

STATE OF NEW YORK

5603

2017-2018 Regular Sessions

IN SENATE

April 19, 2017

Introduced by Sen. CARLUCCI -- 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 the disclosure of personally identifiable information by an internet service provider without the express written approval of the customer

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

1 Section 1. The general business law is amended by adding a new section
2 399-k to read as follows:

3 § 399-k. Disclosure of personally identifiable information by an
4 internet service provider; prohibited. 1. For the purposes of this
5 section the following terms shall have the following meanings:

6 (a) "Consumer" means a person who agrees to pay a fee to an internet
7 service provider for access to the internet for personal, family, or
8 household purposes, and who does not resell access.

9 (b) "Internet service provider" means a business or person who
10 provides consumers authenticated access to, or presence on, the internet
11 by means of a switched or dedicated telecommunications channel upon
12 which the provider provides transit routing of internet protocol (IP)
13 packets for and on behalf of the consumer. Internet service provider
14 does not include the offering, on a common carrier basis, of telecommu-
15 nications facilities or of telecommunications by means of these facili-
16 ties.

17 (c) "Ordinary course of business" means debt-collection activities,
18 order fulfillment, request processing, or the transfer of ownership.

19 (d) "Personally identifiable information" means information that iden-
20 tifies:

21 (i) a consumer by physical or electronic address or telephone number;

22 (ii) a consumer as having requested or obtained specific materials or
23 services from an internet service provider;

24 (iii) internet or online sites visited by a consumer; or

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

LBD10928-02-7

1 (iv) any of the contents of a consumer's data-storage devices.

2 2. Except as provided in subdivisions three and four of this section,
3 an internet service provider shall not knowingly disclose personally
4 identifiable information resulting from the customer's use of the tele-
5 communications or internet service provider without express written
6 approval from the customer.

7 (a) A telecommunications or internet service provider ("ISP") that has
8 entered into a franchise agreement, right-of-way agreement, or other
9 contract with the state of New York or any political subdivision there-
10 of, or that uses facilities that are subject to such agreements, even if
11 it is not a party to the agreement, shall not collect nor disclose
12 personal information from a customer resulting from the customer's use
13 of the telecommunications or internet service provider without express
14 written approval from the customer; and

15 (b) No such telecommunication or internet service provider shall
16 refuse to provide its services to a customer on the grounds that the
17 customer has not approved the collection or disclosure of the customer's
18 personal information.

19 3. An internet service provider shall disclose personally identifiable
20 information concerning a consumer:

21 (a) pursuant to a grand jury subpoena;

22 (b) to an investigative or law enforcement officer while acting as
23 authorized by law;

24 (c) pursuant to a court order in a civil proceeding upon a showing of
25 compelling need for the information that cannot be accommodated by other
26 means;

27 (d) to a court in a civil action for conversion commenced by the
28 internet service provider or in a civil action to enforce collection of
29 unpaid subscription fees or purchase amounts, and then only to the
30 extent necessary to establish the fact of the subscription delinquency
31 or purchase agreement, and with appropriate safeguards against unauthor-
32 ized disclosure;

33 (e) to the consumer who is the subject of the information, upon writ-
34 ten or electronic request and upon payment of a fee not to exceed the
35 actual cost of retrieving the information;

36 (f) pursuant to subpoena, including an administrative subpoena, issued
37 under authority of a law of this state or another state or the United
38 States; or

39 (g) pursuant to a warrant or court order.

40 4. An internet service provider may disclose personally identifiable
41 information concerning a consumer to:

42 (a) any person if the disclosure is incident to the ordinary course of
43 business of the internet service provider;

44 (b) another internet service provider for purposes of reporting or
45 preventing violations of the publish acceptable use policy or customer
46 service agreement of the internet service provider; except that the
47 recipient may further disclose the personally identifiable information
48 only as provided by this chapter;

49 (c) any person with the authorization of the consumer; or

50 (d) as required by subdivision three of this section.

51 5. (a) The internet service provider shall obtain the consumer's
52 authorization of the disclosure of personally identifiable information
53 in writing or by electronic means.

54 (b) The request for authorization must reasonably describe the types
55 of persons to whom personally identifiable information may be disclosed
56 and the anticipated uses of the information.

1 (c) In order for an authorization to be effective, a contract between
2 an internet service provider and the consumer must state that the
3 authorization will be obtained by an affirmative act of the consumer.

4 (d) The provision in the contract must be conspicuous.

5 (e) Authorization shall be obtained in a manner consistent with self-
6 regulating guidelines issued by representatives of the internet service
7 provider or online industries, or in any other manner reasonably
8 designed to comply with this section.

9 6. The internet service provider shall take reasonable steps to main-
10 tain the security and privacy of a consumer's personally identifiable
11 information.

12 7. Except for purposes of establishing a violation of this chapter,
13 personally identifiable information obtained in any manner other than as
14 provided in this chapter shall not be received in evidence in a civil
15 action.

16 8. A consumer who prevails or substantially prevails in an action
17 brought under this section is entitled to the greater of five hundred
18 dollars or actual damages. Costs, disbursements, and reasonable attorney
19 fees may be awarded to a party awarded damages for a violation of this
20 section. The damages available under this section are exempted from any
21 mandatory arbitration clauses that may exist in the contract between the
22 internet service provider and the consumer. In an action under this
23 section, it is a defense that the defendant has established and imple-
24 mented reasonable practices and procedures to prevent violations of this
25 section.

26 9. This section does not limit any greater protection of the privacy
27 of information under other law, except that:

28 (a) nothing in this chapter limits the authority under other state or
29 federal law of law enforcement or prosecuting authorities to obtain
30 information; and

31 (b) if federal law is enacted that regulates the release of personally
32 identifiable information by internet service providers but does not
33 preempt state law on the subject, state law prevails.

34 10. This section shall apply to internet service providers in the
35 provision of services to consumers in this state.

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