
By: **Delegates Rosenberg and Grosfeld**
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Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Privacy of Bookseller and Public Library Records**

3 FOR the purpose of prohibiting the search or seizure by a federal, State, or local
4 government officer or employee of certain bookseller and public library records
5 under certain circumstances; allowing the search or seizure by a federal, State,
6 or local government officer or employee of certain bookseller and public library
7 records under certain circumstances; allowing the disclosure of certain
8 bookseller and library records pursuant to a court order in a criminal or civil
9 proceeding under certain circumstances; providing safeguards for a court order
10 authorizing the search, seizure, or disclosure of certain bookseller and public
11 library records; authorizing a civil action for certain violations; providing for
12 damages, attorneys' fees, and costs; establishing a statute of limitations for the
13 institution of a civil action; prohibiting the introduction into evidence of certain
14 bookseller and public library records under certain circumstances; providing
15 that certain provisions of law relating to library records are subject to this Act;
16 and generally relating to the privacy of bookseller and public library records.

17 BY repealing and reenacting, with amendments,
18 Article - Education
19 Section 23-107
20 Annotated Code of Maryland
21 (2001 Replacement Volume)

22 BY repealing and reenacting, without amendments,
23 Article - State Government
24 Section 10-616(a)
25 Annotated Code of Maryland
26 (1999 Replacement Volume and 2001 Supplement)

27 BY repealing and reenacting, with amendments,
28 Article - State Government
29 Section 10-616(e)
30 Annotated Code of Maryland

1 (1999 Replacement Volume and 2001 Supplement)

2 BY adding to

3 Article - Courts and Judicial Proceedings

4 Section 3-1700 to be under the new subtitle "Subtitle 17. Privacy of Bookseller
5 and Public Library Records"

6 Annotated Code of Maryland

7 (1998 Replacement Volume and 2001 Supplement)

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

10 **Article - Education**

11 23-107.

12 (a) Subject to the provisions of subsection (b) of this section AND § 3-1700 OF
13 THE COURTS ARTICLE, a free association, school, college or university library in this
14 State shall prohibit inspection, use, or disclosure of any circulation record or other
15 item, collection, or grouping of information about an individual that:

16 (1) Is maintained by a library;

17 (2) Contains an individual's name or the identifying number, symbol, or
18 other identifying particular assigned to the individual; and

19 (3) Identifies the use a patron makes of that library's materials, services,
20 or facilities.

21 (b) A free association, school, college, or university library in the State shall
22 permit inspection, use, or disclosure of the circulation record of an individual only in
23 connection with the library's ordinary business and only for the purposes for which
24 the record was created.

25 **Article - State Government**

26 10-616.

27 (a) Unless otherwise provided by law, a custodian shall deny inspection of a
28 public record, as provided in this section.

29 (e) (1) Subject to the provisions of paragraph (2) of this subsection AND §
30 3-1700 OF THE COURTS ARTICLE, a custodian shall prohibit inspection, use, or
31 disclosure of a circulation record of a public library or other item, collection, or
32 grouping of information about an individual that:

33 (i) is maintained by a library;

1 (ii) contains an individual's name or the identifying number,
2 symbol, or other identifying particular assigned to the individual; and

3 (iii) identifies the use a patron makes of that library's materials,
4 services, or facilities.

5 (2) A custodian shall permit inspection, use, or disclosure of a circulation
6 record of a public library only in connection with the library's ordinary business and
7 only for the purposes for which the record was created.

8 **Article - Courts and Judicial Proceedings**

9 **SUBTITLE 17. PRIVACY OF BOOKSELLER AND PUBLIC LIBRARY RECORDS.**

10 3-1700.

11 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
12 INDICATED.

13 (2) "BOOKSELLER" MEANS A PERSON THAT IS ENGAGED IN THE
14 BUSINESS OF THE SALE, RENTAL, OR DELIVERY OF BOOKS, PERIODICALS,
15 NEWSPAPERS, PAMPHLETS, PRINTS, RECORDS, TAPES, OR OTHER SIMILAR FORMS OF
16 LITERARY AND ARTISTIC MATERIALS TO THE PUBLIC.

17 (3) "DOCUMENTARY MATERIAL" MEANS A DOCUMENT, TAPE, OR OTHER
18 COMMUNICATION CREATED BY A BOOKSELLER OR PUBLIC LIBRARY TO HELP
19 DISSEMINATE TO THE PUBLIC A BOOK, PERIODICAL, NEWSPAPER, PAMPHLET, PRINT,
20 RECORD, TAPE, OR OTHER SIMILAR FORM OF LITERARY AND ARTISTIC MATERIAL.

