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HOUSE BILL 905

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Danice Picraux

AN ACT

RELATING TO INFORMATION; ENACTING THE PRIVACY PROTECTION ACT;
PROHIBITING THE TRANSFERRING OF CERTAIN PROTECTED INFORMATION
TO CERTAIN BUSINESSES THAT WOULD USE IT FOR COMMERCIAL
PURPOSES; PROHIBITING CERTAIN PERSONS FROM REQUIRING OR
COMPILING CERTAIN PROTECTED INFORMATION; PROVIDING CIVIL
REMEDIES; PROVIDING CRIMINAL PENALTIES.

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

Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1
through 10 of this act may be cited as the "Privacy Protection
Act".

Section 2. [NEW MATERIAL] DEFINITIONS. -- As used in the
Privacy Protection Act:

A. "business" means a commercial enterprise that:

(1) sells or leases or intends to sell or

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1 lease products, goods or services to consumers;

2 (2) is an agent of a business described in
3 Paragraph (1) of this subsection; or

4 (3) is an agent of a nonprofit organization
5 selling marketing services to that organization;

6 B. "consumer" means a natural person, who is a
7 resident of New Mexico, and who purchases, leases or otherwise
8 contracts for products, goods or services within New Mexico
9 that are primarily used for personal, family or household
10 purposes;

11 C. "consumer behavior information" means personally
12 identifiable information about an individual consumer's
13 interests, buying preferences, habits or other behavior that
14 may assist a business to target that individual consumer as a
15 potential customer. "Consumer behavior information" includes:

16 (1) specific or general types of credit card
17 purchases;

18 (2) television viewing patterns;

19 (3) internet use;

20 (4) magazine or newspaper subscriptions;

21 (5) video rentals;

22 (6) book purchases and library uses; and

23 (7) supermarket cards;

24 D. "financial records" means current or historical
25 personally identifiable information about an individual

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1 consumer's financial condition, including credit card balances,
2 balances of accounts held with financial institutions and
3 security brokerage firms and mortgage or loan information;

4 E. "genetic information" means personally
5 identifiable information about an individual consumer's genetic
6 makeup, including information resulting from genetic analysis,
7 DNA composition, participation in genetic research or use of
8 genetic services;

9 F. "medical information" means current or
10 historical personally identifiable information about an
11 individual consumer's physical or mental health, including drug
12 or alcohol treatment records, medical reports, clinical notes,
13 nurses' notes, history of injury, subjective and objective
14 complaints, test contents and results, interpretations of
15 tests, reports and summaries of interpretations of tests and
16 other reports, diagnoses and prognoses, bills, invoices,
17 referral requests, consultative reports and reports of services
18 requested by a health care provider;

19 G. "personal identifying information" means
20 information that will assist in identifying an individual
21 consumer, including name, address, telephone number, age, race,
22 marriage status, social security number, birth date, occupation
23 and driver's license number; and

24 H. "protected information" means a consumer's
25 consumer behavior information, financial records, genetic

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1 information, medical information or personal identifying
2 information.

3 Section 3. [NEW MATERIAL] CONVEYING PROTECTED
4 INFORMATION. --

5 A. Except as provided in Subsection B of this
6 section, no person shall sell or otherwise convey a consumer's
7 protected information to a business with the knowledge that the
8 protected information will be used by a business to encourage
9 that consumer to purchase or lease property, goods or services
10 or to contribute money.

11 B. Nothing in this section prohibits:

12 (1) a conveyance of protected information
13 concerning a consumer if that consumer consents to the
14 conveyance and the consent is given separately and not
15 incorporated in a consumer transaction;

16 (2) a financial institution or creditor from
17 conveying information about a consumer's credit history to a
18 credit bureau; or

19 (3) a credit bureau from conveying information
20 about a consumer's credit history to a financial institution or
21 potential creditor.

22 Section 4. [NEW MATERIAL] RECEIVING OR USING PROTECTED
23 INFORMATION. --

24 A. Except as provided in Subsection B of this
25 section:

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1 (1) no person shall receive a consumer's
2 protected information with the knowledge that the information
3 will be used by a business to encourage that consumer to
4 purchase or lease property, goods or services or to contribute
5 money; and

6 (2) no business shall use a consumer's
7 protected information to encourage that consumer to purchase or
8 lease property, goods or services or to contribute money with
9 the knowledge that the protected information was obtained by a
10 violation of Section 3 of the Privacy Protection Act.

