
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

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JUNE 29, 2020

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, JUNE 29, 2020

AN ACT

1 Providing for transparency and disclosure of information
2 collected by smart technology devices; establishing the Smart
3 Technology Disclosure Fund; and providing for powers and
4 duties of the Office of Attorney General.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Short title.

8 This act shall be known and may be cited as the Smart
9 Technology Disclosure Act.

10 Section 2. Definitions.

11 The following words and phrases when used in this act shall
12 have the meanings given to them in this section unless the
13 context clearly indicates otherwise:

14 "Bureau." The Bureau of Consumer Protection in the Office of
15 Attorney General.

16 "Consumer." The user of a smart device or a retailer
17 purchasing a smart device wholesale for resale.

18 "Covered information."

1 (1) Information collected through a smart device,
2 including the following:
3 (i) Product registration data.
4 (ii) Viewing and audio data.
5 (iii) Internet Protocol ("IP") address.
6 (iv) User ID or other identifiers.
7 (v) Geolocation or information that can be used to
8 derive geolocation.

9 (2) The term includes any other information combined
10 with information under paragraph (1)(i), (ii), (iii), (iv)
11 and (v).

12 "Data collection." Information or data collected or planned
13 to be collected from a smart device about the content accessed
14 or reports or data derived therefrom and other information
15 combined with that information or data.

16 "Fund." The Smart Technology Disclosure Fund established
17 under section 8.

18 "Internet service provider." As defined under section 2 of
19 the act of December 17, 1968 (P.L.1224, No.387), known as the
20 Unfair Trade Practices and Consumer Protection Law.

21 "Manufacturer." A company that produces a smart device. The
22 term includes a manufacturer's officers, agents, employees and
23 attorneys.

24 "Smart device." A physical object that has computer
25 processing capabilities that can collect, send or receive data
26 via the Internet, Bluetooth or similar networking protocols. The
27 term includes a television, telephone, monitor, doorbell,
28 security system, door lock, thermostat, lighting system, smart
29 speaker, motor vehicle or other device that has the ability to
30 connect to the Internet, Bluetooth or similar networking

1 protocols.

2 "Third party." An entity that has access to covered
3 information obtained from a smart device through its operating
4 system, applications, programs or networking protocols. The term
5 includes a mobile network operator if it has access to covered
6 information on a smart device. The term does not include a
7 manufacturer.

8 Section 3. Disclosure requirements.

9 (a) General rule.--In addition to any other requirements
10 imposed by law, a manufacturer or third party, directly or
11 through a corporation, subsidiary, division, website or other
12 device or affiliate may not misrepresent in any manner,
13 expressly or by implication:

14 (1) the extent to which data is collected, used or
15 maintained or methods for protecting the privacy,
16 confidentiality or security of covered information; or

17 (2) the purpose of the collection, use or disclosure of
18 covered information.

19 (b) Notice and consent.--The following shall apply:

20 (1) A manufacturer of a smart device or third party,
21 directly or through a corporation, subsidiary, division,
22 website or other device or affiliate, in connection with data
23 collection for a product or service, shall:

24 (i) Prior to any data collection undertaken after
25 the effective date of this section, prominently disclose
26 to the consumer, separate and apart from a privacy
27 policy, terms of use page or other similar documents, the
28 following:

29 (A) The types of data that will be collected and
30 used.

1 (B) The types of data that will be shared with
2 third parties.

3 (C) The identities of the third parties.

4 (D) All purposes for the agent's sharing of the
5 data collected.

6 (E) Any data sharing agreements between the
7 manufacturer or third party and Federal, State and
8 local law enforcement agencies or other government
9 agencies.

10 (ii) Obtain the consumer's affirmative express
11 consent to data collection as follows:

12 (A) At the time the disclosure under
13 subparagraph (i) is made.

14 (B) Upon any material changes to the terms
15 disclosed under subparagraph (i).

16 (iii) Provide instructions, at any time the
17 consumer's affirmative express consent is sought under
18 subparagraph (ii) for how the consumer may revoke consent
19 to data collection.

20 (iv) Obtain the consumer's affirmative express
21 consent to continued data collection under section 4(a)
22 (2).

23 (2) A manufacturer or third party, directly or through a
24 corporation, subsidiary, division, website or other device or
25 affiliate, may not collect the covered information of a
26 consumer who does not provide affirmative express consent
27 under paragraph (1)(ii).

