

# **WEST VIRGINIA LEGISLATURE**

## **2021 REGULAR SESSION**

### **Introduced**

## **House Bill 3159**

BY DELEGATES HAMRICK, HOWELL, LINVILLE, SUMMERS,

KIMBLE, SMITH, FERRELL, REYNOLDS, J. KELLY,

ANDERSON AND STEELE

[Introduced March 15, 2021; Referred to the

Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
 2 designated §46A-9-1, §46A-9-2, §46A-9-3, §46A-9-4, §46A-9-5, §46A-9-6, §46A-9-7,  
 3 §46A-9-8, §46A-9-9, §46A-9-10, and §46A-9-11, all relating to consumer data privacy;  
 4 defining terms, requiring privacy for certain identifying personal information; establishing  
 5 a consumer right to request copy of personal data collected; establishing a consumer right  
 6 to have personal information deleted or corrected; establishing a consumer right to request  
 7 personal data sold or shared; establishing a consumer right to opt-out of the sale or  
 8 sharing of personal information to third parties; prohibiting discrimination against  
 9 consumers who exercise their right under this article; establishing procedures for requests  
 10 for personal information under this article; establish a form to opt-out of sale or sharing of  
 11 personal information; creating a private cause of action; empowering the West Virginia  
 12 Division of Consumer Protection to establish rules under this article for enforcement; and  
 13 empowering the West Virginia Division of Consumer Protection to bring suit for violation  
 14 of this article.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 9. CONSUMER DATA PRIVACY.**

**§46A-9-1. Definitions.**

1 (a) Definitions. —As used in this section, the term:

2 (1) “Aggregate consumer information” means information that relates to a group or  
 3 category of consumers, from which the identity of an individual consumer has been removed and  
 4 is not reasonably capable of being directly or indirectly associated or linked with, any consumer  
 5 or household, including via a device. The term does not include one or more individual consumer  
 6 107 records that have been deidentified.

7 (2) “Biometric information” means an individual's physiological, biological, or behavioral  
 8 characteristics, including an individual's deoxyribonucleic acid (DNA), that can be used, singly or  
 9 in combination with each other or with other identifying data, to establish individual identity. The

10 term includes, but is not limited to, imagery of the iris, retina, fingerprint, face, hand, palm, vein  
11 patterns, and voice recordings, from which an identifier template, such as a faceprint, a minutiae  
12 template, or a voiceprint, can be extracted, and keystroke patterns or rhythms, gait patterns or  
13 rhythms, and sleep, health, or exercise data that contain identifying information.

14 (3) "Business" means: A sole proprietorship, partnership, limited liability company,  
15 corporation, association, or legal entity that:

16 (A) Is organized or operated for the profit or financial benefit of its shareholders or owners;

17 (B) Does business in this state;

18 (C) Collects personal information about consumers, or is the entity on behalf of which such  
19 information is collected;

20 (D) Determines the purposes and means of processing personal information about  
21 consumers alone or jointly with others; and

22 (E) Satisfies one or more of the following thresholds:

23 (i) Has global annual gross revenues in excess of \$25 million, as adjusted in January of  
24 every odd-numbered year to reflect any increase in the Consumer Price Index.

25 (ii) Annually buys, receives for the business's commercial purposes, sells, or shares for  
26 commercial purposes, the personal information of 50,000 or more consumers, households, or  
27 devices.

28 (iii) Derives 50 percent or more of its global annual revenues from selling or sharing  
29 personal information about consumers.

30 (F) Any entity that controls or is controlled by a business and that shares common branding  
31 with the business.

32 (4) "Common branding" means a shared name, servicemark, or trademark.

33 (5) "Business purpose" means the use of personal information for the operational purpose  
34 of a business or service provider, or other notified purposes, provided that the use of personal  
35 information is reasonably necessary and proportionate to achieve the operational purpose for

36 which the personal information was collected or processed or for another operational purpose  
37 that is compatible with the context in which the personal information was collected. The term  
38 includes:

39 (A) Auditing relating to a current interaction with a consumer and concurrent transactions,  
40 including, but not limited to, counting ad impressions to unique visitors, verifying positioning and  
41 quality of ad impressions, and auditing compliance with this specification and other standards.

