

Amendment No. 414

Senate Amendment to Senate Bill No. 260	(BDR 52-253)
Proposed by: Senate Committee on Commerce and Labor	
Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date		
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.



SENATE BILL NO. 260—SENATOR CANNIZZARO

MARCH 16, 2021

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions relating to Internet privacy. (BDR 52-253)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to Internet privacy; exempting certain persons and information collected about a consumer in this State from requirements imposed on operators, data brokers and covered information; prohibiting a data broker from making any sale of certain information collected about a consumer in this State if so directed by the consumer; revising provisions relating to the sale of certain information collected about a consumer in this State; revising the circumstances under which operators of certain Internet websites or online services are authorized to remedy a failure to comply with certain requirements relating to the collection and sale of certain information about consumers in this State; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law requires an operator of an Internet website which collects certain items of personally identifiable information about consumers in this State to establish a designated address through which a consumer may submit a verified request directing the operator not to make any sale of covered information collected about the consumer. An operator that receives such a request is prohibited from making any sale of any covered information collected about the consumer. (NRS 603A.345) **Section 3** of this bill imposes similar requirements upon a data broker, which is generally defined in **section 2** of this bill to mean a person primarily engaged in the business of purchasing covered information about consumers in this State from operators and other data brokers and making sales of ~~for disseminating~~ such information. Section 1.5 of this bill exempts certain persons and information from the requirements imposed on operators, data brokers and covered information. Sections 4 and 5 of this bill make conforming changes to properly place the new language of sections 1.5, 2 and 3 in the Nevada Revised Statutes. **Sections 6 and 7** of this bill revise certain definitions to reflect the requirements imposed on data brokers by **section 3**.

Existing law authorizes the Attorney General to seek an injunction or a civil penalty against an operator who violates the provisions of existing law requiring the establishment of a designated request address and prohibiting the sale of covered information about a consumer who has made a verified request. (NRS 603A.360) **Section 12** of this bill similarly authorizes the Attorney General to seek an injunction or a civil penalty against a data broker who violates the provisions of **section 3**.

Existing law defines “operator” to mean, in general, a person who: (1) owns or operates an Internet website or online service for commercial purposes; (2) collects

certain information from consumers who reside in this State and use or visit the Internet website or online service; and (3) has certain minimum contacts with this State. (NRS 603A.330) Section 7.5 of this bill explicitly excludes from the definition of “operator” a person who does not collect, maintain or sell covered information.

Existing law defines “sale” for the purposes of the provisions of existing law governing the sale of covered information by operators as the exchange of covered information for monetary consideration by the operator to a person for the person to license or sell the covered information to additional persons. (NRS 603A.333) **Section 8** of this bill revises that definition to define “sale” as the exchange of covered information for monetary consideration by an operator or data broker to another person.

Existing law requires an operator to make available to consumers a notice containing certain information relating to the collection and sale of covered information collected through its Internet website or online service. An operator who fails to comply with that requirement is authorized to remedy the failure to comply within 30 days after being informed of such a failure. (NRS 603A.340) **Sections 10 and 11** of this bill ~~[- (+)]~~ authorize an operator to remedy such a failure only if it is the first failure of the operator to comply with the requirement ~~[- and (2) reduce the amount of time in which an operator is authorized to remedy such a failure to 10 days.]~~

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 603A of NRS is hereby amended by adding thereto the provisions set forth as sections 1.5, 2 and 3 of this act.

Sec. 1.5. The provisions of this section and NRS 603A.300 to 603A.360, inclusive, and sections 2 and 3 of this act do not apply to:

1. A consumer reporting agency, as defined in NRS 686A.640, or any personally identifiable information collected, maintained or sold by such any agency;

2. A person who collects, maintains or makes sales of personally identifiable information for the purposes of fraud prevention;

3. Any personally identifiable information that is publicly available; or

4. Any personally identifiable information protected from disclosure under the federal Driver’s Privacy Protection Act of 1994, 18 U.S.C. §§ 2721 et seq., which is collected, maintained or sold in compliance with that Act.

Sec. 2. *“Data broker” means a person primarily engaged in the business of purchasing covered information about consumers who reside in this State from operators or other data brokers and making sales of ~~[- disseminating]~~ such covered information.*

Sec. 3. 1. *Each data broker shall establish a designated request address through which a consumer may submit a verified request pursuant to this section.*

2. A consumer may, at any time, submit a verified request through a designated request address to a data broker directing the data broker not to make any sale of any covered information about the consumer that the data broker has purchased or will purchase.

3. A data broker that has received a verified request submitted by a consumer pursuant to subsection 2 shall not make any sale of any covered information about that consumer that the data broker has purchased or will purchase.