28 (3) If a smart device is shared or used by multiple
29 members of a household, a manufacturer or third party shall
30 be deemed in compliance with paragraph (1)(i), (ii) and (iii)

1 if disclosure is made and affirmative express consent is
2 obtained upon first use of the smart device by at least one
3 consumer in the household.

4 (c) Definitions.--As used in this section, the phrase
5 "prominently disclose to a consumer" shall mean a disclosure is
6 difficult to miss and easily understandable by ordinary
7 consumers, including in all of the following ways:

8 (1) A visual disclosure that, by its size, contrast,
9 location, the length of time it appears and other
10 characteristics, stands out from accompanying text or other
11 visual elements so that it is easily noticed, read and
12 understood.

13 (2) An audible disclosure, including by telephone or
14 streaming video, that is delivered in a volume, speed and
15 cadence sufficient for ordinary consumers to easily hear and
16 understand.

17 (3) In any communication using an interactive electronic
18 medium, such as in connection with an update to device
19 firmware, the disclosure is unavoidable.

20 (4) The disclosure uses diction and syntax
21 understandable to ordinary consumers and appears in each
22 language in which the triggering representation appears.

23 (5) The disclosure complies with the requirements in
24 each medium through which it is received, including all
25 electronic devices and face-to-face communications.

26 (6) The disclosure is not contradicted or mitigated by,
27 or inconsistent with, anything else in the communication.

28 (7) When the representation or sales practice targets a
29 specific audience, such as children, the elderly or the
30 terminally ill, the term "ordinary consumers" includes

1 reasonable members of that group.

2 Section 4. Data deletion requirements.

3 (a) General rule.--Within 120 days of the effective date of
4 this section, a manufacturer or third party, in connection with
5 data collection for a product or service, and all others in
6 active concert or participation with a manufacturer or third
7 party, directly or through a corporation, subsidiary, division,
8 website or other device or affiliate, shall destroy data
9 collected on a consumer's smart device prior to the effective
10 date of this section, except:

11 (1) if the data collected was requested by a government
12 agency or required by law, regulation or court order,
13 including without limitation as required by rules applicable
14 to the safeguarding of evidence in pending litigation; or

15 (2) if the user of the smart device associated with the
16 data collected has affirmatively consented to the collection,
17 use or disclosure thereof as provided under section 3(b).

18 (b) Consumer request.--Following the effective date of this
19 section, a manufacturer or third party, in connection with data
20 collection for a product or service, and all others in active
21 concert or participation with a manufacturer or third party,
22 directly or through a corporation, subsidiary, division, website
23 or other device or affiliate, shall destroy data within seven
24 days of the consumer requesting that the data be deleted.

25 Section 5. Mandated privacy program.

26 (a) General rule.--A manufacturer or third party, directly
27 or through a corporation, subsidiary, division, website or other
28 device or affiliate, shall establish and implement and maintain
29 a comprehensive privacy program that is reasonably designed to:

30 (1) Address privacy risks related to the development and

1 management of new and existing products and services for
2 consumers.

3 (2) Protect the privacy and confidentiality of covered
4 information collected directly or indirectly by a
5 manufacturer or third party, directly or through a
6 corporation, subsidiary, division, website or other device or
7 affiliate.

8 (b) Requirements.--A privacy program, the content and
9 implementation of which shall be documented in writing, shall
10 contain controls and procedures appropriate to the size and
11 complexity of the manufacturer or third party, the nature and
12 scope of the manufacturer's or third party's activities and the
13 sensitivity of the covered information, including:

14 (1) The designation of an employee or employees to
15 coordinate and be responsible for the privacy program.

16 (2) The identification of reasonably foreseeable risks,
17 both internal and external, that could result in the
18 unauthorized collection, use or disclosure by the
19 manufacturer or third party or its agents of covered
20 information and an assessment of the sufficiency of any
21 safeguards in place to control these risks. At a minimum, the
22 risk assessment shall include consideration of risks in each
23 area of relevant operation, including:

24 (i) Employee training and management, including
25 training on the requirements of this act.

26 (ii) Product design, development and research.

27 (3) The design and implementation of reasonable controls
28 and procedures to address risks and regular testing or
29 monitoring of the effectiveness of those controls and
30 procedures.

