

UNOFFICIAL COPY OF SENATE BILL 162
EMERGENCY BILL

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6lr1877
CF 6lr1575

By: **Senators Stone, Giannetti, Green, Haines, Jimeno, and Mooney**
Introduced and read first time: January 20, 2006
Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Public Records - Victim and Witness Information - Remote Access and**
3 **Electronic Copying**

4 FOR the purpose of requiring a certain custodian to prevent certain access to certain
5 information of a certain victim or witness; requiring a certain custodian to
6 prevent electronic copying of certain information; defining a certain term;
7 creating certain exceptions; making this Act an emergency measure; and
8 generally relating to remote access to victim and witness information contained
9 in public records.

10 BY repealing and reenacting, with amendments,
11 Article - State Government
12 Section 10-616
13 Annotated Code of Maryland
14 (2004 Replacement Volume and 2005 Supplement)

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

17 **Article - State Government**

18 10-616.

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

21 (b) A custodian shall deny inspection of public records that relate to the
22 adoption of an individual.

23 (c) A custodian shall deny inspection of public records that relate to welfare
24 for an individual.

25 (d) A custodian shall deny inspection of a letter of reference.

26 (e) (1) Subject to the provisions of paragraph (2) of this subsection, a
27 custodian shall prohibit inspection, use, or disclosure of a circulation record of a

1 public library or other item, collection, or grouping of information about an individual
2 that:

3 (i) is maintained by a library;

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

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

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

11 (f) A custodian shall deny inspection of library, archival, or museum material
12 given by a person to the extent that the person who made the gift limits disclosure as
13 a condition of the gift.

14 (g) (1) Subject to paragraphs (2) through (7) of this subsection, a custodian
15 shall deny inspection of a retirement record for an individual.

16 (2) A custodian shall permit inspection:

17 (i) by the person in interest;

18 (ii) by the appointing authority of the individual;

19 (iii) after the death of the individual, by a beneficiary, personal
20 representative, or other person who satisfies the administrators of the retirement and
21 pension systems that the person has a valid claim to the benefits of the individual;
22 and

23 (iv) by any law enforcement agency in order to obtain the home
24 address of a retired employee of the agency when contact with a retired employee is
25 documented to be necessary for official agency business.

26 (3) A custodian shall permit inspection by the employees of a county unit
27 that, by county law, is required to audit the retirement records for current or former
28 employees of the county. However, the information obtained during the inspection is
29 confidential, and the county unit and its employees may not disclose any information
30 that would identify a person in interest.

31 (4) On request, a custodian shall state whether the individual receives a
32 retirement or pension allowance.

33 (5) A custodian shall permit release of information as provided in §
34 21-504 or § 21-505 of the State Personnel and Pensions Article.

35 (6) On written request, a custodian shall:

1 (i) disclose the amount of that part of a retirement allowance that
2 is derived from employer contributions and that is granted to:

- 3 1. a retired elected or appointed official of the State;
- 4 2. a retired elected official of a political subdivision; or
- 5 3. a retired appointed official of a political subdivision who is
6 a member of a separate system for elected or appointed officials; or

7 (ii) disclose the benefit formula and the variables for calculating
8 the retirement allowance of:

- 9 1. a current elected or appointed official of the State;
- 10 2. a current elected official of a political subdivision; or
- 11 3. a current appointed official of a political subdivision who
12 is a member of a separate system for elected or appointed officials.

13 (7) (i) This paragraph applies to Anne Arundel County.

14 (ii) On written request, a custodian of retirement records shall
15 disclose:

16 1. the total amount of that part of a pension or retirement
17 allowance that is derived from employer contributions and that is granted to a retired
18 elected or appointed official of the county;

19 2. the total amount of that part of a pension or retirement
20 allowance that is derived from employee contributions and that is granted to a retired
21 elected or appointed official of the county, if the retired elected or appointed official
22 consents to the disclosure;

23 3. the benefit formula and the variables for calculating the
24 retirement allowance of a current elected or appointed official of the county; or

25 4. the amount of the employee contributions plus interest
26 attributable to a current elected or appointed official of the county, if the current
27 elected or appointed official consents to the disclosure.

28 (iii) A custodian of retirement records shall maintain a list of those
29 elected or appointed officials of the county who have consented to the disclosure of
30 information under subparagraph (ii)2 or 4 of this paragraph.

31 (h) (1) This subsection applies only to public records that relate to:

32 (i) police reports of traffic accidents;

33 (ii) criminal charging documents prior to service on the defendant
34 named in the document; and

1 (iii) traffic citations filed in the Maryland Automated Traffic
2 System.

