(No. 39-2012)
(Approved January 24, 2012)

AN ACT

To create the Privacy Policy Disclosure Act; and empower the Secretary of the Department of Consumer Affairs to adopt the regulations needed for the enforcement of said Act.

STATEMENT OF MOTIVES

Section 8 of Article II of the Constitution of the Commonwealth of Puerto Rico establishes that every person has the right to the protection of law against abusive attacks on his honor, reputation, and private or family life. This guarantee includes the right of every person to have control over his personal information.

Based on the importance of human dignity, as well as on the individual’s right to define his personality, our constitutional guarantee has a broader scope of protection than that of the Constitution of the United States. In this manner, it provides protection against the State as well as against private persons. Therefore, the State has a compelling interest to safeguard, to the extent possible, the right of every human being to his dignity, privacy, and personal integrity.

The right to privacy has been directly affected by the development of certain uses of modern technology. Never in our history has it been easier to access and distribute personal information, which is treated as a commodity. One of the main problems affecting consumers is their inability to control who has access to the personal data shared during commercial and other types of transactions. Likewise, individuals lack the essential tools to find out how third parties use their personal information, which in many cases is sold without their consent.
The Internet facilitates the commission of cybercrimes. The availability of countless personal information on the Internet enables unscrupulous persons to commit crimes such as cyber fraud, black market transactions, and the use of ransomware. One of the most rapidly growing crimes in the world is identity theft.

A study conducted by the Federal Trade Commission (FTC) between 1998 and 2003 estimated that some 27.3 million Americans had been victims of identity theft. This represented a loss of approximately $48 billion for various businesses and financial institutions, as well as a loss of about $5 billion for affected consumers. Fifteen percent (15%) of the victims reported that their personal information was not used for financial purposes, but rather to obtain government documents illegally.

It is difficult to estimate the magnitude of the identity theft issue, since only 25% of those affected file a complaint to such effect. In 2005, the FTC received 685,000 identity theft complaints, which represented approximately $680 million in losses. Forty-six percent (46%) of these complaints were linked to Internet fraud. By 2008, the Identity Theft Resource Center reported 656 cases of undue access to personal information data banks, exposing over 35.6 million people to identity theft. This represents a 46%-increase compared to 2007, when 446 cases of undue access to data banks were reported.

At the federal level, several statutes regulate privacy policies aimed at protecting specific groups, among which are: the Gramm-Leach-Bliley Act of 1999 (regarding financial institutions); the Health Insurance Portability and Accountability Act of 1996 (regarding the management of health-related information); and the Children’s Online Privacy Protection Act of 1998 (regarding those that collect information about minors through the Internet). Some states have
enacted legislation to require websites that collect data on its citizens to have clear privacy policies that are accessible to consumers, just as California did in 2003 through its Online Privacy Protection Act.

Currently, Puerto Rico has specific legislation that regulates the crime of identity theft, such as Act No. 111 of September 7, 2005, known as the “Citizen Information on Data Banks Security Act,” and Article 216 of Act No. 149 of June 18, 2004, as amended, known as the “Puerto Rico Penal Code.” However, the purpose of this Act is to complement said statute by granting persons an additional instrument to protect their good reputation and credit and to safeguard the integrity of their personal information.

This Act does not seek to regulate the collection of information, since that should be provided for on a separate legislation, if deemed appropriate. Likewise, it does not seek to interfere or limit in any manner whatsoever the right to freedom of speech protected by the Constitution. On the contrary, this Act seeks to prevent identity theft and the impairment to the right to privacy. It seeks to provide the people with the necessary tools so that they can make well-informed decisions as to whom they wish to do business with or not. This legislation will require any natural or juridical person who collects personal information to keep an open Privacy Policy. This would be achieved by establishing that such persons must disclose their Privacy Policy in a clear and concise manner and by developing Privacy Policy models to be adopted by personal information collectors.