1 (4) The development and use of reasonable steps to
2 select and retain Internet service providers capable of
3 appropriately protecting the privacy of covered information
4 they receive from the manufacturer or third party or its
5 agents and requiring Internet service providers, by contract,
6 to implement and maintain appropriate privacy protections for
7 covered information.

8 (5) The evaluation and adjustment of the manufacturer's
9 or third party's or its agents' privacy program in light of
10 the results of the testing and monitoring required under
11 paragraph (3), any changes to the manufacturer's or third
12 party's or its agents' operations or business arrangements or
13 any other circumstance that the manufacturer or third party
14 or its agents know or have reason to know may have an impact
15 on the effectiveness of the privacy program.

16 Section 6. Violations.

17 A violation of this act shall be considered an unfair or
18 deceptive act or practice under the act of December 17, 1968
19 (P.L.1224, No.387), known as the Unfair Trade Practices and
20 Consumer Protection Law.

21 Section 7. Remedies available to consumers.

22 Nothing in this act shall be construed to limit the remedies
23 available to consumers, the Attorney General or a district
24 attorney under the act of December 17, 1968 (P.L.1224, No.387),
25 known as the Unfair Trade Practices and Consumer Protection Law,
26 or any other Federal or State law.

27 Section 8. Smart Technology Disclosure Fund.

28 (a) Establishment.--The Smart Technology Disclosure Fund is
29 established in the State Treasury and shall be administered by
30 the bureau. All money in the fund shall be appropriated on a

1 continuing basis to the bureau for the purposes of this act.

2 (b) Fund fee.--Every manufacturer that sells smart devices
3 in this Commonwealth shall register with the bureau and pay a
4 fee determined by the bureau to be deposited into the fund.

5 (c) Claims against fund.--A consumer who purchases a smart
6 device may recover statutory damages from the fund in the event
7 the manufacturer of the smart device violates this act, as found
8 by a court of competent jurisdiction, upon the final
9 determination of or expiration of time for appeal in connection
10 with any such judgment or if a consumer is prevented from
11 collecting the entirety of a final judgment as a result of the
12 manufacturer's filing for bankruptcy protection under Federal
13 law. In the event the bureau and the manufacturer enter into an
14 assurance of voluntary compliance under the act of December 17,
15 1968 (P.L.1224, No.387), known as the Unfair Trade Practices and
16 Consumer Protection Law, which requires payment of restitution
17 to a consumer and the manufacturer fails to pay as required by
18 the terms of the assurance of voluntary compliance, the bureau
19 shall issue an order of payment from the fund to the consumer.
20 The payment made pursuant to an assurance of voluntary
21 compliance shall be considered a claim for the purposes of
22 reimbursement of the fund.

23 (d) Limitation on recovery.--

24 (1) The bureau may not provide from the fund:

25 (i) Less than \$100 and no greater than \$750 per
26 consumer who recovers statutory damages from the fund.

27 (ii) An amount for attorney fees, consequential
28 damages, court costs, interest, personal injury damages
29 or punitive damages, except as may be provided in an
30 assurance of voluntary compliance.

1 (2) In assessing the amount of statutory damages, the
2 court shall consider any one or more of the relevant
3 circumstances presented by any of the parties to the case,
4 including the nature and seriousness of the misconduct, the
5 number of violations, the persistence of the misconduct, the
6 length of time over which the misconduct occurred, the
7 willfulness of the defendant's misconduct and the defendant's
8 assets, liabilities and net worth.

9 (e) Limitation period.--A claim must be made against the
10 fund within two years after the consumer obtains an entry of
11 final judgment or decree against the manufacturer and all appeal
12 rights have been expired or exhausted or, in the case of an
13 assurance of voluntary compliance, within the later of two years
14 of entry into such assurance or one year after nonpayment
15 according to the terms of the assurance.

16 (f) Offer of proof.--In order to recover from the fund, a
17 consumer shall offer proof to the bureau that the consumer has
18 exhausted all reasonable actions available under law and in
19 equity to collect the unpaid amount of a final judgment.

20 (g) Partial payments for fund integrity.--In order to
21 preserve the integrity of the fund, the bureau may order payment
22 out of the fund of an amount less than the judgment amount or
23 the amount agreed to be paid in an assurance of voluntary
24 compliance. The balance remaining due to the consumer shall be
25 paid from the fund under subsection (h).