42 (B) Detecting security incidents; protecting against malicious, deceptive, fraudulent, or  
43 illegal activity; and prosecuting those responsible for that activity.

44 (C) Debugging to identify and repair errors that impair existing intended functionality.

45 (D) Short-term, transient use, provided that the personal information is not disclosed to  
46 another third party and is not used to build a profile about a consumer or otherwise alter an  
47 individual consumer's experience outside the current interaction, including, but not limited to, the  
48 contextual customization of ads shown as part of the same interaction.

49 (E) Performing services on behalf of the business or service provider, including  
50 maintaining or servicing accounts, providing customer service, processing or fulfilling orders and  
51 transactions, verifying customer information, processing payments, providing financing, providing  
52 analytic services, or providing similar services on behalf of the business or service provider.

53 (F) Undertaking internal research for technological development and demonstration.

54 (G) Undertaking activities to verify or maintain the quality or safety of a service or device  
55 that is owned, manufactured, manufactured for, or controlled by the business, and to improve,  
56 upgrade, or enhance the service or device that is owned, manufactured, manufactured for, or  
57 controlled by the business.

58 (6) "Collect" means to buy, rent, gather, obtain, receive, or access any personal  
59 information pertaining to a consumer by any means. The term includes, but is not limited to,  
60 actively or passively receiving information from the consumer or by observing the consumer's  
61 behavior.

62 (7) “Commercial purposes” means to advance the commercial or economic interests of a  
63 person, such as inducing another person to buy, rent, lease, join, subscribe to, provide, or  
64 exchange products, goods, property, information, or services, or directly or indirectly enabling or  
65 effecting a commercial transaction.

66 (8) “Consumer” means a natural person who resides in or is domiciled in this state,  
67 however identified, including by any unique identifier, and who is:

68 (A) In this state for other than a temporary or transitory purpose; or

69 (B) Domiciled in this state but resides outside this state for a temporary or transitory  
70 purpose.

71 (9) “Deidentified” means information that does not reasonably identify, relate to, or  
72 describe a particular consumer, or is not reasonably capable of being directly or indirectly  
73 associated or linked with a particular consumer, provided that a business that uses deidentified  
74 information:

75 (A) Implements technical safeguards that prohibit reidentification of the consumer to whom  
76 the information may pertain.

77 (B) Implements business processes that specifically prohibit reidentification of the  
78 information.

79 (C) Implements business processes to prevent inadvertent release of deidentified  
80 information.

81 (D) Does not attempt to reidentify the information.

82 (10) “Health insurance information” means a consumer’s insurance policy number or  
83 subscriber identification number, or any unique identifier used by a health insurer to identify the  
84 consumer, or any information in the consumer’s application and claims history, including any  
85 appeals records, if the information is reasonably capable of being directly or indirectly associated  
86 or linked with a consumer or household, including via a device, by a business or service provider.

87 (11) “Homepage” means the introductory page of an Internet website and any Internet

88 webpage where personal information is collected. In the case of a mobile application, the  
89 homepage is the application's platform page or download page, a link within the application, such  
90 as the "About" or "Information" application configurations, or settings page, and any other location  
91 that allows consumers to review the notice required by this article, including, but not limited to,  
92 before downloading the application.

93 (12) "Person" means an individual, proprietorship, firm, partnership, joint venture,  
94 syndicate, business trust, company, corporation, limited liability company, association,  
95 committee, and any other organization or group of persons acting in concert.

96 (13) "Personal information" means information that identifies, relates to, or describes a  
97 particular consumer or household, or is reasonably capable of being directly or indirectly  
98 associated or linked with, a particular consumer or household, including:

99 (A) Identifiers such as a real name, alias, postal address, unique identifier, online identifier,  
100 internet protocol address, email address, account name, social security number, driver license  
101 number, passport number, or other similar identifiers.

