



General Assembly

Substitute Bill No. 5765

February Session, 2008

* HB05765GL 030708 *

AN ACT CONCERNING ONLINE ADVERTISING AND PRIVACY.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2008*) (a) As used in this
2 section:

3 (1) "Consumer" means a natural person using an online Internet
4 service to access a web site or web page that includes the display of
5 advertisements.

6 (2) "Nonpersonally identifiable information" means information
7 collected by a third-party advertising network that cannot be used, by
8 itself, to contact, identify or locate a particular person. Nonpersonally
9 identifiable information is compiled from information obtained as an
10 Internet browser moves among different web sites serviced by a
11 particular third-party advertising network, but may also include other
12 information collected directly by the third-party advertising network
13 or provided by third parties, provided the information is not
14 personally identifiable to the third-party advertising network.

15 (3) "Online preference marketing" means third-party advertising
16 delivery and reporting whereby data is collected over time and across
17 multiple web pages controlled by different publishers to determine or
18 predict consumer characteristics or preference for use in advertising
19 delivery on the Internet. Online preference marketing may include the

20 use of personally or nonpersonally identifiable information. Online
21 preference marketing shall not include the use of data provided by a
22 publisher directly to a third-party advertising network and used by
23 that third-party advertising network for Internet advertising solely on
24 behalf of such publisher.

25 (4) "Personally identifiable information" means data that, by itself,
26 can be used to identify, contact or locate a person, including name,
27 address, telephone number or email address.

28 (5) "Publisher" means a company, individual or other group that has
29 a web site, web page or other Internet page.

30 (6) "Third-party advertising delivery and reporting" means: (A)
31 Providing an advertisement to a third-party Internet web site; (B)
32 statistical reporting in connection with the activity on a third-party
33 web site; (C) tracking the number of advertisements served on a
34 particular day to a particular third-party web site; and (D) any other
35 activity related to the delivery of advertisements on a third-party web
36 site and that involves the collection of personally or nonpersonally
37 identifiable information about individual visits to a third-party web
38 site by a consumer or web browser.

39 (7) "Third-party advertising network" means a company, individual
40 or other group that is collecting personally or nonpersonally
41 identifiable information for the purposes of third-party advertising
42 delivery and reporting.

43 (b) A third-party advertising network shall post clear and
44 conspicuous notice on its own web site about its data collection and
45 use practices related to its third-party advertising delivery and
46 reporting activities. Such notice shall include, without limitation, clear
47 descriptions of the following: (1) The types of information that are
48 collected by the third-party advertising network through its third-
49 party advertising delivery and reporting activities; (2) the types of
50 additional data that may be combined with data collected through
51 third-party advertising delivery and reporting; (3) how personally and

52 nonpersonally identifiable information will be used by the third-party
53 advertising network including transfer, if any, of nonaggregate data to
54 a third-party; and (4) the approximate length of time that such
55 information will be retained by the third-party advertising network. If
56 the third-party advertising network engages in online preference
57 marketing, such notice shall also include clear descriptions of the
58 following: (A) Profiling activities undertaken by the third-party
59 advertising network, including all the types of personally and
60 nonpersonally identifiable information that may be used for online
61 preference marketing; and (B) procedures for opting out of such data
62 use, including a description of circumstances that would make it
63 necessary for a consumer to renew the opt out, such as when a
64 consumer changes computers, changes browsers or deletes relevant
65 cookies. If the third-party advertising network seeks consent from
66 consumers for the use of sensitive information for the purposes of
67 online preference marketing, such notice shall also include a clear
68 description of the types of sensitive information to be used and the
69 procedures for revoking such consent. If the third-party advertising
70 network seeks consent from consumers for the merger of personally
71 identifiable information with nonpersonally identifiable information,
72 such notice shall also include a clear description of the types of
73 nonpersonally identifiable information and personally identifiable
74 information that may be merged and the procedures for revoking such
75 consent for any further merger on a prospective basis. If a third-party
76 advertising network materially changes its data collection and use
77 policy, prior notice shall be posted on its web site. Any such material
78 change shall apply only to information collected following the change
79 in policy. Information collected prior to the material change in policy
80 shall be governed by the policy in effect at the time the information
81 was collected, unless the consumer receives direct notice of the change
82 and an opportunity to choose not to have previously collected
83 information governed by the new policy.

