AN ACT

Providing for consumer data privacy, for rights of consumers and duties of businesses relating to the collection of personal information and for duties of the Attorney General.

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

Section 1. Short title.

This act shall be known and may be cited as the Consumer Data Privacy Act.

Section 2. Legislative findings.

The General Assembly finds and declares as follows:

(1) It is an important and substantial State interest to protect the private, personal data in this Commonwealth.

(2) With the increasing use of technology and data in everyday life, there is an increasing amount of private, personal data being shared by consumers with businesses as a part of everyday transactions and online and other activities.
The increasing collection, storage, use and sale of personal data creates increased risks of identity theft, financial loss and other misuse of private personal data. Many consumers do not know, understand or have appropriate authority over the distribution, use, sale or disclosure of their personal data.

Section 3. Definitions.

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

"Business." As follows:

(1) A sole proprietorship, partnership, limited liability company, corporation, association or other legal entity:

(i) That is organized or operated for the profit or financial benefit of its shareholders or other owners.

(ii) That collects consumers' personal information, or on behalf of which consumers' personal information is collected and that alone, or jointly with others, determines the purposes and means of the processing of consumers' personal information.

(iii) That does business in this Commonwealth.

(iv) That satisfies one or more of the following thresholds:

(A) Has annual gross revenues in excess of $10,000,000.

(B) Alone or in combination, annually buys, receives for the business' commercial purposes, sells or shares for commercial purposes, alone or in combination, the personal information of 50,000 or
more consumers, households or devices.

(C) Derives 50% or more of annual revenues from selling consumers' personal information.

(2) An entity that controls a business under paragraph (1) and shares common branding with the business.

"Common branding." A shared name, servicemark or trademark.

"Control." Any of the following:

(1) Ownership of or the power to vote on more than 50% of the outstanding shares of any class of voting security of a business.

(2) Control in any manner over the election of a majority of the directors or of individuals exercising similar functions.

(3) The power to exercise a controlling influence over the management of a company.

"Personal information." As follows:

(1) Information that identifies, relates to, describes, is capable of being associated with or could reasonably be linked, directly or indirectly, with a particular consumer or household, including:

(i) Identifiers such as a real name, alias, postal address, unique personal identifier, online identifier, including an Internet website protocol address, e-mail address, account name, Social Security number, driver's license number, passport number or other similar identifiers.

(ii) Characteristics of protected classifications under Federal or State law.

(iii) Commercial information, including records of personal property, products or services purchased,
obtained or considered or other purchasing or consuming histories or tendencies.

(iv) Biometric information.

(v) Internet or other electronic network activity information, including browser history, search history and information regarding a consumer's interaction with an Internet website, application or advertisement.

(vi) Geolocation data.

(vii) Audio, electronic, visual, thermal, olfactory or similar information.

(viii) Professional or employment-related information.

(ix) Education information, defined as information that is not publicly available personally identifiable information under the Family Educational Rights and Privacy Act of 1974 (Public Law 90-247, 20 U.S.C. § 1232g).

(x) Inferences drawn from any of the information identified under this definition to create a profile about a consumer reflecting the consumer's preferences, characteristics, psychological trends, predispositions, behaviors, attitudes, intelligence, abilities and aptitudes.

(2) The term does not include publicly available information.

"Publicly available." As follows:

(1) Information that is lawfully made available from Federal, State or local government records, as restricted by any conditions associated with the information.

(2) The term does not include biometric information
collected by a business about a consumer without the
consumer's knowledge or consumer information that is
deidentified or aggregate consumer information.
(3) Information is not publicly available if the data is
used for a purpose that is not compatible with the purpose
for which the data is maintained and made available in the
government records or for which it is publicly maintained.

Section 4. Consumer data privacy.
(a) General rights.--A consumer shall have the right to:
(1) Know what personal information is being collected
about the consumer.
(2) Know whether the consumer's personal information is
sold or disclosed and to whom.
(3) Decline or opt out of the sale of the consumer's
personal information.
(4) Access the consumer's personal information that has
been collected.
(5) Equal service and price, even if a consumer
exercises rights under this subsection.
(b) Disclosure by businesses.--A consumer shall have the
right to request that a business that collects personal
information about the consumer disclose to the consumer the
following:
(1) The categories of personal information the business
has collected about the consumer.
(2) The categories of sources from which the personal
information is collected.
(3) The business or commercial purpose for collecting or
selling personal information.
(4) The categories of third parties with whom the
business shares personal information.

(5) The specific pieces of personal information the business has collected about the consumer.

(c) Request from consumer.--A business that collects personal information about a consumer shall disclose to the consumer the information specified under subsection (b) upon receipt of a verifiable request from a consumer. This subsection does not require a business to:

(1) retain any personal information about a consumer collected for a single one-time transaction if, in the ordinary course of business, that information about the consumer is not retained; or

(2) reidentify or otherwise link any data that, in the ordinary course of business, is not maintained in a manner that would be considered personal information.