102 (B) Information that identifies, relates to, or describes, or could be associated with, a  
103 particular individual, including, but not limited to, a name, signature, social security number,  
104 physical characteristics or description, address, telephone number, passport number, driver  
105 license or state identification card number, insurance policy number, education, employment,  
106 employment history, bank account number, credit card number, debit card number, or any other  
107 financial information, medical information, or health insurance information.

108 (C) Characteristics of protected classifications under state or federal law.

109 (D) Commercial information, including records of personal property, products or services  
110 purchased, obtained, or considered, or other purchasing or consuming histories or tendencies.

111 (E) Biometric information.

112 (F) Internet or other electronic network activity information, including, but not limited to,  
113 browsing history, search history, and information regarding a consumer's interaction with an

114 Internet website, application, or advertisement.

115 (G) Geolocation data.

116 (H) Audio, electronic, visual, thermal, olfactory, or similar information.

117 (I) Professional or employment-related information.

118 (J) Education information that is not publicly available, personally identifiable information

119 as defined in the Family Educational Rights and Privacy Act, 20 U.S.C. s. 1232(g) and 34 C.F.R.

120 part 99.

121 (K) Inferences drawn from any of the information identified in this paragraph to create a

122 profile about a consumer reflecting the consumer's preferences, characteristics, psychological

123 trends, predispositions, behavior, attitudes, intelligence, abilities, and aptitudes.

124 The term does not include consumer information that is:

125 (i) Publicly and lawfully made available from federal, state, or local government records.

126 (ii) Deidentified or aggregate consumer information.

127 (14) "Probabilistic identifier" means the identification of a consumer or a device to a degree

128 of certainty of more probable than not based on any categories of personal information included

129 in, or similar to, the categories listed under subsection (a)(13) of this section, above.

130 (15) "Processing" means any operation or set of operations that are performed on personal

131 data or on sets of personal data, whether or not by automated means.

132 (16) "Pseudonymize" means the processing of personal information in a manner that

133 renders the personal information no longer attributable to a specific consumer without the use of

134 additional information, provided that the additional information is kept separately and is subject to

135 technical and organizational measures to ensure that the personal information is not attributed to

136 an identified or identifiable consumer.

137 (17) "Research" means scientific, systematic study and observation, including, but not

138 limited to, basic research or applied research that is in the public interest and that adheres to all

139 other applicable ethics and privacy laws or studies conducted in the public interest in the area of

140 public health. Research with personal information that may have been collected from a consumer  
141 in the course of the consumer's interactions with a business's service or device for other purposes  
142 must be:

143 (A) Compatible with the business purpose for which the personal information was  
144 collected.

145 (B) Subsequently pseudonymized and deidentified, or deidentified and in the aggregate,  
146 such that the information does not reasonably identify, relate to, or describe, or is not capable of  
147 being directly or indirectly associated or linked with, a particular consumer.

148 (C) Made subject to technical safeguards that prohibit reidentification of the consumer to  
149 whom the information may pertain.

150 (D) Subject to business processes that specifically prohibit reidentification of the  
151 information.

152 (E) Made subject to business processes to prevent inadvertent release of deidentified  
153 information.

154 (F) Protected from any reidentification attempts.

155 (G) Used solely for research purposes that are compatible with the context in which the  
156 personal information was collected and not used for any commercial purpose.

157 (H) Subjected by the business conducting the research to additional security controls that  
158 limit access to the research data to only those individuals in a business necessary to carry out  
159 the research purpose.

160 (18) "Sell" means to sell, rent, release, disclose, disseminate, make available, transfer, or  
161 otherwise communicate orally, in writing, or by electronic or other means, a consumer's personal  
162 information by a business to another business or a third party for monetary or other valuable  
163 consideration.

164 (19) "Service" means work or labor furnished in connection with the sale or repair of goods.

