
A BILL FOR AN ACT

RELATING TO INTERNET PRIVACY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

4 "CHAPTER

5 INTERNET SERVICE PROVIDERS; CUSTOMER PRIVACY

6 § -1 Personal information of customers. An internet
7 service provider shall not use, disclose, sell, or permit access
8 to the personal information of customers, except as provided in
9 this chapter.

10 § -2 Customer consent. (a) An internet service
11 provider may use, disclose, sell, or permit access to the
12 personal information of customers; provided that the internet
13 service provider obtains prior written consent from the
14 customer, who may revoke such consent at any time.

15 (b) An internet service provider shall employ a mechanism
16 for customers to grant, deny, or withdraw written consent that
17 is easy to use, clear, conspicuous, comprehensible, not



1 misleading, and persistently available through all methods that
2 the internet service provider gives to customers for account
3 management, in the language primarily used to conduct business
4 with the customer, and made available to the customer for no
5 additional cost.

6 (c) A customer's grant, denial, or withdrawal of written
7 consent shall be given effect promptly and remain in effect
8 until the customer revokes or limits the grant, denial, or
9 withdrawal of such consent.

10 (d) An internet service provider shall not:

11 (1) Refuse to serve a customer who does not provide
12 consent under this chapter; or

13 (2) Charge a customer a higher price or offer a customer a
14 discount or any other benefit based on the customer's
15 decision to provide or not to provide consent.

16 § -3 Exceptions. (a) An internet service provider may
17 use, disclose, sell, or permit access to the personal
18 information of customers without the customer's consent under
19 the following circumstances:



- 1 (1) For the purpose of providing internet service from
2 which such information is derived or for purposes
3 necessary for the provision of such service;
- 4 (2) To comply with legal requirements, including court
5 orders and administrative orders;
- 6 (3) To initiate, render, bill for, and collect payment for
7 the internet service provided;
- 8 (4) To protect the rights or property of the internet
9 service provider or to protect other customers and
10 other internet service providers from fraudulent,
11 abusive, or unlawful use of or subscription to the
12 internet service provider's internet service network;
- 13 (5) To provide location information concerning the
14 customer:
- 15 (A) To a public safety answering point; emergency
16 medical services provider or emergency dispatch
17 provider; public safety, fire service, or law
18 enforcement official; or hospital emergency or
19 trauma care facility, in order to respond to the
20 customer's request for emergency services;



1 (B) To inform the customer's legal guardian, members
2 of the customer's family, or to a person
3 reasonably believed by the internet service
4 provider to be a close personal friend of the
5 customer regarding the customer's location in an
6 emergency situation that involves the risk of
7 death or serious injury; or

8 (C) To providers of information or database
9 management services solely for purposes of
10 assisting in the delivery of emergency services
11 in response to an emergency.

12 (b) Unless otherwise prohibited by law, an internet
13 service provider may use, disclose, sell, or permit access to
14 the personal information of a customer to advertise or market
15 the internet service provider's communications-related services
16 to the customer; provided that the customer may opt out, in
17 writing, from such use, disclosure, sale, or access at any time.
18 All internet service providers shall provide notice to customers
19 of the right to opt out in accordance with the requirements of
20 this chapter.



1 (c) An internet service provider shall disclose the
2 personal information of the customer, upon affirmative written
3 request by the customer, to any person designated by the
4 customer.

5 § -4 Aggregate customer personal information dataset.

6 Nothing in this chapter shall restrict an internet service
7 provider from:

8 (1) Generating an aggregate customer personal information
9 dataset using the personal information of customers;

10 or

11 (2) Using, disclosing, selling, or permitting access to an
12 aggregate customer personal information dataset that
13 it generated.

14 § -5 Security of the personal information of customers.

15 (a) An internet service provider shall implement and maintain
16 reasonable security measures to protect the personal information
17 of customers from unauthorized use, disclosure, sale, access,
18 destruction, or modification.

19 (b) Whether security measures are reasonable shall be
20 based on the following factors:



1 (1) The nature and scope of the internet service
2 provider's activities;

3 (2) The sensitivity of the data that the internet service
4 provider collects;

5 (3) The size of the internet service provider's
6 operations; and

7 (4) The technical feasibility of the security measures.

8 (c) An internet service provider may employ any lawful
9 security measures to comply with the requirements set forth in
10 this section.

11 (d) An internet service provider shall not retain the
12 personal information of customers for longer than reasonably
13 necessary to accomplish the purposes for which the information
14 was collected, unless otherwise required by section -3 or
15 unless the data is part of an aggregate customer personal
16 information dataset.