21 (4) "PATRON" MEANS A PURCHASER, BORROWER, OR SUBSCRIBER OF
22 GOODS OR SERVICES FROM A BOOKSELLER OR PUBLIC LIBRARY.

23 (5) "PERSONALLY IDENTIFIABLE INFORMATION" MEANS INFORMATION
24 THAT NAMES, OR, WITH REASONABLE CERTAINTY, OTHERWISE IDENTIFIES AN
25 INDIVIDUAL AS HAVING REQUESTED OR OBTAINED SPECIFIC MATERIAL FROM A
26 BOOKSELLER OR PUBLIC LIBRARY.

27 (B) EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, A FEDERAL,
28 STATE, OR LOCAL GOVERNMENT OFFICER OR EMPLOYEE MAY NOT SEARCH FOR OR
29 SEIZE FROM A BOOKSELLER OR PUBLIC LIBRARY DOCUMENTARY MATERIAL THAT
30 CONTAINS PERSONALLY IDENTIFIABLE INFORMATION CONCERNING A PATRON.

31 (C) A FEDERAL, STATE, OR LOCAL GOVERNMENT OFFICER OR EMPLOYEE, IN
32 ACCORDANCE WITH APPLICABLE LAW, MAY SEARCH FOR OR SEIZE DOCUMENTARY
33 MATERIAL IF:

34 (1) THE GOVERNMENT RECEIVES, WHEN DISCLOSURE IS SOUGHT, THE
35 PRIOR, INFORMED, AND WRITTEN CONSENT OF THE PATRON WHOSE PERSONALLY
36 IDENTIFIABLE INFORMATION THE GOVERNMENT SEEKS;

1 (2) THERE IS PROBABLE CAUSE TO BELIEVE THAT THE PERSON
2 POSSESSING DOCUMENTARY MATERIAL HAS COMMITTED OR IS COMMITTING A
3 CRIME TO WHICH THE DOCUMENTARY MATERIAL RELATES;

4 (3) THERE IS REASON TO BELIEVE THAT THE IMMEDIATE SEIZURE OF
5 THE DOCUMENTARY MATERIAL IS NECESSARY TO PREVENT THE DEATH OF OR
6 SERIOUS BODILY INJURY TO AN INDIVIDUAL;

7 (4) THERE IS REASON TO BELIEVE THAT GIVING NOTICE IN
8 ACCORDANCE WITH A SUBPOENA WOULD RESULT IN THE DESTRUCTION,
9 ALTERATION, OR CONCEALMENT OF DOCUMENTARY MATERIAL;

10 (5) (I) THE SEARCH OR SEIZURE IS CONDUCTED UNDER A SUBPOENA
11 ISSUED BY A COURT AFTER A HEARING IN WHICH THE GOVERNMENT OFFERS CLEAR
12 AND CONVINCING EVIDENCE THAT:

13 1. THE SUBJECT OF THE PERSONALLY IDENTIFIABLE
14 INFORMATION IS REASONABLY SUSPECTED OF ENGAGING IN CRIMINAL ACTIVITY;

15 2. THE GOVERNMENT HAS A COMPELLING INTEREST IN OR A
16 COMPELLING NEED FOR THE INFORMATION SOUGHT;

17 3. THERE IS A SUFFICIENT CONNECTION BETWEEN THE
18 INFORMATION SOUGHT AND THE INVESTIGATION; AND

19 4. THE PURPOSES OF THE INVESTIGATION CANNOT BE
20 ACHIEVED BY ALTERNATIVE INVESTIGATIVE METHODS OR SOURCES THAT DO NOT
21 REQUIRE DISCLOSURE OF THE INFORMATION SOUGHT;

22 (II) THE SUBJECT OF THE PERSONALLY IDENTIFIABLE
23 INFORMATION AND THE BOOKSELLER OR PUBLIC LIBRARY IN POSSESSION OF THE
24 PERSONALLY IDENTIFIABLE INFORMATION ARE GIVEN NOTICE OF THE HEARING
25 RELEVANT TO THE ISSUANCE OF THE SUBPOENA AT LEAST 10 DAYS BEFORE THE
26 HEARING AND ARE AFFORDED THE OPPORTUNITY TO APPEAR AND CONTEST THE
27 GOVERNMENT'S CLAIMS; AND

28 (III) ALL APPELLATE REMEDIES HAVE BEEN EXHAUSTED.