165 (20) "Service provider" means a sole proprietorship, partnership, limited liability company,



166 corporation, association, or other legal entity that is organized or operated for the profit or financial  
167 benefit of its shareholders or other owners, that processes information on behalf of a business  
168 and to which the business discloses a consumer's personal information for a business purpose  
169 pursuant to a written contract, provided that the contract prohibits the entity receiving the  
170 information from retaining, using, or disclosing the personal information for any purpose other  
171 than for the specific purpose of performing the services specified in the contract for the business,  
172 or as otherwise permitted by this section, including retaining, using, or disclosing the personal  
173 information for a commercial purpose other than providing the services specified in the contract  
174 with the business.

175 (21) "Share" means to share, rent, release, disclose, disseminate, make available,  
176 transfer, or access a consumer's personal information for advertising. The term includes:

177 (A) Allowing a third party to use or advertise to a consumer based on a consumer's  
178 personal information without disclosure of the personal information to the third party.

179 (B) Monetary transactions, nonmonetary transactions, and transactions for other valuable  
180 consideration between a business and a third party for advertising for the benefit of a business.

181 (22) "Third party" means a person who is not any of the following:

182 (A) A business that collects personal information from consumers under this section.

183 (B) A person to whom the business discloses personal information about consumers for a  
184 business purpose pursuant to a written contract.

185 (23) "Unique identifier" means a persistent identifier that can be used to recognize a  
186 consumer, a family, or a device that is linked to a consumer or family, over time and across  
187 different services, including, but not limited to, a device identifier; an Internet Protocol address;  
188 cookies, beacons, pixel tags, mobile ad identifiers, or similar technology; customer number,  
189 unique pseudonym, or user alias; telephone numbers, or other forms of persistent or probabilistic  
190 identifiers which can be used to identify a particular consumer or device.

191 (24) "Verifiable consumer request" means a request that is made by a consumer, by a

192 consumer on behalf of the consumer's minor child, or by a natural person or a person authorized  
193 by the consumer to act on the consumer's behalf, and that the business can reasonably verify to  
194 be the consumer about whom the business has collected personal information.

**§46A-9-2. Privacy policy for personal information.**

1 (a) A business that collects personal information about consumers shall maintain an online  
2 privacy policy, make such policy available on its Internet website, and update the information at  
3 least once every 12 months.

4 (b) The online privacy policy must include the following information:

5 (1) All state-specific consumer privacy rights.

6 (2) A list of the categories of personal information the business collects or has collected  
7 about consumers.

8 (3) Of the categories identified, a list that identifies which categories of personal  
9 information the business sells or shares or has sold or shared about consumers.

10 (c) If the business does not sell or share personal information, the business shall disclose  
11 that fact.

12 (d) Of the categories identified in subsection (b), a list that identifies which categories of  
13 personal information the business discloses or shares or has disclosed or shared about  
14 consumers for a business purpose. If the business does not disclose or share personal  
15 information for a business purpose, the business shall disclose that fact.

16 (e) The right to opt-out of the sale or sharing to third parties and the ability to request  
17 deletion or correction of certain personal information.

18 (f) A consumer has the right to request that a business that collects personal information  
19 disclose to the consumer the categories and specific pieces of personal information the business  
20 collects from or about consumers.

21 (g) A business that collects personal information shall, at or before the point of collection,  
22 inform consumers of the categories of personal information to be collected and the purposes for

23 which the categories of personal information will be used.

24 (h) A business may not collect additional categories of personal information or use  
25 personal information collected for additional purposes without providing the consumer with notice  
26 consistent with this section.

27 (i) A business shall provide the information specified in subsection (f) of this section to a  
28 consumer only upon receipt of a verifiable consumer request.

29 (j) A business shall provide and follow a retention schedule that prohibits the use and  
30 retention of personal information after satisfaction of the initial purpose for collecting or obtaining  
31 such information, or after the duration of a contract, or 1 year after the consumer's last interaction  
32 with the business, whichever occurs first.

**§46A-9-3. Consumer right to request copy of personal data collected.**

1 (a) A consumer has the right to request that a business that collects personal information  
2 about the consumer disclose the personal information that has been collected by the business.