11 B. Nothing in this section prohibits:

12 (1) the receipt of protected information
13 concerning a consumer if that consumer consents to the
14 conveyance of the protected information and the consent is
15 given separately and not incorporated into a consumer
16 transaction; or

17 (2) the receipt of information concerning a
18 consumer's credit history by a credit bureau or a customer of a
19 credit bureau.

20 Section 5. [NEW MATERIAL] MONITORING OR COMPILING
21 CONSUMER BEHAVIOR INFORMATION. --

22 A. Except as provided in Subsection B of this
23 section, no person shall monitor or compile a consumer's
24 consumer behavior information with the knowledge that the
25 consumer behavior information will be used by a business to

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1 encourage that consumer to purchase or lease property, goods or
2 services or to contribute money.

3 B. Nothing in this section prohibits:

4 (1) monitoring or compiling a consumer's
5 consumer behavior information if the consumer consents to the
6 monitoring or compiling and the consent is given separately and
7 is not incorporated into a consumer transaction; or

8 (2) monitoring or compiling a consumer's
9 consumer behavior information if the information will not be
10 used to target that consumer as a future customer or client but
11 will be used in the aggregate with similar information about
12 other consumers to identify trends, populations or similar
13 indicators of group consumer behavior.

14 Section 6. [NEW MATERIAL] DISCLOSURE OF SOCIAL SECURITY
15 NUMBER. --

16 A. Except as provided in Subsection B of this
17 section, no business shall require a consumer's social security
18 number as a condition for the consumer to lease or purchase
19 products, goods or services from the business.

20 B. Nothing in this section prohibits a business
21 from requiring or requesting a consumer's social security
22 number if the number will be used as required by state or
23 federal law.

24 C. Nothing in this section prohibits a business
25 from acquiring or using a consumer's social security number if

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1 the consumer consents to the acquisition or use and the consent
2 is given separately and is not incorporated into a consumer
3 transaction.

4 D. A company acquiring or using social security
5 numbers of consumers shall adopt internal policies that:

6 (1) limit access to the social security
7 numbers to those employees that need the information to perform
8 their duties; and

9 (2) hold employees responsible if the social
10 security numbers are released to other persons.

11 Section 7. [NEW MATERIAL] ATTORNEY GENERAL-- ENFORCEMENT--
12 RULES.--The attorney general shall enforce the provisions of
13 the Privacy Protection Act and may bring such actions for
14 injunctive and declaratory relief as are necessary to ensure
15 compliance with that act.

16 Section 8. [NEW MATERIAL] CIVIL ACTION.--

17 A. A consumer harmed by a violation of the Privacy
18 Protection Act may bring a civil action to recover statutory
19 damages equal to five hundred dollars (\$500) for each
20 violation. In addition, the consumer may recover:

21 (1) actual damages, including consequential
22 and incidental damages;

23 (2) punitive damages, when the violation was
24 malicious or reckless;

25 (3) costs and reasonable attorney fees; and

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1 (4) injunctive, declaratory and such other
2 equitable relief as the court deems appropriate in an action to
3 enforce compliance with the Privacy Protection Act.

4 B. The civil action and remedies provided in this
5 section are not exclusive and are in addition to any other
6 action or remedies available to a consumer under applicable
7 law.

8 Section 9. [NEW MATERIAL] CRIMINAL PENALTY.-- Any person,
9 including members, officers and directors of a business, who
10 knowingly violates a provision of the Privacy Protection Act is
11 guilty of a misdemeanor and shall be punished by a fine of not
12 more than one thousand dollars (\$1,000) or by imprisonment for
13 a definite term not to exceed six months, or both.

14 Section 10. [NEW MATERIAL] APPLICATION OF UNFAIR
15 PRACTICES ACT.-- A violation of the Privacy Protection Act
16 constitutes an unfair or deceptive trade practice pursuant to
17 the Unfair Practices Act.

18 Section 11. A new section of the Credit Card Act is
19 enacted to read:

20 "[NEW MATERIAL] PROHIBITED DISCLOSURE OF CREDIT CARD
21 NUMBER.-- A person who accepts a credit card from a cardholder
22 shall not issue a receipt that shows the credit card expiration
23 date or that reveals more than the last four numbers from the
24 cardholder's credit card account number."

25 Section 12. SEVERABILITY.-- The provisions of the Privacy

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1 Protection Act are severable, and if any part or application of
2 that act is held invalid, the remainder or its application to
3 other situations or persons shall not be affected.

4 Section 13. EFFECTIVE DATE. --The effective date of the
5 provisions of this act is July 1, 2003.

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