

Legislative Bill Drafting Commission
09416-01-5

S. _____
Senate

19

IN SENATE--Introduced by Sen
(at the request of the Attorney General)

--read twice and ordered printed,
and when printed to be committed
to the Committee on

----- A.
Assembly

IN ASSEMBLY--Introduced by M. of A.
(at the request of the Attorney General)

with M. of A. as co-sponsors

--read once and referred to the
Committee on

GENEBULA
(Provides for the protection of
confidential personal information
collected and distributed for
commercial purposes)

Gen Bus L. protect personal info.

AN ACT

to amend the general business law
and the executive law, in relation
to protecting personal information
collected and distributed by infor-
mation brokers

The People of the State of New
York, represented in Senate and
Assembly, do enact as follows:

IN SENATE

Senate introducer's signature

The senators whose names are circled below wish to join me in the sponsorship
of this proposal

#55 Alasi	#02 Flanagan	#40 Leibell	#37 Oppenheimer	#09 Skales
#20 Andrews	#08 Puschillo	#52 Libous	#11 Padavan	#10 Smith, A.
#07 Balboni	#22 Golden	#45 Little	#21 Parker	#14 Smith, M.
#42 Bonacic	#33 Gonzalez	#15 Maltese	#30 Peterson	#35 Spano
#46 Breslin	#06 Hannon	#05 Marcellino	#61 Rath	#58 Stachowski
#60 Brown	#36 Hassell-	#24 Marchi	#56 Robach	#16 Steviaky
#43 Bruno	Thompson	#62 Maziarz	#13 Sabini	#01 Trunzo
#25 Connor	#04 Johnson	#57 McGee	#41 Saland	#49 Valecky
#50 DeFrancisco	#34 Klein	#47 Meier	#15 Sampson	#59 Volker
#32 Diaz	#26 Krueger	#18 Montgomery	#23 Savino	#53 Winner
#17 Dilan	#27 Kruger	#38 Morahan	#11 Schneiderman	#48 Wright
#29 Duane	#39 Larkin	#54 Nozzolio	#28 Serrano	
#44 Farley	#01 LaValle	#12 Onorato	#51 Seward	

IN ASSEMBLY

Assembly introducer's signature

The Members of the Assembly whose names are circled below wish to join me in the
multi-sponsorship of this proposal:

#049 Abbate	#010 Conte	#148 Hayes	#022 Meng	#000 Rivera, N.
#001 Acampora	#032 Cook	#083 Heastie	#102 Miller	#076 Rivera, P.
#021 Alfano	#107 Crouch	#040 Hiking	#052 Millman	#056 Robinson
#084 Arroyo	#063 Cusick	#127 Hooker	#060 Mirones	#012 Saladino
#118 Aubertine	#045 Cymbrowitz	#018 Hooper	#132 Morelle	#074 Sanders
#035 Aubry	#138 DelMonte	#144 Hoyt	#093 Mosiello	#113 Sayward
#136 Becalles	#116 Destito	#062 Ignizio	#139 Nesbitt	#029 Scarborough
#124 Barclay	#086 Diaz, L.	#042 Jacobs	#037 Nolan	#140 Schimminger
#014 Barra	#085 Diaz, R.	#131 John	#043 Norman	#145 Schroeder
#008 Barreaga	#016 DiNapoli	#095 Karben	#128 Oaks	#122 Scorsafava
#082 Benedetto	#081 Dinowitz	#100 Kirwan	#017 O'Connell	#059 Seddie
#079 Benjamin	#003 Eddington	#129 Kolb	#069 O'Donnell	#038 Seminaric
#073 Bing	#004 Englebright	#135 Koon	#137 O'Mara	#064 Silver
#055 Boyland	#130 Errigo	#034 Lafayette	#051 Ortiz	#099 Stephens
#089 Bradley	#072 Espaillet	#091 Letimer	#114 Ortloff	#067 Stringer
#044 Brennan	#071 Farrell	#061 Lavelle	#150 Parment	#011 Sweeney
#092 Brodsky	#015 Ferrara	#013 Levine	#088 Paulin	#110 Tedisco
#121 Brown	#005 Fields	#050 Lentol	#141 Peoples	#002 Thiele
#147 Burling	#123 Pinch	#125 Lifton	#039 Peralta	#031 Titus
#117 Butler	#007 Fitzpatrick	#053 Lopez	#058 Perry	#143 Tokass
#101 Cahill	#096 Galef	#126 Lupardo	#023 Pnaffar	#105 Tonko
#098 Calhoun	#133 Gantt	#111 Magee	#068 Powell	#054 Towns
#106 Canestrari	#036 Diannaris	#120 Magnarelli	#087 Pretlow	#116 Townsend
#026 Carrozza	#066 Glick	#103 Manning	#146 Quinn	#041 Weinstein
#108 Casale	#040 Dardan	#030 Markey	#097 Rabbitt	#020 Weisenberg
#119 Christensen	#075 Gottfried	#027 Mayersohn	#009 Raia	#024 Waprin
#033 Clark	#065 Gramis	#112 McDonald	#006 Ramos	#142 Wirth
#046 Cohen, A.	#057 Green	#019 McDonough	#134 Reichlich	#070 Wright
#028 Cohen, M.	#077 Greene	#104 McEneny	#109 Reilly	#149 Young
#047 Colton	#098 Gunther	#025 McLaughlin	#078 Rivera, J.	#094 Zebrowski

