

SENATE BILL 467

I3

71r1532
CF 71r0886

By: **Senators Gladden, Britt, Conway, Forehand, Frosh, Jones, Lenett,
Madaleno, Muse, Pinsky, Pugh, Raskin, and Robey**

Introduced and read first time: February 2, 2007

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Consumer Protection – Protection and Disclosure of Information About**
3 **Consumers Collected and Maintained by Merchants**

4 FOR the purpose of requiring certain merchants that collect and maintain certain
5 personal information to implement and maintain certain security procedures
6 and practices; requiring a merchant to disclose to a consumer certain personal
7 information in a certain manner; establishing procedures for requesting certain
8 personal information; requiring a merchant to provide certain personal
9 information requested within a certain period of time; authorizing a merchant
10 to charge a certain fee for the disclosure of certain personal information;
11 prohibiting a merchant from sharing or selling certain personal information
12 about certain consumers; providing certain exceptions; authorizing a merchant
13 to share or sell certain marketing information under certain circumstances;
14 providing that a violation of this Act is an unfair or deceptive trade practice
15 within the meaning of the Maryland Consumer Protection Act and is subject to
16 certain enforcement and penalty provisions; defining certain terms; and
17 generally relating to the protection and disclosure of information about
18 consumers collected and maintained by merchants.

19 BY adding to

20 Article – Commercial Law

21 Section 14–3501 through 14–3505 to be under the new subtitle “Subtitle 35.
22 Protection and Disclosure of Information About Consumers Collected
23 and Maintained by Merchants”

24 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2005 Replacement Volume and 2006 Supplement)

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

4 **Article – Commercial Law**

5 **SUBTITLE 35. PROTECTION AND DISCLOSURE OF INFORMATION ABOUT**
6 **CONSUMERS COLLECTED AND MAINTAINED BY MERCHANTS.**

7 **14-3501.**

8 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
9 INDICATED.

10 (B) “CLUB CARD” MEANS ANY CARD, PLATE, COUPON BOOK, OR OTHER
11 DEVICE ISSUED BY A MERCHANT TO A CONSUMER THAT MAY BE USED BY THE
12 CONSUMER TO PURCHASE CONSUMER GOODS AT A DISCOUNTED PRICE.

13 (C) “CONSUMER” HAS THE MEANING STATED IN § 13-101 OF THIS
14 ARTICLE.

15 (D) “CONSUMER GOODS” HAS THE MEANING STATED IN § 13-101 OF
16 THIS ARTICLE.

17 (E) “MARKETING INFORMATION” MEANS THE CATEGORIZATION OF
18 CLUB CARD HOLDERS COMPILED BY A CLUB CARD ISSUER BASED ON A CARD
19 HOLDER’S SHOPPING PATTERNS, SPENDING HISTORY, OR BEHAVIORAL
20 CHARACTERISTICS DERIVED FROM ACCOUNT ACTIVITY.

21 (F) “MERCHANT” HAS THE MEANING STATED IN § 13-101 OF THIS
22 ARTICLE.

23 (G) (1) “PERSONAL INFORMATION” MEANS THE FOLLOWING
24 INFORMATION WHEN THE INFORMATION IS CAPABLE OF BEING ASSOCIATED
25 WITH A PARTICULAR CONSUMER AND IS NOT ENCRYPTED:

26 (I) A NAME;

27 (II) AN ADDRESS;

- 1 (III) A TELEPHONE NUMBER;
- 2 (IV) A DRIVER'S LICENSE NUMBER;
- 3 (V) A FINANCIAL ACCOUNT NUMBER, INCLUDING A CREDIT
4 CARD NUMBER OR DEBIT CARD NUMBER; OR
- 5 (VI) A REQUIRED SECURITY CODE, ACCESS CODE, OR
6 PASSWORD THAT WOULD PERMIT ACCESS TO A CONSUMER'S FINANCIAL
7 ACCOUNT.

8 (2) "PERSONAL INFORMATION" DOES NOT INCLUDE
9 INFORMATION THAT A CONSUMER HAS CONSENTED TO HAVE PUBLICLY
10 DISSEMINATED OR LISTED.

11 **14-3502.**

12 THIS SUBTITLE APPLIES ONLY TO MERCHANTS THAT HAVE 50 OR MORE
13 EMPLOYEES.

14 **14-3503.**

15 (A) A MERCHANT THAT COLLECTS AND MAINTAINS THE PERSONAL
16 INFORMATION ABOUT A CONSUMER IN THE STATE SHALL IMPLEMENT AND
17 MAINTAIN REASONABLE SECURITY PROCEDURES AND PRACTICES TO PROTECT
18 THE PERSONAL INFORMATION FROM UNAUTHORIZED ACCESS, USE,
19 MODIFICATION, OR DISCLOSURE.

