

SENATE BILL 159

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1998 Regular Session
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By: **Senators Frosh, Blount, Boozer, Bromwell, Colburn, Collins, Conway, Craig, Currie, Dyson, Ferguson, Forehand, Fry, Hafer, Hogan, Hollinger, Jimeno, Kasemeyer, Kelley, Lawlah, Madden, McCabe, Middlebrooks, Middleton, Neall, Pinsky, Roesser, Ruben, Sfikas, Stoltzfus, Stone, Teitelbaum, and Van Hollen**

Introduced and read first time: January 23, 1998
Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Motor Vehicle Administration - Privacy Protection Act of 1998**

3 FOR the purpose of prohibiting the disclosure, except under certain circumstances, of
4 Motor Vehicle Administration records containing certain personal information
5 unless the individual who is the subject of the record consents to the disclosure
6 in writing; requiring the Administration to provide certain notice that the
7 Administration is prohibited from disclosing personal information, except under
8 certain circumstances, unless the disclosure is authorized by a certain person in
9 interest; authorizing certain individuals to allow the disclosure of personal
10 information under certain circumstances; limiting the scope of the personal
11 information that may be disclosed; defining certain terms; and generally
12 relating to access to personal information contained in records of the Motor
13 Vehicle Administration.

14 BY repealing and reenacting, with amendments,
15 Article - State Government
16 Section 10-611 and 10-616(p)
17 Annotated Code of Maryland
18 (1995 Replacement Volume and 1997 Supplement)

19 BY repealing and reenacting, with amendments,
20 Article - Transportation
21 Section 12-112
22 Annotated Code of Maryland
23 (1992 Replacement Volume and 1997 Supplement)

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

Article - State Government

10-611.

(a) In this Part III of this subtitle the following words have the meanings indicated.

(b) "Applicant" means a person or governmental unit that asks to inspect a public record.

(c) "Custodian" means:

(1) the official custodian; or

(2) any other authorized individual who has physical custody and control of a public record.

(d) "Official custodian" means an officer or employee of the State or of a political subdivision who, whether or not the officer or employee has physical custody and control of a public record, is responsible for keeping the public record.

(e) "Person in interest" means:

(1) a person or governmental unit that is the subject of a public record or a designee of the person or governmental unit;

(2) if the person has a legal disability, the parent or legal representative of the person; or

(3) as to requests for correction of certificates of death under § 5-310(d)(2) of the Health - General Article, the spouse, adult child, parent, adult sibling, grandparent, or guardian of the person of the deceased at the time of the deceased's death.

(f) (1) "Personal information" means information that identifies an individual including an individual's address, driver's license number or any other identification number, medical or disability information, name, photograph or computer generated image, social security number, or telephone number.

(2) "Personal information" does not include an individual's driver's status, driving offenses, 5-digit zip code, or information on vehicular accidents.

(g) (1) "Public record" means the original or any copy of any documentary material that:

(i) is made by a unit or instrumentality of the State government or of a political subdivision or received by the unit or instrumentality in connection with the transaction of public business; and

(ii) is in any form, including:

- 1 1. a card;
- 2 2. a computerized record;
- 3 3. correspondence;
- 4 4. a drawing;
- 5 5. film or microfilm;
- 6 6. a form;
- 7 7. a map;
- 8 8. a photograph or photostat;
- 9 9. a recording; or
- 10 10. a tape.

11 (2) "Public record" includes a document that lists the salary of an
12 employee of a unit or instrumentality of the State government or of a political
13 subdivision.

14 (3) "Public record" does not include a digital photographic image or
15 signature of an individual, or the actual stored data thereof, recorded by the Motor
16 Vehicle Administration.

17 (h) "SENSITIVE PERSONAL INFORMATION" MEANS PERSONAL INFORMATION
18 CONTAINING:

19 (1) THE SOCIAL SECURITY NUMBER OF A PERSON IN INTEREST; OR

20 (2) INFORMATION REGARDING THE PHYSICAL CHARACTERISTICS,
21 MEDICAL CONDITION, OR DISABILITIES OF A PERSON IN INTEREST.