84 (c) A third-party advertising network, when entering into a contract
85 with a publisher for third-party advertising delivery and reporting

86 services, shall require that the publisher post a privacy policy that
87 clearly and conspicuously discloses the publisher's use of a third-party
88 advertising network and the type of information that may be collected
89 by the third-party advertising network. If the third-party advertising
90 delivery and reporting services include online preference marketing,
91 then the notice shall also clearly and conspicuously disclose that the
92 consumer has the ability to opt out of online preference marketing and
93 include a link to the opt out page. The third-party advertising network
94 shall make every reasonable effort to ensure that any publisher using
95 its third-party advertising delivery and reporting services post a
96 privacy policy on the publisher's web site as required by this section.

97 (d) A third-party advertising network that engages in online
98 preference marketing shall provide a method for consumers to opt out
99 of online preference marketing by the third-party advertising network.
100 Such method shall be accessible at a designated opt out page on the
101 third-party advertising network's web site.

102 (e) Third-party advertising networks shall not use information
103 about sensitive medical or financial data, sexual behavior or sexual
104 orientation for the purposes of online preference marketing without
105 the affirmative consent of the consumer. A third-party advertising
106 network that seeks such consent must also provide a means of
107 revoking such consent on a prospective basis. Such means shall be
108 accessible at a designated location on the third-party advertising
109 network's web site.

110 (f) Third-party advertising networks shall not merge nonpersonally
111 identifiable information collected through third-party advertising
112 delivery and reporting activities with personally identifiable
113 information without the consumer's prior consent to such merger. If
114 the merger involves nonpersonally identifiable information collected
115 on a prospective basis only, prominent notice and an opportunity to
116 opt out is required. The means of opting out must remain available at a
117 designated location on the third-party advertising network's web site.
118 When a consumer exercises the opt out at a later time, after

119 information has been merged, the effect of that choice shall be to
120 revoke consent for further mergers of such information on a
121 prospective basis only. If the merger involves previously collected
122 nonpersonally identifiable information, affirmative opt in consent is
123 required. A third-party advertising network that seeks such consent
124 shall also provide a means of revoking consent for further mergers of
125 such data on a prospective basis. Such means shall be accessible at a
126 designated location on the third-party advertising network's web site.

127 (g) Third-party advertising networks shall make reasonable efforts
128 to protect data they collect as a result of third-party advertising
129 delivery and reporting from loss, misuse, alteration, destruction or
130 improper access. Third-party advertising networks that collect both
131 nonpersonally identifiable information through advertising delivery
132 and reporting activities and personally identifiable information
133 directly from consumers or from third parties shall implement
134 reasonable technical and procedural protections to prevent the merger
135 of personally identifiable information and nonpersonally identifiable
136 information in the absence of the consent of the consumer as required
137 by this section.

138 (h) Third-party advertising networks shall provide consumers with
139 reasonable access to personally identifiable information and other
140 information that is directly associated with personally identifiable
141 information retained by the third-party advertising network for third-
142 party advertising delivery and reporting uses. The provisions of this
143 subsection shall not require a third-party advertising network to
144 provide an individual with access where: (1) The consumer requesting
145 access cannot reasonably verify his or her identity as the person to
146 whom the personally identifiable information relates; (2) the rights of
147 persons other than the consumer would be violated; (3) the burden or
148 expense of providing access would be disproportionate to the risks of
149 harm to the consumer in the case in question; (4) proprietary or
150 confidential information, technology or business processes would be
151 revealed as a result; (5) revealing the information would likely affect
152 litigation or judicial proceeding in which the third-party advertising

153 network has an interest; or (6) revealing the information would be
154 unlawful, or would likely interfere with the detection or prevention of
155 unlawful activity.

156 (i) A third-party advertising network may charge a reasonable fee
157 for providing access in accordance with the provisions of this section,
158 which shall not exceed the greater of: (1) The actual cost to the third-
159 party advertising network of responding to the consumer's access
160 request, or (2) the average cost to the third-party advertising network
161 of responding to access requests of a similar type. The obligation to
162 provide access does not, by itself, create an obligation on the
163 organization to retain personally identifiable information.

164 (j) A violation of subsections (b) to (h), inclusive, of this section shall
165 constitute an unfair trade practice pursuant to subsection (a) of section
166 42 -110b of the general statutes.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2008	New section

Statement of Legislative Commissioners:

Changes were made to subsection (a) of section 1 for accuracy and clarity.

GL *Joint Favorable Subst.-LCO*