20 (B) A MERCHANT, ON REQUEST, SHALL DISCLOSE CLEARLY AND
21 ACCURATELY TO A CONSUMER ALL PERSONAL INFORMATION COLLECTED AND
22 MAINTAINED ABOUT THE CONSUMER AT THE TIME OF THE REQUEST.

23 (C) (1) A CONSUMER MAY REQUEST THE PERSONAL INFORMATION A
24 MERCHANT HAS COLLECTED AND MAINTAINS ABOUT THE CONSUMER BY:

- 25 (I) WRITTEN REQUEST SENT BY CERTIFIED MAIL;
- 26 (II) TELEPHONE; OR

1 (III) ELECTRONIC MAIL IF A SECURE ELECTRONIC MAIL
2 CONNECTION IS MADE AVAILABLE BY THE MERCHANT.

3 (2) A MERCHANT SHALL REQUIRE A CONSUMER TO PROVIDE
4 PROPER IDENTIFICATION WHEN MAKING A REQUEST.

5 (3) A MERCHANT SHALL PROVIDE THE CONSUMER WITH THE
6 PERSONAL INFORMATION REQUESTED WITHIN 30 DAYS AFTER RECEIVING THE
7 REQUEST.

8 (D) A MERCHANT MAY CHARGE A REASONABLE FEE, NOT EXCEEDING
9 \$20, FOR PROVIDING THE CONSUMER WITH THE REQUESTED PERSONAL
10 INFORMATION.

11 **14-3504.**

12 (A) A MERCHANT MAY NOT SHARE OR SELL THE PERSONAL
13 INFORMATION ABOUT A CONSUMER IN THE STATE.

14 (B) (1) NOTWITHSTANDING SUBSECTION (A) OF THIS SECTION, A
15 MERCHANT THAT OFFERS A CLUB CARD TO CONSUMERS MAY SHARE THE NAME
16 AND ADDRESS OF A CONSUMER WITH A THIRD PARTY FOR THE SOLE PURPOSE
17 OF MAILING TO THE CONSUMER INFORMATION ABOUT THE CLUB CARD.

18 (2) THE THIRD PARTY MAY NOT USE A CONSUMER'S NAME AND
19 ADDRESS FOR ANY OTHER PURPOSE.

20 (C) NOTWITHSTANDING SUBSECTION (A) OF THIS SECTION, A
21 MERCHANT MAY SHARE OR SELL MARKETING INFORMATION ABOUT A
22 CONSUMER THAT INCLUDES THE CONSUMER'S NAME AND ADDRESS IF THE
23 MERCHANT:

24 (1) CHARGES AN ANNUAL FEE FOR ITS CLUB CARD;

25 (2) REQUIRES A CONSUMER TO RENEW THE CLUB CARD
26 ANNUALLY AND PAY AN ANNUAL RENEWAL FEE;

1 **(3) ALLOWS ONLY A CLUB CARD HOLDER AND NOT A MEMBER OF**
2 **THE PUBLIC TO PURCHASE CONSUMER GOODS FROM THE MERCHANT;**

3 **(4) PROVIDES A PRIVACY STATEMENT TO THE CONSUMER IN THE**
4 **CLUB CARD APPLICATION AND THE RENEWAL APPLICATION THAT NOTIFIES A**
5 **CONSUMER THAT A THIRD PARTY MAY RECEIVE MARKETING INFORMATION,**
6 **INCLUDING THE CONSUMER'S NAME AND ADDRESS, AND THE CONSUMER**
7 **AGREES TO ALLOW THE MERCHANT TO SHARE OR SELL THIS INFORMATION; AND**

8 **(5) BEFORE SHARING OR SELLING A CONSUMER'S NAME AND**
9 **ADDRESS, OBTAINS A WRITTEN CONFIDENTIALITY AGREEMENT FROM THE**
10 **THIRD PARTY STATING THAT THE THIRD PARTY WILL NOT SHARE THE**
11 **INFORMATION WITH, OR SELL THE INFORMATION TO, ANY OTHER PERSON.**

12 **14-3505.**

13 **(A) A VIOLATION OF THIS SUBTITLE:**

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

16 **(2) IS SUBJECT TO THE ENFORCEMENT AND PENALTY**
17 **PROVISIONS CONTAINED IN TITLE 13 OF THIS ARTICLE.**

18 **(B) FOR PURPOSES OF THIS SECTION, EACH INDIVIDUAL FAILURE TO**
19 **COMPLY WITH THE REQUIREMENTS OF THIS SUBTITLE IS A SEPARATE**
20 **VIOLATION.**

21 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
22 October 1, 2007.