26 (h) Special order of payment.--If the money in the fund is
27 insufficient to satisfy a duly authorized claim or portion of
28 the claim, the bureau shall, when sufficient money exists in the
29 fund, satisfy the unpaid claims or portions of the claims, in
30 the order that those claims or portions of claims were

1 originally determined.

2 (i) Investigation by bureau.--If the bureau pays an amount
3 from the fund as a result of a claim against a manufacturer, the
4 bureau may conduct an investigation to determine if the
5 manufacturer is possessed of assets liable to be sold or applied
6 in satisfaction of the claim on the fund. If the bureau
7 discovers any such assets, the bureau may take any lawful action
8 necessary for the reimbursement of the fund.

9 Section 9. Procedure of submitted claims.

10 (a) Initial claim.--In order to recover from the fund, a
11 consumer shall submit to the bureau the documentation required
12 under section 8(f), together with:

13 (1) a copy of the judgment and evidence that the
14 judgment has not been appealed;

15 (2) a copy of the assurance of voluntary compliance and
16 a certification that the manufacturer has failed to pay; or

17 (3) evidence that the consumer has been prevented from
18 collecting the entirety of a final judgment as a result of
19 the manufacturer's filing for bankruptcy protection under
20 Federal law. In the event of the manufacturer's bankruptcy
21 filing, the consumer shall only be entitled to collect from
22 the fund the amount the consumer was prevented from
23 collecting as a result of the bankruptcy filing.

24 (b) Copy of claim to manufacturer.--On receipt of a claim
25 under this section, the bureau shall send a copy of the claim to
26 the manufacturer alleged to be responsible for the violation of
27 this act. The manufacturer shall file a response or objection to
28 the claim within 30 days of the receipt of the notice of the
29 claim. Failure to respond to the claim shall constitute a waiver
30 of any defense of objection to the claim. The only defense a

1 manufacturer may raise in response is a defense of payment in
2 full of the claim.

3 (c) General order of payment.--Except as otherwise provided
4 in this act, the bureau shall pay from the fund approved claims
5 in the order that the claims are submitted.

6 Section 10. Reimbursement of fund.

7 (a) General rule.--After the bureau pays a claim from the
8 fund:

9 (1) The bureau shall be subrogated to all rights of the
10 consumer in the claim up to the amount paid.

11 (2) The consumer shall assign to the bureau all rights
12 of the consumer in the claim up to the amount paid.

13 (3) The bureau has a right to reimbursement of the fund
14 by the manufacturer for:

15 (i) The amount paid from the fund.

16 (ii) Interest on the amount at an annual rate of 5%
17 as adjusted by the Consumer Price Index on an annual
18 basis.

19 (4) All money that the bureau recovers on a claim shall
20 be deposited into the fund.

21 (b) Suit for nonpayment.--If, within 30 days after the
22 bureau gives notice, a manufacturer on whose account a claim was
23 paid fails to reimburse the fund in full, the bureau may
24 initiate an action against the manufacturer in a court of
25 competent jurisdiction for the unreimbursed amount.

26 (c) Judgment.--The bureau is entitled to a judgment for the
27 unreimbursed amount if the bureau proves that:

28 (1) A claim was paid from the fund on account of the
29 manufacturer.

30 (2) The manufacturer has not reimbursed the fund in

1 full.

2 (3) The bureau directed payment based on a final
3 judgment of a court of competent jurisdiction or an assurance
4 of voluntary compliance.

5 Section 11. Burden of proof.

6 In a civil proceeding alleging a violation of this act, the
7 burden of proving an exemption is on the person claiming the
8 exemption. In a criminal proceeding alleging a violation of this
9 act, the burden of producing evidence to support a defense based
10 upon an exemption is on the person claiming the exemption.

11 Section 12. Regulations.

12 The Office of Attorney General shall promulgate regulations
13 necessary to carry out the provisions of this act, which shall,
14 at a minimum, include:

15 (1) The fee paid by manufacturers to the bureau for
16 registering under section 8.

17 (2) The information required from a manufacturer when
18 registering with the bureau.

19 (3) The acceptable forms of proof required under section
20 8.

21 Section 13. Effective date.

22 This act shall take effect in 120 days.