
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1908 Session of
2021

INTRODUCED BY RABB, SNYDER, KINSEY, McNEILL, LEE AND CIRESI,
SEPTEMBER 27, 2021

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, SEPTEMBER 27, 2021

AN ACT

1 Providing for transparency and disclosure of information
2 collected by smart technology devices; establishing the Smart
3 Technology Disclosure Fund; and providing for powers and
4 duties of the Office of Attorney General.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Short title.

8 This act shall be known and may be cited as the Smart
9 Technology Disclosure Act.

10 Section 2. Definitions.

11 The following words and phrases when used in this act shall
12 have the meanings given to them in this section unless the
13 context clearly indicates otherwise:

14 "Bureau." The Bureau of Consumer Protection in the Office of
15 Attorney General.

16 "Consumer." The user of a smart device or a retailer
17 purchasing a smart device wholesale for resale.

18 "Covered information."

19 (1) Information collected through a smart device,

1 including the following:

2 (i) Product registration data.

3 (ii) Viewing and audio data.

4 (iii) Internet Protocol ("IP") address.

5 (iv) User ID or other identifiers.

6 (v) Geolocation or information that can be used to
7 derive geolocation.

8 (2) The term includes any other information combined
9 with information under paragraph (1)(i), (ii), (iii), (iv)
10 and (v).

11 "Data collection." Information or data collected or planned
12 to be collected from a smart device about the content accessed
13 or reports or data derived from the smart device and other
14 information combined with that information or data.

15 "Fund." The Smart Technology Disclosure Fund established
16 under section 8.

17 "Internet service provider." As defined under section 2 of
18 the act of December 17, 1968 (P.L.1224, No.387), known as the
19 Unfair Trade Practices and Consumer Protection Law.

20 "Manufacturer." A company that produces a smart device. The
21 term includes a manufacturer's officers, agents, employees and
22 attorneys.

23 "Smart device." A physical object that has computer
24 processing capabilities that can collect, send or receive data
25 via the Internet, Bluetooth or similar networking protocols. The
26 term includes a television, telephone, monitor, doorbell,
27 security system, door lock, thermostat, lighting system, smart
28 speaker, motor vehicle or other device that has the ability to
29 connect to the Internet, Bluetooth or similar networking
30 protocols.

1 "Third party." An entity that has access to covered
2 information obtained from a smart device through its operating
3 system, applications, programs or networking protocols. The term
4 includes a mobile network operator if it has access to covered
5 information on a smart device. The term does not include a
6 manufacturer.

7 Section 3. Disclosure requirements.

8 (a) General rule.--In addition to any other requirements
9 imposed by law, a manufacturer or third party, directly or
10 through a corporation, subsidiary, division, website or other
11 device or affiliate may not misrepresent in any manner,
12 expressly or by implication:

13 (1) the extent to which data is collected, used or
14 maintained or methods for protecting the privacy,
15 confidentiality or security of covered information; or

16 (2) the purpose of the collection, use or disclosure of
17 covered information.

18 (b) Notice and consent.--The following shall apply:

19 (1) A manufacturer of a smart device or third party,
20 directly or through a corporation, subsidiary, division,
21 website or other device or affiliate, in connection with data
22 collection for a product or service, shall:

23 (i) Prior to any data collection undertaken after
24 the effective date of this section, prominently disclose
25 to the consumer, separate and apart from a privacy
26 policy, terms of use page or other similar documents, the
27 following:

28 (A) The types of data that will be collected and
29 used.

30 (B) The types of data that will be shared with

1 third parties.

2 (C) The identities of the third parties.

3 (D) All purposes for the agent's sharing of the
4 data collected.

5 (E) Any data sharing agreements between the
6 manufacturer or third party and Federal, State and
7 local law enforcement agencies or other government
8 agencies.

9 (ii) Obtain the consumer's affirmative express
10 consent to data collection as follows:

11 (A) At the time the disclosure under
12 subparagraph (i) is made.

13 (B) Upon any material changes to the terms
14 disclosed under subparagraph (i).

15 (iii) Provide instructions, at any time the
16 consumer's affirmative express consent is sought under
17 subparagraph (ii) for how the consumer may revoke consent
18 to data collection.

19 (iv) Obtain the consumer's affirmative express
20 consent to continued data collection under section 4(a)
21 (2).

