

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5112

By Delegate Young

[Introduced January 25, 2024; Referred to the
Committee on Technology and Infrastructure then 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 a
 5 consumer right to request copy of personal data collected; establishing a consumer right to
 6 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 sharing
 8 of personal information to third parties; prohibiting discrimination against consumers who
 9 exercise their right under this article; establishing procedures for requests for personal
 10 information under this article; establish a form to opt-out of sale or sharing of personal
 11 information; creating a private cause of action; empowering the West Virginia Division of
 12 Consumer Protection to establish rules under this article for enforcement; and empowering
 13 the West Virginia Division of Consumer Protection to bring suit for violation 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 "Aggregate consumer information" means information that relates to a group or category of
 3 consumers, from which the identity of an individual consumer has been removed and is not
 4 reasonably capable of being directly or indirectly associated or linked with, any consumer or
 5 household, including via a device. The term does not include one or more individual consumer
 6 records that have been deidentified.
 7 "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 "Business" means: A sole proprietorship, partnership, limited liability company,
15 corporation, association, or legal entity that:

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

17 (2) Does business or conducts sales in this state, for money or other valuable
18 consideration;

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

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

23 (5) Satisfies one or more of the following thresholds:

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

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

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

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

33 "Common branding" means a shared name, servicemark, or trademark.

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

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

39 (1) 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 (2) Detecting security incidents; protecting against malicious, deceptive, fraudulent, or
43 illegal activity; and prosecuting those responsible for that activity.

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

45 (4) 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 (5) Performing services on behalf of the business or service provider, including maintaining
50 or servicing accounts, providing customer service, processing or fulfilling orders and transactions,
51 verifying customer information, processing payments, providing financing, providing analytic
52 services, or providing similar services on behalf of the business or service provider.

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

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

61 "Commercial purposes" means to advance the commercial or economic interests of a
62 person, such as inducing another person to buy, rent, lease, join, subscribe to, provide, or

63 exchange products, goods, property, information, or services, or directly or indirectly enabling or
64 effecting a commercial transaction.

65 "Consumer" means a natural person who resides in or is domiciled in this state, however
66 identified, including by any unique identifier, and who is:

67 (1) In this state for other than a temporary or transitory purpose; or

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

70 "Deidentified" means information that does not reasonably identify, relate to, or describe a
71 particular consumer, or is not reasonably capable of being directly or indirectly associated or linked
72 with a particular consumer, provided that a business that uses deidentified information:

73 (1) Implements technical safeguards that prohibit reidentification of the consumer to whom
74 the information may pertain.

75 (2) Implements business processes that specifically prohibit reidentification of the
76 information.

77 (3) Implements business processes to prevent inadvertent release of deidentified
78 information.

79 (4) Does not attempt to reidentify the information.

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

85 "Homepage" means the introductory page of an Internet website and any Internet
86 webpage where personal information is collected. In the case of a mobile application, the
87 homepage is the application's platform page or download page, a link within the application, such
88 as the "About" or "Information" application configurations, or settings page, and any other location

89 that allows consumers to review the notice required by this article, including, but not limited to,
90 before downloading the application.

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

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

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

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

106 (3) Characteristics of protected classifications under state or federal law.

107 (4) Commercial information, including records of personal property, products or services
108 purchased, obtained, or considered, or other purchasing or consuming histories or tendencies.

109 (5) Biometric information.

110 (6) Internet or other electronic network activity information, including, but not limited to,
111 browsing history, search history, and information regarding a consumer's interaction with an
112 Internet website, application, or advertisement.

113 (7) Geolocation data.

114 (8) Audio, electronic, visual, thermal, olfactory, or similar information.

115 (8) Professional or employment-related information.

116 (10) Education information that is not publicly available, personally identifiable information
117 as defined in the Family Educational Rights and Privacy Act, 20 U.S.C. s. 1232(g) and 34 C.F.R.
118 part 99.

119 (11) Inferences drawn from any of the information identified in this paragraph to create a
120 profile about a consumer reflecting the consumer's preferences, characteristics, psychological
121 trends, predispositions, behavior, attitudes, intelligence, abilities, and aptitudes.

122 The term does not include consumer information that is:

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

124 (B) Deidentified or aggregate consumer information.

125 "Probabilistic identifier" means the identification of a consumer or a device to a degree of
126 certainty of more probable than not based on any categories of personal information included in, or
127 similar to, the categories listed under subsection (a)(13) of this section, above.

128 "Processing" means any operation or set of operations that are performed on personal
129 data or on sets of personal data, whether or not by automated means.

130 "Pseudonymize" means the processing of personal information in a manner that renders
131 the personal information no longer attributable to a specific consumer without the use of additional
132 information, provided that the additional information is kept separately and is subject to technical
133 and organizational measures to ensure that the personal information is not attributed to an
134 identified or identifiable consumer.

135 "Research" means scientific, systematic study and observation, including, but not limited
136 to, basic research or applied research that is in the public interest and that adheres to all other
137 applicable ethics and privacy laws or studies conducted in the public interest in the area of public
138 health. Research with personal information that may have been collected from a consumer in the
139 course of the consumer's interactions with a business's service or device for other purposes shall
140 be:

141 (1) Compatible with the business purpose for which the personal information was
142 collected.

