

HOUSE BILL 344

I3, P1
HB 757/08 – ECM

9lr0897

By: **Delegates Howard, Aumann, Barkley, Bobo, Boteler, Braveboy, Cane, Carter, Dwyer, Glenn, Griffith, Guzzone, Harrison, Hecht, Holmes, Jones, Kaiser, Pena-Melnyk, Proctor, Rice, Robinson, Stein, Stocksdale, Taylor, F. Turner, V. Turner, Valderrama, and Vaughn**

Introduced and read first time: January 30, 2009

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 14–3701 through 14–3704 to be under the new subtitle “Subtitle 37.
22 Disclosure of Personal Information Act”
23 Annotated Code of Maryland
24 (2005 Replacement Volume and 2008 Supplement)

25 BY repealing and reenacting, with amendments,
26 Article – State Government

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 10-624(c)
2 Annotated Code of Maryland
3 (2004 Replacement Volume and 2008 Supplement)

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

6 **Article – Commercial Law**

7 **SUBTITLE 37. DISCLOSURE OF PERSONAL INFORMATION ACT.**

8 **14-3701.**

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

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

14 (2) “BUSINESS” DOES NOT INCLUDE:

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

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

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

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

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

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

4 (I) **A HOME TELEPHONE NUMBER;**

5 (II) **AN ELECTRONIC MAIL ADDRESS;**

6 (III) **A HOME ADDRESS;**

7 (IV) **A SOCIAL SECURITY NUMBER;**

8 (V) **MEDICAL INFORMATION; OR**

9 (VI) **INFORMATION USED TO DESCRIBE AN INDIVIDUAL’S**
10 **CREDITWORTHINESS OR FINANCIAL STATUS, INCLUDING EMPLOYMENT**
11 **HISTORY, PERSONAL INCOME, OR A CONSUMER REPORT, AS DEFINED IN §**
12 **14-1201 OF THIS TITLE.**

13 (2) **“PERSONAL INFORMATION” DOES NOT INCLUDE**
14 **INFORMATION THAT AN INDIVIDUAL HAS CONSENTED TO HAVE PUBLICLY**
15 **DISSEMINATED OR LISTED.**

16 **14-3702.**

17 (A) **A BUSINESS THAT ENTERS INTO A CONSUMER TRANSACTION WITH**
18 **AN INDIVIDUAL AND OBTAINS PERSONAL INFORMATION AS A RESULT OF THAT**
19 **TRANSACTION MAY NOT DISCLOSE THAT INFORMATION TO A THIRD PARTY FOR**
20 **COMPENSATION.**

21 (B) **A BUSINESS IS CONSIDERED TO HAVE OBTAINED PERSONAL**
22 **INFORMATION AS A RESULT OF A CONSUMER TRANSACTION IF:**

23 (1) **THE INDIVIDUAL PROVIDES THE INFORMATION TO THE**
24 **BUSINESS AT ANY TIME DURING THE CONSUMER TRANSACTION AT THE**
25 **REQUEST OF THE BUSINESS OR AS A REQUIREMENT TO COMPLETE THE**
26 **CONSUMER TRANSACTION; OR**

27 (2) **THE BUSINESS OTHERWISE OBTAINS THE PERSONAL**
28 **INFORMATION TO OFFER, CONDUCT, OR COMPLETE THE CONSUMER**
29 **TRANSACTION.**

30 **14-3703.**

1 (A) A VIOLATION OF THIS SUBTITLE:

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

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

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

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

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

12 (II) ACTUAL DAMAGES SUSTAINED AS A RESULT OF THE
13 VIOLATION; AND

14 (2) REASONABLE ATTORNEY'S FEES.

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

17 14-3704.

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

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

24 Article - State Government

25 10-624.

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

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

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

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

5 (ii) any specific consequences to the person for refusal to provide
6 the personal information;

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

9 (iv) whether the personal information is generally available for
10 public inspection; and

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

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

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

20 (II) **A UNIT OF STATE GOVERNMENT MAY SELL OR**
21 **DISTRIBUTE:**

22 **1. A MAILING LIST FOR NONCOMMERCIAL USE BY**
23 **ANOTHER UNIT OF STATE GOVERNMENT OR A POLITICAL SUBDIVISION OF THE**
24 **STATE;**

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

26 **3. A MAILING LIST PREPARED BY OR FOR A**
27 **STATE-AFFILIATED CREDIT UNION TO SOLICIT MEMBERSHIP IN THE CREDIT**
28 **UNION OR FOR EDUCATIONAL PURPOSES; OR**

29 **4. A LIST PREPARED WITH THE INTENT TO NOTIFY**
30 **PROSPECTIVE STUDENTS ABOUT STATE-SPONSORED EDUCATIONAL**
31 **OPPORTUNITIES.**

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

4 **[(5)] (6)** The following personal records shall be exempt from the
5 requirements of this subsection:

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

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

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

13 (iv) information gathered as part of formal research projects
14 previously reviewed and approved by federally mandated institutional review boards;
15 and

16 (v) any other personal records exempted by regulations adopted
17 by the Secretary of Budget and Management, based on the recommendation of the
18 Secretary of Information Technology.

19 **[(6)] (7)** If the Secretary of Budget and Management adopts
20 regulations under paragraph **[(5)(v)] (6)(V)** of this subsection, the Secretary shall, in
21 accordance with § 2-1246 of this article, report to the General Assembly on the
22 personal records exempted from the requirements of this subsection.

23 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
24 October 1, 2009.