1) Single House Bill (introduced and printed separately in either or both
houses). Uni-Bill (introduced simultaneously in both houses and printed as one
bill. Senate and Assembly introducer sign the same copy of the bill).

2) Circle names of co-sponsors and return to introduction clerk with 3 signed
copies of bill and 4 copies of memorandum in support (single house); or 4 signed
copies of bill and 8 copies of memorandum in support (uni-bill).

1 Section 1. Legislative findings and declaration. The legislature here-
2 by finds that individuals in today's society must engage in a wide vari-
3 ety of commercial, financial and other transactions with local and
4 national businesses, educational institutions and other organizations.
5 These transactions frequently involve the transfer of information that
6 is inherently private, which the individual would prefer not to reveal.

7 The legislature further finds that, when engaging in these trans-
8 actions, many individuals appropriately assume that the information
9 being provided will be treated as confidential and will not be dissem-
10 inated to others. The information generally is necessary solely to
11 complete the transaction and to deliver the necessary goods or services,
12 and further sale or dissemination of that personal, private information
13 to others is not a consequence anticipated or desired by the consumer.

14 The legislature further finds that, despite the strong interest that
15 individuals have in preserving confidentiality of this private informa-
16 tion, details about their finances, habits, purchasing preferences and
17 backgrounds are routinely sold or otherwise released for commercial or
18 other purposes. The rapid evolution of information technology enables
19 many individuals and entities to gain access to private, personally
20 identifiable information without the knowledge and consent of the person
21 to whom the information relates. As a result, there has been a dramatic
22 proliferation of large electronic databases containing an array of
23 sensitive details about New York residents. The existence of these data-
24 bases and the disclosure of confidential personal information has led to
25 numerous adverse consequences including: (1) the rapid increase in
26 identity fraud crimes; (2) the proliferation of fraudulent, misleading,
27 intrusive and deceptive telephone, direct mail and internet sollicita-
28 tions; (3) undue embarrassment for individuals who have had private

1 information revealed without their consent; and (4) the dissemination of
2 incorrect information which has led to the denial or refusal of housing,
3 employment, insurance and other services and opportunities.

4 The legislature therefore finds and declares that there are insuffi-
5 cient controls on the entities that compile and disseminate this infor-
6 mation and that it is in the public's and state's interest to establish
7 protections limiting the collection and distribution of personal infor-
8 mation. Although this could be accomplished by prohibiting all sale or
9 disclosure of personal information by third parties, the legislature
10 recognizes that such a broad prohibition would unduly restrict some
11 legitimate uses of the information. The legislature finds that organiza-
12 tions that collect and sell personal information and lists for profit,
13 present a significant threat to the protection of personal privacy, and
14 that the restrictions imposed by this legislation on the activities of
15 such information brokers will meaningfully and substantially advance the
16 state's interest in protecting personal privacy in a manner that is
17 narrowly tailored to avoid undue impact on other rights.