22 (2) A manufacturer or third party, directly or through a
23 corporation, subsidiary, division, website or other device or
24 affiliate, may not collect the covered information of a
25 consumer who does not provide affirmative express consent
26 under paragraph (1)(ii).

27 (3) If a smart device is shared or used by multiple
28 members of a household, a manufacturer or third party shall
29 be deemed in compliance with paragraph (1)(i), (ii) and (iii)
30 if disclosure is made and affirmative express consent is

1 obtained upon first use of the smart device by at least one
2 consumer in the household.

3 (c) Definitions.--As used in this section, the phrase
4 "prominently disclose to a consumer" shall mean a disclosure is
5 difficult to miss and easily understandable by ordinary
6 consumers, including in all of the following ways:

7 (1) A visual disclosure that, by its size, contrast,
8 location, the length of time it appears and other
9 characteristics, stands out from accompanying text or other
10 visual elements so that it is easily noticed, read and
11 understood.

12 (2) An audible disclosure, including by telephone or
13 streaming video, that is delivered in a volume, speed and
14 cadence sufficient for ordinary consumers to easily hear and
15 understand.

16 (3) In any communication using an interactive electronic
17 medium, such as in connection with an update to device
18 firmware, the disclosure is unavoidable.

19 (4) The disclosure uses diction and syntax
20 understandable to ordinary consumers and appears in each
21 language in which the triggering representation appears.

22 (5) The disclosure complies with the requirements in
23 each medium through which it is received, including all
24 electronic devices and face-to-face communications.

25 (6) The disclosure is not contradicted or mitigated by,
26 or inconsistent with, anything else in the communication.

27 (7) When the representation or sales practice targets a
28 specific audience, such as children, the elderly or the
29 terminally ill, the term "ordinary consumers" includes
30 reasonable members of that group.

1 Section 4. Data deletion requirements.

2 (a) General rule.--Within 120 days of the effective date of
3 this section, a manufacturer or third party, in connection with
4 data collection for a product or service, and all others in
5 active concert or participation with a manufacturer or third
6 party, directly or through a corporation, subsidiary, division,
7 website or other device or affiliate, shall destroy data
8 collected on a consumer's smart device prior to the effective
9 date of this section, except:

10 (1) if the data collected was requested by a government
11 agency or required by law, regulation or court order,
12 including without limitation as required by rules applicable
13 to the safeguarding of evidence in pending litigation; or

14 (2) if the user of the smart device associated with the
15 data collected has affirmatively consented to the collection,
16 use or disclosure thereof as provided under section 3(b).

17 (b) Consumer request.--Following the effective date of this
18 section, a manufacturer or third party, in connection with data
19 collection for a product or service, and all others in active
20 concert or participation with a manufacturer or third party,
21 directly or through a corporation, subsidiary, division, website
22 or other device or affiliate, shall destroy data within seven
23 days of the consumer requesting that the data be deleted.

24 Section 5. Mandated privacy program.

25 (a) General rule.--A manufacturer or third party, directly
26 or through a corporation, subsidiary, division, website or other
27 device or affiliate, shall establish and implement and maintain
28 a comprehensive privacy program that is reasonably designed to:

29 (1) Address privacy risks related to the development and
30 management of new and existing products and services for

1 consumers.

2 (2) Protect the privacy and confidentiality of covered
3 information collected directly or indirectly by a
4 manufacturer or third party, directly or through a
5 corporation, subsidiary, division, website or other device or
6 affiliate.

7 (b) Requirements.--A privacy program, the content and
8 implementation of which shall be documented in writing, shall
9 contain controls and procedures appropriate to the size and
10 complexity of the manufacturer or third party, the nature and
11 scope of the manufacturer's or third party's activities and the
12 sensitivity of the covered information, including:

13 (1) The designation of an employee or employees to
14 coordinate and be responsible for the privacy program.

15 (2) The identification of reasonably foreseeable risks,
16 both internal and external, that could result in the
17 unauthorized collection, use or disclosure by the
18 manufacturer or third party or its agents of covered
19 information and an assessment of the sufficiency of any
20 safeguards in place to control these risks. At a minimum, the
21 risk assessment shall include consideration of risks in each
22 area of relevant operation, including:

23 (i) Employee training and management, including
24 training on the requirements of this act.

25 (ii) Product design, development and research.

