

Attachment #1

An Act Relating to Commercial Law - General Regulatory Provisions - Rhode Island
Right-To-Know Data Transparency and Privacy Protection Act (draft H7111 SubA3)

2018 -- H 7111 SUBSTITUTE A

LC003294/SUB A/3

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2018

A N A C T

RELATING TO COMMERCIAL LAW--GENERAL REGULATORY PROVISIONS -- RHODE ISLAND RIGHT-TO-KNOW DATA TRANSPARENCY AND PRIVACY PROTECTION ACT

Introduced By: Representatives Shanley, Carson, Regunberg, Marszalkowski, and Edwards

Date Introduced: January 11, 2018

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 6 of the General Laws entitled "COMMERCIAL LAW - GENERAL
2 REGULATORY PROVISIONS" is hereby amended by adding thereto the following chapter:

3 CHAPTER 48.1

4 RHODE ISLAND RIGHT-TO-KNOW DATA TRANSPARENCY AND PRIVACY
5 PROTECTION ACT

6 6-48.1-1. Short title.

7 This chapter shall be known and may be cited as the "Rhode Island Right-to-Know Data
8 Transparency and Privacy Protection Act."

9 6-48.1-2. Legislative findings.

10 The general assembly hereby finds and declares that:

1 (1) The right to privacy is a personal and fundamental right protected by the United States
2 Constitution. As such, all individuals have a right to privacy in information pertaining to them. This
3 state recognizes the importance of providing consumers with transparency about how their
4 Personally Identifiable Information (as that term is hereinafter defined), especially information
5 relating to their children, is shared by businesses. This transparency is crucial for Rhode Island
6 citizens to protect themselves and their families from cyber-crimes and identity thieves.

7 (2) Furthermore, for free market forces to have a role in shaping the privacy practices and
8 for "opt-in" and "opt-out" remedies to be effective, consumers must be more than vaguely informed
9 that a business might share Personally Identifiable Information with Third Parties (as that term is
10 hereinafter defined). Consumers must be better informed about what kinds of Personally
11 Identifiable Information is shared with other businesses. With these specifics, consumers can
12 knowledgeably choose to opt-in, opt-out, or choose among businesses that Disclose (as that term
13 is hereinafter defined) Personally Identifiable Information to Third Parties on the basis of how
14 protective the business is of consumers' privacy.

15 (3) Businesses are now collecting Personally Identifiable Information and Disclosing it in
16 ways not contemplated or properly covered by the current law. Some websites are installing
17 tracking tools that record when consumers visit web pages, and sending Personally Identifiable
18 Information, such as age, gender, race, income, health concerns, religion, and recent purchases to
19 Third-Party marketers and data brokers. Third-Party data broker companies are buying and
20 Disclosing Personally Identifiable Information obtained from mobile phones, financial institutions,
21 social media sites, and other online and brick and mortar companies. Some mobile applications are
22 sharing Personally Identifiable Information, such as location information, unique phone
23 identification numbers, and age, gender, and other personal details with Third-Parties.

24 (4) As such, consumers need to know the ways that their Personally Identifiable
25 Information is being collected and then shared or sold to Third Parties in order to properly protect
26 their privacy, personal safety, and financial security.

1 **6-48.1-3. Definitions.**

2 **As used in this chapter:**

3 **(1) "Affiliate" means any entity that, directly or indirectly, controls, is controlled by, or is**
4 **under common control with, the entity that has Disclosed Personally Identifiable Information to it.**

5 **(2) "Customer" means an individual residing in this state who provides, either knowingly**
6 **or unknowingly, Personally Identifiable Information to any entity, with or without an exchange of**
7 **consideration, in the course of purchasing, viewing, accessing, renting, leasing, or otherwise using**
8 **real or personal property, or any interest therein, or obtaining a product or service, including**
9 **advertising or any other content.**