3 (b) A business that receives a verifiable consumer request from a consumer to access  
4 personal information shall promptly take steps to disclose and deliver, free of charge to the  
5 consumer, the personal information required by this section. The information may be delivered by  
6 mail or electronically, and if provided electronically, the information must be in a portable and, to  
7 the extent technically feasible, readily useable format that allows the consumer to transmit this  
8 information to another entity without hindrance. A business may provide personal information to  
9 a consumer at any time, but may not be required to provide personal information to a consumer  
10 more than twice in a 12-month period.

11 (c) A business shall disclose the following to the consumer:

12 (1) The specific pieces of personal information it has collected about the consumer.

13 (2) The categories and sources from which it collected the consumer's personal  
14 information.

15 (3) The business or commercial purpose for collecting or selling the consumer's personal

16 information.

17 (4) The categories of third parties which the business shares the consumer's personal  
18 information.

19 (d) A business that collects personal information about a consumer shall disclose the  
20 information specified in subsection (a) to the consumer upon receipt of a verifiable consumer  
21 request from the consumer.

22 (e) This subsection does not require a business to do the following:

23 (1) Retain any personal information about a consumer collected for a single one-time  
24 transaction if, in the ordinary course of business, that information about the consumer is not  
25 retained.

26 (2) Reidentify or otherwise link any data that, in the ordinary course of business, is not  
27 maintained in a manner that would be considered personal information.

**§46A-9-4. Right to have personal information deleted or corrected.**

1 (a) A consumer has the right to request that a business delete any personal information  
2 about the consumer which the business has collected from the consumer.

3 (b) A business that receives a verifiable consumer request from a consumer to delete the  
4 consumer's personal information shall delete the consumer's personal information from its  
5 records and direct any service providers to delete the consumer's personal information from their  
6 records.

7 (c) A business or a service provider may not be required to comply with a consumer's  
8 request to delete the consumer's personal information if it is necessary for the business or service  
9 provider to maintain the consumer's personal information to do any of the following:

10 (1) Complete the transaction for which the personal information was collected.

11 (2) Fulfill the terms of a written warranty or product recall conducted in accordance with  
12 federal law.

13 (3) Provide a good or service requested by the consumer, or reasonably anticipated within

14 the context of a business' ongoing business relationship with the consumer, or otherwise perform  
15 a contract between the business and the consumer.

16 (4) Detect security incidents, protect against malicious, deceptive, fraudulent, or illegal  
17 activity; or prosecute those responsible for that activity.

18 (5) Debug to identify and repair errors that impair existing intended functionality.

19 (6) Engage in public or peer-reviewed scientific, historical, or statistical research in the  
20 public interest that adheres to all other applicable ethics and privacy laws when the business'  
21 deletion of the information is likely to render impossible or seriously impair the achievement of  
22 such research, if the consumer has provided informed consent.

23 (7) Enable solely internal uses that are reasonably aligned with the expectations of the  
24 consumer based on the consumer's relationship with the business.

25 (8) Comply with a legal obligation.

26 (9) Otherwise internally use the consumer's personal information in a lawful manner that  
27 is compatible with the context in which the consumer provided the information.

28 (d) A consumer has the right to request a business that maintains inaccurate personal  
29 information about the consumer to correct the inaccurate personal information, taking into account  
30 the nature of the personal information and the purposes of the processing of the personal  
31 information. A business that receives a verifiable consumer request to correct inaccurate personal  
32 information shall use commercially reasonable efforts to correct the inaccurate personal  
33 information as directed by the consumer.

**§46A-9-5. Right to request personal data sold or shared.**

1 (a) A consumer has the right to request that a business that sells or shares personal  
2 information about the consumer, or discloses such information for a business purpose, to disclose  
3 to the consumer:

4 (1) The categories of personal information about the consumer the business sold or  
5 shared.

6 (2) The categories of third parties to which the personal information about the consumer  
7 was sold or shared by category of personal information for each category of third parties to which  
8 the personal information was sold or shared.

9 (3) The categories of personal information about the consumer that the business disclosed  
10 for a business purpose.