26 (3) The design and implementation of reasonable controls
27 and procedures to address risks and regular testing or
28 monitoring of the effectiveness of those controls and
29 procedures.

30 (4) The development and use of reasonable steps to

1 select and retain Internet service providers capable of
2 appropriately protecting the privacy of covered information
3 they receive from the manufacturer or third party or its
4 agents and requiring Internet service providers, by contract,
5 to implement and maintain appropriate privacy protections for
6 covered information.

7 (5) The evaluation and adjustment of the manufacturer's
8 or third party's or its agents' privacy program in light of
9 the results of the testing and monitoring required under
10 paragraph (3), any changes to the manufacturer's or third
11 party's or its agents' operations or business arrangements or
12 any other circumstance that the manufacturer or third party
13 or its agents know or have reason to know may have an impact
14 on the effectiveness of the privacy program.

15 Section 6. Violations.

16 A violation of this act shall be considered an unfair or
17 deceptive act or practice under the act of December 17, 1968
18 (P.L.1224, No.387), known as the Unfair Trade Practices and
19 Consumer Protection Law.

20 Section 7. Remedies available to consumers.

21 Nothing in this act shall be construed to limit the remedies
22 available to consumers, the Attorney General or a district
23 attorney under the act of December 17, 1968 (P.L.1224, No.387),
24 known as the Unfair Trade Practices and Consumer Protection Law,
25 or any other Federal or State law.

26 Section 8. Smart Technology Disclosure Fund.

27 (a) Establishment.--The Smart Technology Disclosure Fund is
28 established in the State Treasury and shall be administered by
29 the bureau. All money in the fund shall be appropriated on a
30 continuing basis to the bureau for the purposes of this act.

1 (b) Fund fee.--Every manufacturer that sells smart devices
2 in this Commonwealth shall register with the bureau and pay a
3 fee determined by the bureau to be deposited into the fund.

4 (c) Claims against fund.--A consumer who purchases a smart
5 device may recover statutory damages from the fund in the event
6 the manufacturer of the smart device violates this act, as found
7 by a court of competent jurisdiction, upon the final
8 determination of or expiration of time for appeal in connection
9 with any such judgment or if a consumer is prevented from
10 collecting the entirety of a final judgment as a result of the
11 manufacturer's filing for bankruptcy protection under Federal
12 law. In the event the bureau and the manufacturer enter into an
13 assurance of voluntary compliance under the act of December 17,
14 1968 (P.L.1224, No.387), known as the Unfair Trade Practices and
15 Consumer Protection Law, which requires payment of restitution
16 to a consumer and the manufacturer fails to pay as required by
17 the terms of the assurance of voluntary compliance, the bureau
18 shall issue an order of payment from the fund to the consumer.
19 The payment made pursuant to an assurance of voluntary
20 compliance shall be considered a claim for the purposes of
21 reimbursement of the fund.

22 (d) Limitation on recovery.--

23 (1) The bureau may not provide from the fund:

24 (i) Less than \$100 and no greater than \$750 per
25 consumer who recovers statutory damages from the fund.

26 (ii) An amount for attorney fees, consequential
27 damages, court costs, interest, personal injury damages
28 or punitive damages, except as may be provided in an
29 assurance of voluntary compliance.

30 (2) In assessing the amount of statutory damages, the

1 court shall consider any one or more of the relevant
2 circumstances presented by any of the parties to the case,
3 including the nature and seriousness of the misconduct, the
4 number of violations, the persistence of the misconduct, the
5 length of time over which the misconduct occurred, the
6 willfulness of the defendant's misconduct and the defendant's
7 assets, liabilities and net worth.

8 (e) Limitation period.--A claim must be made against the
9 fund within two years after the consumer obtains an entry of
10 final judgment or decree against the manufacturer and all appeal
11 rights have been expired or exhausted or, in the case of an
12 assurance of voluntary compliance, within the later of two years
13 of entry into such assurance or one year after nonpayment
14 according to the terms of the assurance.

15 (f) Offer of proof.--In order to recover from the fund, a
16 consumer shall offer proof to the bureau that the consumer has
17 exhausted all reasonable actions available under law and in
18 equity to collect the unpaid amount of a final judgment.

19 (g) Partial payments for fund integrity.--In order to
20 preserve the integrity of the fund, the bureau may order payment
21 out of the fund of an amount less than the judgment amount or
22 the amount agreed to be paid in an assurance of voluntary
23 compliance. The balance remaining due to the consumer shall be
24 paid from the fund under subsection (h).