3 (2) A custodian shall deny inspection of a record described in paragraph
4 (1) of this subsection to any of the following persons who request inspection of records
5 for the purpose of soliciting or marketing legal services:

6 (i) an attorney who is not an attorney of record of a person named
7 in the record; or

8 (ii) a person who is employed by, retained by, associated with, or
9 acting on behalf of an attorney described in this paragraph.

10 (i) (1) Subject to paragraph (2) of this subsection, a custodian shall deny
11 inspection of a personnel record of an individual, including an application,
12 performance rating, or scholastic achievement information.

13 (2) A custodian shall permit inspection by:

14 (i) the person in interest; or

15 (ii) an elected or appointed official who supervises the work of the
16 individual.

17 (j) A custodian shall deny inspection of a hospital record that:

18 (1) relates to:

19 (i) medical administration;

20 (ii) staff;

21 (iii) medical care; or

22 (iv) other medical information; and

23 (2) contains general or specific information about 1 or more individuals.

24 (k) (1) Subject to paragraphs (2) and (3) of this subsection, a custodian shall
25 deny inspection of a school district record about the home address, home phone
26 number, biography, family, physiology, religion, academic achievement, or physical or
27 mental ability of a student.

28 (2) A custodian shall permit inspection by:

29 (i) the person in interest; or

30 (ii) an elected or appointed official who supervises the student.

31 (3) (i) A custodian may permit inspection of the home address or home
32 phone number of a student of a public school by:

- 1 1. an organization of parents, teachers, students, or former
2 students, or any combination of those groups, of the school;
- 3 2. an organization or force of the military;
- 4 3. a person engaged by a school or board of education to
5 confirm a home address or home phone number;
- 6 4. a representative of a community college in the State; or
- 7 5. the Maryland Higher Education Commission.

8 (ii) The Commission or a person, organization, or community
9 college that obtains information under this paragraph may not:

- 10 1. use this information for a commercial purpose; or
- 11 2. disclose this information to another person, organization,
12 or community college.

13 (iii) When a custodian permits inspection under this paragraph, the
14 custodian shall notify the Commission, person, organization, or community college of
15 the prohibitions under subparagraph (ii) of this paragraph regarding use and
16 disclosure of this information.

17 (l) Subject to the provisions of § 4-310 of the Insurance Article, a custodian
18 shall deny inspection of all RBC reports and RBC plans and any other records that
19 relate to those reports or plans.

20 (m) (1) Subject to the provisions of paragraph (2) of this subsection, a
21 custodian shall deny inspection of all photographs, videotapes or electronically
22 recorded images of vehicles, vehicle movement records, personal financial
23 information, credit reports, or other personal or financial data created, recorded,
24 obtained by or submitted to the Maryland Transportation Authority or its agents or
25 employees in connection with any electronic toll collection system or associated
26 transaction system.

27 (2) A custodian shall permit inspection of the records enumerated in
28 paragraph (1) of this subsection by:

- 29 (i) an individual named in the record;
- 30 (ii) the attorney of record of an individual named in the record;
- 31 (iii) employees or agents of the Maryland Transportation Authority
32 in any investigation or proceeding relating to a violation of speed limitations or to the
33 imposition of or indemnification from liability for failure to pay a toll in connection
34 with any electronic toll collection system;
- 35 (iv) employees or agents of a third party that has entered into an
36 agreement with the Maryland Transportation Authority to use an electronic toll

1 collection system for nontoll applications in the collection of revenues due to the third
2 party; or

3 (v) employees or agents of an entity in another state operating or
4 having jurisdiction over a toll facility.

5 (n) (1) Subject to paragraph (2) of this subsection, a custodian shall deny
6 inspection of any record disclosing:

7 (i) the name of an account holder or qualified beneficiary of a
8 prepaid contract under Title 18, Subtitle 19 of the Education Article; and

9 (ii) the name of an account holder or qualified designated
10 beneficiary of an investment account under Title 18, Subtitle 19A of the Education
11 Article.

12 (2) A custodian:

13 (i) shall permit inspection by a person in interest; and

14 (ii) may release information to an eligible institution of higher
15 education designated:

16 1. by an account holder of a prepaid contract or qualified
17 beneficiary under Title 18, Subtitle 19A of the Education Article; or

18 2. by an account holder or qualified designated beneficiary
19 under Title 18, Subtitle 19A of the Education Article.

20 (o) (1) In this subsection, "recorded images" has the meaning stated in §
21 21-202.1 of the Transportation Article.