11 (b) A business that sells or shares personal information about consumers or discloses  
12 such information for a business purpose shall disclose the information specified in subsection (a)  
13 of this section to the consumer upon receipt of a verifiable consumer request from the consumer.

14 (c) A third party may not sell or share personal information about a consumer that has  
15 been sold or shared to the third party by a business unless the consumer has received explicit  
16 notice and is provided an opportunity to opt-out.

**§46A-9-6 Right to opt-out of the sale or sharing of personal information to third parties.**

17 (a) A consumer has the right at any time to direct a business that sells or shares personal  
18 information about the consumer to third parties to not sell or share the consumer's personal  
19 information. This right may be referred to as the right to opt-out.

20 (b) A business that sells or shares personal information to third parties shall provide notice  
21 to consumers that this information may be sold and shared and that consumers have the right to  
22 opt-out of the sale or sharing of their personal information.

23 (c) Notwithstanding subsection (a) of this section, a business may not sell or share the  
24 personal information of a consumer if the business has actual knowledge that the consumer is  
25 not 16 years of age or older, unless the consumer, in the case of consumers between 13 and 15  
26 years of age, or the consumer's parent or guardian, in the case of consumers who are 12 years  
27 of age or younger, has affirmatively authorized the sale or sharing of the consumer's personal  
28 information. A business that willfully disregards the consumer's age is deemed to have had actual  
29 knowledge of the consumer's age. This right may be referred to as the right to opt-in.

30 (d) A business that has received direction from a consumer prohibiting the sale or sharing

31 of the consumer's personal information or that has not received consent to sell or share a minor  
32 consumer's personal information is prohibited from selling or sharing the consumer's personal  
33 information after its receipt of the consumer's direction, unless the consumer subsequently  
34 provides express authorization for the sale or sharing of the consumer's personal information.

35 (e) A business does not sell personal information when:

36 (1) A consumer uses or directs the business to intentionally disclose personal information  
37 or uses the business to intentionally interact with a third party, provided the third party does not  
38 also sell the personal information, unless that disclosure would be consistent with the provisions  
39 of this section. An intentional interaction occurs when the consumer intends to interact with the  
40 third party, via one or more deliberate interactions. Hovering over, muting, pausing, or closing a  
41 given piece of content does not constitute a consumer's intent to interact with a third party.

42 (2) The business uses or shares an identifier for a consumer who has opted out of the  
43 sale or sharing of the consumer's personal information for the purposes of alerting third parties  
44 that the consumer has opted out of the sale or sharing of the consumer's personal information.

45 (3) The business uses or shares with a service provider personal information of a  
46 consumer that is necessary to perform a business purpose if both of the following conditions are  
47 met:

48 (A) The business has provided notice that the personal information of the consumer is  
49 being used or shared in its terms and conditions.

50 (B) The service provider does not further collect, sell, share, or use the personal  
51 information of the consumer except as necessary to perform the business purpose.

52 (C) The business transfers to a third party the personal information of a consumer as an  
53 asset that is part of a merger, acquisition, bankruptcy, or other transaction in which the third party  
54 assumes control of all or part of the business, provided that information is used or shared  
55 consistently with this article. If a third party materially alters how it uses or shares the personal  
56 information of a consumer in a manner that is materially inconsistent with the promises made at

57 the time of collection, it shall provide prior notice of the new or changed practice to the consumer.  
58 The notice must be sufficiently prominent and robust to ensure that existing consumers can easily  
59 exercise their choices consistently with this article.

60 (f) A business does not share personal information when:

61 (1) A consumer uses or directs the business to intentionally disclose personal information  
62 or intentionally interact with one or more third parties.

63 (2) The business uses or shares an identifier for a consumer who has opted-out of sharing  
64 the consumer's personal information for the purposes of alerting persons that the consumer has  
65 opted-out of sharing the consumer's personal information.

**§46A-9-7 Discrimination against consumers who exercise their right under this article.**

1 A business may not discriminate against a consumer who exercised any of the consumer's  
2 rights under this article. Discrimination under this section includes, but is not limited to:

3 (1) Denying goods or services to the consumer.