The Department shall be in charge of drafting the regulations and a distinctive logo for each Privacy Policy model, which shall be available on its website. Each logo shall correspond to the different privacy levels and may be chosen by the website operators. Each level shall have a logo, which will be easily identified by its distinctive color or design. Thus, it shall be easier for the user to identify the Privacy Policy adopted by the website operators in a simple and visual
manner. The website operators shall have two options: they may select one of the models adopted by the Department or draft their own Privacy Policy in accordance with this Act and the regulations adopted by the Department.

In this manner, the transparency in transactions involving the management of personal information is promoted and our constitutional right to privacy is safeguarded. To the extent that privacy policies are clearly visible, persons shall not do business with commercial establishments that have obscure policies, thus indirectly compelling commercial establishments to implement more protective policies if they wish to remain competitive in the market.

Consequently, the Legislative Assembly of Puerto Rico deems it prudent and necessary to approve this Act in order to protect the privacy of the residents of Puerto Rico, to establish a set of requirements for personal information collectors and website operators, and to set forth the pertinent sanctions for noncompliance.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:**

Section 1.- Title of the Act.

This Act shall be known as the “Privacy Policy Disclosure Act.”

Section 2.- Definitions.

The following terms and phrases shall have the meaning set forth hereinbelow:

1. “Department” - means the Department of Consumer Affairs of Puerto Rico.

2. “Personal Information” - means any name or number that may be used, by itself or together with any other information, to identify a specific individual, including, but not limited to:
   a) Name and last names;
   b) Social Security number;
   c) Date and/or place of birth;
d) Marital status;
e) Gender;
f) Street or mailing address;
g) Zip Code;
h) Electronic mail address;
i) Telephone number;
j) Driver’s license number;
k) Passport number;
l) Fingerprints;
m) Voice recordings;
n) Retinal image; and
o) Any other information that enables the physical or electronic identification of a natural person.

3. “Internet” - means the global system of interconnected computer networks. This communications network enables the user to connect to thousands of computers and access their information.

4. “Website Operators” - means any natural or juridical person resident of, or doing business in or from Puerto Rico who owns and/or operates a website or any other online service mainly to obtain commercial benefit or financial compensation, and who, by any means, collects and/or keeps the personal information of users that are residents of Puerto Rico. This definition excludes Internet service providers that do not own and/or operate the sites in question.

5. “Personal Information Collector” - means any natural or juridical person that engages in commercial activities mainly to obtain commercial benefit or financial compensation and that, in the course of said activities, through any means, collects and/or keeps personal information of the residents of Puerto Rico.
6. “Privacy Policy” - means a document that describes Personal Information collection, management, and disposal practices.

7. “Secretary” - means the Secretary of the Department of Consumer Affairs.

8. “Users” - means any natural person who accesses a website or online service operated by a person or entity that is a resident of Puerto Rico and collects and/or keeps personal information.

Section 3.- Requirement to Disclose Privacy Policy.

1. Website Operators.

Website operators shall be required to disclose their Privacy Policy to their users in a clear, concise, conspicuous, and unambiguous manner. Said Privacy Policy shall include:

   a) The type of personal information about the website users that is being collected and/or stored;

   b) Any person or entity with which the private operator shares the personal information being collected and/or stored;

   c) In the event that the operator provides users with a process to review or request changes to the personal information being collected and/or stored, a description of said process shall be provided;

   d) The description of a process whereby the operator may notify its users of changes in the Privacy Policy, in which case the effective date of said changes shall be notified;

   e) Any other information that the Department deems pertinent and consistent with the purposes of this Act.

The Department shall establish through regulations the guidelines to set the specific parameters that the aforesaid Privacy Policy shall meet.
The Department shall also establish through regulations several Privacy Policy models corresponding to the different privacy levels available to the user. These models shall be considered, in each case, as a minimum requirement for the applicable or corresponding privacy level. However, operators may also include additional requirements. The Department shall make these models available on its website and design a distinctive logo that shall be characteristic of each Private Policy model. Website operators may select one of the models adopted by the Department and their respective logo, or they may draft their own Privacy Policy in accordance with this Act and the guidelines established by the Department through regulations. It shall be the responsibility of the Department to notify the operators and users of their rights and duties through the mass media.

