

# HOUSE BILL 757

I3, P1  
HB 210/07 – ECM

8lr2537

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By: **Delegates Howard, Braveboy, Griffith, Healey, Pena–Melnyk, Proctor,  
and Vaughn**

Introduced and read first time: February 4, 2008

Assigned to: Economic Matters

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## 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 14–3601 through 14–3604 to be under the new subtitle “Subtitle 36.  
22 Disclosure of Personal Information Act”  
23 Annotated Code of Maryland  
24 (2005 Replacement Volume and 2007 Supplement)

25 BY repealing and reenacting, with amendments,

26 Article – State Government  
27 Section 10–624(c)  
28 Annotated Code of Maryland

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(2004 Replacement Volume and 2007 Supplement)

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

**Article – Commercial Law**

**SUBTITLE 36. DISCLOSURE OF PERSONAL INFORMATION ACT.**

**14-3601.**

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

(B) (1) “BUSINESS” MEANS A SOLE PROPRIETORSHIP, PARTNERSHIP, CORPORATION, ASSOCIATION, OR ANY OTHER BUSINESS ENTITY, WHETHER OR NOT ORGANIZED TO OPERATE AT A PROFIT.

(2) “BUSINESS” DOES NOT INCLUDE:

(I) A FINANCIAL INSTITUTION ORGANIZED, CHARTERED, LICENSED, OR OTHERWISE AUTHORIZED TO OPERATE IN THIS STATE THAT IS SUBJECT TO FEDERAL LAW OR REGULATION GOVERNING THE DISCLOSURE OF INFORMATION TO A THIRD PARTY; OR

(II) A COVERED ENTITY SUBJECT TO MEDICAL PRIVACY RULES IN ACCORDANCE WITH THE FEDERAL HEALTH INSURANCE PORTABILITY AND AVAILABILITY ACT OF 1996.

(C) “COMPENSATION” MEANS ANYTHING OF ECONOMIC VALUE THAT IS PAID OR TRANSFERRED TO A BUSINESS FOR OR IN DIRECT CONSIDERATION OF THE DISCLOSURE OF PERSONAL INFORMATION.

(D) “CONSUMER TRANSACTION” HAS THE MEANING STATED IN § 14-201 OF THIS TITLE.

(E) “MEDICAL INFORMATION” MEANS ANY INDIVIDUALLY IDENTIFIABLE INFORMATION, IN ELECTRONIC OR PHYSICAL FORM, REGARDING AN INDIVIDUAL’S MEDICAL HISTORY OR MEDICAL TREATMENT OR DIAGNOSIS BY A HEALTH CARE PROFESSIONAL.

(F) (1) “PERSONAL INFORMATION” MEANS AN INDIVIDUAL’S FIRST NAME OR FIRST INITIAL AND LAST NAME, COMBINED WITH ONE OR MORE OF THE FOLLOWING ITEMS WHEN EITHER THE NAME OR ITEM IS NOT ENCRYPTED:

- 1 (I) A HOME TELEPHONE NUMBER;
- 2 (II) AN ELECTRONIC MAIL ADDRESS;
- 3 (III) A HOME ADDRESS;
- 4 (IV) A SOCIAL SECURITY NUMBER;
- 5 (V) MEDICAL INFORMATION; OR
- 6 (VI) INFORMATION USED TO DESCRIBE AN INDIVIDUAL'S
- 7 CREDITWORTHINESS OR FINANCIAL STATUS, INCLUDING EMPLOYMENT
- 8 HISTORY, PERSONAL INCOME, OR A CONSUMER REPORT, AS DEFINED IN §
- 9 14-1201 OF THIS TITLE.

10 (2) "PERSONAL INFORMATION" DOES NOT INCLUDE

11 INFORMATION THAT AN INDIVIDUAL HAS CONSENTED TO HAVE PUBLICLY

12 DISSEMINATED OR LISTED.

13 **14-3602.**

14 (A) A BUSINESS THAT ENTERS INTO A CONSUMER TRANSACTION WITH

15 AN INDIVIDUAL AND OBTAINS PERSONAL INFORMATION AS A RESULT OF THAT

16 TRANSACTION MAY NOT DISCLOSE THAT INFORMATION TO A THIRD PARTY FOR

17 COMPENSATION.

18 (B) A BUSINESS IS CONSIDERED TO HAVE OBTAINED PERSONAL

19 INFORMATION AS A RESULT OF A CONSUMER TRANSACTION IF:

20 (1) THE INDIVIDUAL PROVIDES THE INFORMATION TO THE

21 BUSINESS AT ANY TIME DURING THE CONSUMER TRANSACTION AT THE

22 REQUEST OF THE BUSINESS OR AS A REQUIREMENT TO COMPLETE THE

23 CONSUMER TRANSACTION; OR

24 (2) THE BUSINESS OTHERWISE OBTAINS THE PERSONAL

25 INFORMATION TO OFFER, CONDUCT, OR COMPLETE THE CONSUMER

26 TRANSACTION.

27 **14-3603.**

28 (A) A VIOLATION OF THIS SUBTITLE:

29 (1) IS AN UNFAIR OR DECEPTIVE TRADE PRACTICE WITHIN THE

30 MEANING OF TITLE 13 OF THIS ARTICLE; AND

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

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

7           **(1) DAMAGES IN THE AMOUNT OF THE GREATER OF:**

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

9                   **(II) ACTUAL DAMAGES SUSTAINED AS A RESULT OF THE**  
 10 **VIOLATION; AND**

11           **(2) REASONABLE ATTORNEY'S FEES.**

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

14 **14-3604.**

15           **(A) A WAIVER OF ANY PROVISION OF THIS SUBTITLE IS CONTRARY TO**  
 16 **PUBLIC POLICY AND IS VOID AND UNENFORCEABLE.**

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

21                                   **Article – State Government**

22 **10-624.**

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

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

27                   **(3) An official custodian who requests personal information for**  
 28 **personal records shall provide the following information to each person in interest**  
 29 **from whom personal information is collected:**

- 1 (i) the purpose for which the personal information is collected;
- 2 (ii) any specific consequences to the person for refusal to provide  
3 the personal information;
- 4 (iii) the person's right to inspect, amend, or correct personal  
5 records, if any;
- 6 (iv) whether the personal information is generally available for  
7 public inspection; and
- 8 (v) whether the personal information is made available or  
9 transferred to or shared with any entity other than the official custodian.

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

13 **(5) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS**  
14 **PARAGRAPH, A UNIT OF STATE GOVERNMENT MAY NOT SELL OR DISTRIBUTE A**  
15 **MAILING LIST THAT IS PREPARED BY THE UNIT IF THE LIST CONTAINS**  
16 **PERSONAL INFORMATION.**

17 **(II) A UNIT OF STATE GOVERNMENT MAY SELL OR**  
18 **DISTRIBUTE:**

19 **1. A MAILING LIST FOR NONCOMMERCIAL USE BY**  
20 **ANOTHER UNIT OF STATE GOVERNMENT OR A POLITICAL SUBDIVISION OF THE**  
21 **STATE;**

22 **2. A LIST OF REGISTERED VOTERS IN THE STATE;**

23 **3. A MAILING LIST PREPARED BY OR FOR A**  
24 **STATE-AFFILIATED CREDIT UNION TO SOLICIT MEMBERSHIP IN THE CREDIT**  
25 **UNION OR FOR EDUCATIONAL PURPOSES; OR**

26 **4. A LIST PREPARED WITH THE INTENT TO NOTIFY**  
27 **PROSPECTIVE STUDENTS ABOUT STATE-SPONSORED EDUCATIONAL**  
28 **OPPORTUNITIES.**

29 **(III) THIS PARAGRAPH DOES NOT PROHIBIT AN INDIVIDUAL**  
30 **FROM COMPILING A MAILING LIST BY EXAMINATION OF ORIGINAL DOCUMENTS**  
31 **OR APPLICATIONS THAT ARE OTHERWISE OPEN TO PUBLIC INSPECTION.**

1                    **[(5)] (6)**     The following personal records shall be exempt from the  
2 requirements of this subsection:

3                    (i)     information pertaining to the enforcement of criminal laws  
4 or the administration of the penal system;

5                    (ii)    information contained in investigative materials kept for the  
6 purpose of investigating a specific violation of State law and maintained by a State  
7 agency whose principal function may be other than law enforcement;

8                    (iii)   information contained in public records which are accepted  
9 by the State Archivist for deposit in the Maryland Hall of Records;

10                   (iv)    information gathered as part of formal research projects  
11 previously reviewed and approved by federally mandated institutional review boards;  
12 and

13                   (v)     any other personal records exempted by regulations adopted  
14 by the Secretary of Budget and Management, based on the recommendation of the  
15 Chief of Information Technology.

16                   **[(6)] (7)**     In accordance with § 2-1246 of this article, the Secretary of  
17 Budget and Management shall report on October 1 of each year to the General  
18 Assembly on the personal records exempted by regulations under paragraph **[(5)(v)]**  
19 **(6)(v)** of this subsection.

20                   SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
21 October 1, 2008.