(d) Request for information sold or used for business purposes.--A consumer shall have the right to request that a business that sells the consumer's personal information, or that discloses it for a business purpose, disclose to the consumer:

(1) The categories of personal information that the business collected about the consumer.

(2) The categories of personal information that the business sold about the consumer and the categories of third parties to whom the personal information was sold, by category or categories of personal information for each third party to whom the personal information was sold.

(3) The categories of personal information that the business disclosed about the consumer for a business purpose.

(e) Request to delete personal information.--A consumer shall have the right to request that a business delete any
personal information about the consumer that the business has collected from the consumer. The following apply:

(1) A business that collects personal information about consumers shall disclose under subsection (l) the consumer's rights to request the deletion of the consumer's personal information.

(2) A business that receives a verifiable request from a consumer to delete the consumer's personal information shall delete the consumer's personal information from its records and direct service providers to delete the consumer's personal information from the service provider's records.

(3) A business or a service provider shall not be required to comply with a consumer's request to delete the consumer's personal information if it is necessary for the business or service provider to maintain the consumer's personal information to:

   (i) Complete the transaction for which the personal information was collected, provide a good or service requested by the consumer or reasonably anticipated within the context of a business's ongoing business relationship with the consumer or otherwise perform a contract between the business and the consumer.

   (ii) Detect security incidents, protect against malicious, deceptive, fraudulent or illegal activity or prosecute those responsible for that activity.

   (iii) Debug to identify and repair errors that impair existing intended functionality.

   (iv) Exercise free speech, ensure the right of another consumer to exercise the consumer's right of free speech or exercise another right provided under Federal
or State law.

(v) Engage in public or peer-reviewed scientific, historical or statistical research in the public interest that adheres to all other applicable Federal and State ethics and privacy laws, when the business's deletion of the information is likely to render impossible or seriously impair the achievement of the research, if the consumer has provided informed consent.

(vi) Enable solely internal uses that are reasonably aligned with the expectations of the consumer based on the consumer's relationship with the business.

(vii) Comply with a legal obligation.

(f) Compliance with request.--A business that sells personal information about a consumer, or that discloses a consumer's personal information for a business purpose, shall disclose the information specified under subsection (d) to the consumer upon receipt of a verifiable request from the consumer.

(g) Third parties.--A third party may not sell personal information about a consumer that has been sold to the third party by a business unless the consumer has received explicit notice and is provided an opportunity to exercise the right to opt out.

(h) Notice.--A business that sells consumers' personal information to third parties shall provide notice to consumers that this information may be sold and that a consumer has the right to opt out of the sale of their personal information at any time.

(i) Prohibition on sale of personal information.--A business that has received direction from a consumer not to sell the consumer's personal information or, in the case of a minor
consumer's personal information has not received consent to sell the minor consumer's personal information, shall be prohibited from selling the consumer's personal information after receipt of the consumer's direction, unless the consumer subsequently provides express authorization for the sale of the consumer's personal information.

(j) Consumers of young age.--Notwithstanding subsection (i), a business may not sell the personal information of a consumer if the business has actual knowledge that the consumer is less than 16 years of age, unless the consumer, in the case of a consumer who is between 13 and 16 years of age, or the consumer's parent or guardian, in the case of a consumer who is less than 13 years of age, has affirmatively authorized the sale of the consumer's personal information. A business that willfully disregards the consumer's age shall be deemed to have had actual knowledge of the consumer's age.

(k) Discrimination prohibited.--
(1) A business may not discriminate against a consumer because the consumer exercised any of the consumer's rights under this section, including by:
   (i) Denying goods or services to the consumer.
   (ii) Charging different prices or rates for goods or services, including through the use of discounts or other benefits or imposing penalties.
   (iii) Providing a different level or quality of goods or services to the consumer.
   (iv) Suggesting that the consumer will receive a different price or rate for goods or services or a different level or quality of goods or services.
(2) Nothing in this subsection shall prohibit a business
from charging a consumer a different price or rate, or from
providing a different level or quality of goods or services
to the consumer, if that difference is reasonably related to
the value provided to the consumer by the consumer's data.

(l) Compliance with notice requirements.--To comply with the
notice requirements under this section, a business shall:

(1) In a form that is reasonably accessible to
consumers, make available to consumers two or more designated
methods for submitting requests for information required to
be disclosed, including, at a minimum, a toll-free telephone
number, and if the business maintains a publicly accessible
Internet website, the website address.

(2) In a form that is reasonably accessible to
consumers, disclose and deliver the required information to a
consumer free of charge within 45 days of receiving a
verifiable request from the consumer. The time period to
provide the required information may be extended once by an
additional 45 days when reasonably necessary, if the consumer
is provided notice of the extension within the first 45-day
period.

