103RD GENERAL ASSEMBLY
State of Illinois
2023 and 2024
SB1365

Introduced 2/6/2023, by Sen. Michael W. Halpin

SYNOPSIS AS INTRODUCED:

New Act

Creates the Right to Know Act. Provides that an operator of a commercial website or online service that collects personally identifiable information through the Internet about individual customers residing in Illinois who use or visit its commercial website or online service shall notify those customers of certain specified information pertaining to its personal information sharing practices. Requires an operator to make available certain specified information upon disclosing a customer's personal information to a third party, and to provide an e-mail address or toll-free telephone number whereby customers may request or obtain that information. Provides for a data protection safety plan. Provides for a right of action to customers whose rights are violated under the Act. Provides that any waiver of the provisions of the Act or any agreement that does not comply with the applicable provisions of the Act shall be void and unenforceable. Provides that no provision of the Act shall be construed to conflict with or apply to certain specified provisions of federal law or certain interactions with State or local government. Provides findings and purpose. Defines terms.
AN ACT concerning regulation.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Short title. This Act may be cited as the Right to Know Act.

Section 5. Findings and purpose. The General Assembly hereby finds and declares that the right to privacy is a personal and fundamental right protected by the United States Constitution. As such, all individuals have a right to privacy in information pertaining to them. This State recognizes the importance of providing consumers with transparency about how their personal information, especially information relating to their children, is shared by businesses. This transparency is crucial for Illinois citizens to protect themselves and their families from cyber-crimes and identity thieves. Furthermore, for free market forces to have a role in shaping the privacy practices and for "opt-in" and "opt-out" remedies to be effective, consumers must be more than vaguely informed that a business might share personal information with third parties. Consumers must be better informed about what kinds of personal information are shared with other businesses. With these specifics, consumers can knowledgeably choose to opt in, opt out, or choose among businesses that disclose information to
third parties on the basis of how protective the business is of consumers' privacy.

Businesses are now collecting personal information and sharing and selling it in ways not contemplated or properly covered by the current law. Some websites are installing tracking tools that record when consumers visit web pages, and sending very personal information, such as age, gender, race, income, health concerns, religion, and recent purchases to third party marketers and data brokers. Third party data broker companies are buying, selling, and trading personal information obtained from mobile phones, financial institutions, social media sites, and other online and brick and mortar companies. Some mobile applications are sharing personal information, such as location information, unique phone identification numbers, and age, gender, and other personal details with third party companies. As such, consumers need to know the ways that their personal information is being collected by companies and then shared or sold to third parties in order to properly protect their privacy, personal safety, and financial security.

Section 10. Definitions. As used in this Act:

"Categories of personal information" includes, but is not limited to, the following:

(a) Identity information including, but not limited to, real name, alias, nickname, and user name.
(b) Address information, including, but not limited to, postal or email.

c) Telephone number.

d) Account name.

e) Social security number or other government-issued identification number, including, but not limited to, social security number, driver's license number, identification card number, and passport number.

f) Birthdate or age.

g) Physical characteristic information, including, but not limited to, height and weight.

h) Sexual information, including, but not limited to, sexual orientation, sex, gender status, gender identity, and gender expression.

i) Race or ethnicity.

j) Religious affiliation or activity.

k) Political affiliation or activity.

l) Professional or employment-related information.

m) Educational information.

(n) Medical information, including, but not limited to, medical conditions or drugs, therapies, mental health, or medical products or equipment used.

(o) Financial information, including, but not limited to, credit, debit, or account numbers, account balances, payment history, or information related to assets, liabilities, or general creditworthiness.
(p) Commercial information, including, but not limited to, records of property, products or services provided, obtained, or considered, or other purchasing or consumer histories or tendencies.

(q) Location information.

(r) Internet or mobile activity information, including, but not limited to, Internet protocol addresses or information concerning the access or use of any Internet or mobile-based site or service.

(s) Content, including text, photographs, audio or video recordings, or other material generated by or provided by the customer.

(t) Any of the above categories of information as they pertain to the children of the customer.

"Customer" means an individual residing in Illinois who provides, either knowingly or unknowingly, personal information to a private entity, with or without an exchange of consideration, in the course of purchasing, viewing, accessing, renting, leasing, or otherwise using real or personal property, or any interest therein, or obtaining a product or service from the private entity, including advertising or any other content.