4. A data broker shall respond to a verified request submitted by a consumer pursuant to subsection 2 within 60 days after receipt thereof. A data broker may extend by not more than 30 days the period prescribed by this subsection if the data broker determines that such an extension is reasonably

1 *necessary. A data broker who extends the period prescribed by this subsection*
2 *shall notify the consumer of such an extension.*

3 **Sec. 4.** NRS 603A.100 is hereby amended to read as follows:

4 603A.100 1. The provisions of NRS 603A.010 to 603A.290, inclusive, do
5 not apply to the maintenance or transmittal of information in accordance with NRS
6 439.581 to 439.595, inclusive, and the regulations adopted pursuant thereto.

7 2. A data collector who is also an operator, as defined in NRS 603A.330, shall
8 comply with the provisions of NRS 603A.300 to 603A.360, inclusive ~~4~~, *and*
9 *sections 1.5, 2 and 3 of this act.*

10 3. Any waiver of the provisions of NRS 603A.010 to 603A.290, inclusive, is
11 contrary to public policy, void and unenforceable.

12 **Sec. 5.** NRS 603A.300 is hereby amended to read as follows:

13 603A.300 As used in NRS 603A.300 to 603A.360, inclusive, *and sections*
14 *1.5, 2 and 3 of this act*, unless the context otherwise requires, the words and terms
15 defined in NRS 603A.310 to 603A.337, inclusive, *and section 2 of this act* have the
16 meanings ascribed to them in those sections.

17 **Sec. 6.** NRS 603A.320 is hereby amended to read as follows:

18 603A.320 “Covered information” means any one or more of the following
19 items of personally identifiable information about a consumer collected by an
20 operator through an Internet website or online service and maintained by the
21 operator *or a data broker* in an accessible form:

22 1. A first and last name.

23 2. A home or other physical address which includes the name of a street and
24 the name of a city or town.

25 3. An electronic mail address.

26 4. A telephone number.

27 5. A social security number.

28 6. An identifier that allows a specific person to be contacted either physically
29 or online.

30 7. Any other information concerning a person collected from the person
31 through the Internet website or online service of the operator and maintained by the
32 operator *or data broker* in combination with an identifier in a form that makes the
33 information personally identifiable.

34 **Sec. 7.** NRS 603A.325 is hereby amended to read as follows:

35 603A.325 “Designated request address” means an electronic mail address,
36 toll-free telephone number or Internet website established by an operator *or data*
37 *broker* through which a consumer may submit to an operator *or data broker* a
38 verified request.

39 **Sec. 7.5.** NRS 603A.330 is hereby amended to read as follows:

40 603A.330 1. “Operator” means a person who:

41 (a) Owns or operates an Internet website or online service for commercial
42 purposes;

43 (b) Collects and maintains covered information from consumers who reside in
44 this State and use or visit the Internet website or online service; and

45 (c) Purposefully directs its activities toward this State, consummates some
46 transaction with this State or a resident thereof, purposefully avails itself of the
47 privilege of conducting activities in this State or otherwise engages in any activity
48 that constitutes sufficient nexus with this State to satisfy the requirements of the
49 United States Constitution.

50 2. The term does not include:

51 (a) A third party that operates, hosts or manages an Internet website or online
52 service on behalf of its owner or processes information on behalf of the owner of an
53 Internet website or online service;

1 (b) A financial institution or an affiliate of a financial institution that is subject
2 to the provisions of the Gramm-Leach-Bliley Act, 15 U.S.C. §§ 6801 et seq., and
3 the regulations adopted pursuant thereto;

4 (c) An entity that is subject to the provisions of the Health Insurance
5 Portability and Accountability Act of 1996, Public Law 104-191, as amended, and
6 the regulations adopted pursuant thereto; ~~for~~

7 (d) A manufacturer of a motor vehicle or a person who repairs or services a
8 motor vehicle who collects, generates, records or stores covered information that is:

9 (1) Retrieved from a motor vehicle in connection with a technology or
10 service related to the motor vehicle; or

11 (2) Provided by a consumer in connection with a subscription or
12 registration for a technology or service related to the motor vehicle. ~~for~~; or

13 (e) A person who does not collect, maintain or make sales of covered
14 information.

15 **Sec. 8.** NRS 603A.333 is hereby amended to read as follows:

16 603A.333 1. "Sale" means the exchange of covered information for
17 monetary consideration by ~~the~~ *an operator or data broker* to ~~a~~ *another* person .
18 ~~[for the person to license or sell the covered information to additional persons.]~~

19 2. The term does not include:

20 (a) The disclosure of covered information by an operator *or data broker* to a
21 person who processes the covered information on behalf of the operator ~~for~~ *or data*
22 *broker*;

23 (b) The disclosure of covered information by an operator to a person with
24 whom the consumer has a direct relationship for the purposes of providing a
25 product or service requested by the consumer;

26 (c) The disclosure of covered information by an operator to a person for
27 purposes which are consistent with the reasonable expectations of a consumer
28 considering the context in which the consumer provided the covered information to
29 the operator;

30 (d) The disclosure of covered information *by an operator or data broker* to a
31 person who is an affiliate, as defined in NRS 686A.620, of the operator ~~for~~ *or data*
32 *broker*; or

33 (e) The disclosure or transfer of covered information *by an operator or data*
34 *broker* to a person as an asset that is part of a merger, acquisition, bankruptcy or
35 other transaction in which the person assumes control of all or part of the assets of
36 the operator ~~for~~ *or data broker*.