4 (2) Charging different prices or rates for goods or services, including through the use of  
5 discounts or other benefits or imposing penalties.

6 (3) Providing a different level or quality of goods or services to the consumer.

7 (4) Suggesting that the consumer will receive a different price or rate for goods or services  
8 or a different level or quality of goods or services.

**§46A-9-8. Requests for personal information.**

1 (a) To comply with this subsection, a business shall, in a form that is reasonably accessible  
2 to consumers, make available two or more methods for submitting verifiable consumer requests,  
3 including, but not limited to, a toll-free number and, if the business maintains an Internet website,  
4 a link on the homepage of the website. The business may not require the consumer to create an  
5 account with the business in order to make a verifiable consumer request.

6 (b) The business shall deliver the information required or act on the request to a consumer  
7 free of charge within 45 days after receiving a verifiable consumer request. The response period



8 may be extended once by 30 additional days when reasonably necessary, taking into account the  
9 complexity of the consumer's requests, provided the business informs the consumer of any such  
10 extension within the initial 45-day response period along with the reason for the extension. The  
11 information must be delivered in a readily usable format that allows the consumer to transmit the  
12 information from one entity to another entity without hindrance.

13 (c) If a third party assumes control of all or part of a business and acquires a consumer's  
14 personal information as part of the transfer, and the third party materially alters how it uses a  
15 consumer's personal information or shares the information in a manner that is materially  
16 inconsistent with the promises made at the time of collection, the third party must provide prior  
17 notice of the new or changed practice to the customer. The notice must be sufficiently prominent  
18 and robust to ensure that existing consumers can easily exercise their choices.

19 (d) Any contract between a business and a service provider must prohibit the service  
20 provider from:

21 (1) Selling or sharing the personal information;

22 (2) Retaining, using, or disclosing the personal information for any purpose other than for  
23 the business purposes specified in the contract for the business, including retaining, using, or  
24 disclosing the personal information for a commercial purpose other than the business purposes  
25 specified in the contract with the business;

26 (3) Retaining, using, or disclosing the information outside of the direct business  
27 relationship between the service provider and the business; or

28 (4) Combining the personal information that the service provider receives from or on behalf  
29 of the business with personal information that it receives from or on behalf of another person or  
30 entity or that the service provider collects from its own interaction with the consumer, provided  
31 that the service provider may combine personal information to perform any business purpose.

32 (e) Any contract between a business and a third party must prohibit the third party that  
33 receives a consumer's personal information from the following:

34 (1) Selling or sharing the personal information.

35 (2) Retaining, using, or disclosing the personal information for any purpose other than the  
36 specific purpose of performing the services specified in the contract, including retaining, using, or  
37 disclosing the personal information for a commercial purpose other than providing the services  
38 specified in the contract.

39 (3) Retaining, using, or disclosing the personal information for any purpose other than for  
40 the specific purpose of performing the services specified in the contract, including retaining, using,  
41 or disclosing the personal information for a commercial purpose other than providing the services  
42 specified in the contract.

43 (4) Retaining, using, or disclosing the information outside of the direct business  
44 relationship between the person and the business.

45 (f) The contract must include a certification made by the person or entity receiving the  
46 personal information stating that the person or entity understands and will comply with the  
47 restrictions under this article.

48 (g) Any contract between a business and a third party or between a business and a service  
49 provider for receiving personal information must include a provision that any contract between a  
50 third party and any subcontractor or between a service provider and any subcontractor must  
51 require the subcontractor to meet the obligations of the third party or service provider with respect  
52 to personal information.

53 (h) A third party or service provider or any subcontractor thereof who violates any of the  
54 restrictions imposed upon it under this article is liable for any violations. A business that discloses  
55 personal information to a third party or service provider in compliance with this section is not liable  
56 if the person receiving the personal information uses it in violation of the restrictions under this  
57 article, provided that at the time of disclosing the personal information, the business does not  
58 have actual knowledge or reason to believe that the person intends to commit such a violation.

