
By: **Delegate Howard**

Introduced and read first time: February 10, 2006

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Consumer Protection - Sale or Distribution of Personal Information -**
3 **Limitations**

4 FOR the purpose of prohibiting certain businesses from disclosing to a third party, for
5 compensation, certain personal information obtained in a certain manner;
6 providing that a violation of certain provisions of this Act is an unfair or
7 deceptive trade practice within the meaning of the Maryland Consumer
8 Protection Act and is subject to certain enforcement and penalty provisions;
9 providing that a waiver of certain provisions of this Act is contrary to public
10 policy and is void and unenforceable; providing that compliance with certain
11 provisions of this Act does not relieve a certain business from a duty to comply
12 with certain other requirements of federal, State, or local law; establishing a
13 private right of action for an individual affected by a violation of certain
14 provisions of this Act; prohibiting units of State government from selling or
15 distributing certain mailing lists under certain circumstances; providing certain
16 exceptions; defining certain terms; and generally relating to the sale or
17 distribution of personal information obtained or prepared by businesses or units
18 of State government.

19 BY adding to

20 Article - Commercial Law
21 Section 14-3501 through 14-3504, inclusive, to be under the new subtitle
22 "Subtitle 35. Disclosure of Personal Information Act"
23 Annotated Code of Maryland
24 (2005 Replacement Volume)

25 BY repealing and reenacting, with amendments,

26 Article - State Government
27 Section 10-624(c)
28 Annotated Code of Maryland
29 (2004 Replacement Volume and 2005 Supplement)

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

1 **Article - Commercial Law**

2 SUBTITLE 35. DISCLOSURE OF PERSONAL INFORMATION ACT.

3 14-3501.

4 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
5 INDICATED.6 (B) (1) "BUSINESS" MEANS A SOLE PROPRIETORSHIP, PARTNERSHIP,
7 CORPORATION, ASSOCIATION, OR ANY OTHER BUSINESS ENTITY, WHETHER OR NOT
8 ORGANIZED TO OPERATE AT A PROFIT.

9 (2) "BUSINESS" DOES NOT INCLUDE:

10 (I) A FINANCIAL INSTITUTION ORGANIZED, CHARTERED,
11 LICENSED, OR OTHERWISE AUTHORIZED TO OPERATE IN THIS STATE THAT IS
12 SUBJECT TO FEDERAL LAW OR REGULATION GOVERNING THE DISCLOSURE OF
13 INFORMATION TO A THIRD PARTY; OR14 (II) A COVERED ENTITY SUBJECT TO MEDICAL PRIVACY RULES IN
15 ACCORDANCE WITH THE FEDERAL HEALTH INSURANCE PORTABILITY AND
16 AVAILABILITY ACT OF 1996.17 (C) "COMPENSATION" MEANS ANYTHING OF ECONOMIC VALUE THAT IS PAID
18 OR TRANSFERRED TO A BUSINESS FOR OR IN DIRECT CONSIDERATION OF THE
19 DISCLOSURE OF PERSONAL INFORMATION.20 (D) "CONSUMER TRANSACTION" HAS THE MEANING STATED IN § 14-201 OF
21 THIS TITLE.22 (E) "MEDICAL INFORMATION" MEANS ANY INDIVIDUALLY IDENTIFIABLE
23 INFORMATION, IN ELECTRONIC OR PHYSICAL FORM, REGARDING AN INDIVIDUAL'S
24 MEDICAL HISTORY OR MEDICAL TREATMENT OR DIAGNOSIS BY A HEALTH CARE
25 PROFESSIONAL.26 (F) (1) "PERSONAL INFORMATION" MEANS AN INDIVIDUAL'S FIRST NAME OR
27 FIRST INITIAL AND LAST NAME, COMBINED WITH ONE OR MORE OF THE FOLLOWING
28 ITEMS WHEN EITHER THE NAME OR ITEM IS NOT ENCRYPTED:

29 (I) A HOME TELEPHONE NUMBER;

30 (II) AN ELECTRONIC MAIL ADDRESS;

31 (III) A HOME ADDRESS;

32 (IV) A SOCIAL SECURITY NUMBER;

33 (V) MEDICAL INFORMATION; OR

1 (VI) INFORMATION USED TO DESCRIBE AN INDIVIDUAL'S CREDIT
2 WORTHINESS OR FINANCIAL STATUS, INCLUDING EMPLOYMENT HISTORY,
3 PERSONAL INCOME, OR A CONSUMER REPORT, AS DEFINED IN § 14-1201 OF THIS
4 TITLE.

5 (2) "PERSONAL INFORMATION" DOES NOT INCLUDE INFORMATION THAT
6 AN INDIVIDUAL HAS CONSENTED TO HAVE PUBLICLY DISSEMINATED OR LISTED.