29 (D) A FEDERAL, STATE, OR LOCAL GOVERNMENT OFFICER OR EMPLOYEE MAY
30 NOT SEARCH FOR OR SEIZE DOCUMENTARY MATERIAL UNDER SUBSECTION (C)(2) OF
31 THIS SECTION IF THE CRIME TO WHICH THE DOCUMENTARY MATERIAL RELATES
32 CONSISTS OF THE RECEIPT, POSSESSION, COMMUNICATION, OR WITHHOLDING OF
33 THE DOCUMENTARY MATERIAL OR THE INFORMATION CONTAINED IN IT.

34 (E) (1) THE PERSONALLY IDENTIFIABLE INFORMATION OF A PATRON MAY
35 BE DISCLOSED UNDER A COURT ORDER IN A CIVIL PROCEEDING ONLY ON A
36 SHOWING OF COMPELLING NEED FOR THE INFORMATION THAT CANNOT BE
37 ACCOMMODATED BY ANY OTHER MEANS.

1 (2) THE PERSON SEEKING THE DISCLOSURE OF THE PERSONALLY
2 IDENTIFIABLE INFORMATION SHALL GIVE NOTICE TO THE PATRON AND THE
3 BOOKSELLER OR PUBLIC LIBRARY IN POSSESSION OF THE PERSONALLY
4 IDENTIFIABLE INFORMATION SOUGHT OF THE COURT PROCEEDING RELEVANT TO
5 THE ISSUANCE OF THE COURT ORDER AT LEAST 10 DAYS BEFORE THE PROCEEDING.

6 (3) THE PATRON AND THE BOOKSELLER OR PUBLIC LIBRARY IN
7 POSSESSION OF THE PERSONALLY IDENTIFIABLE INFORMATION SOUGHT SHALL BE
8 AFFORDED THE OPPORTUNITY TO APPEAR AND CONTEST THE CLAIM OF THE
9 PERSON SEEKING THE DISCLOSURE.

10 (F) IF AN ORDER IS ISSUED UNDER SUBSECTION (C)(5) OR (E) OF THIS
11 SECTION, THE COURT:

12 (1) SHALL IMPOSE APPROPRIATE SAFEGUARDS AGAINST
13 UNAUTHORIZED DISCLOSURE; AND

14 (2) MAY QUASH OR MODIFY THE ORDER ON A MOTION MADE PROMPTLY
15 BY THE BOOKSELLER OR PUBLIC LIBRARY IF:

16 (I) THE INFORMATION OR RECORDS REQUESTED ARE
17 UNREASONABLY VOLUMINOUS; OR

18 (II) COMPLIANCE WITH THE ORDER WOULD OTHERWISE CAUSE AN
19 UNREASONABLE BURDEN ON THE BOOKSELLER OR PUBLIC LIBRARY.

20 (G) (1) ANY PERSON AGGRIEVED BY ANY ACT OF THE GOVERNMENT OR A
21 PERSON IN VIOLATION OF THIS SECTION MAY BRING A CIVIL ACTION IN A COURT OF
22 COMPETENT JURISDICTION.

23 (2) THE COURT MAY AWARD:

24 (I) ACTUAL DAMAGES OR LIQUIDATED DAMAGES IN THE AMOUNT
25 OF \$10,000, WHICHEVER IS GREATER;

26 (II) PUNITIVE DAMAGES;

27 (III) REASONABLE ATTORNEYS' FEES;

28 (IV) REASONABLE LITIGATION COSTS; AND

29 (V) OTHER PRELIMINARY AND EQUITABLE RELIEF THAT THE
30 COURT DETERMINES TO BE APPROPRIATE.

31 (H) THE REMEDY PROVIDED BY SUBSECTION (G) OF THIS SECTION IS IN
32 ADDITION TO ANY OTHER REMEDY AVAILABLE TO A BOOKSELLER, PUBLIC LIBRARY,
33 OR PATRON.

34 (I) A CIVIL ACTION MAY NOT BE BROUGHT UNDER THIS SECTION UNLESS
35 THE ACTION IS BEGUN WITHIN 3 YEARS FROM THE DATE THE ACT COMPLAINED OF
36 OCCURRED OR WAS DISCOVERED.

1 (J) PERSONALLY IDENTIFIABLE INFORMATION OBTAINED OTHER THAN AS
2 PROVIDED IN THIS SECTION MAY NOT BE RECEIVED IN EVIDENCE IN A PROCEEDING
3 BEFORE ANY COURT, REGULATORY BODY, LEGISLATIVE COMMITTEE, OR OTHER
4 AUTHORITY OF THE GOVERNMENT.

5 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
6 October 1, 2002.