18 § 2. The general business law is amended by adding a new article 32-A
19 to read as follows:

20 ARTICLE 32-A

21 PROTECTION OF CONFIDENTIAL PERSONAL INFORMATION

22 Section 676. Definitions.

23 676-a. Collection and distribution of personal information by
24 individual reference services providers.

25 676-b. Collection and distribution of personal information by
26 marketing list brokers.

27 676-c. Exclusion lists.

28 676-d. Penalties.

1 676-e. Civil liability.

2 § 676. Definitions. For purposes of this article the following terms
3 shall have the following meanings:

4 1. "Affiliate" shall have the same meaning as provided in section nine
5 hundred twelve of the business corporation law.

6 2. "Confidential personal information" means the following information
7 relating to an identifiable data subject: (a) social security informa-
8 tion, including but not limited to social security number; (b) mother's
9 former and current names; (c) birth date; (d) non-published telephone
10 numbers; (e) records of telephone calls made and received; (f) income;
11 (g) bank account and investment information; (h) tax information; (i)
12 organization memberships and donations; (j) purchasing information or
13 preferences; (k) medical information, including but not limited to
14 medical history; (l) driving record; (m) criminal record; or (n) history
15 of civil actions.

16 3. "Consumer reporting agency" shall have the same meaning as provided
17 in subdivision (e) of section three hundred eighty-a of this chapter.

18 4. "Data subject" means any natural person about whom confidential
19 personal information has been collected or is maintained.

20 5. "Exclusion lists" means the lists established and maintained by the
21 secretary of state, of data subjects residing in this state who have
22 requested that their confidential personal information not be disclosed
23 by an information broker.

24 6. (a) "Information broker" means an individual reference services
25 provider or a marketing list broker.

26 (b) "Individual reference services provider" means any person who
27 primarily engages in the business of collecting, assembling or maintain-
28 ing confidential personal information for the purpose of providing,

1 directly or indirectly, reports containing such information about indi-
2 vidual data subjects to third parties for monetary compensation or other
3 consideration. A person or entity that engages in individual reference
4 services provider activities shall be presumed to be primarily engaged
5 in such practice if the revenue such person or entity derives from such
6 practice represents more than twenty percent of such person's or enti-
7 ty's professional service-related revenue.

8 (c) "Marketing list broker" means any person who, for monetary compen-
9 sation or other consideration, primarily engages in the business of
10 creating, assembling, evaluating or providing, directly or indirectly,
11 marketing reports. A person or entity that engages in marketing list
12 broker activities shall be presumed to be primarily engaged in such
13 practice if the revenue such person or entity derives from such practice
14 represents more than twenty percent of such person's or entity's profes-
15 sional service-related revenue.

16 For the purposes of this article, the terms "information broker",
17 "individual reference services provider" and "marketing list broker"
18 shall not include the following:

19 (i) the federal or state government or any political subdivision ther-
20 eof;

21 (ii) any person, when furnishing information to the federal or state
22 government or any political subdivision thereof;

23 (iii) a consumer reporting agency, when engaged in the practice of
24 creating, assembling, evaluating, or providing a consumer report or
25 investigative consumer report pursuant to article twenty-five of this
26 chapter;

1 (iv) any person, when furnishing information to a consumer reporting
2 agency to be included in a consumer report or an investigative consumer
3 report pursuant to article twenty-five of this chapter;

4 (v) any person, other than a natural person, when communicating infor-
5 mation solely among affiliates;

6 (vi) any person with an established business relationship with the
7 data subject;

8 (vii) news media organizations;

9 (viii) licensed private investigators when engaged in the business of
10 private investigator as defined in section seventy-one of this chapter,
11 except when providing information set forth in paragraph (a), (d), (e),
12 (g), (h) or (k) of subdivision two of this section; or

13 (ix) any labor union engaged in a practice or pursuant to a purpose
14 authorized by the National Labor Relations Act.