"Designated request address" means an email address or toll-free telephone number whereby customers may request or obtain the information required to be provided under Section 15 of this Act.
"Disclose" means to disclose, release, transfer, share, disseminate, make available, or otherwise communicate orally, in writing, or by electronic or any other means to any third party. "Disclose" does not include the following:

(a) Disclosure of personal information by a private entity to a third party under a written contract authorizing the third party to utilize the personal information to perform services on behalf of the private entity, including maintaining or servicing accounts, providing customer service, processing or fulfilling orders and transactions, verifying customer information, processing payments, providing financing, or similar services, but only if (i) the contract prohibits the third party from using the personal information for any reason other than performing the specified service or services on behalf of the private entity and from disclosing any such personal information to additional third parties, and (ii) the private entity effectively enforces these prohibitions.

(b) Disclosure of personal information by a business to a third party based on a good-faith belief that disclosure is required to comply with applicable law, regulation, legal process, or court order.

(c) Disclosure of personal information by a private entity to a third party (i) that is reasonably necessary to address fraud, security, or technical issues, (ii) to
protect the disclosing private entity's rights or property, or (iii) to protect customers or the public from illegal activities as required or permitted by law.

"Operator" means any person or entity that owns a website located on the Internet or an online service that collects and maintains personally identifiable information from a customer residing in Illinois who uses or visits the website or online service if the website or online service is operated for commercial purposes. It does not include any third party that operates, hosts, or manages, but does not own, a website or online service on the owner's behalf or by processing information on behalf of the owner.

"Personal information" means any information that identifies, relates to, describes, or is capable of being associated with, a particular individual, including, but not limited to, his or her name, signature, physical characteristics or description, address, telephone number, passport number, driver's license or State identification card number, insurance policy number, education, employment, employment history, bank account number, credit card number, debit card number, or any other financial information.

"Personal information" also means any data or information pertaining to an individual's income, assets, liabilities, purchases, leases, or rentals of goods, services, or real property, if that information is disclosed, or is intended to be disclosed, with any identifying information, such as the
individual's name, address, telephone number, or social security number.

"Third party" or "third parties" means (i) a private entity that is a separate legal entity from the private entity that has disclosed personal information, (ii) a private entity that does not share common ownership or common corporate control with the private entity that has disclosed personal information, or (iii) a private entity that does not share a brand name or common branding with the private entity that has disclosed personal information such that the affiliate relationship is clear to the customer.

Section 15. Notification of information sharing practices. An operator of a commercial website or online service that collects personally identifiable information through the Internet about individual customers residing in Illinois who use or visit its commercial website or online service shall, in its customer agreement or incorporated addendum (i) identify all categories of personal information that the operator collects through the website or online service about individual customers who use or visit its commercial website or online service, (ii) identify all categories of third party persons or entities with whom the operator may disclose that personally identifiable information, and (iii) provide a description of a customer's rights, as required under Section 25 of this Act, accompanied by one or more designated request
Section 20. Disclosure of a customer's personal information to a third party.

(a) An operator that discloses a customer's personal information to a third party shall make the following information available to the customer free of charge:

(1) all categories of personal information that were disclosed; and

(2) the names of all third parties that received the customer's personal information.

(b) This Section applies only to personal information disclosed after the effective date of this Act.

Section 25. Information availability service.

(a) An operator required to comply with Section 20 shall make the required information available by providing a designated request address in its customer agreement or incorporated addendum, and, upon receipt of a request under this Section, shall provide the customer with the information required under Section 20 for all disclosures occurring in the prior 12 months.

(b) An operator that receives a request from a customer under this Section at one of the designated addresses shall provide a response to the customer within 30 days.
Section 30. Data protection safety plan. Each manufacturer or company doing business in this State, or which collects personal information from customers who are residents of this State, shall develop a safety plan for the protection of customer data.

Section 35. Right of action. Any person whose rights under this Act are violated shall have a right of action against an offending party, and shall recover: (i) liquidated damages of $10 or actual damages, whichever is greater; (ii) injunctive relief, if appropriate; and (iii) reasonable attorneys' fees, costs, and expenses.

Section 40. Waivers; contracts. Any waiver of the provisions of this Act shall be void and unenforceable. Any agreement that does not comply with the applicable provisions of this Act shall be void and unenforceable.

Section 45. Construction.
(a) Nothing in this Act shall be construed to conflict with the federal Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated under that Act.
(b) Nothing in this Act shall be deemed to apply in any manner to a financial institution or an affiliate of a financial institution that is subject to Title V of the
federal Gramm-Leach-Bliley Act of 1999 and the regulations promulgated under that Act.

(c) Nothing in this Act shall be deemed to apply to the activities of an individual or entity to the extent that those activities are subject to Section 222 or 631 of the federal Communications Act of 1934.

(d) Nothing in this Act shall be construed to apply to a contractor, subcontractor, or agent of a State agency or local unit of government when working for that State agency or local unit of government.