**§46A-9-9. Form to opt-out of sale or sharing of personal information.**

1 (a) A business shall, in a form that is reasonably accessible to consumers:

2 (1) Provide a clear and conspicuous link on the business's Internet homepage, entitled  
3 “Do Not Sell or Share My Personal Information,” to an Internet webpage that enables a consumer,  
4 or a person authorized by the consumer, to opt-out of the sale or sharing of the consumer's  
5 personal information. A business may not require a consumer to create an account in order to  
6 direct the business not to sell the consumer's personal information.

7 (2) Include a description of a consumer's rights along with a separate link to the “Do Not  
8 Sell or Share My Personal Information” Internet webpage in:

9 (A) Its online privacy policy or policies.

10 (B) Any state-specific consumer privacy rights.

11 (3) Ensure that all individuals responsible for handling consumer inquiries about the  
12 business's privacy practices or the business's compliance with this section are informed of all  
13 requirements in this article and how to direct consumers to exercise their rights under this article.

14 (4) For consumers who opt-out of the sale or sharing of their personal information, refrain  
15 from selling or sharing personal information collected by the business about the consumer.

16 (5) For consumers who opted-out of the sale or sharing of their personal information,  
17 respect the consumer's decision to opt-out for at least 12 months before requesting that the  
18 consumer authorize the sale of the consumer's personal information.

19 (6) Use any personal information collected from the consumer in connection with the  
20 submission of the consumer's opt-out request solely for the purposes of complying with the opt-  
21 out request.

22 (b) This subsection does not require a business to include the required links and text on  
23 the homepage that the business makes available to the public generally, if the business maintains  
24 a separate and additional homepage that is dedicated to West Virginia consumers and that  
25 includes the required links and text, and the business takes reasonable steps to ensure that West  
26 Virginia consumers are directed to the homepage for West Virginia consumers and not the

27 homepage made available to the public generally.

28 (c) A consumer may authorize another person to opt-out of the sale or sharing of the  
29 consumer's personal information on the consumer's behalf, and a business shall comply with an  
30 opt-out request received from a person authorized by the consumer to act on the consumer's  
31 behalf.

**§46A-9-10. Private cause of action.**

1 A consumer whose nonencrypted and nonredacted personal information or e-mail  
2 address, in combination with a password or security question and answer that would allow access  
3 to the account, is subject to an unauthorized access and exfiltration, theft, or disclosure as a result  
4 of a business' violation of the duty to implement and maintain reasonable security procedures and  
5 practices appropriate to the nature of the information to protect the personal information may bring  
6 civil action for any of the following:

7 (1) Damages in an amount not less than \$100 and not greater than \$750 per consumer  
8 per incident or actual damages, whichever is greater.

9 (2) Injunctive or declaratory relief, as the court deems proper.

**§46A-9-11. Enforcement and implementation.**

1 (a) If the West Virginia Division of Consumer Protection has reason to believe that any  
2 business, service provider, or other person or entity is in violation of this article and that  
3 proceedings would be in the public interest, the division may bring an action against such  
4 business, service provider, or other person or entity and may seek a civil penalty of not more than  
5 \$2,500 for each unintentional violation or \$7,500 for each intentional violation. Such fines may be  
6 tripled if the violation involves a consumer who is 16 years of age or younger.

7 (b) The division may adopt rules to implement this article.

8 (c) A business may be found to be in violation of this section if it fails to cure any alleged  
9 violation within 30 days after being notified in writing by the department of the alleged  
10 noncompliance.

NOTE: The purpose of this bill is to protect consumer data privacy by establishing a consumer right to request copy of personal data collected; establishing a consumer right to have personal information deleted or corrected; establishing a consumer right to request personal data sold or shared; establishing a consumer right to opt-out of the sale or sharing of personal information to third parties; prohibiting discrimination against consumers who exercise their right under this article; establishing procedures for requests for personal information under this article; establish a form to opt-out of sale or sharing of personal information; creating a private cause of action; empowering the West Virginia Division of Consumer Protection to establish rules under this article for enforcement; and empowering the West Virginia Division of Consumer Protection to bring suit for violation of this article.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.