

H. B. 4279

(By Delegate Manypenny, Sponaugle, Skinner, Barrett,
Eldridge, Ellem and Guthrie)

[Introduced January 23, 2014; referred to the
Committee on the Judiciary then Finance.]

**FISCAL
NOTE**

A BILL to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new article, designated §61-14-1, §61-14-2,
§61-14-3, §61-14-4, §61-14-5 and §61-14-6, all relating to
creating the Citizen Privacy and Internet Activity Act;
prohibiting the sale of online Internet activity to third
parties; providing a short title; making legislative findings;
defining terms; declaring public policy; and establishing
criminal penalties.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended
by adding thereto a new article, designated §61-14-1, §61-14-2,
§61-14-3, §61-14-4, §61-14-5 and §61-14-6, all to read as follows:

ARTICLE 14. Citizen Privacy and Internet Activity Act.

§61-14-1. Short Title.

1 This article shall be known and may be cited as the "Citizen
2 Privacy and Internet Activity Act".

3 **§61-14-2. Legislative findings.**

4 (a) The Legislature hereby finds and declares:

5 (1) Online Internet activities, including cloud computing,
6 enable convenient, on-demand access to a shared pool of
7 configurable computing resources, including networks, servers,
8 storage, applications and services;

9 (2) Online Internet activities, including cloud computing
10 services, offer tremendous potential to individual, business and
11 educational institutions in terms of helping consolidate technical
12 infrastructure, reducing energy and capital costs, increasing
13 collaboration through "anytime-anywhere" access to applications and
14 information, and realizing efficiencies, network resilience, and
15 flexible deployment; and

16 (3) Online Internet activities, including cloud computing
17 services, hold the potential to invade the privacy of individuals
18 by tracking and selling users' online activities for commercial
19 purposes, such as delivering behaviorally targeted advertising or
20 otherwise altering advertising services that a website, cloud
21 computing provider or Internet provider may offer in connection
22 with or separate from the services it offers to the individual,
23 business and educational institutions.

24 (b) Therefore, the Legislature deems it necessary to ensure

1 that when an individual, business or educational institution
2 engages in an online Internet activity, including visiting
3 websites, using an Internet search engine or cloud computing
4 services or utilizing an Internet provider, that the service
5 provider, website or search engine may use that online activity
6 data only for its own benefit or the benefit of that individual,
7 business or educational institution, and may not sell or otherwise
8 transfer that data to a third party.

9 **§61-14-3. Definitions.**

10 "Business" means any corporation, partnership, limited
11 partnership, limited liability partnership, professional limited
12 liability partnership, limited liability company, professional
13 limited liability company, joint venture, business trust or any
14 other form of business organization, including nonprofit
15 organizations.

16 "Cloud computing service" means a service that enables
17 convenient, on-demand network access to a shared pool of
18 configurable computing resources to provide an individual,
19 business or educational institution account-based productivity
20 applications such as email, document storage and document
21 editing that can be rapidly provisioned and released with minimal
22 management effort or cloud computing service provider
23 interaction.

24 "Cloud computing service provider" means an entity, other

1 than an educational institution, that operates a cloud
2 computing service.

3 "Data" means any information or materials in any media or
4 format created or provided by a person in the course of using the
5 Internet provider, search engine, cloud computing service or
6 website through online activity. In each case the term "data" shall
7 include, but not be limited to the name, electronic mail address,
8 postal address, phone number, email message, documents, unique
9 identifiers, Internet and website searches, results of Internet and
10 website searches, metadata, or any aggregations or derivatives
11 thereof.

12 "Educational institution" means any public or nonpublic
13 school, charter school, school district or board of cooperative
14 educational services serving students in secondary and post-
15 secondary schools.

16 "Internet" means an electronic communications network that
17 connects computer networks and organizational computer facilities
18 around the world.

19 "Internet provider" means a business or organization that
20 offers users access to the Internet and related services.

21 "Internet search engine" means a software system that is
22 designed to search for information on the World Wide Web. The
23 search results are generally presented in a line of results often
24 referred to as search engine results pages. The information may be

1 a specialist in web pages, images, information and other types of
2 files. Some search engines also mine data available in databases or
3 open directories. Unlike web directories, which are maintained only
4 by human editors, search engines also maintain real-time
5 information by running an algorithm on a web crawler.

6 "Online activity" means any activity that is engaged in while
7 accessing the Internet via an Internet provider or, once having
8 accessed the Internet, any activity using an Internet search engine
9 or cloud computing service, or any activity while on a website or
10 the World Wide Web.

11 "Person" means individual, business, partnership, corporation,
12 association, company or any other legal entity.

13 "Process" or "processing" means to use, access, manipulate,
14 scan, modify, transform, disclose, store, transmit, transfer,
15 retain, aggregate or dispose of data.

16 "Website" means a set of interconnected webpages, usually
17 including a homepage, generally located on the same server, and
18 prepared and maintained as a collection of information by a person,
19 group or organization.

20 **§61-14-4. Prohibition on the use of data.**

21 Any person who, with knowledge that online activity data will
22 be processed, provides Internet access, provides a cloud computing
23 service to individuals, businesses or educational institutions or
24 a websites that permits individuals, businesses or educational

1 institutions to access its site are prohibited from using data or
2 information on the user to track or process online activity data
3 for any secondary uses that benefits any third party, including,
4 but not limited to, online behavioral advertising, creating or
5 correcting an individual or household profile, the sale or transfer
6 of the data to a third party for any commercial purpose, or any
7 other similar commercial for-profit activity. However, an Internet
8 provider, search engine, cloud computing service provider or
9 website may process or monitor data solely to provide its
10 contracted service to the individual, business or educational
11 institution and maintain the integrity of the service.

12 **§61-14-5. Waivers against public policy.**

13 Any contract, agreement or stipulation which endeavors to
14 limit or waive the requirements and prohibitions of this article is
15 contrary to the public policy of this state and that portion of the
16 contract, agreement or stipulation is null and void and of no
17 effect.

18 **§61-14-6. Criminal penalties.**

19 (a) An Internet provider, website, Internet search engine,
20 cloud computing service provider or other person who sells or
21 otherwise transfers online activity data or online activity
22 information to a third party or permits another person to sell or
23 otherwise transfer that information is guilty of a misdemeanor and,
24 upon conviction, shall be punished in accordance with subsection

1 (c) of this section.

2 (b) Each separate piece or item of data or online activity or
3 information sold or transferred in violation of this article is a
4 separate actionable offense.

5 (c) A person convicted of a misdemeanor under this section
6 shall be punished as follows:

7 (1) Upon a first conviction under this section, the defendant
8 shall be fined not less than \$1,000, nor more than \$5,000.

9 (2) Upon a second conviction under this section, the defendant
10 shall be fined not less than \$5,000, nor more than \$10,000, or
11 confined in jail for not more than thirty days, or both fined and
12 confined.

13 (3) Upon a third conviction under this section, the defendant
14 shall be fined not less than \$10,000, nor more than \$25,000, or
15 confined in jail for not less than sixty days, nor more than one
16 year, or both fined and confined.

NOTE: The purpose of this article is to create the "Citizen Privacy and Internet Activity Act." The bill defines terms. The bill prohibits the sale of online Internet activity to third parties. The bill provides a short title. The bill makes legislative findings. The bill declares public policy and establishes criminal penalties.

This article is new; therefore, it has been completely underscored.