37 **Sec. 9.** NRS 603A.337 is hereby amended to read as follows:

38 603A.337 "Verified request" means a request:

39 1. Submitted by a consumer to an operator *or data broker* for the purposes set
40 forth in NRS 603A.345 ~~for~~ *or section 3 of this act, as applicable*; and

41 2. For which an operator *or data broker* can reasonably verify the authenticity
42 of the request and the identity of the consumer using commercially reasonable
43 means.

44 **Sec. 10.** NRS 603A.340 is hereby amended to read as follows:

45 603A.340 1. Except as otherwise provided in subsection 3, an operator shall
46 make available, in a manner reasonably calculated to be accessible by consumers
47 whose covered information the operator collects through its Internet website or
48 online service, a notice that:

49 (a) Identifies the categories of covered information that the operator collects
50 through its Internet website or online service about consumers who use or visit the
51 Internet website or online service and the categories of third parties with whom the
52 operator may share such covered information;

1 (b) Provides a description of the process, if any such process exists, for an
 2 individual consumer who uses or visits the Internet website or online service to
 3 review and request changes to any of his or her covered information that is
 4 collected through the Internet website or online service;

5 (c) Describes the process by which the operator notifies consumers who use or
 6 visit the Internet website or online service of material changes to the notice required
 7 to be made available by this subsection;

8 (d) Discloses whether a third party may collect covered information about an
 9 individual consumer's online activities over time and across different Internet
 10 websites or online services when the consumer uses the Internet website or online
 11 service of the operator; and

12 (e) States the effective date of the notice.

13 2. An operator *who has not previously failed to comply with the provisions*
 14 *of subsection 1* may remedy any failure to comply with the provisions of
 15 subsection 1 within 30 ~~100~~ days after being informed of such a failure.

16 3. The provisions of subsection 1 do not apply to an operator:

17 (a) Who is located in this State;

18 (b) Whose revenue is derived primarily from a source other than the sale or
 19 lease of goods, services or credit on Internet websites or online services; and

20 (c) Whose Internet website or online service has fewer than 20,000 unique
 21 visitors per year.

22 **Sec. 11.** NRS 603A.350 is hereby amended to read as follows:

23 603A.350 An operator violates NRS 603A.340 if the operator:

24 1. ~~Knowingly~~ *Has not previously failed to comply with the provisions of*
 25 *subsection 1 of that section and knowingly* ~~and willfully~~ fails to remedy a failure
 26 to comply with ~~the~~ *such* provisions ~~of subsection 1 of that section~~ within 30 ~~100~~
 27 days after being informed of such a failure; ~~or~~

28 2. *Knowingly* ~~and willfully~~ *fails to comply with the provisions of*
 29 *subsection 1 of that section after having previously failed to comply with such*
 30 *provisions; or*

31 3. Makes available a notice pursuant to that section which contains
 32 information which constitutes a knowing and material misrepresentation or
 33 omission that is likely to mislead a consumer acting reasonably under the
 34 circumstances, to the detriment of the consumer.

35 **Sec. 12.** NRS 603A.360 is hereby amended to read as follows:

36 603A.360 1. The Attorney General shall enforce the provisions of NRS
 37 603A.300 to 603A.360, inclusive ~~and~~ *and sections 1.5, 2 and 3 of this act.*

38 2. If the Attorney General has reason to believe that an operator, either
 39 directly or indirectly, has violated or is violating NRS 603A.340 or 603A.345, the
 40 Attorney General may institute an appropriate legal proceeding against the
 41 operator. The district court, upon a showing that the operator, either directly or
 42 indirectly, has violated or is violating NRS 603A.340 or 603A.345, may:

43 (a) Issue a temporary or permanent injunction; or

44 (b) Impose a civil penalty not to exceed \$5,000 for each violation.

45 3. *If the Attorney General has reason to believe that a data broker, either*
 46 *directly or indirectly, has violated or is violating section 3 of this act, the Attorney*
 47 *General may institute an appropriate legal proceeding against the data broker.*
 48 *The district court, upon a showing that the data broker, either directly or*
 49 *indirectly, has violated or is violating section 3 of this act, may:*

50 (a) *Issue a temporary or permanent injunction; or*

51 (b) *Impose a civil penalty not to exceed \$5,000 for each violation.*

52 4. The provisions of NRS 603A.300 to 603A.360, inclusive, *and sections 1.5,*
 53 *2 and 3 of this act* do not establish a private right of action against an operator.

1 ~~{4}~~ 5. The provisions of NRS 603A.300 to 603A.360, inclusive, *and*
2 *sections 1.5, 2 and 3 of this act* are not exclusive and are in addition to any other
3 remedies provided by law.