

HOUSE BILL 277

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2000 Regular Session
(01r0180)

ENROLLED BILL

-- Commerce and Government Matters/Economic and Environmental Affairs --

Introduced by **The Speaker (Administration) and Delegates Franchot,
Mandel, Barve, Petzold, DeCarlo, Rosenberg, and Pendergrass**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **Public Records - Privacy Policies and Data Security**

3 FOR the purpose of requiring that personal records be collected by units of
4 government only under certain circumstances and subject to certain conditions;
5 requiring certain custodians of public records to collect personal information in
6 a certain manner; requiring that certain custodians provide certain information
7 to persons from whom personal information is collected; providing for certain
8 exceptions; requiring the Secretary of Budget and Management to report
9 annually to the General Assembly on certain regulations; requiring units of
10 State government to post certain privacy policies on their web sites; requiring
11 ~~units~~ each unit of State government to ensure the security of ~~certain~~ the unit's
12 records; prohibiting a certain construction of this Act; encouraging counties and
13 municipal corporations to conform certain practices to this Act; and generally
14 relating to privacy policies and data security for public records.

15 BY repealing and reenacting, with amendments,

1 Article - State Government
2 Section 10-624 and 10-633
3 Annotated Code of Maryland
4 (1999 Replacement Volume)

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

7 **Article - State Government**

8 10-624.

9 (a) In this section, "personal record" means a public record that names or, with
10 reasonable certainty, otherwise identifies an individual by an identifying factor such
11 as:

- 12 (1) an address;
- 13 (2) a description;
- 14 (3) a finger or voice print;
- 15 (4) a number; or
- 16 (5) a picture.

17 (B) (1) PERSONAL RECORDS ~~SHALL~~ MAY NOT BE CREATED UNLESS THE
18 NEED FOR THE INFORMATION HAS BEEN CLEARLY ESTABLISHED BY THE UNIT
19 COLLECTING THE RECORDS.

20 (2) PERSONAL INFORMATION ~~SHALL~~ COLLECTED FOR PERSONAL
21 RECORDS:

22 (I) SHALL BE APPROPRIATE AND RELEVANT TO THE PURPOSES
23 FOR WHICH IT IS COLLECTED;

24 (II) SHALL BE ACCURATE AND CURRENT TO THE GREATEST
25 EXTENT ~~POSSIBLE~~ PRACTICABLE; AND

26 (III) MAY NOT BE OBTAINED BY FRAUDULENT MEANS.

27 (C) (1) THIS SUBSECTION ONLY APPLIES TO UNITS OF STATE GOVERNMENT.

28 (2) EXCEPT AS OTHERWISE PROVIDED BY LAW, AN OFFICIAL CUSTODIAN
29 WHO KEEPS PERSONAL RECORDS SHALL ~~ENDEAVOR TO,~~ TO THE GREATEST EXTENT
30 PRACTICABLE, COLLECT PERSONAL INFORMATION FROM THE PERSON IN INTEREST.

31 (3) AN OFFICIAL CUSTODIAN WHO REQUESTS PERSONAL INFORMATION
32 FOR PERSONAL RECORDS SHALL PROVIDE THE FOLLOWING INFORMATION TO EACH
33 PERSON IN INTEREST FROM WHOM PERSONAL INFORMATION IS COLLECTED:

1 (I) THE PURPOSE FOR WHICH THE PERSONAL INFORMATION IS
2 COLLECTED;

3 (II) ANY SPECIFIC CONSEQUENCES TO THE PERSON FOR REFUSAL
4 TO PROVIDE THE PERSONAL INFORMATION;

5 (III) THE PERSON'S RIGHT TO INSPECT, AMEND, OR CORRECT
6 PERSONAL RECORDS, IF ANY;

7 (IV) WHETHER THE PERSONAL INFORMATION IS GENERALLY
8 AVAILABLE FOR PUBLIC INSPECTION; AND

9 (V) WHETHER THE PERSONAL INFORMATION IS MADE AVAILABLE
10 OR TRANSFERRED TO OR SHARED WITH ANY ENTITY OTHER THAN THE OFFICIAL
11 CUSTODIAN.

