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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 1093 Session of  
2018

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INTRODUCED BY HAYWOOD, HUGHES, FONTANA, TARTAGLIONE, LEACH,  
COSTA, BREWSTER, RESCHENTHALER, SCHWANK, WARD, BROWNE AND  
FARNESE, MARCH 23, 2018

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REFERRED TO COMMUNICATIONS AND TECHNOLOGY, MARCH 23, 2018

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AN ACT

1 Amending Titles 12 (Commerce and Trade) and 66 (Public  
2 Utilities) of the Pennsylvania Consolidated Statutes, in  
3 commercial protection, providing for personal information; in  
4 alternative form of regulation of telecommunications  
5 services, further providing for definitions; and making an  
6 editorial change.

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

9 Section 1. Part IV heading of Title 12 of the Pennsylvania  
10 Consolidated Statutes is amended to read:

11 PART IV

12 COMMERCIAL [PROTECTION] AND CONSUMER PROTECTIONS

13 Section 2. Part IV of Title 12 is amended by adding a  
14 chapter to read:

15 CHAPTER 55

16 PERSONAL INFORMATION

17 Sec.

18 5501. Scope of chapter.

19 5502. Definitions.

1 5503. Collection of personal information.

2 5504. Limitations.

3 5505. Unfair trade practices.

4 5506. Invasion of privacy.

5 5507. Federal law.

6 § 5501. Scope of chapter.

7 This chapter relates to personal information of customers to  
8 be collected and maintained by service providers.

9 § 5502. Definitions.

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

13 "Call detail information." Information pertaining to the  
14 transmission of specific telephone calls, including the  
15 following:

16 (1) For an outbound call, the telephone number called  
17 and the time, location or duration of the call.

18 (2) For an inbound call, the telephone number from which  
19 the call was placed and the time, location or duration of the  
20 call.

21 "Customer proprietary information." Any of the following  
22 that a telecommunication service provider acquires in connection  
23 with the provision of a telecommunication service:

24 (1) Individually identifiable customer proprietary  
25 network information.

26 (2) Personally identifiable information.

27 (3) Sensitive customer proprietary information.

28 "Customer proprietary network information." As defined under  
29 section 222(h)(1) of the Communications Act of 1934 (48 Stat.  
30 1064, 47 U.S.C. § 222(h)(1)).

1 "Internet service provider." A person providing a service  
2 which enables users to access content, information, e-mail or  
3 other services offered over the Internet.

4 "Person." An individual, a corporation, a business trust, an  
5 estate, a trust, a partnership, an association, a joint venture,  
6 a government, a governmental subdivision or agency or another  
7 legal or commercial entity.

8 "Personal information."

9 (1) Any of the following:

10 (i) An individual's last name in combination with  
11 and linked to one or more of the following data elements  
12 when the data elements are not encrypted or redacted:

13 (A) Social Security number.

14 (B) Driver's license number or a State  
15 identification card number issued in lieu of a  
16 driver's license.

17 (C) Financial account number, credit or debit  
18 card number, access code or password that would  
19 permit access to an individual's financial account.

20 (ii) Call detail information.

21 (iii) Customer proprietary information.

22 (2) The term does not include publicly available  
23 information that is lawfully made available to the general  
24 public from Federal, State or local government records.

25 "Personally identifiable information." Any information that  
26 is linked or reasonably linkable to an individual or device.

27 "Sensitive customer proprietary information." Includes any  
28 of the following:

29 (1) Financial information.

30 (2) Health or medical history information.

1           (3) Information regarding children.

2           (4) Social Security number.

3           (5) Precise geolocation information.

4           (6) The content of communications.

5           (7) Web browsing history, application usage history or  
6 the functional equivalent of either history.

7           "Telecommunication service." Includes, but is not limited  
8 to, a service provided for a charge or compensation to  
9 facilitate the origination, transmission, emission or reception  
10 of signs, signals, data, writings, images and sounds or  
11 intelligence of any nature by telephone, including cell phone,  
12 wire, radio, electromagnetic, photoelectronic or photo-optical  
13 system.

14           "Telecommunication service provider." A person providing  
15 telecommunication service, including, but not limited to, a  
16 cellular, paging or other wireless communications company  
17 which, for a fee, supplies the facility, cell site, mobile  
18 telephone switching office or other equipment or  
19 telecommunication service.

