

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 343
Economic Matters

(Delegate Howard, *et al.*)

Consumer Protection - Disclosure of Personal Information by Credit Card
Issuers - Limitations

This bill prohibits a credit card issuer from disclosing any personal information about a cardholder to a person other than an affiliate unless: (1) the cardholder provides express, written authorization; and (2) the credit card issuer provides the cardholder with a conspicuous notice regarding the issuer's privacy policies and practices at specified times. Violation of the bill's provisions is an unfair and deceptive trade practice under the Maryland Consumer Protection Act (MCPA).

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures due to the bill's imposition of existing penalty provisions. If the Consumer Protection Division of the Office of the Attorney General receives fewer than 50 complaints per year stemming from the bill, the additional workload can be handled with existing resources.

Local Effect: Potential minimal increase in revenues and expenditures due to the bill's imposition of existing penalty provisions.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: Under the bill, "personal information" means an individual's first name or first initial and last name in combination with a Social Security number; a driver's license number; a financial account number, including a credit card number or debit card number with a password that permits access to an individual's account; or an individual

taxpayer identification number. “Personal information” also includes (1) information provided by a cardholder to a card issuer as part of a credit card application; and (2) any other information obtained about a cardholder relating to consumer goods or services purchased with a card issued by the credit card issuer.

Prior to a credit card issuer disclosing any personal information about a cardholder to a person other than an affiliate, a cardholder must expressly authorize the disclosure in writing. The credit card issuer must also provide the cardholder with clear and conspicuous notice at the time the account is opened, and every year thereafter that:

- reflects the credit card issuer’s privacy policy with respect to personal information;
- identifies the types of personal information that the credit card issuer may disclose and the types of persons that are not considered affiliates of the card issuer;
- informs the cardholder that a disclosure authorization may be revoked in writing;
- informs the cardholder of any disclosure authorization in effect on the date of the notice; and
- informs the cardholder about how to revoke a disclosure authorization and how to authorize the disclosure of personal information.

Current Law/Background: An unfair or deceptive trade practice under MCPA includes any false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers. The prohibition against engaging in any unfair or deceptive trade practice encompasses the offer for or actual sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer service; the extension of consumer credit; and the collection of consumer debt.

The Consumer Protection Division is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter, hold a public hearing, seek an injunction, or bring an action for damages. A merchant who violates MCPA is subject to a fine of up to \$1,000 for the first violation and up to \$5,000 for each subsequent violation. In addition to any civil penalties that may be imposed, any person who violates MCPA is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$1,000 and/or imprisonment for up to one year.

The federal Gramm-Leach-Bliley Act (GLBA) of 2001 prohibits a financial institution from disclosing a consumer’s private personal information without providing the consumer a copy of the institution’s privacy notice. Under GLBA, the financial institution must disclose to its customers the types of information it collects and to whom such information is disclosed when a new account is opened and each year thereafter.

If a financial institution discloses a consumer's personal information to anyone other than a corporate affiliate, consumers must be allowed to opt out of any information sharing. GLBA also requires a financial institution to generally describe its efforts to protect the confidentiality and security of its customers' personal information.

A section of GLBA preserves a state "statute, regulation, order or interpretation" that is not "inconsistent" with the provisions of GLBA if the state statute affords any person greater protection than the protection afforded by GLBA. Based on several determinations by the Federal Trade Commission (FTC), GLBA does not expressly preempt all state laws on financial privacy, nor does it intend to preempt the field.

So long as the provisions of the bill do not frustrate the purpose of GLBA, and it is possible for financial institutions to comply with both statutory schemes, the legislation and GLBA are not inconsistent with one another. In responding to petitions as to whether state financial privacy statutes afford "greater protection" than GLBA, FTC has determined that, absent an inconsistency between the state law and the privacy provisions of GLBA, there is no need to reach a "greater protection" analysis set forth in GLBA.

The legislation is similar to Vermont financial privacy regulations adopted by that state's Department of Banking, Insurance, Securities, and Health Care Administration and the North Dakota Disclosure of Customer Information law, which received a favorable determination from the Secretary of FTC on June 28, 2001.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Federal Trade Commission; Office of the Attorney General (Consumer Protection Division); Department of Labor, Licensing, and Regulation; Department of Legislative Services

Fiscal Note History: First Reader - March 2, 2009
mam/ljm

Analysis by: Jason F. Weintraub

Direct Inquiries to:
(410) 946-5510
(301) 970-5510