

Chapter 37
Notice of Intent to Sell Nonpublic Personal Information Act

Part 1
General Provisions

13-37-101 Title.

This chapter is known as the "Notice of Intent to Sell Nonpublic Personal Information Act."

Enacted by Chapter 97, 2003 General Session

13-37-102 Definitions.

As used in this chapter:

- (1) "Affiliate" means a person that controls, is controlled by, or is under common control with:
 - (a) a commercial entity; and
 - (b)
 - (i) directly; or
 - (ii) indirectly through one or more intermediaries.
- (2)
 - (a) Subject to Subsection (2)(b), "commercial entity" means a person that:
 - (i) has an office or other place of business located in the state; and
 - (ii) in the ordinary course of business transacts a consumer transaction in this state.
 - (b) "Commercial entity" does not include:
 - (i) a governmental entity; or
 - (ii) an entity providing services on behalf of a governmental entity.
- (3) "Compensation" means anything of economic value that is paid or transferred to a commercial entity for or in direct consideration of the disclosure of nonpublic personal information.
- (4)
 - (a) "Consumer transaction" means:
 - (i) a sale, lease, assignment, award by chance, or other written or oral transfer or disposition:
 - (A) that is initiated or completed in this state; and
 - (B) of:
 - (I) goods;
 - (II) services; or
 - (III) other tangible or intangible property, except securities and insurance or services related thereto; or
 - (ii) a transaction:
 - (A) that is initiated or completed in this state; and
 - (B) that constitutes credit offered or extended by a commercial entity to a person primarily for personal, family, or household purposes.
 - (b) "Consumer transaction" includes:
 - (i) the use of nonpublic personal information in relation to a transaction with a person if the transaction is for primarily personal, family, or household purposes; and
 - (ii) with respect to any transaction described in Subsection (4)(a):
 - (A) an offer or solicitation;
 - (B) an agreement;
 - (C) the performance of an agreement; or

- (D) a charitable solicitation as defined in Section 13-11-3.
- (c) "Consumer transaction" does not include a transaction related to real property.
- (5)
 - (a) "Nonpublic personal information" means information that:
 - (i) is not public information; and
 - (ii) either alone or in conjunction with public information, identifies a person in distinction from other persons.
 - (b) "Nonpublic personal information" includes:
 - (i) a person's Social Security number;
 - (ii) information used to determine a person's credit worthiness including a person's:
 - (A) income; or
 - (B) employment history;
 - (iii) the purchasing patterns of a person; or
 - (iv) the personal preferences of a person.
- (6) "Public information" means a person's:
 - (a) name;
 - (b) telephone number; or
 - (c) street address.
- (7)
 - (a) Subject to Subsection (7)(b), "third party" means a person other than the commercial entity that obtains nonpublic personal information.
 - (b) "Third party" does not include an affiliate or agent of the commercial entity that obtains nonpublic personal information.

Enacted by Chapter 97, 2003 General Session

Part 2 Notice of Disclosure

13-37-201 Required notice.

- (1)
 - (a) In accordance with this section, a commercial entity shall provide the notice described in this section to a person if:
 - (i) the commercial entity enters into a consumer transaction with that person;
 - (ii) as a result of the consumer transaction described in this Subsection (1)(a), the commercial entity obtains nonpublic personal information concerning that person; and
 - (iii) the commercial entity intends to or wants the ability to disclose the nonpublic personal information:
 - (A) to a third party; and
 - (B) for compensation; and
 - (iv) the compensation described in Subsection (1)(a)(iii)(B):
 - (A) is the primary consideration for the commercial entity disclosing the nonpublic personal information;
 - (B) is directly related to the commercial entity disclosing the nonpublic personal information; and

- (C) is not compensation received by the commercial entity in consideration of a transaction described in Subsection (5).
- (b) For purposes of this chapter, a commercial entity is considered to have obtained information as a result of a consumer transaction if:
 - (i) the person provides the information to the commercial entity:
 - (A) at any time during the consumer transaction; and
 - (B) at the request of the commercial entity; or
 - (ii)
 - (A) the commercial entity otherwise obtains the information; and
 - (B) but for the consumer transaction, the commercial entity would not obtain the information.
- (2) The notice required by Subsection (1) shall be given before the earlier of:
 - (a) the point at which the person is requested to provide the nonpublic personal information; or
 - (b) the commercial entity otherwise obtains the nonpublic personal information as a result of the consumer transaction described in Subsection (1)(a).
- (3) The notice required by Subsection (1):
 - (a) shall read substantially as follows: "We may choose to disclose nonpublic personal information about you, the consumer, to a third party for compensation.";
 - (b) may be made:
 - (i) orally, if the consumer transaction itself is entirely conducted orally; or
 - (ii) in writing, if the notice is written in dark bold; and
 - (c) shall be sufficiently conspicuous so that a reasonable person would perceive the notice before providing the nonpublic personal information.
- (4) This chapter does not apply to:
 - (a) a commercial entity that is subject to a federal law or regulation that governs the disclosure of nonpublic information to a third party; or
 - (b) a covered entity as defined in 45 C.F.R. Parts 160 and 164.
- (5) Notwithstanding the other provisions of this section, a commercial entity is not required to provide notice under this section if:
 - (a) the disclosure of the nonpublic personal information is related to the third party providing to the commercial entity:
 - (i) services, including business outsource services;
 - (ii) personal or real property; or
 - (iii) other thing of value; and
 - (b) compensation received by the commercial entity as part of the transaction is received by the commercial entity for or in consideration of the transaction described in Subsection (5)(a).

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13-37-202 Disclosure of nonpublic personal information prohibited without notice.

- (1) A commercial entity may not disclose nonpublic personal information that the commercial entity obtained on or after January 1, 2004, as a result of a consumer transaction if the commercial entity fails to comply with Section 13-37-201.
- (2) This chapter may not be interpreted as authorizing a commercial entity to disclose nonpublic personal information to a greater extent than the commercial entity is otherwise permitted to disclose nonpublic personal information.

Enacted by Chapter 97, 2003 General Session

13-37-203 Liability.

- (1) A person may bring an action against a commercial entity in a court of competent jurisdiction in this state if:
 - (a) the commercial entity enters into a consumer transaction with that person;
 - (b) as a result of the consumer transaction described in Subsection (1)(a), the commercial entity obtains nonpublic personal information concerning that person; and
 - (c) the commercial entity violates this chapter.
- (2) In an action brought under Subsection (1), a commercial entity that violates this chapter is liable to the person who brings the action for:
 - (a) \$500 for each time the commercial entity fails to provide the notice required by this section in relation to the nonpublic personal information of the person who brings the action; and
 - (b) court costs.
- (3) A person may not bring a class action under this chapter.

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