20 § 5503. Collection of personal information.

21           (a) Prohibition without consent.--Except as otherwise  
22 provided in section 5504 (relating to limitations), a  
23 telecommunication service provider or an Internet service  
24 provider that has entered into a franchise agreement, right-of-  
25 way agreement or contract with the Commonwealth or a political  
26 subdivision, or that uses facilities subject to the agreement or  
27 contract, even if the telecommunication service provider or  
28 Internet service provider is not a party to the agreement or  
29 contract, may not disclose personal information from a customer  
30 resulting from the customer's use of the telecommunication

1 service provider or Internet service provider without the  
2 express written authorization from the customer.

3 (b) Impairment of services.--A telecommunication service  
4 provider or an Internet service provider under subsection (a)  
5 may not refuse to provide services to a customer because the  
6 customer has not provided the express written authorization to  
7 collect the customer's personal information.

8 § 5504. Limitations.

9 (a) Disclosure required.--A telecommunication service  
10 provider or an Internet service provider shall disclose personal  
11 information from a customer in any of the following situations:

12 (1) In accordance with any of the following:

13 (i) A grand jury subpoena.

14 (ii) A subpoena, including an administrative  
15 subpoena, issued under authority of law of the United  
16 States, this Commonwealth or another state.

17 (iii) A court order in a civil proceeding upon a  
18 showing of compelling need for the information that  
19 cannot be accommodated by other means.

20 (iv) A warrant or court order.

21 (2) To any of the following:

22 (i) An investigating or law enforcement officer  
23 while acting as authorized by law.

24 (ii) A court in a civil action for conversion  
25 commenced by the telecommunication service provider or  
26 Internet service provider or a court in a civil action to  
27 enforce collection of unpaid subscription fees or  
28 purchase amounts, but only to the extent necessary to  
29 establish the fact of the subscription delinquency or  
30 purchase agreement, and with appropriate safeguards

1 against unauthorized disclosure.

2 (iii) The customer who is the subject of the  
3 information.

4 (b) Disclosure permitted.--A telecommunication service  
5 provider or an Internet service provider may disclose personal  
6 information from a customer if the disclosure is incident to the  
7 ordinary course of business and for any of the following  
8 purposes:

9 (1) To initiate or provide the telecommunication service  
10 or Internet service from which the information is derived, if  
11 the information is necessary or used to provide the service.

12 (2) To initiate, render, bill for or collect a fee for a  
13 telecommunication service or an Internet service.

14 (3) To protect the rights or property of the  
15 telecommunication service provider or Internet service  
16 provider or to protect users of the telecommunication service  
17 or Internet service or other providers from fraudulent,  
18 abusive or unlawful use of the service.

19 (4) To provide inbound marketing, referral or  
20 administrative services to the customer for the duration of a  
21 real-time interaction, if the customer initiated the  
22 interaction.

23 (5) To provide location information or nonpersonal  
24 information to any of the following:

25 (i) A public safety answering point, emergency  
26 medical service provider, emergency dispatch provider,  
27 public safety official, fire service official, law  
28 enforcement official, hospital emergency room personnel  
29 or trauma care facility personnel to respond to the  
30 customer's request for emergency services.

1           (ii) The customer's legal guardian or members of the  
2           customer's immediate family in an emergency situation  
3           involving the risk of death or serious physical harm to  
4           the customer.

5           (iii) A provider of information or database  
6           management services solely for the purpose of assisting  
7           in the delivery of emergency services in response to an  
8           emergency.

9           (6) As otherwise required or authorized by law.

10       (c) Authorization.--

11           (1) A telecommunication service provider or an Internet  
12           service provider may obtain the customer's authorization to  
13           disclose personally identifiable information in writing or by  
14           electronic means.

15           (2) A request for authorization shall reasonably  
16           describe the types of persons to whom personally identifiable  
17           information may be disclosed and the anticipated uses of the  
18           information.

19           (3) For an authorization to be effective, notice to a  
20           customer by a telecommunication service provider or an  
21           Internet service provider shall state that:

22                   (i) the authorization will be obtained by an  
23                   affirmative act of the customer; or

24                   (ii) failure of the customer to object after the  
25                   request has been made constitutes an authorization of  
26                   disclosure.

