

HOUSE BILL 305

I3
HB 1094/15 – ECM

6lr0381

By: **Delegates Smith, Barkley, Barve, Brooks, Carr, Clippinger, Davis, Frick, Glenn, Kelly, Korman, Kramer, Lisanti, Luedtke, McCray, A. Miller, Moon, Platt, S. Robinson, Valderrama, Waldstreicher, A. Washington, and C. Wilson**

Introduced and read first time: January 26, 2016
Assigned to: Economic Matters

Committee Report: Favorable
House action: Adopted
Read second time: February 17, 2016

CHAPTER _____

1 AN ACT concerning

2 **Consumer Protection – Monitoring Consumer Behavior and Shopping**
3 **Habits – Required Notice**

4 FOR the purpose of prohibiting a merchant from using certain technology to monitor the
5 behavior or shopping habits of a certain consumer unless the merchant provides a
6 certain notice in a certain manner; providing that a violation of this Act is an unfair
7 or deceptive trade practice under the Maryland Consumer Protection Act and is
8 subject to certain enforcement and penalty provisions; defining certain terms;
9 providing for the application of this Act; and generally relating to merchants and the
10 use of technology to monitor consumer behavior or shopping habits.

11 BY adding to
12 Article – Commercial Law
13 Section 14–1325
14 Annotated Code of Maryland
15 (2013 Replacement Volume and 2015 Supplement)

16 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
17 That the Laws of Maryland read as follows:

18 **Article – Commercial Law**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 14-1325.

2 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
3 INDICATED.

4 (2) "CONSUMER" HAS THE MEANING STATED IN § 13-101 OF THIS
5 ARTICLE.

6 (3) "MERCHANT" HAS THE MEANING STATED IN § 13-101 OF THIS
7 ARTICLE.

8 (B) THIS SECTION DOES NOT APPLY TO:

9 (1) THE USE OF ANY MOBILE APPLICATION OR SIMILAR TECHNOLOGY
10 THAT A CONSUMER AFFIRMATIVELY CHOOSES TO DOWNLOAD ONTO THE
11 CONSUMER'S WIRELESS DEVICE; OR

12 (2) TECHNOLOGY USED BY A MERCHANT EXCLUSIVELY FOR
13 PURPOSES OF SAFETY OR THEFT PREVENTION.

14 (C) (1) A MERCHANT MAY NOT USE ANY TECHNOLOGY TO MONITOR THE
15 BEHAVIOR OR SHOPPING HABITS OF A CONSUMER WHO IS SHOPPING ON THE
16 MERCHANT'S BUSINESS PREMISES UNLESS THE MERCHANT PROVIDES A NOTICE
17 THAT CLEARLY AND CONSPICUOUSLY DISCLOSES TO THE CONSUMER THAT THE
18 MERCHANT IS USING TECHNOLOGY TO MONITOR CONSUMER BEHAVIOR OR
19 SHOPPING HABITS.

20 (2) A MERCHANT SHALL PROVIDE THE NOTICE REQUIRED UNDER
21 PARAGRAPH (1) OF THIS SUBSECTION BY DISPLAYING THE NOTICE:

22 (I) AT EACH ENTRANCE TO THE MERCHANT'S BUSINESS
23 PREMISES;

24 (II) ON THE CONSUMER'S WIRELESS DEVICE; OR

25 (III) THROUGH ANY OTHER MEANS THAT IS REASONABLY
26 CALCULATED TO PROVIDE THE NOTICE TO CONSUMERS.

27 (3) DISPLAY OF A NOTICE ON A MERCHANT'S WEB SITE MAY NOT BE
28 CONSIDERED TO BE REASONABLY CALCULATED TO PROVIDE NOTICE UNDER
29 PARAGRAPH (2)(III) OF THIS SUBSECTION UNLESS:

30 (I) THE NOTICE IS DISPLAYED IN A CONSPICUOUS LOCATION
31 ON THE MERCHANT'S WEB SITE; AND

1 **(II) THE CONSUMER AFFIRMATIVELY CONSENTS TO BEING**
2 **MONITORED.**

3 **(D) A VIOLATION OF THIS SECTION:**

4 **(1) IS AN UNFAIR OR DECEPTIVE TRADE PRACTICE UNDER TITLE 13**
5 **OF THIS ARTICLE; AND**

6 **(2) IS SUBJECT TO THE ENFORCEMENT AND PENALTY PROVISIONS**
7 **CONTAINED IN TITLE 13 OF THIS ARTICLE.**

8 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
9 October 1, 2016.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.