

**Department of Legislative Services**  
 Maryland General Assembly  
 2001 Session

**FISCAL NOTE**

Senate Bill 219 (Senator Ferguson, *et al.*)  
 Finance

**Maryland Internet Privacy Act**

This bill prohibits merchants from collecting or maintaining an individual's "personal information" in consumer electronic transactions unless specified criteria are met.

A violation of the bill is an unfair and deceptive trade practice under the Maryland Consumer Protection Act.

**Fiscal Summary**

**State Effect:** General fund expenditures for the Office of the Attorney General could increase by \$126,500 in FY 2002, reflecting the bill's October 1, 2001 effective date. Out-year projections reflect annualization and inflation. Any cost recovery by the Attorney General resulting from actions brought under the unfair and deceptive trade practices provision cannot be quantified beforehand.

(in dollars)	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
GF Revenue	-	-	-	-	-
Expenditure	126,500	165,500	172,600	180,000	188,000
Net Effect	(\$126,500)	(\$165,500)	(\$172,600)	(\$180,000)	(\$188,000)

*Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect*

**Local Effect:** None.

**Small Business Effect:** Meaningful.

## Analysis

**Bill Summary:** The bill prohibits a merchant from collecting or maintaining records of an individual's "personal information" in a consumer electronic transaction unless the merchant: (1) provides the individual with notice of the types of information to be collected and retained, how the information will be used, and whether the information will be disclosed; and (2) offers a conspicuous and explicit method on the Internet site that allows the consumer to prohibit the merchant from collecting, using, or disclosing the personal information. If a consumer prohibits a merchant from collecting, using, or disclosing the consumer's personal information, the bill prohibits the merchant from: (1) collecting personal information about the consumer through the Internet; and (2) using or disclosing the information. The prohibitions do not apply when the collection, use, or disclosure is necessary to: (1) complete a commercial transaction; (2) protect the integrity of the merchant's website or on-line systems; (3) protect the merchant from liability; (4) respond to the judicial process; or (4) comply with other provisions of law that require the collection, use, or disclosure.

**Current Law:** No law specifically regulates the practice of selling an individual's personal information. However, companies that advertise that they will not sell their mailing lists to third parties may be subject to penalties under federal and State consumer protection laws, if they do so.

**Background:** At the federal level, the Children's Online Privacy Protection Act of 1998 requires the Federal Trade Commission (FTC) to adopt regulations for commercial website operators to follow in connection with the collection and use of personal information from children.

Several legislative proposals were introduced in the 106<sup>th</sup> Congress to protect on-line privacy further. For example, S. 806 and H.R. 3560 would have required the FTC to adopt regulations to protect privacy over the Internet and would have made it unlawful for a website operator to collect, use, or disclose personal information in a manner that violated the regulations. S. 2606 provided that an Internet service provider, online service provider, or operator of a commercial website on the Internet may not collect, use, or disclose personally identifiable information about a user of that service or website except as prescribed in the bill. Already, legislation has been introduced in the 107<sup>th</sup> Congress to regulate Internet privacy protection at the federal level for those not covered by the Children's Online Privacy Protection Act, including H.R. 237 and H.R. 347.

In a civil action, the FTC recently sued a failed online retailer seeking injunctive and declaratory relief to prevent the sale of confidential, personal customer information collected on the company's website in violation of the company's own privacy policy. The FTC alleged that the sale amounted to a violation of federal unfair or deceptive trade

practices legislation. A settlement was negotiated that set conditions on the sale of the database. The conditions included a requirement that the list only be sold to a buyer in a similar market that agreed to abide by the original privacy pledge. Attorneys general from 35 states joined privacy advocates in opposing the settlement. The list was later sold to another corporation, which promised to destroy the list.

**State Expenditures:** General fund expenditures for the Office of the Attorney General could increase by an estimated \$126,500 in fiscal 2002, which accounts for the bill's October 1, 2001 effective date. This estimate reflects the cost of hiring two investigators to assist in the investigation of on-line privacy violations. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Salaries and Fringe Benefits	\$90,900
Operating Expenses	<u>35,600</u>
<b>Total FY 2002 State Expenditures</b>	<b>\$126,500</b>

Future year expenditures reflect: (1) full salaries with a 6.5% increase in fiscal 2003 and a 4.5% increase each year thereafter, with 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

**Small Business Effect:** Small businesses that sell or distribute records of personal information of their customers would face increased compliance costs.

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### Additional Information

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Office of the Attorney General, Department of Legislative Services

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