22 (I) (1) "Telephone solicitation" means the initiation of a telephone call to an
23 individual or to the residence or business of an individual for the purpose of
24 encouraging the purchase or rental of or investment in property, goods, or services.

25 (2) "Telephone solicitation" does not include a telephone call or message:

26 (i) to an individual who has given express permission to the person
27 making the telephone call;

28 (ii) to an individual with whom the person has an established
29 business relationship; or

30 (iii) by a tax-exempt, nonprofit organization.

1 10-616.

2 (p) (1) Except as provided in paragraphs (2) through (5) of this subsection, a
3 custodian may not knowingly disclose a public record of the Motor Vehicle
4 Administration containing personal information.

5 (2) A custodian shall disclose personal information when required by
6 federal law.

7 (3) (i) This paragraph applies only to the disclosure of personal
8 information for any use in response to a request for an individual motor vehicle
9 record.

10 (ii) The custodian [shall provide notice in a clear and conspicuous
11 manner on the forms for the issuance or renewal of a driver's license, certificate of
12 title, registration, or identification card that personal information may be disclosed to
13 any person] **MAY NOT DISCLOSE PERSONAL INFORMATION WITHOUT WRITTEN
14 CONSENT FROM THE PERSON IN INTEREST.**

15 (iii) The custodian [shall provide an opportunity to prohibit
16 disclosure under this paragraph in a clear and conspicuous manner on the forms for
17 the issuance or renewal of a driver's license, certificate of title, registration, or
18 identification card] **MAY NOT DISCLOSE SENSITIVE PERSONAL INFORMATION
19 PURSUANT TO A WRITTEN CONSENT FROM THE PERSON IN INTEREST UNLESS THE
20 CONSENT EXPRESSLY AUTHORIZES THE DISCLOSURE OF SENSITIVE PERSONAL
21 INFORMATION.**

22 (IV) 1. **THE PERSON IN INTEREST MAY AT ANY TIME WITHDRAW
23 CONSENT TO DISCLOSE PERSONAL INFORMATION AND SENSITIVE PERSONAL
24 INFORMATION BY NOTIFYING THE CUSTODIAN.**

25 2. **THE WITHDRAWAL OF THE PERSON IN INTEREST'S
26 CONSENT TO DISCLOSE PERSONAL INFORMATION AND SENSITIVE PERSONAL
27 INFORMATION SHALL TAKE EFFECT AS SOON AS PRACTICAL AFTER IT IS RECEIVED
28 BY THE CUSTODIAN.**

29 [(iv) The custodian may not disclose personal information under this
30 paragraph if a person in interest prohibited disclosure under this paragraph or by
31 notifying the custodian in writing.

32 (v) If the person in interest does not prohibit disclosure of the
33 personal information as provided in subparagraph (iv) of this paragraph, the
34 custodian shall disclose the personal information.]

35 (4) (i) This paragraph applies only to the disclosure of personal
36 information for inclusion in lists of information to be used for surveys, marketing, and
37 solicitations.

38 (ii) The custodian [shall provide notice in a clear and conspicuous
39 manner on the forms for the issuance or renewal of a driver's license, certificate of

1 title, registration, or identification card that personal information may be disclosed
2 for surveys, marketing, and solicitations] MAY NOT DISCLOSE PERSONAL
3 INFORMATION FOR SURVEYS, MARKETING, AND SOLICITATIONS WITHOUT WRITTEN
4 CONSENT FROM THE PERSON IN INTEREST.