22 (2) Except as provided in paragraph (3) of this subsection, a custodian of
23 recorded images produced by a traffic control signal monitoring system operated
24 under § 21-202.1 of the Transportation Article shall deny inspection of the recorded
25 images.

26 (3) A custodian shall allow inspection of recorded images:

27 (i) as required in § 21-202.1 of the Transportation Article;

28 (ii) by any person issued a citation under § 21-202.1 of the
29 Transportation Article, or an attorney of record for the person; or

30 (iii) by an employee or agent of a law enforcement agency in an
31 investigation or proceeding relating to the imposition of or indemnification from civil
32 liability pursuant to § 21-202.1 of the Transportation Article.

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

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

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

6 (ii) The custodian may not disclose personal information without
7 written consent from the person in interest.

8 (iii) 1. At any time the person in interest may withdraw consent
9 to disclose personal information by notifying the custodian.

10 2. The withdrawal by the person in interest of consent to
11 disclose personal information shall take effect as soon as practicable after it is
12 received by the custodian.

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

16 (ii) The custodian may not disclose personal information for
17 surveys, marketing, and solicitations without written consent from the person in
18 interest.

19 (iii) 1. At any time the person in interest may withdraw consent
20 to disclose personal information by notifying the custodian.

21 2. The withdrawal by the person in interest of consent to
22 disclose personal information shall take effect as soon as practicable after it is
23 received by the custodian.

24 (iv) The custodian may not disclose personal information under this
25 paragraph for use in telephone solicitations.

26 (v) Personal information disclosed under this paragraph may be
27 used only for surveys, marketing, or solicitations and only for a purpose approved by
28 the Motor Vehicle Administration.

29 (5) Notwithstanding the provisions of paragraphs (3) and (4) of this
30 subsection, a custodian shall disclose personal information:

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

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

34 1. motor vehicle or driver safety;

35 2. motor vehicle theft;

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;

6 (xii) for use in any matter relating to:

7 1. the operation of a Class B (for hire), Class C (funeral and
8 ambulance), or Class Q (limousine) vehicle; and

9 2. public safety or the treatment by the operator of a member
10 of the public;

11 (xiii) for a use specifically authorized by the law of this State, if the
12 use is related to the operation of a motor vehicle or public safety; and

13 (xiv) for use by a hospital to obtain, for hospital security purposes,
14 information relating to ownership of vehicles parked on hospital property.

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

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

20 1. keep a record for 5 years of the person to whom the
21 information is redisclosed and the purpose for which the information is to be used;
22 and

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

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

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

31 2. The regulations and procedures adopted under this
32 subparagraph shall:

33 A. state the circumstances under which the custodian may
34 request a waiver; and

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

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

4 (q) (1) Except as provided in paragraph (4) of this subsection and subject to
5 the provisions of paragraph (5) of this subsection, unless otherwise ordered by the
6 court, files and records of the court pertaining to an arrest warrant issued pursuant
7 to Maryland Rule 4-212(d)(1) or (2) and the charging document upon which the arrest
8 warrant was issued may not be open to inspection until either:

9 (i) the arrest warrant has been served and a return of service has
10 been filed in compliance with Maryland Rule 4-212(g); or

11 (ii) 90 days have elapsed since the arrest warrant was issued.

12 (2) Except as provided in paragraph (4) of this subsection and subject to
13 the provisions of paragraph (5) of this subsection, unless otherwise ordered by the
14 court, files and records of the court pertaining to an arrest warrant issued pursuant
15 to a grand jury indictment or conspiracy investigation and the charging document
16 upon which the arrest warrant was issued may not be open to inspection until all
17 arrest warrants for any co-conspirators have been served and all returns of service
18 have been filed in compliance with Maryland Rule 4-212(g).

19 (3) Subject to the provisions of paragraphs (1) and (2) of this subsection,
20 unless sealed pursuant to Maryland Rule 4-201(d), the files and records shall be open
21 to inspection.

22 (4) (i) Subject to subparagraph (ii) of this paragraph, the name,
23 address, birth date, driver's license number, sex, height, and weight of an individual
24 contained in an arrest warrant issued pursuant to Maryland Rule 4-212(d)(1) or (2)
25 or issued pursuant to a grand jury indictment or conspiracy investigation may be
26 released to the Motor Vehicle Administration for use by the Administration for
27 purposes of § 13-406.1 or § 16-204 of the Transportation Article.

28 (ii) Except as provided in subparagraph (i) of this paragraph,
29 information contained in a charging document that identifies an individual may not
30 be released to the Motor Vehicle Administration.