12 (4) EACH UNIT OF STATE GOVERNMENT SHALL POST ITS PRIVACY
13 POLICIES WITH REGARD TO THE COLLECTION OF PERSONAL INFORMATION,
14 INCLUDING THE POLICIES SPECIFIED IN THIS SUBSECTION, ON ITS INTERNET WEB
15 SITE.

16 (5) THE FOLLOWING PERSONAL RECORDS SHALL BE EXEMPT FROM THE
17 REQUIREMENTS OF THIS SUBSECTION:

18 (I) INFORMATION PERTAINING TO THE ENFORCEMENT OF
19 CRIMINAL LAWS OR THE ADMINISTRATION OF THE PENAL SYSTEM;

20 (II) INFORMATION CONTAINED IN INVESTIGATIVE MATERIALS
21 KEPT FOR THE PURPOSE OF INVESTIGATING A SPECIFIC VIOLATION OF STATE LAW
22 AND MAINTAINED BY A STATE AGENCY WHOSE PRINCIPAL FUNCTION MAY BE OTHER
23 THAN LAW ENFORCEMENT;

24 ~~(III) STUDENT AND OTHER EDUCATIONAL RECORDS DESCRIBED IN~~
25 ~~THE CODE OF MARYLAND REGULATIONS AND THE CODE OF FEDERAL REGULATIONS;~~

26 ~~(IV) INFORMATION CONTAINED IN PATIENT MEDICAL AND~~
27 ~~PSYCHOLOGICAL RECORDS AT STATE MEDICAL FACILITIES, HOSPITALS, OR~~
28 ~~INSTITUTIONS, EXCEPT THAT THE EXTENT OF ANY ROUTINE SHARING OF~~
29 ~~INFORMATION WITH OTHER GOVERNMENTAL AGENCIES SHALL BE DISCLOSED IN~~
30 ~~WRITING TO THE PERSON IN INTEREST;~~

31 ~~(V)~~ (III) INFORMATION CONTAINED IN PUBLIC RECORDS WHICH
32 ARE ACCEPTED BY THE STATE ARCHIVIST FOR DEPOSIT IN THE MARYLAND HALL OF
33 RECORDS;

34 ~~(VI)~~ INFORMATION CONTAINED IN APPLICATIONS FOR
35 EMPLOYMENT, EXCEPT THAT THE EXTENT OF ANY ROUTINE SHARING OF THE
36 PERSONAL INFORMATION WITH OTHER GOVERNMENTAL AGENCIES SHALL BE
37 DISCLOSED TO THE PERSON IN INTEREST; AND

1 ~~(VII)~~ (IV) INFORMATION GATHERED AS PART OF FORMAL
 2 RESEARCH PROJECTS PREVIOUSLY REVIEWED AND APPROVED BY FEDERALLY
 3 MANDATED INSTITUTIONAL REVIEW BOARDS; AND

4 ~~(VIII)~~ (V) ANY OTHER PERSONAL RECORDS EXEMPTED BY
 5 REGULATIONS ADOPTED BY THE OFFICE OF INFORMATION TECHNOLOGY IN THE
 6 DEPARTMENT SECRETARY OF BUDGET AND MANAGEMENT, BASED ON THE
 7 RECOMMENDATION OF THE CHIEF OF INFORMATION TECHNOLOGY.

8 (6) IN ACCORDANCE WITH § 2-1246 OF THIS ARTICLE, THE SECRETARY
 9 OF BUDGET AND MANAGEMENT SHALL REPORT ON OCTOBER 1 OF EACH YEAR TO
 10 THE GENERAL ASSEMBLY ON THE PERSONAL RECORDS EXEMPTED BY REGULATIONS
 11 UNDER PARAGRAPH ~~(5)(VIII)~~ (5)(V) OF THIS SUBSECTION.

