\_, c. \_\_\_\_\_ (C. \_\_\_\_\_) (pending before the  
42 Legislature as this bill) shall require <sup>6</sup>[an operator] a controller<sup>6</sup> to:

43 a. re-identify de-identified data;

44 b. collect, retain, use, link, or combine personal data concerning a  
45 consumer that it would not otherwise collect, retain, use, link, or  
46 combine in the ordinary course of business.<sup>5</sup>

1       <sup>5</sup>12. a. Nothing in P.L. , c. (C. ) (pending before the  
2 Legislature as this bill) shall be construed to restrict a controller’s  
3 or processor’s ability to:  
4       (1) comply with federal or State law or regulations;  
5       (2) comply with a civil, criminal or regulatory inquiry,  
6 investigation, subpoena or summons by federal, State, municipal or  
7 other governmental authorities;  
8       (3) cooperate with law enforcement agencies concerning  
9 conduct or activity that the controller or processor reasonably and in  
10 good faith believes may violate federal, State or municipal  
11 ordinances or regulations;  
12       (4) investigate, establish, exercise, prepare for or defend legal  
13 claims;  
14       (5) provide a product or service specifically requested by a  
15 consumer;  
16       (6) perform under a contract to which a consumer is a party,  
17 including fulfilling the terms of a written warranty;  
18       (7) take steps at the request of a consumer prior to entering into  
19 a contract;  
20       (8) take immediate steps to protect an interest that is essential  
21 for the life or physical safety of the consumer or another individual,  
22 and where the processing cannot be manifestly based on another  
23 legal basis;  
24       (9) prevent, detect, protect against or respond to security  
25 incidents, identity theft, fraud, harassment, malicious or deceptive  
26 activities or any illegal activity, preserve the integrity or security of  
27 systems or investigate, report or prosecute those responsible for any  
28 such action;  
29       (10) engage in public or peer-reviewed scientific or statistical  
30 research in the public interest that adheres to all other applicable  
31 ethics and privacy laws and is approved, monitored and governed  
32 by an institutional review board that determines, or similar  
33 independent oversight entities that determine,  
34       (a) whether the deletion of the information is likely to provide  
35 substantial benefits that do not exclusively accrue to the controller,  
36       (b) the expected benefits of the research outweigh the privacy  
37 risks, and  
38       (c) whether the controller has implemented reasonable  
39 safeguards to mitigate privacy risks associated with research,  
40 including any risks associated with re-identification;  
41       (11) assist another controller, processor, or third party with any  
42 of the obligations under P.L. , c. (C. ) (pending before the  
43 Legislature as this bill); or  
44       (12) personal data for reasons of public interest in the area of  
45 public health, community health, or population health, but solely to  
46 the extent that such processing is  
47       (a) subject to suitable and specific measures to safeguard the  
48 rights of the consumer whose personal data is being processed, and

- 1     (b) under the responsibility of a professional subject to  
2 confidentiality obligations under federal, State or local law.
- 3     b. The obligations imposed on controllers or processors under  
4 P.L. , c. (C. ) (pending before the Legislature as this bill)  
5 shall not restrict a controller's or processor's ability to collect, use or  
6 retain data for internal use to:
- 7         (1) conduct internal research to develop, improve, or repair  
8 products, services, or technology;
- 9         (2) effectuate a product recall;
- 10         (3) identify and repair technical errors that impair existing or  
11 intended functionality; or
- 12         (4) perform internal operations that are reasonably aligned with  
13 the expectations of the consumer or reasonably anticipated based on  
14 the consumer's existing relationship with the controller, or are  
15 otherwise compatible with processing data in furtherance of the  
16 provision of a product or service specifically requested by a  
17 consumer or the performance of a contract to which the consumer is  
18 a party. Personal data collected, used, or retained pursuant to this  
19 subsection shall, where applicable, take into account the nature and  
20 purpose or purposes of such collection, use or retention. Such data  
21 shall be subject to reasonable administrative, technical, and physical  
22 measures to protect the confidentiality, integrity, and accessibility  
23 of the personal data and to reduce reasonably foreseeable risks of  
24 harm to consumers relating to such collection, use, or retention of  
25 personal data.
- 26     c. The obligations imposed on controllers or processors under  
27 P.L. , c. (C. ) (pending before the Legislature as this bill)  
28 shall not apply where compliance by the controller or processor  
29 with the provisions of law would violate an evidentiary privilege  
30 under the laws of this State. Nothing in P.L. , c. (C. )  
31 (pending before the Legislature as this bill) shall be construed to  
32 prevent a controller or processor from providing personal data  
33 concerning a consumer to a person covered by an evidentiary  
34 privilege under the laws of the State as part of a privileged  
35 communication.
- 36     d. Personal data that are processed by a controller pursuant to an  
37 exception provided by this section:
- 38         (1) shall not be processed for any purpose other than a purpose  
39 expressly listed in this section; and
- 40         (2) shall be processed solely to the extent that the processing is  
41 necessary, reasonable, and proportionate to the specific purpose or  
42 purposes listed in this section.
- 43     e. If a controller processes personal data pursuant to an  
44 exemption in this section, the controller bears the burden of  
45 demonstrating that such processing qualifies for the exemption and  
46 complies with the requirements in this section.
- 47     f. Processing personal data for the purposes expressly identified  
48 in this section shall not solely make a legal entity a controller with

1 respect to such processing if such entity would not otherwise meet  
2 the definition of a controller.<sup>5</sup>

3  
4 <sup>5</sup>13. a. Controllers and processors shall meet their respective  
5 obligations established under P.L. , c. (C. ) (pending before  
6 the Legislature as this bill).