31 (5) The provisions of paragraphs (1) and (2) of this subsection may not be
32 construed to prohibit:

33 (i) the release of statistical information concerning unserved arrest
34 warrants;

35 (ii) the release of information by a State's Attorney or peace officer
36 concerning an unserved arrest warrant and the charging document upon which the
37 arrest warrant was issued; or

1 (iii) inspection of files and records, of a court pertaining to an
2 unserved arrest warrant and the charging document upon which the arrest warrant
3 was issued, by:

- 4 1. a judicial officer;
- 5 2. any authorized court personnel;
- 6 3. a State's Attorney;
- 7 4. a peace officer;
- 8 5. a correctional officer who is authorized by law to serve an
9 arrest warrant;
- 10 6. a bail bondsman, surety insurer, or surety who executes
11 bail bonds who executed a bail bond for the individual who is subject to arrest under
12 the arrest warrant;
- 13 7. an attorney authorized by the individual who is subject to
14 arrest under the arrest warrant;
- 15 8. the Department of Public Safety and Correctional Services
16 or the Department of Juvenile Services for the purpose of notification of a victim
17 under the provisions of § 11-507 of the Criminal Procedure Article; or
- 18 9. a federal, State, or local criminal justice agency described
19 under Title 10, Subtitle 2 of the Criminal Procedure Article.

20 (r) (1) Except as provided in paragraph (2) of this subsection, a custodian
21 shall deny inspection of all records of persons created, generated, obtained by, or
22 submitted to the Maryland Transit Administration, its agents, or employees in
23 connection with the use or purchase of electronic fare media provided by the
24 Maryland Transit Administration, its agents, employees, or contractors.

25 (2) A custodian shall permit inspection of the records enumerated in
26 paragraph (1) of this subsection by:

- 27 (i) an individual named in the record; or
- 28 (ii) the attorney of record of an individual named in the record.

29 (s) (1) Except as provided in paragraph (2) of this subsection, a custodian
30 may not knowingly disclose a public record of the Department of Natural Resources
31 containing personal information.

32 (2) Notwithstanding paragraph (1) of this subsection, a custodian shall
33 disclose personal information for use in the normal course of business activity by a
34 financial institution, as defined in § 1-101(i) of the Financial Institutions Article, its
35 agents, employees, or contractors, but only:

1 (i) to verify the accuracy of personal information submitted by the
2 individual to that financial institution; and

3 (ii) if the information submitted is not accurate, to obtain correct
4 information only for the purpose of:

- 5 1. preventing fraud by the individual;
- 6 2. pursuing legal remedies against the individual; or
- 7 3. recovering on a debt or security interest against the
8 individual.

9 (t) A custodian shall deny inspection of an application for renewable energy
10 credit certification or a claim for renewable energy credits under Title 10, Subtitle 15
11 of the Agriculture Article.

12 (U) (1) IN THIS SUBSECTION, "REMOTE ACCESS" MEANS THE ABILITY TO
13 INSPECT, SEARCH, OR COPY A COURT RECORD BY ELECTRONIC MEANS FROM A
14 LOCATION OTHER THAN THE LOCATION WHERE THE RECORD IS STORED.

15 (2) NOTWITHSTANDING ANY OTHER LAW OR RULE TO THE CONTRARY,
16 EXCEPT FOR IDENTIFYING INFORMATION OF LAW ENFORCEMENT OFFICERS AND
17 OTHER PUBLIC OFFICIALS ACTING IN THEIR OFFICIAL CAPACITIES AND EXPERT
18 WITNESSES, A CUSTODIAN SHALL PREVENT:

19 (I) REMOTE ACCESS TO THE NAME, ADDRESS, TELEPHONE
20 NUMBER, ELECTRONIC MAIL ADDRESS, PLACE OF EMPLOYMENT, AND OTHER
21 IDENTIFYING INFORMATION OF A VICTIM OR WITNESS OTHER THAN A DEFENDANT
22 IN A CRIMINAL CASE; AND

23 (II) ELECTRONIC COPYING OF INFORMATION DESCRIBED IN ITEM
24 (I) OF THIS PARAGRAPH THAT IS NOT AVAILABLE BY REMOTE ACCESS AT COMPUTER
25 TERMINALS THAT A COURT OR OTHER JUDICIAL AGENCY MAKES AVAILABLE FOR
26 PUBLIC USE.

27 SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency
28 measure, is necessary for the immediate preservation of the public health or safety,
29 has been passed by a ye and nay vote supported by three-fifths of all the members
30 elected to each of the two Houses of the General Assembly, and shall take effect from
31 the date it is enacted.