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Legislative Document

No. 946

S.P. 275

In Senate, February 21, 2019

An Act To Protect the Privacy of Online Customer Information

Reference to the Committee on Energy, Utilities and Technology suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator BELLOWS of Kennebec.
Cosponsored by Representative BERRY of Bowdoinham and
Senators: GUERIN of Penobscot, President JACKSON of Aroostook, KEIM of Oxford,
LAWRENCE of York, MIRAMANT of Knox, Representatives: GROHOSKI of Ellsworth,
MOONEN of Portland, SKOLFIELD of Weld.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 35-A MRSA c. 94** is enacted to read:

3 **CHAPTER 94**

4 **BROADBAND INTERNET ACCESS SERVICE CUSTOMER PRIVACY**

5 **§9301. Privacy of broadband Internet access service customer personal information**

6 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
7 following terms have the following meanings.

8 A. "Broadband Internet access service" means a mass-market retail service by wire
9 or radio that provides the capability to transmit data to and receive data from all or
10 substantially all Internet endpoints, including any capabilities that are incidental to
11 and enable the operation of the service, excluding dial-up Internet access service.

12 B. "Customer" means an applicant for or a current or former subscriber of broadband
13 Internet access service.

14 C. "Customer personal information" means:

15 (1) Personally identifying information about a customer, including but not
16 limited to the customer's name, billing information, social security number,
17 billing address and demographic data; and

18 (2) Information from a customer's use of broadband Internet access service,
19 including but not limited to:

20 (a) The customer's web browsing history;

21 (b) The customer's application usage history;

22 (c) The customer's precise geolocation information;

23 (d) The customer's financial information;

24 (e) The customer's health information;

25 (f) Information pertaining to the customer's children;

26 (g) The customer's device identifier, such as a media access control address,
27 international mobile equipment identity or Internet protocol address;

28 (h) The content of the customer's communications; and

29 (i) The origin and destination Internet protocol addresses.

30 D. "Provider" means a person who provides broadband Internet access service.

31 **2. Privacy of customer personal information.** A provider may not use, disclose,
32 sell or permit access to customer personal information, except as provided in subsections
33 3 and 4.

1 **3. Customer consent exception.** Consent of a customer is governed by this
2 subsection.

3 A. A provider may use, disclose, sell or permit access to a customer's customer
4 personal information if the customer gives the provider express, affirmative consent
5 to such use, disclosure, sale or access. A customer may revoke the customer's
6 consent under this paragraph at any time.

7 B. A provider may not:

8 (1) Refuse to serve a customer who does not provide consent under paragraph A;
9 or

10 (2) Charge a customer a penalty or offer a customer a discount based on the
11 customer's decision to provide or not provide consent under paragraph A.

12 C. A provider may use, disclose, sell or permit access to information the provider
13 collects pertaining to a customer that is not customer personal information, except
14 upon written notice from the customer notifying the provider that the customer does
15 not permit the provider to use, disclose, sell or permit access to that information.

16 **4. Other exceptions.** Notwithstanding the provisions of subsections 2 and 3, a
17 provider may collect, retain, use, disclose, sell and permit access to customer personal
18 information without customer approval:

19 A. For the purpose of providing the service from which such information is derived
20 or for the services necessary to the provision of such service;

21 B. To advertise or market the provider's communications-related services to the
22 customer;

23 C. To comply with a lawful court order;

24 D. To initiate, render, bill for and collect payment for broadband Internet access
25 service;

26 E. To protect users of the provider's or other providers' services from fraudulent,
27 abusive or unlawful use of or subscription to such services; and

28 F. To provide geolocation information concerning the customer to:

29 (1) For the purpose of responding to a customer's call for emergency services, a
30 public safety answering point; a provider of emergency medical or emergency
31 dispatch services; a public safety, fire service or law enforcement official; or a
32 hospital emergency or trauma care facility;

33 (2) The customer's legal guardian or a member of the customer's immediate
34 family in an emergency situation that involves the risk of death or serious
35 physical harm; or

36 (3) A provider of information or database management services solely for the
37 purpose of assisting in the delivery of emergency services in response to an
38 emergency.

1 **5. Security of customer personal information.** A provider shall take reasonable
2 measures to protect customer personal information from unauthorized use, disclosure or
3 access.

4 A. In implementing security measures required by this subsection, a provider shall
5 take into account each of the following factors:

6 (1) The nature and scope of the provider's activities;

7 (2) The sensitivity of the data the provider collects;

8 (3) The size of the provider; and

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

10 B. A provider may employ any lawful measure that allows the provider to comply
11 with the requirements of this subsection.

12 **6. Notice required.** A provider shall provide to each of the provider's customers a
13 clear, conspicuous and nondeceptive notice at the point of sale and on the provider's
14 publicly accessible website of the provider's obligations and a customer's rights under this
15 section.

16 **7. Applicability.** The requirements of this section apply to providers operating
17 within the State when providing broadband Internet access service to customers that are
18 physically located and billed for service received in the State.

19 SUMMARY

20 This bill prohibits a provider of broadband Internet access service from using,
21 disclosing, selling or permitting access to customer personal information unless the
22 customer expressly consents to that use, disclosure, sale or access. The bill provides
23 other exceptions under which a provider may use, disclose, sell or permit access to
24 customer personal information. The bill prohibits a provider from refusing to serve a
25 customer, charging a customer a penalty or offering a customer a discount if the customer
26 does or does not consent to the use, disclosure, sale or access. The bill requires providers
27 to take reasonable measures to protect customer personal information from unauthorized
28 use, disclosure, sale or access. The provisions of the bill apply to providers operating
29 within the State when providing broadband Internet access service to customers that are
30 billed for service received in the State and are physically located in the State.