7 b. Processors shall adhere to the instructions of the controller  
8 and assist the controller to meet its obligations under this act.  
9 Taking into account the nature of processing and the information  
10 available to the processor, the processor shall assist the controller  
11 by:

12 (1) taking appropriate technical and organizational measures,  
13 insofar as possible, for the fulfillment of the controller's obligation  
14 to respond to consumer requests to exercise their rights under this  
15 act;

16 (2) helping to meet the controller's obligations in relation to the  
17 security of processing the personal data and in relation to  
18 notification of a breach of the security of the system; and

19 (3) providing information to the controller necessary to enable  
20 the controller to conduct and document any data protection  
21 assessments required by section 9 of P.L. , c. (C. )  
22 (pending before the Legislature as this bill). The controller and  
23 processor are each responsible for only the measures allocated to  
24 them.

25 c. Notwithstanding the instructions of the controller, a  
26 processor shall:

27 (1) ensure that each person processing the personal data is  
28 subject to a duty of confidentiality with respect to the data; and

29 (2) engage a subcontractor pursuant to a written contract in  
30 accordance with subsection e. of this section that requires the  
31 subcontractor to meet the obligations of the processor with respect  
32 to the personal data.

33 d. Taking into account the context of processing, the controller  
34 and the processor shall implement appropriate technical and  
35 organizational measures to ensure a level of security appropriate to  
36 the risk and establish a clear allocation of the responsibilities  
37 between them to implement the measures.

38 e. Processing by a processor shall be governed by a contract  
39 between the controller and the processor that is binding on both  
40 parties and that sets forth:

41 (1) the processing instructions to which the processor is bound,  
42 including the nature and purpose of the processing;

43 (2) the type of personal data subject to the processing, and the  
44 duration of the processing;

45 (3) the requirements imposed by this subsection and subsections  
46 c. and d. of this section; and

47 (4) the following requirements:

1       (a) At the discretion of the controller, the processor shall delete  
2 or return all personal data to the controller as requested at the end of  
3 the provision of services, unless retention of the personal data is  
4 required by law;

5       (b) (i) The processor shall make available to the controller all  
6 information necessary to demonstrate compliance with the  
7 obligations in this act; and

8       (ii) The processor shall allow for, and contribute to, reasonable  
9 assessments and inspections by the controller or the controller's  
10 designated assessor. Alternatively, the processor may, with the  
11 controller's consent, arrange for a qualified and independent  
12 assessor to conduct, at least annually and at the processor's expense,  
13 an assessment of the processor's policies and technical and  
14 organizational measures in support of the obligations under this act  
15 using an appropriate and accepted control standard or framework  
16 for the assessment as applicable. The processor shall provide a  
17 report of the assessment to the controller upon request.

18       f. In no event may a contract relieve a controller or a processor  
19 from the liabilities imposed on them by virtue of its role in the  
20 processing relationship as defined by P.L. , c. (C. )  
21 (pending before the Legislature as this bill).

22       g. Determining whether a person is acting as a controller or  
23 processor with respect to a specific processing of data shall be a  
24 fact-based determination that depends upon the context in which  
25 personal data are to be processed. A person that is not limited in its  
26 processing of personal data pursuant to a controller's instructions, or  
27 that fails to adhere to the instructions, shall be deemed a controller  
28 and not a processor with respect to a specific processing of data. A  
29 processor that continues to adhere to a controller's instructions with  
30 respect to a specific processing of personal data shall remain a  
31 processor. If a processor begins, alone or jointly with others,  
32 determining the purposes and means of the processing of personal  
33 data, it shall be deemed a controller with respect to the processing.<sup>5</sup>

34  
35       <sup>5</sup>14. a. It shall be an unlawful practice and violation of  
36 P.L.1960, c.39 (C.56:8-1 et seq.) for a controller to violate the  
37 provisions of P.L. , c. (C. ) (pending before the Legislature  
38 as this bill).

39       b. Until the first day of the 18th month next following the  
40 effective date of P.L. , c. (C. ) (pending before the  
41 Legislature as this bill), prior to bringing an enforcement action  
42 before an administrative law judge or a court of competent  
43 jurisdiction in this State, the Division of Consumer Affairs in the  
44 Department of Law and Public Safety shall issue a notice to the  
45 controller if a cure is deemed possible. If the operator controller  
46 fails to cure the alleged violation of P.L. , c. (C. ) (pending  
47 before the Legislature as this bill) within 30 days after receiving

1 notice of alleged noncompliance from the division, such  
2 enforcement action may be brought.<sup>5</sup>

3

4 <sup>5</sup>15. The Director of the Division of Consumer Affairs in the  
5 Department of Law and Public Safety shall promulgate rules and  
6 regulations, pursuant to the “Administrative Procedure Act,”  
7 P.L.1968, c.410 (C.52:14B-1 et seq.), necessary to effectuate the  
8 purposes of P.L. , c. (C. ) (pending before the Legislature as  
9 this bill).<sup>5</sup>

10

11 <sup>5</sup>16. The Office of the Attorney General shall have sole and  
12 exclusive authority to enforce a violation of P.L. , c. (C. )  
13 (pending before the Legislature as this bill). Nothing in  
14 P.L. , c. (C. ) (pending before the Legislature as this bill)  
15 shall be construed as providing the basis for, or subject to, a private  
16 right of action for violations of P.L. , c. (C. ) (pending before  
17 the Legislature as this bill) <sup>6</sup>【or under any other law】<sup>6</sup>.<sup>5</sup>

18

19 <sup>5</sup>17. This act shall take effect on the 365th day following the date  
20 of enactment, except that the Director of the Division of Consumer  
21 Affairs may take any anticipatory administrative action in advance as  
22 shall be necessary for the implementation of this act.<sup>5</sup>