10 **(3) "Disclose" means to disclose, sell, release, transfer, share, trade, disseminate, make**
11 **available, or otherwise communicate orally, in writing, or by electronic means or any other means**
12 **to any individual or Third Party. "Disclose" does not include the following:**

13 **(i) Disclosure to an Affiliate, provided that the Affiliate does not Disclose the Personally**
14 **Identifiable Information to any Third Party.**

15 **(ii) Disclosure of Personally Identifiable Information by any entity to a Third Party under**
16 **a written contract authorizing the Third Party to utilize the Personally Identifiable Information to**
17 **perform services on behalf of such entity, including maintaining or servicing accounts, providing**
18 **customer service, processing or fulfilling orders and transactions, verifying customer information,**
19 **processing payments, providing financing, or similar services, but only if:**

20 **(A) The contract prohibits the Third Party from using the Personally Identifiable**
21 **Information for any reason other than performing the specified service or services on behalf of such**
22 **entity and from Disclosing any such Personally Identifiable Information to additional Third Parties;**

23 **and**

24 **(B) The entity effectively enforces these prohibitions.**

25 **(iii) Disclosure of Personally Identifiable Information by a business to a Third Party based**
26 **on a good- faith belief that the Disclosure is required to comply with applicable law, regulation,**

1 legal process, or court order.

2 (iv) Disclosure of Personally Identifiable Information by any entity to a Third Party that is
3 reasonably necessary to address fraud, security, or technical issues; to protect the Disclosing entity's
4 rights or property; or to protect customers or the public from illegal activities as required or
5 permitted by law.

6 (4) "Operator" means any person or entity that owns a website located on the internet or an
7 online service that collects and maintains Personally Identifiable Information from a customer
8 residing in this state who uses or visits the website or online service if the website or online service
9 is operated for commercial purposes. It does not include any Third Party that operates, hosts, or
10 manages, but does not own, a website or online service on the owner's behalf or by processing
11 information on behalf of the owner. "Operator" does not include businesses having ten (10) or fewer
12 employees, or any Third Party that operates, hosts, or manages, but does not own, a website or
13 online service on the owner's behalf or by processing information on behalf of the owner.

14 (5) "Personally Identifiable Information" means and includes the following categories of:

15 (i) Identity information including, but not limited to, real name, alias, nickname, and user
16 name;

17 (ii) Address information, including, but not limited to, postal or email address;

18 (iii) Telephone number;

19 (iv) Account name;

20 (v) Social security number or other government-issued identification number, including,
21 but not limited to, social security number, driver's license number, identification card number, and
22 passport number;

23 (vi) Birthdate or age;

24 (vii) Sexual information, including, but not limited to, sexual orientation, sex, gender
25 status, gender identity, and gender expression;

26 (viii) Race or ethnicity;

- 1 (ix) Religious affiliation or activity;
2 (x) Political affiliation or activity;
3 (xi) Professional or employment-related information;
4 (xii) Educational information;
5 (xiii) Medical information, including, but not limited to, medical conditions or drugs,
6 therapies, mental health, or medical products or equipment used;
7 (xiv) Financial information, including, but not limited to, credit, debit, or account numbers,
8 account balances, payment history, or information related to assets, liabilities, or general
9 creditworthiness;
10 (xv) Commercial information, including, but not limited to, records of property, products
11 or services provided, obtained, or considered, or other purchasing or consumer histories or
12 tendencies;
13 (xvi) Location information; and
14 (xvii) Content, including text, photographs, audio or video recordings, or other material
15 generated by or provided by the customer.

16
17 (6) "Third Party" means any entity that is a separate legal entity from the entity that has
18 Disclosed the Personally Identifiable Information; provided, however, that an Affiliate of the entity
19 that has Disclosed the Personally Identifiable Information shall not be considered a Third Party.

