

**Department of Legislative Services**  
Maryland General Assembly  
2013 Session

**FISCAL AND POLICY NOTE**

House Bill 316  
Economic Matters

(Delegate Davis)

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**Consumer Protection - Children's Online Privacy Protection**

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This bill prohibits an operator, as defined by the bill, from using the personal information of a child that resides in the State to display or transmit an advertisement for a product or service to the child, unless the operator (1) provides a specified notice on the website; (2) obtains verifiable consent before displaying or transmitting the advertisement; and (3) clearly identifies the advertisement as such. The operator must know or have reason to know that the operator is collecting or maintaining the child's personal information. The bill prohibits a person from violating the Federal Children's Online Privacy Protection Act (COPPA) as implemented by the Federal Trade Commission (FTC) in the COPPA Rule.

Violation of the bill is an unfair or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), subject to MCPA's civil and criminal penalty provisions. The bill also authorizes a person affected by a violation to bring an action for reasonable attorney's fees and the greater of \$500 for each violation or actual damages sustained as a result of each violation.

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**Fiscal Summary**

**State Effect:** The bill's imposition of existing penalty provisions does not have a material impact on State finances or operations, as the bill incorporates existing federal regulations. 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:** The bill's imposition of existing penalty provisions does not have a material impact on local government finances or operations.

**Small Business Effect:** Minimal.

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## **Analysis**

**Bill Summary:** The bill defines “personal information” as having the definition found in the COPPA Rule. Under the COPPA Rule, personal information means individually identifiable information about an individual collected online, including a first and last name, a home or other physical address, an email address or other online contact information, a telephone number, and a Social Security number.

**Current Law:** The COPPA Rule promulgated by FTC imposes requirements on the operators of websites or online services directed to children younger than age 13, as well as operators that have actual knowledge that the operator is collecting personal information from children younger than age 13.

Operators must place a notice on the operator’s website containing the operator’s contact information, the type of information collected, and how the information will be used. Additionally, operators must obtain verifiable parental consent prior to collecting, using, or disclosing the personal information and make reasonable efforts to provide a specified notice to the parents.

Upon request of a parent whose child has provided personal information to a website or online service, the operator is required to provide to that parent the type of information collected, the opportunity to refuse the operator’s future use of that information and to instruct the operator to delete the information, and the ability to review the information collected. If the parent prohibits the operator from using the child’s personal information, the operator may refuse any future service to the child. However, an operator is prohibited from conditioning a child’s participation in a game, the offering of a prize, or another activity on the child’s disclosing more personal information than is reasonably necessary to participate in such activity.

FTC requires that the operator maintain reasonable procedures to protect the confidentiality, security, and integrity of personal information collected from children.

An unfair or deceptive trade practice under MCPA includes, among other acts, 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 services; the extension of consumer credit; the collection of consumer debt; or the offer for or actual purchase of consumer

goods or consumer realty from a consumer by a merchant whose business includes paying off consumer debt in connection with the purchase of any consumer goods or consumer realty from a consumer.

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.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 374 (Senator Astle, *et al.*) - Finance.

**Information Source(s):** Office of the Attorney General (Consumer Protection Division), Judiciary (Administrative Office of the Courts), Federal Trade Commission, Department of Legislative Services

**Fiscal Note History:** First Reader - February 4, 2013  
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