7 14-3502.

8 (A) A BUSINESS THAT ENTERS INTO A CONSUMER TRANSACTION WITH AN
9 INDIVIDUAL AND OBTAINS PERSONAL INFORMATION AS A RESULT OF THAT
10 TRANSACTION MAY NOT DISCLOSE THAT INFORMATION TO A THIRD PARTY FOR
11 COMPENSATION.

12 (B) A BUSINESS IS CONSIDERED TO HAVE OBTAINED PERSONAL
13 INFORMATION AS A RESULT OF A CONSUMER TRANSACTION IF:

14 (1) THE INDIVIDUAL PROVIDES THE INFORMATION TO THE BUSINESS AT
15 ANY TIME DURING THE CONSUMER TRANSACTION AT THE REQUEST OF THE
16 BUSINESS OR AS A REQUIREMENT TO COMPLETE THE CONSUMER TRANSACTION; OR

17 (2) THE BUSINESS OTHERWISE OBTAINS THE PERSONAL INFORMATION
18 TO OFFER, CONDUCT, OR COMPLETE THE CONSUMER TRANSACTION.

19 14-3503.

20 (A) A VIOLATION OF THIS SUBTITLE:

21 (1) IS AN UNFAIR OR DECEPTIVE TRADE PRACTICE WITHIN THE
22 MEANING OF TITLE 13 OF THIS ARTICLE; AND

23 (2) IS SUBJECT TO THE ENFORCEMENT AND PENALTY PROVISIONS
24 CONTAINED IN TITLE 13 OF THIS ARTICLE.

25 (B) IN ADDITION TO THE REMEDIES PROVIDED IN § 13-408 OF THIS ARTICLE,
26 AN INDIVIDUAL WHO IS AFFECTED BY A VIOLATION OF THIS SUBTITLE MAY BRING
27 AN ACTION AGAINST A PERSON THAT VIOLATES THIS SUBTITLE TO RECOVER:

28 (1) DAMAGES IN THE AMOUNT OF THE GREATER OF:

29 (I) \$1,000 FOR EACH VIOLATION; OR

30 (II) ACTUAL DAMAGES SUSTAINED AS A RESULT OF THE
31 VIOLATION; AND

32 (2) REASONABLE ATTORNEY'S FEES.

33 (C) FOR PURPOSES OF THIS SECTION, EACH FAILURE TO COMPLY WITH THE
34 REQUIREMENTS OF THIS SUBTITLE IS A SEPARATE VIOLATION.

1 14-3504.

2 (A) A WAIVER OF ANY PROVISION OF THIS SUBTITLE IS CONTRARY TO PUBLIC
3 POLICY AND IS VOID AND UNENFORCEABLE.

4 (B) COMPLIANCE WITH THIS SUBTITLE DOES NOT RELIEVE A BUSINESS FROM
5 A DUTY TO COMPLY WITH ANY OTHER PROVISIONS OF FEDERAL, STATE, OR LOCAL
6 LAW RELATING TO THE PROTECTION AND PRIVACY OF PERSONAL INFORMATION.

7 **Article - State Government**

8 10-624.

9 (c) (1) This subsection only applies to units of State government.

10 (2) Except as otherwise provided by law, an official custodian who keeps
11 personal records shall, to the greatest extent practicable, collect personal information
12 from the person in interest.

13 (3) An official custodian who requests personal information for personal
14 records shall provide the following information to each person in interest from whom
15 personal information is collected:

16 (i) the purpose for which the personal information is collected;

17 (ii) any specific consequences to the person for refusal to provide
18 the personal information;

19 (iii) the person's right to inspect, amend, or correct personal records,
20 if any;

21 (iv) whether the personal information is generally available for
22 public inspection; and

23 (v) whether the personal information is made available or
24 transferred to or shared with any entity other than the official custodian.

25 (4) (I) Each unit of State government shall post its privacy policies
26 with regard to the collection of personal information, including the policies specified
27 in this subsection, on its Internet website.

28 (II) EXCEPT AS PROVIDED IN SUBPARAGRAPH (III) OF THIS
29 PARAGRAPH, A UNIT OF STATE GOVERNMENT MAY NOT SELL OR DISTRIBUTE A
30 MAILING LIST THAT IS PREPARED BY THE UNIT IF THE LIST CONTAINS PERSONAL
31 INFORMATION.

32 (III) A UNIT OF STATE GOVERNMENT MAY SELL OR DISTRIBUTE:

33 1. A MAILING LIST FOR NONCOMMERCIAL USE BY ANOTHER
34 UNIT OF STATE GOVERNMENT OR A POLITICAL SUBDIVISION OF THE STATE;