(3) In a form that is reasonably accessible to
consumers, provide a clear and conspicuous link on the
business's publicly accessible Internet website, titled "Do
Not Sell My Personal Information," to a publicly accessible
Internet website that enables a consumer, or a person
authorized by the consumer, to opt out of the sale of the
consumer's personal information. A business may not require a
consumer to create an account to direct the business not to
sell the consumer's personal information.

(4) Include a description of a consumer's rights along
with a separate link to the "Do Not Sell My Personal Information" publicly accessible Internet website required under paragraph (3) in the following:

(i) The business's online privacy policy or policies if the business has an online privacy policy or policies.

(ii) A description of consumers' privacy rights under the laws of this Commonwealth.

(5) Ensure that all individuals responsible for handling consumer inquiries about the business's privacy practices are informed of the requirements of this section and how to direct consumers to exercise their rights.

(6) For consumers who exercise their right to opt out of the sale of their personal information, refrain from selling personal information collected by the business about the consumer.

(7) For a consumer who has opted out of the sale of the consumer's personal information, respect the consumer's decision to opt out for at least 12 months before requesting that the consumer authorize the sale of the consumer's personal information.

(8) Use personal information collected from the consumer in connection with the submission of the consumer's opt-out request solely for the purposes of complying with the opt-out request.

(9) Nothing in this subsection shall be construed to require a business to comply with this subsection by including the required links and text on its publicly accessible Internet website that the business makes available to the public generally, if the business maintains a separate and additional publicly accessible Internet website that is
dedicated to consumers in this Commonwealth and that includes the required links and text, and the business takes reasonable steps to ensure that consumers in this Commonwealth are directed to the publicly accessible Internet website for consumers in this Commonwealth and not the publicly accessible Internet website made available to the public generally.

(m) Obligations on business.--The obligations imposed on a business under this section shall not restrict a business's ability to:

(1) Comply with Federal, State or local laws.

(2) Comply with a civil, criminal or regulatory inquiry, investigation, subpoena or summons by Federal, State or local authorities.

(3) Cooperate with law enforcement agencies concerning conduct or activity that the business, service provider or third party reasonably and in good faith believes may violate Federal, State or local laws.

(4) Exercise or defend legal claims.

(5) Collect, use, retain, sell or disclose consumer information that is deidentified or in the aggregate consumer information.

(6) Collect or sell a consumer's personal information if every aspect of that commercial conduct takes place wholly outside of this Commonwealth. For purposes of this section, commercial conduct takes place wholly outside of this Commonwealth if the business collected that information while the consumer was outside of this Commonwealth, no part of the sale of the consumer's personal information occurred in this Commonwealth and no personal information collected while the

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consumer was in this Commonwealth is sold. This paragraph shall not permit a business from storing, including on a device, personal information about a consumer when the consumer is in this Commonwealth and then collecting that personal information when the consumer and stored personal information is outside of this Commonwealth.

(n) Civil action by consumer.--

(1) A consumer whose nonencrypted or nonredacted personal information is subject to an unauthorized access and exfiltration, theft or disclosure as a result of the business's violation of the duty to implement and maintain reasonable security procedures and practices appropriate to the nature of the information to protect the personal information may institute a civil action for any of the following:

   (i) To recover damages in an amount not less than $100 and not more than $750 per consumer per incident or actual damages, whichever is greater.

   (ii) Injunctive or declaratory relief.

   (iii) Any other relief the court deems appropriate.

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

(3) An action under this section may be brought by a consumer if, prior to initiating any action against a
business for statutory damages on an individual or classwide basis, a consumer provides a business 30 days' written notice identifying the specific provisions of this act the consumer alleges have been or are being violated. In the event a cure is possible, if, within the 30 days the business actually cures the noticed violation and provides the consumer an express written statement that the violations have been cured and that no further violations shall occur, no action for individual statutory damages or classwide statutory damages may be initiated against the business. No notice shall be required prior to an individual consumer initiating an action solely for actual pecuniary damages suffered as a result of the alleged violations of this act. If a business continues to violate this act in breach of the express written statement provided to the consumer under this paragraph, the consumer may initiate an action against the business to enforce the written statement and may pursue statutory damages for each breach of the express written statement, as well as any other violation of this act that postdates the written statement.

(o) Violation.—A business shall be in violation of this section if the business fails to cure an alleged violation within 30 days after being notified of alleged noncompliance. A business, service provider or other person that violates this section shall be liable for a civil penalty in a civil action brought by the Attorney General of up to $7,500 for each violation.

(p) Opinion of Attorney General.—A business or third party may seek the opinion of the Attorney General for guidance on how to comply with the provisions of this act.

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(q) Rules and regulations.--The Attorney General shall promulgate rules and regulations to implement this section.

Section 5. Effective date.

This act shall take effect immediately.