15 7. "Individual reference services report" means a report or presenta-
16 tion containing confidential personal information provided by an indi-
17 vidual reference services provider to another person for monetary
18 compensation or other consideration.

19 8. "Marketing list information" means the names, mailing addresses or
20 electronic mail addresses of data subjects.

21 9. "Marketing report" means a report or list containing marketing list
22 information regarding data subjects categorized or grouped by character-
23 istics, conditions, circumstances, traits, preferences or mode of
24 living.

25 10. "Person" means any natural person and any firm, organization,
26 partnership, association, corporation or other entity, except a not-for-
27 profit organization.

1 § 676-a. Collection and distribution of personal information by indi-
2 vidual reference services providers. 1. Right of individuals to protect
3 confidential personal information. Every data subject shall have the
4 right to require that confidential personal information about such data
5 subject is excluded from any individual reference services report by
6 providing notice either through a notification system established by the
7 individual reference services provider pursuant to subdivision three of
8 this section, or through the notification system maintained by the
9 secretary of state pursuant to section six hundred seventy-six-c of this
10 article.

11 2. Withholding confidential personal information. Upon receipt of
12 notice that a data subject does not want confidential personal informa-
13 tion revealed, whether notification is provided through the system
14 established pursuant to subdivision three of this section or through the
15 system maintained pursuant to section six hundred seventy-six-c of this
16 article, every individual reference services provider shall be prohibit-
17 ed from disclosing confidential personal information about that data
18 subject, unless the data subject provides written consent to the disclo-
19 sure. An election by a data subject under this section shall be effec-
20 tive with respect to the individual reference services provider and
21 every affiliate, agent and employee of the individual reference services
22 provider, on the date on which the data subject notifies the individual
23 reference services provider, except that no penalties may be imposed
24 under this section for disclosures made within five business days after
25 receipt of such election if the individual reference services provider
26 establishes that the information was disclosed in response to a request
27 received prior to the receipt of such election and that the individual
28 reference services provider took all reasonable steps to prevent such

1 disclosure from occurring. Notification from a data subject that all
2 confidential personal information must be withheld shall remain in
3 effect until the data subject rescinds such election.

4 3. Notification of election to have confidential personal information
5 withheld. Every individual reference services provider shall establish
6 and maintain a notification system through which a data subject may
7 elect to have all confidential personal information on such data subject
8 excluded from any individual reference services report provided by the
9 individual reference services provider. The individual reference
10 services provider shall accept requests in writing or by telephone and
11 shall establish a toll-free telephone number for this purpose. Each
12 individual reference services provider that maintains files on data
13 subjects on a nationwide basis shall establish and maintain such notifi-
14 cation system jointly with affiliated individual reference services
15 providers. Under no circumstances may any information about an individ-
16 ual acquired through the notification system be disclosed in any indi-
17 vidual reference services report or otherwise, except to a government
18 agency or pursuant to a court order.

19 4. Notice of request for and disclosure of confidential personal
20 information. Every individual reference services provider shall send a
21 written notice to a data subject whenever the individual reference
22 services provider has provided an individual reference services report
23 concerning the data subject; except that no such notice shall be given
24 when a report is provided to a governmental agency or pursuant to a
25 court order. The notice shall clearly and conspicuously describe the
26 following: (a) the name, address and the telephone number of the person
27 who requested the individual reference services report; (b) the date of
28 such request; (c) that the data subject has the right to receive a copy

1 of the report free of charge annually and to receive additional copies
2 at a fee not exceeding eight dollars; (d) that the data subject has the
3 right to request that confidential personal information be withheld from
4 future reports; and (e) the data subject's rights under this section and
5 section six hundred seventy-six-c of this article. Such notice shall be
6 printed in no smaller than twelve point type and shall be sent no later
7 than the date when such individual reference services report is sent to
8 the requesting person.

9 5. Disclosure of individual reference services report to data subject.
10 Every data subject shall have the right to obtain all information about
11 such data subject in the files of an individual reference services
12 provider pursuant to the procedures set forth in this subdivision.

