

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 249
Economic Matters

(Delegates C. Watson and Carey)

Consumer Protection - Right to Opt Out of Third-Party Disclosure

This bill authorizes a consumer to demand, at any time, that a business not disclose the consumer's personal information to third parties. This right may be referred to as the "right to opt out of third-party disclosure." Violation of the bill is an unfair, abusive, or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), subject to MCPA's civil and criminal penalty provisions. **The bill takes effect January 1, 2021.**

Fiscal Summary

State Effect: The bill's imposition of existing penalty provisions does not have a material impact on State finances or operations. The Office of the Attorney General, Consumer Protection Division, can handle the bill's requirements 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: Potential meaningful.

Analysis

Bill Summary:

Applicability Provisions

The bill applies to any for-profit business that collects the personal information of an individual or consumer and satisfies one or more of the following thresholds:

- has annual gross revenues of more than \$25 million;
- annually buys, receives (for commercial purposes), sells, or shares (for commercial purposes), alone or in combination, the personal information of 100,000 or more consumers, households, or devices; or
- derives at least one-half of its annual revenues from selling consumers' personal information.

The bill also applies to any entity that (1) controls (or is controlled by) a business subject to the bill's requirements and (2) shares a name, service mark, or trademark with the business.

Definitions

The bill defines "personal information" as information that reasonably identifies, relates to, describes, or could reasonably be linked to (directly or indirectly) a particular consumer, household, or consumer's device. "Personal information" does not include (1) information that is lawfully made available from government records or (2) de-identified or aggregate consumer information.

Right to Opt Out of Third-party Disclosures

A consumer may exercise the rights established by the bill through a setting indicating the consumer's intent to opt out of third-party disclosure, including a browser setting, browser extension, or global device setting.

In no case may a business disclose the personal information of a consumer to a third party if the business has actual knowledge of or willfully disregards the fact that a consumer is younger than age 18.

A business that receives direction from a consumer to opt out of third-party disclosures may not disclose personal information unless the consumer later provides express authorization for that disclosure. A business may not subsequently request authorization to disclose the consumer's personal information to third parties for at least 12 months.

The bill requires a business to provide a clear and conspicuous link on the Internet homepage of the business to an Internet web page that enables a consumer (or authorized person) to opt out of the third-party disclosure of the consumer's personal information. A business may not require a consumer to create an account in order to exercise his or her rights under the bill.

A consumer may authorize another person to act on the consumer's behalf solely for the purpose of opting out of the sale or disclosure of the consumer's personal information. A business must comply with such an opt-out request.

Finally, the bill prohibits a business from discriminating against a consumer because the consumer exercised any of the consumer's rights under the bill, including by:

- denying goods or services to the consumer;
- charging different prices or rates for goods or services (including through the use of discounts or other benefits, or imposing penalties);
- providing a different level or quality of goods or services to the consumer; or
- suggesting that the consumer will that the consumer will receive a different price or rate for goods or services (or a different level or quality of goods or services).

Current Law: An unfair, abusive, 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, abusive, 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, issue a cease and desist order, or file a civil action in court. A merchant who violates MCPA is subject to a fine of up to \$10,000 for each violation and up to \$25,000 for each repetition of the same 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.

Small Business Effect: If any small businesses meet the bill's thresholds, they may be meaningfully affected by the bill's third-party disclosure requirements. Such businesses must limit or discontinue third-party disclosure activities to the extent consumers choose to exercise their rights pursuant to the bill. The number of small businesses that may be affected cannot be determined due to insufficient data.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Department of Legislative Services

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