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

146 (3) Made subject to technical safeguards that prohibit reidentification of the consumer to
147 whom the information may pertain.

148 (4) Subject to business processes that specifically prohibit reidentification of the
149 information.

150 (5) Made subject to business processes to prevent inadvertent release of deidentified
151 information.

152 (6) Protected from any reidentification attempts.

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

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

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

162 "Service" means work or labor furnished in connection with the sale or repair of goods.

163 "Service provider" means a sole proprietorship, partnership, limited liability company,
164 corporation, association, or other legal entity that is organized or operated for the profit or financial
165 benefit of its shareholders or other owners, that processes information on behalf of a business and
166 to which the business discloses a consumer's personal information for a business purpose

167 pursuant to a written contract, provided that the contract prohibits the entity receiving the
168 information from retaining, using, or disclosing the personal information for any purpose other than
169 for the specific purpose of performing the services specified in the contract for the business, or as
170 otherwise permitted by this section, including retaining, using, or disclosing the personal
171 information for a commercial purpose other than providing the services specified in the contract
172 with the business.

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

175 (1) Allowing a third party to use or advertise to a consumer based on a consumer's
176 personal information without disclosure of the personal information to the third party.

177 (2) Monetary transactions, nonmonetary transactions, and transactions for other valuable
178 consideration between a business and a third party for advertising for the benefit of a business.

179 "Third party" means a person who is not any of the following:

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

181 (2) A person to whom the business discloses personal information about consumers for a
182 business purpose pursuant to a written contract.

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

189 "Verifiable consumer request" means a request that is made by a consumer, by a
190 consumer on behalf of the consumer's minor child, or by a natural person or a person authorized
191 by the consumer to act on the consumer's behalf, and that the business can reasonably verify to
192 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 the policy available on its Internet website, and update the information at least
3 once every 12 months.

4 (b) The online privacy policy shall 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) of this section, a list that identifies which
13 categories of personal information the business discloses or shares or has disclosed or shared
14 about 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 may request that a business that collects personal information disclose to
19 the consumer the categories and specific pieces of personal information the business collects
20 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 the information, or after the duration of a contract, or one 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 may request that a business that collects personal information about the
2 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 shall 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 a
9 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) of this section to the consumer upon receipt of a verifiable
21 consumer 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 may request that a business delete any personal information about the
2 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 the
22 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 is
27 compatible with the context in which the consumer provided the information.

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

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

1 (a) A consumer may request that a business that sells or shares personal information
2 about the consumer, or discloses such information for a business purpose, to disclose to the
3 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 been
15 sold or shared to the third party by a business unless the consumer has received explicit notice
16 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.

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

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

7 (c) Notwithstanding subsection (a) of this section, a business may not sell or share the
8 personal information of a consumer if the business has actual knowledge that the consumer is not
9 16 years of age or older, unless the consumer, in the case of consumers between 13 and 15 years
10 of age, or the consumer's parent or guardian, in the case of consumers who are 12 years of age or
11 younger, has affirmatively authorized the sale or sharing of the consumer's personal information. A
12 business that willfully disregards the consumer's age is deemed to have had actual knowledge of
13 the consumer's age. This right may be referred to as the right to opt-in.

14 (d) A business that has received direction from a consumer prohibiting the sale or sharing
15 of the consumer's personal information or that has not received consent to sell or share a minor
16 consumer's personal information is prohibited from selling or sharing the consumer's personal
17 information after its receipt of the consumer's direction, unless the consumer subsequently

18 provides express authorization for the sale or sharing of the consumer's personal information.

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

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

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

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

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

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

36 (C) The business transfers to a third party the personal information of a consumer as an
37 asset that is part of a merger, acquisition, bankruptcy, or other transaction in which the third party
38 assumes control of all or part of the business, provided that information is used or shared
39 consistently with this article. If a third party materially alters how it uses or shares the personal
40 information of a consumer in a manner that is materially inconsistent with the promises made at
41 the time of collection, it shall provide prior notice of the new or changed practice to the consumer.
42 The notice shall be sufficiently prominent and robust to ensure that existing consumers can easily
43 exercise their choices consistently with this article.

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

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

47 (2) The business uses or shares an identifier for a consumer who has opted-out of sharing
48 the consumer's personal information for the purposes of alerting persons that the consumer has
49 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, a
4 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 shall 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 shall provide prior
17 notice of the new or changed practice to the customer. The notice shall 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 shall 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 that
31 the service provider may combine personal information to perform any business purpose.

32 (e) Any contract between a business and a third party shall 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 shall 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 shall include a provision that any contract between a
50 third party and any subcontractor or between a service provider and any subcontractor shall
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 have
58 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-out
21 request.

22 (b) This subsection does not require a business to include the required links and text on the
23 homepage that the business makes available to the public generally, if the business maintains a
24 separate and additional homepage that is dedicated to West Virginia consumers and that includes
25 the required links and text, and the business takes reasonable steps to ensure that West Virginia
26 consumers are directed to the homepage for West Virginia consumers and not the homepage
27 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 per
8 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 the business,
4 service provider, or other person or entity and may seek a civil penalty of not more than \$2,500 for
5 each unintentional violation or \$7,500 for each intentional violation. The fines may be tripled if the
6 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.

11

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.