
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1049 Session of
2019

INTRODUCED BY NEILSON, McNEILL, BOBACK, HILL-EVANS, ZIMMERMAN,
MURT, CALTAGIRONE, BROWN, FREEMAN, YOUNGBLOOD, READSHAW,
SOLOMON AND DeLUCA, APRIL 5, 2019

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, APRIL 5, 2019

AN ACT

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

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

6 Section 1. Short title.

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

9 Section 2. Legislative findings.

10 The General Assembly finds and declares as follows:

11 (1) That it is an important and substantial State
12 interest to protect the private, personal data in this
13 Commonwealth.

14 (2) That with the increasing use of technology and data
15 in everyday life, there is an increasing amount of private,
16 personal data being shared by consumers with businesses as a
17 part of everyday transactions and online and other
18 activities.

1 (3) That the increasing collection, storage, use and
2 sale of personal data creates increased risks of identity
3 theft, financial loss and other misuse of private personal
4 data.

5 (4) That many consumers do not know, understand or have
6 appropriate authority over the distribution, use, sale or
7 disclosure of their personal data.

8 Section 3. Definitions.

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

12 "Business." The following:

13 (1) A sole proprietorship, partnership, limited
14 liability company, corporation, association or other legal
15 entity that is organized or operated for the profit or
16 financial benefit of its shareholders or other owners, that
17 collects consumers' personal information, or on the behalf of
18 which such information is collected and that alone, or
19 jointly with others, determines the purposes and means of the
20 processing of consumers' personal information, that does
21 business in this Commonwealth and that satisfies one or more
22 of the following thresholds:

23 (i) Has annual gross revenues in excess of
24 \$10,000,000.

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

30 (iii) Derives 50% or more of annual revenues from

1 selling consumers' personal information.

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

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

5 "Control." Ownership of or the power to vote on more than
6 50% of the outstanding shares of any class of voting security of
7 a business, control in any manner over the election of a
8 majority of the directors, or of individuals exercising similar
9 functions, or the power to exercise a controlling influence over
10 the management of a company.

11 "Personal information." Information that identifies, relates
12 to, describes, is capable of being associated with or could
13 reasonably be linked, directly or indirectly, with a particular
14 consumer or household, including, but not limited to:

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

20 (2) Characteristics of protected classifications under
21 Federal or State law.

22 (3) Commercial information, including records of
23 personal property, products or services purchased, obtained
24 or considered or other purchasing or consuming histories or
25 tendencies.

26 (4) Biometric information.

27 (5) Internet or other electronic network activity
28 information, including, but not limited to, browser history,
29 search history and information regarding a consumer's
30 interaction with an Internet website, application or

1 advertisement.

2 (6) Geolocation data.

3 (7) Audio, electronic, visual, thermal, olfactory or
4 similar information.

5 (8) Professional or employment-related information.

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

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

15 (11) The term does not include publicly available
16 information.

17 "Publicly available." Information that is lawfully made
18 available from Federal, State or local government records, as
19 restricted by any conditions associated with such information.
20 The term does not include biometric information collected by a
21 business about a consumer without the consumer's knowledge or
22 consumer information that is deidentified or aggregate consumer
23 information. Information is not publicly available if the data
24 is used for a purpose that is not compatible with the purpose
25 for which the data is maintained and made available in the
26 government records or for which it is publicly maintained.

27 Section 4. Consumer data privacy.

28 (a) General rule.--A consumer shall have the right to:

29 (1) Know what personal information is being collected
30 about the consumer.

1 (2) Know whether the consumer's personal information is
2 sold or disclosed and to whom.

3 (3) Decline or opt out of the sale of the consumer's
4 personal information.

5 (4) Access the consumer's personal information that has
6 been collected.

7 (5) Equal service and price, even if a consumer
8 exercises their rights under this subsection.

9 (b) Disclosure by businesses.--A consumer shall have the
10 right to request that a business which collects personal
11 information about the consumer disclose to the consumer the
12 following:

13 (1) The categories of personal information the business
14 has collected about the consumer.

15 (2) The categories of sources from which the personal
16 information is collected.

17 (3) The business or commercial purpose for collecting or
18 selling personal information.

19 (4) The categories of third parties with whom the
20 business shares personal information.

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

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

28 (1) retain any personal information about a consumer
29 collected for a single one-time transaction if, in the
30 ordinary course of business, that information about the

1 consumer is not retained; or

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

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

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

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

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

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

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

27 (2) A business that receives a verifiable request from a
28 consumer to delete the consumer's personal information shall
29 delete the consumer's personal information from its records
30 and direct any service providers to delete the consumer's

1 personal information from the service provider's records.

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

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

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

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

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

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

29 (vi) To enable solely internal uses that are
30 reasonably aligned with the expectations of the consumer

1 based on the consumer's relationship with the business.

2 (vii) Comply with a legal obligation.

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

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

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

18 (i) Prohibition on sale of personal information.--A business
19 which has received direction from a consumer not to sell the
20 consumer's personal information or, in the case of a minor
21 consumer's personal information has not received consent to sell
22 the minor consumer's personal information, shall be prohibited
23 from selling the consumer's personal information after its
24 receipt of the consumer's direction, unless the consumer
25 subsequently provides express authorization for the sale of the
26 consumer's personal information.

