

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE

House Bill 210
Economic Matters

(Delegate Howard, *et al.*)

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

This bill restricts the sale or distribution of personal information acquired from an individual by a business or a unit of State government.

Fiscal Summary

State Effect: State revenues could decrease to the extent that units of State government sell mailing lists containing personal information. Expenditures would not be affected.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: A “business” that enters into a “consumer transaction” with an individual and obtains “personal information” as a result of that transaction may not disclose that information to a third party for compensation. A business is considered to have obtained personal information as a result of a consumer transaction if: (1) the individual provides the information at any time during the transaction at the request of the business or as a requirement to complete the transaction; or (2) the business otherwise obtains the personal information to offer, conduct, or complete the transaction. Violation is an unfair or deceptive trade practice under the Maryland Consumer Protection Act. In

addition, an affected individual may bring a private right of action against a violator to recover: (1) damages equaling the greater of \$1,000 or actual damages; and (2) reasonable attorney's fees.

Each failure to comply with the bill's requirements is a separate violation. A waiver of the bill's provisions is void and unenforceable. Compliance does not relieve a business from a duty to comply with any other provisions of federal, State, or local law relating to the protection and privacy of personal information.

The bill also prohibits a unit of State government from selling or distributing a mailing list that is prepared by the unit if the list contains personal information. A unit of State government may sell or distribute: (1) a mailing list for noncommercial use by another unit of State government or a political subdivision of the State; (2) a list of registered voters in the State; (3) a mailing list prepared by or for a State-affiliated credit union to solicit membership under specified circumstances; or (4) a list prepared with the intent to notify prospective students about State-sponsored educational opportunities. The provisions do not prohibit an individual from compiling a mailing list by examination of original documents or applications that are otherwise open to the public.

Current Law: Selling or distributing personal information by businesses is not specifically regulated by the State. Selling or distributing a mailing list prepared by a unit of State government is not specifically regulated.

The Consumer Protection Division within the Office of the Attorney General is responsible for pursuing unfair and deceptive trade practice claims under the Maryland Consumer Protection Act. Upon receiving a complaint, the division must determine whether there are "reasonable grounds" to believe that a violation of the Act has occurred. Generally, if the division does find reasonable grounds that a violation has occurred, the division must seek to conciliate the complaint. The division may also issue cease and desist orders, or seek action in court, including an injunction or civil damages, to enforce the Act. Violators of the Act are subject to: (1) civil penalties of \$1,000 for the first violation and \$5,000 for subsequent violations; and (2) criminal sanction as a misdemeanor, with a fine of up to \$1,000 and/or up to one year's imprisonment.

State Revenues: Most units of State government do not sell mailing lists containing personal information.

The Department of Labor, Licensing, and Regulation (DLLR) advises that it sells lists of licensees and permit holders to individuals and businesses. For these sales, DLLR receives approximately \$10,000 annually, of which \$7,400 are general funds and \$2,600 are special funds.

The Department of Health and Mental Hygiene advises that its Vital Statistics Administration routinely sells lists of birth and death certificates to the Social Security Administration and the Centers for Disease Control and Prevention. It is not clear whether this information constitutes a “mailing list” and, therefore, subject to the bill’s prohibitions. If it is, federal fund revenues would decrease by approximately \$230,000 annually beginning in fiscal 2008.

The Motor Vehicle Administration advises that it does not sell mailing lists with personal information.

Small Business Effect: Small businesses that collect and sell personal information in connection with consumer transactions could be prohibited from doing so. While it is not generally a large source of revenue for most small businesses, some businesses may experience significant decreases in revenues.

Additional Information

Prior Introductions: A nearly identical bill, HB 1349 of 2006, received a hearing in the House Economic Matters Committee but no further action was taken. A similar bill, SB 134 of 2006 as amended, passed the Senate and received a hearing in Economic Matters, where no further action was taken.

Cross File: None.

Information Source(s): Department of Health and Mental Hygiene; Maryland Department of Transportation; Department of Labor, Licensing, and Regulation; Office of the Attorney General (Consumer Protection Division); Department of Legislative Services

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