5 (iii) The custodian [shall provide an opportunity to prohibit
6 disclosure under this paragraph in a clear and conspicuous manner on the forms for
7 the issuance or renewal of a driver's license, certificate of title, registration, or
8 identification card] MAY NOT DISCLOSE SENSITIVE PERSONAL INFORMATION
9 PURSUANT TO A WRITTEN CONSENT FROM THE PERSON IN INTEREST UNLESS THE
10 CONSENT EXPRESSLY AUTHORIZES THE DISCLOSURE OF SENSITIVE PERSONAL
11 INFORMATION.

12 (IV) 1. THE PERSON IN INTEREST MAY AT ANY TIME WITHDRAW
13 CONSENT TO DISCLOSE PERSONAL INFORMATION AND SENSITIVE PERSONAL
14 INFORMATION BY NOTIFYING THE CUSTODIAN.

15 2. THE WITHDRAWAL OF THE PERSON IN INTEREST'S
16 CONSENT TO DISCLOSE PERSONAL INFORMATION AND SENSITIVE PERSONAL
17 INFORMATION SHALL TAKE EFFECT AS SOON AS PRACTICAL AFTER IT IS RECEIVED
18 BY THE CUSTODIAN.

19 [(iv) The custodian may not disclose personal information under this
20 paragraph if a person in interest prohibited disclosure under this paragraph or by
21 notifying the custodian in writing.

22 (v) Except as provided in subparagraph (vi) of this paragraph, if
23 the person in interest does not prohibit disclosure of the personal information as
24 provided in subparagraph (iv) of this paragraph, the custodian may disclose the
25 personal information.

26 [(vi)] (V) The custodian may not disclose personal information
27 under this paragraph for use in telephone solicitations.

28 [(vii)] (VI) Personal information disclosed under this paragraph may
29 be used only for surveys, marketing, or solicitations and only for a purpose approved
30 by the Motor Vehicle Administration.

31 (5) Notwithstanding the provisions of [paragraph (3) or (4)]
32 PARAGRAPHS (3) AND (4) of this subsection, a custodian shall disclose personal
33 information:

34 (i) for use by a federal, state, or local government, including a law
35 enforcement agency, or a court in carrying out its functions;

36 (ii) for use in connection with matters of:

37 1. motor vehicle or driver safety;

38 2. motor vehicle theft;

- 1 3. motor vehicle emissions;
- 2 4. motor vehicle product alterations, recalls, or advisories;
- 3 5. performance monitoring of motor vehicle parts and
4 dealers; and
- 5 6. removal of nonowner records from the original records of
6 motor vehicle manufacturers;

7 (iii) for use by a private detective agency licensed by the Secretary of
8 State Police under Title 13 of the Business Occupations and Professions Article or a
9 security guard service licensed by the Secretary of State Police under Title 19 of the
10 Business Occupations and Professions Article for a purpose permitted under this
11 paragraph;

12 (iv) for use in connection with a civil, administrative, arbitral, or
13 criminal proceeding in a federal, State, or local court or regulatory agency for service
14 of process, investigation in anticipation of litigation, and execution or enforcement of
15 judgments or orders;

16 (v) for purposes of research or statistical reporting as approved by
17 the Motor Vehicle Administration provided that the personal information is not
18 published, redisclosed, or used to contact the individual;

19 (vi) for use by an insurer, insurance support organization, or
20 self-insured entity, or its employees, agents, or contractors, in connection with rating,
21 underwriting, claims investigating, and antifraud activities;

22 (vii) for use in the normal course of business activity by a legitimate
23 business entity, its agents, employees, or contractors, but only:

24 1. to verify the accuracy of personal information submitted
25 by the individual to that entity; and

26 2. if the information submitted is not accurate, to obtain
27 correct information only for the purpose of:

28 A. preventing fraud by the individual;

29 B. pursuing legal remedies against the individual; or

30 C. recovering on a debt or security interest against the
31 individual;

32 (viii) for use by an employer or insurer to obtain or verify information
33 relating to a holder of a commercial driver's license that is required under the
34 Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. App. et seq);

35 (ix) for use in connection with the operation of a private toll
36 transportation facility;

1 (x) for use in providing notice to the owner of a towed or impounded
2 motor vehicle;

3 (xi) for use by an applicant who provides written consent from the
4 individual to whom the information pertains if the consent is obtained within the
5 6-month period before the date of the request for personal information; and

6 (xii) for a use specifically authorized by the law of this State, if the
7 use is related to the operation of a motor vehicle or public safety.