27 (j) Consumers of young age.--Notwithstanding subsection (i),
28 a business may not sell the personal information of a consumer
29 if the business has actual knowledge that the consumer is less
30 than 16 years of age, unless the consumer, in the case of a

1 consumer who is between 13 and 16 years of age, or the
2 consumer's parent or guardian, in the case of a consumer who is
3 less than 13 years of age, has affirmatively authorized the sale
4 of the consumer's personal information. A business that
5 willfully disregards the consumer's age shall be deemed to have
6 had actual knowledge of the consumer's age.

7 (k) Discrimination prohibited.--

8 (1) A business shall not discriminate against a consumer
9 because the consumer exercised any of the consumer's rights
10 under this section, including, but not limited to, by:

11 (i) Denying goods or services to the consumer.

12 (ii) Charging different prices or rates for goods or
13 services, including through the use of discounts or other
14 benefits or imposing penalties.

15 (iii) Providing a different level or quality of
16 goods or services to the consumer.

17 (iv) Suggesting that the consumer will receive a
18 different price or rate for goods or services or a
19 different level or quality of goods or services.

20 (2) Nothing in this subsection shall prohibit a business
21 from charging a consumer a different price or rate, or from
22 providing a different level or quality of goods or services
23 to the consumer, if that difference is reasonably related to
24 the value provided to the consumer by the consumer's data.

25 (l) Compliance with notice requirements.--In order to comply
26 with the notice requirements under this section, a business
27 shall:

28 (1) In a form that is reasonably accessible to
29 consumers, make available to consumers two or more designated
30 methods for submitting requests for information required to

1 be disclosed, including, at a minimum, a toll-free telephone
2 number, and if the business maintains a publicly accessible
3 Internet website, the website address.

4 (2) In a form that is reasonably accessible to
5 consumers, disclose and deliver the required information to a
6 consumer free of charge within 45 days of receiving a
7 verifiable request from the consumer. The time period to
8 provide the required information may be extended once by an
9 additional 45 days when reasonably necessary, provided the
10 consumer is provided notice of the extension within the first
11 45-day period.

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

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

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

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

29 (5) Ensure that all individuals responsible for handling
30 consumer inquiries about the business's privacy practices are

1 informed of the requirements of this section and how to
2 direct consumers to exercise their rights.

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

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

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

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

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

1 ability to:

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

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

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

10 (4) Exercise or defend legal claims.

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

14 (6) Collect or sell a consumer's personal information if
15 every aspect of that commercial conduct takes place wholly
16 outside of this Commonwealth. For purposes of this section,
17 commercial conduct takes place wholly outside of this
18 Commonwealth if the business collected that information while
19 the consumer was outside of this Commonwealth, no part of the
20 sale of the consumer's personal information occurred in this
21 Commonwealth and no personal information collected while the
22 consumer was in this Commonwealth is sold. This paragraph
23 shall not permit a business from storing, including on a
24 device, personal information about a consumer when the
25 consumer is in this Commonwealth and then collecting that
26 personal information when the consumer and stored personal
27 information is outside of this Commonwealth.

28 (n) Civil action by consumer.--

29 (1) A consumer whose nonencrypted or nonredacted
30 personal information is subject to an unauthorized access and

1 exfiltration, theft or disclosure as a result of the
2 business's violation of the duty to implement and maintain
3 reasonable security procedures and practices appropriate to
4 the nature of the information to protect the personal
5 information may institute a civil action for any of the
6 following:

7 (i) To recover damages in an amount not less than
8 \$100 and not more than \$750 per consumer per incident or
9 actual damages, whichever is greater.

10 (ii) Injunctive or declaratory relief.

11 (iii) Any other relief the court deems appropriate.

12 (2) In assessing the amount of statutory damages, a
13 court shall consider any one or more of the relevant
14 circumstances presented by any of the parties to the case,
15 including, but not limited to, the nature and seriousness of
16 the misconduct, the number of violations, the persistence of
17 the misconduct, the length of time over which the misconduct
18 occurred, the willfulness of the defendant's misconduct and
19 the defendant's assets, liabilities and net worth.

20 (3) An action under this section may be brought by a
21 consumer if, prior to initiating any action against a
22 business for statutory damages on an individual or classwide
23 basis, a consumer provides a business 30 days' written notice
24 identifying the specific provisions of this act the consumer
25 alleges have been or are being violated. In the event a cure
26 is possible, if, within the 30 days the business actually
27 cures the noticed violation and provides the consumer an
28 express written statement that the violations have been cured
29 and that no further violations shall occur, no action for
30 individual statutory damages or classwide statutory damages

1 may be initiated against the business. No notice shall be
2 required prior to an individual consumer initiating an action
3 solely for actual pecuniary damages suffered as a result of
4 the alleged violations of this act. If a business continues
5 to violate this act in breach of the express written
6 statement provided to the consumer under this paragraph, the
7 consumer may initiate an action against the business to
8 enforce the written statement and may pursue statutory
9 damages for each breach of the express written statement, as
10 well as any other violation of this act that postdates the
11 written statement.

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

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

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

24 Section 5. Effective date.

25 This act shall take effect immediately.