13 (a) Every individual reference services provider shall, upon request
14 and proper identification of any data subject, clearly and accurately
15 disclose to the data subject the nature, contents, and substance of all
16 information in its file pertaining to the data subject, or deliver to
17 the data subject a copy of all such information, including any codes or
18 keys necessary to interpret such information. In addition, the individ-
19 ual reference services provider shall provide the data subject with the
20 name and address of the recipients of any individual reference services
21 reports regarding the data subject provided within the twelve-month
22 period preceding the request, other than reports provided to a govern-
23 mental agency or pursuant to a court order. The individual reference
24 services provider may not impose any fee or charge upon the data subject
25 for the disclosure required by this subdivision, provided that a fee of
26 not more than eight dollars may be charged if the data subject has
27 requested and received such a report within the prior twelve months.

1 (b) If a data subject requests disclosure of information in the files
2 of an individual reference services provider without providing suffi-
3 cient proof of identity, the individual reference services provider
4 shall advise the data subject of the information required to establish
5 such proof of identity. No information shall be disclosed to a data
6 subject unless and until the data subject provides sufficient proof of
7 identity. Information received by an individual reference services
8 provider for the purpose of establishing proof of identity may not be
9 used for any other purpose and may not be disclosed in an individual
10 reference services report or otherwise, except to a government agency or
11 pursuant to court order.

12 6. Notice of rights of data subjects. Every individual reference
13 services provider, upon contact by a data subject by telephone, regular
14 mail, electronic mail or in person regarding information which may be
15 contained in the individual reference services provider's files regard-
16 ing that data subject, shall notify the data subject of the rights
17 established by this section and section six hundred seventy-six-c of
18 this article. If the contact is made by telephone or in person, the
19 individual reference services provider shall provide such notice orally
20 at the time of such conversation or, if contact is by electronic mail or
21 in writing, such notice shall be in writing, in a clear and conspicuous
22 format in no smaller than twelve point type.

23 7. Protection of confidential personal information. Every individual
24 reference services provider shall establish appropriate administrative,
25 technical and physical safeguards to ensure the security and confiden-
26 tiality of records and to protect against any anticipated threats or
27 hazards to their security or integrity which could result in substantial

1 harm, embarrassment, inconvenience or unfairness to any data subject
2 about whom information is maintained.

3 § 676-b. Collection and distribution of personal information by
4 marketing list brokers. 1. Right of exclusion from marketing reports.
5 Every data subject shall have the right to have marketing list informa-
6 tion about the data subject excluded from marketing reports issued by
7 marketing list brokers by providing notice either directly to the
8 marketing list broker or through the notification system maintained by
9 the secretary of state pursuant to section six hundred seventy-six-c of
10 this article.

11 2. Removal of data subjects from marketing reports. Upon receipt of
12 notice that a data subject does not want marketing list information
13 included in any marketing report, every marketing list broker shall be
14 prohibited from including such marketing list information in any market-
15 ing report, unless the data subject provides written consent to the
16 inclusion of such information. An election by a data subject under this
17 section shall be effective with respect to the marketing list broker,
18 and every affiliate, agent and employee of the marketing list broker, on
19 the date on which the data subject notifies the marketing list broker,
20 except that no penalties may be imposed under this section for disclo-
21 sure made within five business days after receipt of such election if
22 the marketing list broker proves that the information was disclosed in
23 response to a request received prior to the receipt of such election and
24 that the marketing list broker took all reasonable steps to prevent such
25 disclosure from occurring. Notification from a data subject that market-
26 ing list information must be withheld shall remain in effect until the
27 data subject rescinds such election.

1 3. Disclosure of marketing list report to data subject. Every data
2 subject shall have the right to obtain all information about such data
3 subject in the files of a marketing list broker pursuant to the proce-
4 dures set forth in this subdivision.