17 § -6 Notice. (a) An internet service provider shall
18 provide a clear, prominent, comprehensible, and not misleading
19 notice of the requirements of sections -1 to -5 to each of
20 its customers in the language primarily used to conduct business
21 with the customer at the point of sale and when seeking the



1 customer's written opt-in consent. Each internet service
2 provider shall make the notice subsequently and persistently
3 available through all methods through which the internet service
4 provider gives customers for account management.

5 (b) The notice required by this section shall specify and
6 describe, or link electronically to a resource that specifies
7 and describes:

8 (1) The types of personal information of customers
9 collected, how that information is used by the
10 internet service provider, and how long the internet
11 service provider retains the data;

12 (2) The circumstances under which the internet service
13 provider discloses, sells, or permits access to the
14 information that it collects;

15 (3) The categories of entities to which the internet
16 service provider discloses, sells, or permits access
17 to the personal information of customers and the
18 purposes for which each category of entity will use
19 the information; and

20 (4) The customer's right to consent with regard to the use
21 of, disclosure of, sale of, or access to the personal



1 information of the customer and how that right may be
2 exercised.

3 (c) An internet service provider shall provide advance
4 notice of material changes to how it uses, discloses, sells, or
5 permits access to the personal information of customers or the
6 notice required under this section. The advance notice provided
7 pursuant to this subsection shall specify that a customer may
8 grant, deny, or withdraw consent at any time in a manner that
9 accords with the requirements of this chapter.

10 § -7 Enforcement. Every person who violates this
11 chapter shall be fined not less than \$1,000 nor more than \$3,000
12 for the first offense, and not less than \$3,000 nor more than
13 \$9,000 for each offense thereafter.

14 § -8 Waiver; void and unenforceable. Any waiver by a
15 customer of the provisions of this chapter shall be deemed
16 contrary to public policy and shall be void and unenforceable.

17 § -9 Applicability. This chapter shall apply to all
18 internet service providers operating within Hawaii when
19 providing internet service to their customers who are residents
20 of or physically located in Hawaii.

21 § -10 Definitions. As used in this chapter:



1 "Aggregate customer personal information dataset" means
2 collective data that relates to a group or category of
3 customers, from which individual customer identities and
4 characteristics have been removed, and that is not linked or
5 reasonably linkable to any individual person, household, or
6 device.

7 "Consent" means affirmative, explicit customer approval for
8 the requested use, disclosure, sale, or access to the personal
9 information of the customer after the customer has been provided
10 appropriate notification of the internet service provider's
11 practices under section -6.

12 "Material change" means any change that a customer, acting
13 reasonably under the circumstances, would consider important to
14 the customer's decisions regarding the customer's privacy.

15 "Personal information of customers" and "personal
16 information of the customer" mean information collected by an
17 internet service provider from or about a customer that is made
18 available to the internet service provider by a customer solely
19 by virtue of the relationship between the internet service
20 provider and the customer, including the following:

21 (1) Name and billing information of the customer;



- 1 (2) Government-issued identifiers, such as social security
2 and driver's license numbers, of the customer;
- 3 (3) Other contact information, such as physical address,
4 electronic mail address, or telephone number, of the
5 customer;
- 6 (4) Demographic information, such as date of birth, age,
7 race, ethnicity, nationality, religion, political
8 beliefs, marital status, gender, or sexual
9 orientation, of the customer;
- 10 (5) Financial information, health information, or
11 information pertaining to children with respect to the
12 customer;
- 13 (6) Geolocation information sufficient to identify street
14 name and name of a city or town;
- 15 (7) Information that relates to the quantity, technical
16 configuration, type, destination, location, and amount
17 of use of the internet service provider, including web
18 browsing history, application usage history, timing of
19 use, quantity of use, and origin and destination
20 internet protocol addresses of all internet traffic;



(8) Content of communications, which includes any part of the substance, purport, or meaning of a communication or any other part of a communication that is highly suggestive of the substance, purpose, or meaning of a communication, and includes application payload;

(9) Device identifiers, such as media access control address, international mobile equipment identity number, and internet protocol address;

(10) Information concerning a customer that is collected or made available and is maintained in a way that the information is linked or reasonably linkable to a particular customer or device; and

(11) Information related to a customer that has had the customer's identity and characteristics removed."

SECTION 2. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.



1 SECTION 3. This Act shall take effect on July 1, 3000.



Report Title:

Customer Privacy; Internet Service Providers

Description:

Prohibits internet service providers from using the personal information of customers for specific purposes without the prior written consent of customers. (HB2296 HD1)

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