2. Personal Information Collector.

Every person who collects personal information shall be required to make his Privacy Policy available in a clear, concise, conspicuous, and unambiguous manner to any person who requests it. Said Privacy Policy shall include:

a) The type of personal information being collected and/or stored;

b) Any person or entity with which the personal information collector shares the personal information being collected and/or stored;

c) In the event that the personal information collector provides users with a process to review or request changes to the personal information being collected and/or stored, a description of said process shall be provided;

d) The description of a process whereby the personal information collector may notify its users of changes in the Privacy Policy, in which case the effective date of said change shall be notified;

e) Any other information that the Department deems pertinent and consistent with the purposes of this Act.
The Department shall establish through regulations the guidelines to set the specific parameters that the aforesaid Privacy Policy shall meet.

Section 4.- Exclusions from Application.

Should any federal law, regulation, or provision on personal information management apply to any specific industry or entity, this Act shall be interpreted consistently with said federal law, regulation, or provision.

Section 5.- Rulemaking Authority.

The Secretary is hereby empowered to adopt the standards, rules, and regulations that may be necessary for the implementation of this Act and its public policy pursuant to the provisions of Act No. 170 of August 12, 1988, as amended, better known as the “Uniform Administrative Procedures Act.” The Department shall amend or promulgate the Regulations thereof in accordance with the provisions of this Act within one hundred twenty (120) days after its approval.

Section 6.- Power to Investigate.

The Secretary shall have all the investigative powers conferred by the Constitution of the Commonwealth of Puerto Rico; Act No. 5 of April 23, 1973, as amended, better known as the “Organic Act of the Department of Consumer Affairs”; and Act No. 170 of August 12, 1988, as amended, better known as the “Uniform Administrative Procedures Act,” in order to ascertain that the requirements of this Act and the Regulations thereof are complied with.

Section 7.- Sanctions and Penalties.

The Secretary shall be empowered to issue notices, orders to enjoin and to cease and desist, and to impose sanctions and administrative fines for the maximum allowed by its Organic Act for violations of this Act, or the regulations adopted or orders issued thereunder.
In the event that a website operator or personal information collector engages in the practice of issuing a privacy policy and/or logo that does not correspond to the reality of his personal information management practices, said person shall be subject to a civil penalty of up to fifty thousand dollars ($50,000).

None of the provisions of this Section shall be construed as to deprive any affected user of his right to file any civil action as appropriate under the law.

Section 8.- Interpretation of this Act.

The words and phrases in this Act shall be construed according to the context and their meaning as commonly used. The present tense used in this Act shall also include the future. Those words with a masculine gender shall include the female and neutral gender as well, except when said interpretation would not make sense. Any words in the single form shall include the plural form and vice versa; provided, that such interpretation does not contravene the purpose of the provision.

Section 9.- Severability Clause.

Should one or more Sections of this Act be amended, or if a word, subsection, article, section, chapter, or part of this Act were held to be unconstitutional by the Supreme Court of Puerto Rico or by another competent court with jurisdiction, the remainder of this Act shall remain in effect.

Section 10.- Effectiveness.

With the exception of Section 6, which shall take effect immediately, this Act shall take effect one hundred twenty (120) days after the Department approves the corresponding regulations.
CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 39-2012 (S. B. 541) (Conference) of the 6th Regular Session of the 16th Legislative Assembly of Puerto Rico:

AN ACT to create the Privacy Policy Disclosure Act; and empower the Secretary of the Department of Consumer Affairs to adopt the regulations needed for the enforcement of said Act.

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, on this 19th day of October, 2017.

Orlando Pagán-Ramírez
Acting Director