5 (a) Every marketing list broker shall, upon request and proper iden-
6 tification of any data subject, clearly and accurately disclose to the
7 data subject the nature, contents, and substance of all information in
8 its file pertaining to the data subject, or deliver to the data subject
9 a copy of all such information, including any codes or keys necessary to
10 interpret such information. In addition, the marketing list broker shall
11 provide the data subject with the name and addresses of the recipients
12 of any marketing reports regarding the data subject provided within the
13 twelve-month period preceding the request, other than reports provided
14 to a governmental agency or pursuant to a court order. The marketing
15 list broker may not impose any fee or charge upon the data subject for
16 the disclosure required by this subdivision, provided that a fee of not
17 more than eight dollars may be charged if the data subject has requested
18 and received such a report within the prior twelve months.

19 (b) If a data subject requests disclosure of information in the files
20 of a marketing list broker without providing sufficient proof of identi-
21 ty, the marketing list broker shall advise the data subject of the
22 information required to establish such proof of identity. No information
23 shall be disclosed to a data subject unless and until the data subject
24 provides sufficient proof of identity. Information received by a market-
25 ing list broker for the purpose of establishing proof of identity may
26 not be used for any other purpose and may not be disclosed in a market-
27 ing report or otherwise, except to a government agency or pursuant to a
28 court order.

1 4. Notice of rights of data subjects. Every marketing list broker upon
2 contact by a data subject by telephone, regular mail, electronic mail or
3 in person regarding information which may be contained in the marketing
4 list broker's files regarding that data subject, shall notify the data
5 subject of the rights established by this section and section six
6 hundred seventy-six-c of this article. If the contact is made by tele-
7 phone or in person, the marketing list broker shall provide such notice
8 orally at the time of such conversation, or if the contact is made by
9 electronic mail or in writing, such notice shall be in writing in a
10 clear and conspicuous format and in no smaller than twelve point type.

11 5. Protection of marketing list information. Every marketing list
12 broker shall establish appropriate administrative, technical and phys-
13 ical safeguards to ensure the security and confidentiality of records
14 and to protect against any anticipated threats or hazards to their secu-
15 rity or integrity which could result in substantial harm, embarrassment,
16 inconvenience or unfairness to any data subject about whom information
17 is maintained.

18 § 676-c. Exclusion lists. 1. The secretary of state shall establish
19 and operate, or enter into an agreement with another person who is not
20 an information broker to establish and operate, the following two exclu-
21 sion lists: (a) an individual reference services provider exclusion list
22 consisting of the data subjects who do not want their confidential
23 personal information disclosed in any information reference services
24 report; and (b) a marketing broker exclusion list consisting of the data
25 subjects who do not want their marketing list information included in
26 any marketing report.

27 2. Each exclusion list shall include all data subjects who have noti-
28 fied the secretary of state that they wish to be included on the list or

1 have otherwise indicated that they do not wish to have their confiden-
2 tial personal information disclosed in any information reference
3 services report or to have their marketing list information included in
4 any marketing report. The name and other identifying information of
5 each data subject shall remain on the exclusion lists until the data
6 subject rescinds his or her notification, and the secretary of state may
7 by regulation provide for other circumstances under which removal may be
8 made. The exclusion lists shall be published at least quarterly in hard
9 copy and may be made available in other formats at the discretion of the
10 secretary of state.

11 3. Notwithstanding any other provision of law, no information broker,
12 or any affiliate, agent or employee of such information broker, shall
13 issue or cause to be issued any report containing confidential personal
14 information or marketing list information relating to any data subject
15 listed in the most recent relevant exclusion list published by the
16 secretary of state; provided that no penalties may be imposed under this
17 section for any disclosures within five business days after the publica-
18 tion of the exclusion list relating to any data subject listed for the
19 first time in such exclusion list, if the information broker establishes
20 that the information was disclosed in response to a request received
21 prior to the publication of the list and the information broker took all
22 reasonable steps to prevent such disclosure from occurring.