27           (4) If included within a broader written contract or  
28           other agreement with a telecommunication service provider or  
29           an Internet service provider, an authorization and notice of  
30           the disclosure of information must be conspicuous.

1           (5) An authorization under this chapter shall be  
2 effective for no longer than six months but may be extended  
3 for a period not exceeding an additional six months if the  
4 extension is provided in a written and conspicuous manner and  
5 consistent with paragraph (3).

6           (6) An authorization may be obtained in a manner  
7 consistent with self-regulating guidelines issued by a  
8 representative of the telecommunication service provider or  
9 Internet service provider or an online industry or in another  
10 manner reasonably designed to comply with this chapter.

11           (7) A customer may terminate an authorization under this  
12 chapter at any time by providing oral or written notice to  
13 the telecommunication service provider or Internet service  
14 provider.

15 § 5505. Unfair trade practices.

16           (a) Enforcement and penalties generally.--Except as provided  
17 in subsection (b), a violation of a provision of this chapter  
18 shall constitute an unfair method of competition and unfair or  
19 deceptive act or practice within the meaning of section 2(4) of  
20 the act of December 17, 1968 (P.L.1224, No.387), known as the  
21 Unfair Trade Practices and Consumer Protection Law, and shall be  
22 subject to the enforcement provisions and civil penalties  
23 contained in the Unfair Trade Practices and Consumer Protection  
24 Law.

25           (b) Private action.--Notwithstanding section 9.2(a) of the  
26 Unfair Trade Practices and Consumer Protection Law, as a result  
27 of the use or employment by a telecommunication service provider  
28 or an Internet service provider of a method, act or practice in  
29 contravention of the provisions of this chapter, a customer who  
30 suffers an ascertainable loss of money or property, real or

1 personal, may bring a private action to recover actual damages  
2 or \$1,000, whichever is greater, for each violation. The court  
3 may:

4 (1) award up to three times the actual damages sustained  
5 for each violation, but not less than \$1,000 for each  
6 violation;

7 (2) award costs and reasonable attorney fees to the  
8 plaintiff, in addition to other relief provided under this  
9 chapter and under the Unfair Trade Practices and Consumer  
10 Protection Law; and

11 (3) provide additional relief as it deems necessary or  
12 proper.

13 § 5506. Invasion of privacy.

14 (a) Criminal penalties.--Subject to subsection (c), a person  
15 maintaining, using or disclosing information which was obtained  
16 in contravention of the provisions of this chapter, whether or  
17 not the person is the telecommunication service provider or  
18 Internet service provider subject to the penalties under section  
19 5505 (relating to unfair trade practices), commits a felony of  
20 the third degree.

21 (b) Civil liability.--Subject to subsection (c), a person  
22 maintaining, using or disclosing information which was obtained  
23 in contravention of the provisions of this chapter, whether or  
24 not the person is the telecommunication service provider or  
25 Internet service provider subject to the penalties under section  
26 5505, shall be liable to a person damaged by the maintenance,  
27 use or disclosure of the information in an action for invasion  
28 of privacy for the following:

29 (1) Treble the actual damages proved.

30 (2) Reasonable attorney fees.

1 (c) Defense to liability.--A complete defense to criminal  
2 liability under subsection (a) and civil liability under  
3 subsection (b) shall exist if:

4 (1) the person in good faith relied on a court order  
5 entered under this chapter; or

6 (2) the use, maintenance or disclosure by the person is  
7 otherwise authorized by law.

8 § 5507. Federal law.

9 The enforcement provisions under this chapter shall be  
10 consistent with Federal law.

11 Section 3. The definition of "telecommunications carrier" in  
12 section 3012 of Title 66 is amended to read:

13 § 3012. Definitions.

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

17 \* \* \*

18 "Telecommunications carrier." An entity that provides  
19 telecommunications services subject to the jurisdiction of the  
20 commission. The term includes an "Internet service provider" and  
21 a "telecommunication service provider," as those terms are  
22 defined in 12 Pa.C.S. § 5502 (relating to definitions).

23 \* \* \*

24 Section 4. This act shall take effect immediately.