20 **6-48.1-4. Information sharing practices.**

21 An operator of a commercial website or online service that collects, stores and Discloses
22 categories of Personally Identifiable Information through the internet about individual customers
23 residing in this state who use or visit its commercial website or online service shall, in its customer
24 agreement or incorporated addendum or in another conspicuous location on its website or online
25 service platform where similar notices are customarily posted:

26 (1) Identify all categories of Personally Identifiable Information that the operator collects

1 through the website or online service about individual customers who use or visit its commercial
2 website or online service; and

3 (2) Identify all Third Parties to whom the operator may Disclose Personally Identifiable
4 Information.

5 **6-48.1-5. Violations.**

6 A violation of this chapter constitutes a violation of the general regulatory provisions of
7 commercial law in title 6; provided further, that in the event that any individual or entity
8 intentionally Discloses Personally Identifiable Information: (i) to a shell company or any entity
9 that has been formed or established solely, or in part, for the purposes of circumventing the intent
10 of this chapter, or (ii) in violation of any provision of this chapter, that individual or entity shall
11 pay a one-hundred-dollar fine (\$100) for each such disclosure. The office of the attorney general
12 shall have sole enforcement authority of the provisions of this chapter and may enforce a
13 violation of this chapter pursuant to the: (a) the provisions of this section or (b) general regulatory
14 provisions of commercial law in title 6, or both. Nothing in this section shall prevent a person
15 from otherwise seeking relief under any other similarly applicable state laws.

16 **6-48.1-6. Waivers; Contracts.**

17 Any waiver of the provisions of this chapter shall be void and unenforceable. Any
18 agreement that does not comply with the applicable provisions of this chapter shall be void and
19 unenforceable.

20 **6-48.1-7. Construction.**

21 (a) Nothing in this chapter shall be construed to conflict with the Federal Health Insurance
22 Portability and Accountability Act of 1996 and the rules promulgated under that act.

23 (b) Nothing in this chapter shall be deemed to apply in any manner to a financial institution
24 or an affiliate of a financial institution that is subject to Title V of the Federal Gramm- Leach-Bliley
25 Act of 1999 and the rules promulgated under that act.

26 (c) Nothing in this chapter shall be construed to apply to a contractor, subcontractor, or

1 agent of a state agency or local unit of government when working for that state agency or local unit
2 of government.

3 (d) Nothing in this chapter shall be construed to apply to any entity recognized as a tax-
4 exempt organization under the Internal Revenue Code of 1986.

5 (e) Nothing in this chapter shall be construed to mandate and/or require the retention or
6 disclosure of any specific individual's Personally Identifiable Information.

7 (f) Nothing in this chapter shall prohibit or restrict the dissemination or sale of product
8 sales summaries or statistical information or aggregate customer data which may include Personally
9 Identifiable Information.

10 (g) Nothing in this chapter shall be construed to apply to any Personally Identifiable
11 Information or any other information collected, used, processed, or Disclosed by or for a consumer
12 reporting agency as defined by subdivision (f) of Section 1681a of Title 15 of the United States
13 Code.

14 SECTION 2. This act shall take effect on January 1, 2019.

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LC003294/SUB A/3
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EXPLANATION
BY THE LEGISLATIVE COUNCIL

OF

A N A C T

RELATING TO COMMERCIAL LAW--GENERAL REGULATORY PROVISIONS -- RHODE
ISLAND RIGHT-TO-KNOW DATA TRANSPARENCY AND PRIVACY PROTECTION ACT

1 This act would create the "Rhode Island Right-to-Know Transparency and Privacy
2 Protection Act" to require online service providers and commercial websites that collect, store and
3 Disclose Personally Identifiable Information to identify what categories of Personally Identifiable
4 Information they collect and to what Third Parties they Disclose the information. This act does not
5 prohibit the collection or Disclosure of Personally Identifiable Information and does not require the
6 retention or Disclosure of personally identifiable information by online service providers or
7 commercial websites.

8 This act would take effect on January 1, 2020.