23 4. The secretary of state shall promulgate rules or regulations which
24 specify:

25 (a) the methods by which members of the public will be advised that
26 the exclusion lists have been created and that data subjects have the
27 right to be added to the lists;

1 (b) the methods by which a data subject may give notice to the secre-
2 tary of state or other entity operating the exclusion list that such
3 data subject must be listed on the exclusion list;

4 (c) the methods by which a data subject may revoke a notice previously
5 given and be removed from the exclusion list;

6 (d) the methods by which any information broker may obtain access to
7 the exclusion list; and

8 (e) such other matters that the secretary of state deems necessary to
9 implement this section.

10 5. The secretary of state may impose a charge on information brokers
11 in an amount calculated to defray the costs of compiling and maintaining
12 the exclusion lists. If such exclusion lists are compiled and maintained
13 by an entity other than the secretary of state, the agreement entered
14 into shall specify the amount that such entity shall be permitted to
15 charge information brokers for obtaining access to the exclusion lists.
16 In no case may a data subject be charged for being included in the
17 exclusion list.

18 6. Information obtained for the purpose of compiling the exclusion
19 lists, including but not limited to the names, addresses, electronic
20 mail addresses and telephone numbers of data subjects who request to be
21 added to the exclusion list, may be used only for the purpose of compli-
22 ance with this section or in a proceeding or action commenced pursuant
23 to this section. Such information shall not be subject to public
24 inspection or any other disclosure.

25 § 676-d. Penalties. Whenever there shall be a violation of this arti-
26 cle or any rules or regulations promulgated pursuant to this article, an
27 application may be made by the attorney general in the name of the
28 people of the state of New York to a court or justice having jurisdic-

1 tion to issue an injunction, and upon notice to the defendant of not
2 fewer than five days, to enjoin and restrain the continuance of such
3 violations; and if it shall appear to the satisfaction of the court or
4 justice, that the defendant has, in fact, violated this article an
5 injunction may be issued by such court or justice enjoining and
6 restraining any further violation, without requiring proof that any
7 person has in fact, been injured or damaged thereby. In any such
8 proceeding, the court may make allowances to the attorney general as
9 provided in paragraph six of subdivision (a) of section eighty-three
10 hundred three of the civil practice law and rules, and direct restitu-
11 tion. Whenever the court shall determine that a violation of this arti-
12 cle has occurred, the court may impose a civil penalty of not more than
13 one thousand dollars per violation. In connection with any such proposed
14 application, the attorney general is authorized to take proof and make a
15 determination of the relevant facts and to issue subpoenas in accordance
16 with the civil practice law and rules. An action brought by the attorney
17 general may also include other causes of action.

18 § 676-e. Civil liability. 1. In addition to the right of action grant-
19 ed to the attorney general pursuant to this article, any person who has
20 had confidential personal information or marketing list information
21 disclosed in violation of this article may bring an action in his or her
22 own name to enjoin such unlawful act or practice, an action to recover
23 his actual damages or one thousand dollars, whichever is greater, or
24 both such actions. The court may, in its discretion, increase the award
25 of damages to an amount not to exceed three times the actual damages or
26 five thousand dollars, whichever is greater, for each willful or knowing
27 violation. The court may award reasonable attorney's fees to a prevail-
28 ing plaintiff.

1 2. The remedies, duties, prohibitions and penalties provided in this
2 article are not exclusive and are in addition to all other causes of
3 action, remedies, and penalties provided by law.

4 § 3. The executive law is amended by adding a new section 101 to read
5 as follows:

6 § 101. Exclusion lists. The secretary of state shall establish and
7 maintain two exclusion lists pursuant to article thirty-two-A of the
8 general business law.

9 § 4. Severability. If any clause, sentence, paragraph, section or part
10 of this act shall be adjudged by any court of competent jurisdiction to
11 be invalid, such judgment shall not affect, impair or invalidate the
12 remainder thereof, but shall be confined in its operation to the clause,
13 sentence, paragraph, section or part thereof directly involved in the
14 controversy in which such judgment shall have been rendered.

15 § 5. This act shall take effect on the one hundred eightieth day after
16 it shall have become a law, provided however that the secretary of state
17 shall promulgate such rules or regulations as are necessary to implement
18 this act within 150 days after enactment.