8 (6) (i) A person receiving personal information under paragraph (4) or
9 (5) of this subsection may not use or redisclose the personal information for a purpose
10 other than the purpose for which the custodian disclosed the personal information.

11 (ii) A person receiving personal information under paragraph (4) or
12 (5) of this subsection who rediscloses the personal information shall:

13 1. keep a record for 5 years of the person to whom the
14 information is redisclosed and the purpose for which the information is to be used;
15 and

16 2. make the record available to the custodian on request.

17 (7) (i) The custodian shall adopt regulations to implement and enforce
18 the provisions of this subsection.

19 (ii) 1. The custodian shall adopt regulations and procedures for
20 securing a person in interest's waiver of privacy rights under this subsection when an
21 applicant requests personal information about the person in interest that the
22 custodian is not authorized to disclose under paragraphs (2) through (5) of this
23 subsection.

24 2. The regulations and procedures adopted under this
25 subparagraph shall:

26 A. state the circumstances under which the custodian may
27 request a waiver; and

28 B. conform with the waiver requirements in the federal
29 Driver's Privacy Protection Act of 1994 and other federal law.

30 (8) The custodian may develop and implement methods for monitoring
31 compliance with this section and ensuring that personal information is used only for
32 purposes for which it is disclosed.

Article - Transportation

12-112.

(a) Unless the information is classified as confidential under § 12-111 of this subtitle or otherwise as provided by law, and subject to § 10-616(p) of the State Government Article, the Administration may furnish listings of vehicle registration and other public information in its records to those persons who request them, but only if the Administration approves of the purpose for which the information is requested.

(b) The Administration shall charge a fee for any listing furnished under this section. The fee charged may not be less than the cost to this State of preparing that listing. The revenue from the fee shall not be subject to the distribution provisions of Title 8, Subtitle 4 of this article.

(c) A person furnished any information under this section is prohibited from distributing or otherwise using the information for any purpose other than that for which it was furnished.

(d) (1) (i) In this subsection the following terms have the meanings indicated.

(ii) "Personal information" has the meaning indicated in § 10-611(f) of the State Government Article.

(iii) "SENSITIVE PERSONAL INFORMATION" HAS THE MEANING INDICATED IN § 10-611 (H) OF THE STATE GOVERNMENT ARTICLE.

(IV) "Telephone solicitation" has the meaning indicated in § 10-611[(h)] (I) of the State Government Article.

(2) The Administration [shall provide notice in a clear and conspicuous manner on the forms for the issuance or renewal of a driver's license, certificate of title, registration, or identification card that personal information may be disclosed] MAY NOT DISCLOSE PERSONAL INFORMATION, INCLUDING SENSITIVE PERSONAL INFORMATION, for inclusion in listings of information for use in surveys, marketing, or solicitations WITHOUT WRITTEN CONSENT FROM THE PERSON IN INTEREST.

(3) An individual may [prohibit] ALLOW disclosure of personal information INCLUDING SENSITIVE PERSONAL INFORMATION under this section when applying for or renewing a driver's license, certificate of title, registration, or identification card or by notifying the Administrator in writing at any time.

(4) The Administration may not disclose personal information OF ANY TYPE under this section for use in telephone solicitations.

(5) This subsection does not prevent the Administration from furnishing personal information under this section:

- 1 (i) To another governmental agency; or
- 2 (ii) For another purpose permissible under § 10-616(p) of the State
- 3 Government Article.

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
5 October 1, 1998.