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HOUSE BILL 677

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Mimi Stewart

AN ACT

RELATING TO CONSUMER PROTECTION; CREATING THE CONSUMER
INFORMATION PROTECTION ACT; PROHIBITING PUBLIC CONTRACTS WITH
PERSONS WHO SEND CONSUMER IDENTIFICATION INFORMATION OFFSHORE;
REQUIRING NOTICE TO AND CONSENT OF CONSUMERS TO SEND PERSONAL
INFORMATION OFFSHORE; PROHIBITING DISCRIMINATION AGAINST
NONCONSENTING CONSUMERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
"Consumer Information Protection Act".

Section 2. DEFINITIONS.--As used in the Consumer
Information Protection Act:

A. "consumer" means a person who is the subject of
personally identifiable information or personally identifiable
health information;

1 B. "essential to homeland security" means:

2 (1) information necessary to enhance the
3 capability of the state and local jurisdictions to prepare for
4 and respond to terrorist acts, including events of terrorism
5 involving weapons of mass destruction and biological, nuclear,
6 radiological, incendiary, chemical and explosive devices; or

7 (2) information relating to physical and
8 information infrastructures, including telecommunications,
9 energy, financial services, water and transportation;

10 C. "local public body" means a political
11 subdivision of the state and its agencies, instrumentalities
12 and institutions, including two-year post-secondary educational
13 institutions;

14 D. "personally identifiable health information"
15 means information identifiable to a consumer that relates to
16 the past, present or future physical or mental health or
17 condition of the consumer; the provision of health care to the
18 consumer; or the past, present or future payment for the
19 provision of health care to the consumer;

20 E. "personally identifiable information" means
21 information that alone or in conjunction with other information
22 identifies a consumer, including the consumer's name, address,
23 telephone number, email address, birth date, biometric data,
24 passport number, driver's license number, social security
25 number, place of employment, mother's maiden name, demand

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1 deposit account number, checking or savings account number,
2 credit card or debit card number, personal identification
3 number, password or any other numbers or information that can
4 be used to identify a consumer or used to access a consumer's
5 financial resources; and

6 F. "state agency" means a department, commission,
7 council, board, committee, institution, legislative body,
8 agency, government corporation, educational institution or
9 official of the executive, legislative or judicial branch of
10 the government of this state.

11 Section 3. OFFSHORE CONTRACTS PROHIBITED.--The state, a
12 state agency or a local public body shall not enter into a
13 contract or other agreement with a person if the person
14 performs work outside the United States involving private
15 information or information essential to homeland security.

16 Section 4. PRIVATE INFORMATION.--For the purposes of the
17 Consumer Information Protection Act:

18 A. private information includes personally
19 identifiable information; personally identifiable health
20 information; confidential information between an attorney at
21 law and a client; and information obtained in the business of
22 preparing federal or state income tax returns or assisting
23 taxpayers in preparing those returns, including an instance in
24 which this information is obtained through an electronic
25 medium; but

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1 B. private information does not include publicly
2 available information for which there is a reasonable basis to
3 believe that the information is lawfully made available to the
4 general public from federal, state or local government records;
5 widely distributed media; and disclosures to the general public
6 that are required to be made by federal, state or local
7 government law.

8 Section 5. TRANSMITTAL OF INFORMATION OFFSHORE
9 PROHIBITED.--

10 A. A person who has contracted or subcontracted
11 with another person to receive personally identifiable
12 information or personally identifiable health information shall
13 disclose to the person if any of the information will be
14 transferred to a site outside the United States.

15 B. A person, or the person's contractor or
16 subcontractor, shall not transmit a consumer's personally
17 identifiable information or personally identifiable health
18 information to a site outside the United States unless all of
19 the following apply:

20 (1) the person discloses to the consumer that
21 the consumer's personally identifiable information or
22 personally identifiable health information may be transmitted
23 to a site outside the United States;

24 (2) the person obtains a consent
25 acknowledgment from the consumer that the consumer's personally

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1 identifiable information or personally identifiable health
2 information may be transmitted to a site outside the United
3 States. This consent must be renewed annually;

4 (3) the consumer may revoke consent in writing
5 to the person at any time; and

6 (4) the obligations imposed on the person by
7 this section are undertaken by that person and are not
8 delegated or assigned to another.

9 Section 6. CONSENT FORM.--A person shall use a form to
10 obtain a consumer's consent to transmit personally identifiable
11 information or personally identifiable health information to a
12 site outside the United States; provided that this section does
13 not apply if a consumer initiates a request for goods or
14 services outside the United States. The form shall:

15 A. be dated and signed by the consumer; and

16 B. clearly and conspicuously disclose all of the
17 following:

18 (1) that by signing, the consumer is
19 consenting to the transmission of the consumer's personally
20 identifiable information or personally identifiable health
21 information to a site outside the United States;

22 (2) that the consent of the consumer must be
23 renewed on at least an annual basis;

24 (3) that the consumer may revoke consent at
25 any time; and

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(4) the procedure by which consent may be
revoked.

Section 7. DISCRIMINATION PROHIBITED.--A person shall not
discriminate against a consumer or deny a consumer goods or
services because the consumer has not provided consent pursuant
to the Consumer Information Protection Act.

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