12 [(b)] (D) (1) This subsection does not apply to:

- 13 (i) a unit in the Legislative Branch of the State government;
- 14 (ii) a unit in the Judicial Branch of the State government; or
- 15 (iii) a board of license commissioners.

16 (2) If a unit or instrumentality of the State government keeps personal
 17 records, the unit or instrumentality shall submit an annual report to the Secretary of
 18 General Services, as provided in this subsection.

19 (3) An annual report shall state:

- 20 (i) the name of the unit or instrumentality;
- 21 (ii) for each set of the personal records:
 - 22 1. the name;
 - 23 2. the location; and
 - 24 3. if a subunit keeps the set, the name of the subunit;
- 25 (iii) for each set of personal records that has not been previously
 26 reported:
 - 27 1. the category of individuals to whom the set applies;
 - 28 2. a brief description of the types of information that the set
 29 contains;
 - 30 3. the major uses and purposes of the information;
 - 31 4. by category, the source of information for the set; and

1 5. the policies and procedures of the unit or instrumentality
2 as to access and challenges to the personal record by the person in interest and
3 storage, retrieval, retention, disposal, and security, including controls on access; and

4 (iv) for each set of personal records that has been disposed of or
5 changed significantly since the unit or instrumentality last submitted a report, the
6 information required under item (iii) of this paragraph.

7 (4) A unit or instrumentality that has 2 or more sets of personal records
8 may combine the personal records in the report only if the character of the personal
9 records is highly similar.

10 (5) The Secretary of General Services shall adopt regulations that
11 govern the form and method of reporting under this subsection.

12 (6) The annual report shall be available for public inspection.

13 [(c)] (E) The official custodian may permit inspection of personal records for
14 which inspection otherwise is not authorized by a person who is engaged in a research
15 project if:

16 (1) the researcher submits to the official custodian a written request
17 that:

18 (i) describes the purpose of the research project;

19 (ii) describes the intent, if any, to publish the findings;

20 (iii) describes the nature of the requested personal records;

21 (iv) describes the safeguards that the researcher would take to
22 protect the identity of the persons in interest; and

23 (v) states that persons in interest will not be contacted unless the
24 official custodian approves and monitors the contact;

25 (2) the official custodian is satisfied that the proposed safeguards will
26 prevent the disclosure of the identity of persons in interest; and

27 (3) the researcher makes an agreement with the unit or instrumentality
28 that:

29 (i) defines the scope of the research project;

30 (ii) sets out the safeguards for protecting the identity of the persons
31 in interest; and

32 (iii) states that a breach of any condition of the agreement is a
33 breach of contract.

1 10-633.

2 (a) Each unit of the State government shall have a program for the continual,
3 economical, and efficient management of the records of the unit.

4 (b) The program shall include procedures:

5 (1) TO ENSURE THE SECURITY OF THE RECORDS;

6 [(1)] (2) to establish and to revise, in accordance with the regulations,
7 record retention and disposal schedules that ensure the prompt and orderly
8 disposition of records that the unit no longer needs for its operation; and

9 [(2)] (3) to facilitate compliance with Part V of this subtitle.

10 SECTION 2. AND BE IT FURTHER ENACTED, That the provisions of this Act
11 may not be construed to preempt or conflict with the provisions of Title 4, Subtitle 3 of
12 the Health - General Article.

13 SECTION 3. AND BE IT FURTHER ENACTED, That the General Assembly
14 encourages counties and municipal corporations to review their privacy policies and
15 data security safeguards and conform their practices to those set forth in § 10-624(c) of
16 the State Government Article as enacted by Section 1 of this Act.

17 SECTION ~~2.~~ 4. AND BE IT FURTHER ENACTED, That this Act shall take
18 effect October 1, 2000.