25 (h) Special order of payment.--If the money in the fund is
26 insufficient to satisfy a duly authorized claim or portion of
27 the claim, the bureau shall, when sufficient money exists in the
28 fund, satisfy the unpaid claims or portions of the claims, in
29 the order that those claims or portions of claims were
30 originally determined.

1 (i) Investigation by bureau.--If the bureau pays an amount
2 from the fund as a result of a claim against a manufacturer, the
3 bureau may conduct an investigation to determine if the
4 manufacturer is possessed of assets liable to be sold or applied
5 in satisfaction of the claim on the fund. If the bureau
6 discovers any such assets, the bureau may take any lawful action
7 necessary for the reimbursement of the fund.

8 Section 9. Procedure of submitted claims.

9 (a) Initial claim.--In order to recover from the fund, a
10 consumer shall submit to the bureau the documentation required
11 under section 8(f), together with:

12 (1) a copy of the judgment and evidence that the
13 judgment has not been appealed;

14 (2) a copy of the assurance of voluntary compliance and
15 a certification that the manufacturer has failed to pay; or

16 (3) evidence that the consumer has been prevented from
17 collecting the entirety of a final judgment as a result of
18 the manufacturer's filing for bankruptcy protection under
19 Federal law. In the event of the manufacturer's bankruptcy
20 filing, the consumer shall only be entitled to collect from
21 the fund the amount the consumer was prevented from
22 collecting as a result of the bankruptcy filing.

23 (b) Copy of claim to manufacturer.--On receipt of a claim
24 under this section, the bureau shall send a copy of the claim to
25 the manufacturer alleged to be responsible for the violation of
26 this act. The manufacturer shall file a response or objection to
27 the claim within 30 days of the receipt of the notice of the
28 claim. Failure to respond to the claim shall constitute a waiver
29 of any defense of objection to the claim. The only defense a
30 manufacturer may raise in response is a defense of payment in

1 full of the claim.

2 (c) General order of payment.--Except as otherwise provided
3 in this act, the bureau shall pay from the fund approved claims
4 in the order that the claims are submitted.

5 Section 10. Reimbursement of fund.

6 (a) General rule.--After the bureau pays a claim from the
7 fund:

8 (1) The bureau shall be subrogated to all rights of the
9 consumer in the claim up to the amount paid.

10 (2) The consumer shall assign to the bureau all rights
11 of the consumer in the claim up to the amount paid.

12 (3) The bureau has a right to reimbursement of the fund
13 by the manufacturer for:

14 (i) The amount paid from the fund.

15 (ii) Interest on the amount at an annual rate of 5%
16 as adjusted by the Consumer Price Index on an annual
17 basis.

18 (4) All money that the bureau recovers on a claim shall
19 be deposited into the fund.

20 (b) Suit for nonpayment.--If, within 30 days after the
21 bureau gives notice, a manufacturer on whose account a claim was
22 paid fails to reimburse the fund in full, the bureau may
23 initiate an action against the manufacturer in a court of
24 competent jurisdiction for the unreimbursed amount.

25 (c) Judgment.--The bureau is entitled to a judgment for the
26 unreimbursed amount if the bureau proves that:

27 (1) A claim was paid from the fund on account of the
28 manufacturer.

29 (2) The manufacturer has not reimbursed the fund in
30 full.

1 (3) The bureau directed payment based on a final
2 judgment of a court of competent jurisdiction or an assurance
3 of voluntary compliance.

4 Section 11. Burden of proof.

5 In a civil proceeding alleging a violation of this act, the
6 burden of proving an exemption is on the person claiming the
7 exemption. In a criminal proceeding alleging a violation of this
8 act, the burden of producing evidence to support a defense based
9 upon an exemption is on the person claiming the exemption.

10 Section 12. Regulations.

11 The Office of Attorney General shall promulgate regulations
12 necessary to carry out the provisions of this act, which shall,
13 at a minimum, include:

14 (1) The fee paid by manufacturers to the bureau for
15 registering under section 8.

16 (2) The information required from a manufacturer when
17 registering with the bureau.

18 (3) The acceptable forms of proof required under section
19 8.

20 Section 13. Effective date.

21 This act shall take effect in 120 days.