

SENATE BILL 234

P3

(PRE-FILED)

1r1295
CF HB 23

By: **Senator Lam**

Requested: October 30, 2020

Introduced and read first time: January 13, 2021

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Personal Information – State and Local Agencies – Restrictions on Access**

3 FOR the purpose of requiring an officer, an employee, an agent, or a contractor of the State
4 or a political subdivision to deny inspection by a federal agency seeking access for
5 certain immigration enforcement matters of the part of a public record that contains
6 personal information or a certain photograph under certain circumstances; requiring
7 an officer, an employee, an agent, or a contractor of the State or a political
8 subdivision to deny inspection using certain facial recognition searches by a federal
9 agency seeking access for certain immigration enforcement matters under certain
10 circumstances; requiring certain State or local agencies to annually report certain
11 information to the General Assembly on a certain date; requiring law enforcement
12 agencies operating certain databases to require certain individuals accessing the
13 databases to provide certain information; requiring certain agencies to deny access
14 to certain databases by an individual seeking to enforce federal immigration law
15 under certain circumstances; defining certain terms; making a conforming change;
16 and generally relating to access to personal information held by State and local
17 agencies.

18 BY repealing and reenacting, with amendments,
19 Article – General Provisions
20 Section 4–320
21 Annotated Code of Maryland
22 (2019 Replacement Volume and 2020 Supplement)

23 BY adding to
24 Article – General Provisions
25 Section 4–320.1
26 Annotated Code of Maryland
27 (2019 Replacement Volume and 2020 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY adding to
2 Article – Public Safety
3 Section 3–523
4 Annotated Code of Maryland
5 (2018 Replacement Volume and 2020 Supplement)

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

8 **Article – General Provisions**

9 4–320.

10 (a) (1) In this section, “telephone solicitation” means the initiation of a
11 telephone call to an individual or to the residence or business of an individual to encourage
12 the purchase or rental of or investment in property, goods, or services.

13 (2) “Telephone solicitation” does not include a telephone call or message:

14 (i) to an individual who has given express permission to the person
15 making the telephone call;

16 (ii) to an individual with whom the person has an established
17 business relationship; or

18 (iii) by a tax–exempt, nonprofit organization.

19 (b) Except as provided in subsections (c) through (f) of this section, a custodian
20 may not knowingly disclose a public record of the Motor Vehicle Administration containing
21 personal information.

22 (c) A custodian shall disclose personal information when required by federal law.

23 (d) (1) This subsection applies only to the disclosure of personal information
24 for any use in response to a request for an individual motor vehicle record.

25 (2) The custodian may not disclose personal information without written
26 consent from the person in interest.

27 (3) (i) At any time the person in interest may withdraw consent to
28 disclose personal information by notifying the custodian.

29 (ii) The withdrawal by the person in interest of consent to disclose
30 personal information shall take effect as soon as practicable after it is received by the
31 custodian.

32 (e) (1) This subsection applies only to the disclosure of personal information

1 for inclusion in lists of information to be used for surveys, marketing, and solicitations.

2 (2) The custodian may not disclose personal information for surveys,
3 marketing, and solicitations without written consent from the person in interest.

4 (3) (i) At any time the person in interest may withdraw consent to
5 disclose personal information by notifying the custodian.

6 (ii) The withdrawal by the person in interest of consent to disclose
7 personal information shall take effect as soon as practicable after it is received by the
8 custodian.

9 (4) The custodian may not disclose personal information under this
10 subsection for use in telephone solicitations.

11 (5) Personal information disclosed under this subsection may be used only
12 for surveys, marketing, or solicitations and only for a purpose approved by the Motor
13 Vehicle Administration.

14 (f) Notwithstanding subsections (d) and (e) of this section, **AND SUBJECT TO §**
15 **4-320.1 OF THIS SUBTITLE**, a custodian shall disclose personal information:

16 (1) for use by a federal, state, or local government, including a law
17 enforcement agency, or a court in carrying out its functions;

18 (2) for use in connection with matters of:

19 (i) motor vehicle or driver safety;

20 (ii) motor vehicle theft;

21 (iii) motor vehicle emissions;

22 (iv) motor vehicle product alterations, recalls, or advisories;

23 (v) performance monitoring of motor vehicle parts and dealers; and

24 (vi) removal of nonowner records from the original records of motor
25 vehicle manufacturers;

26 (3) for use by a private detective agency licensed by the Secretary of State
27 Police under Title 13 of the Business Occupations and Professions Article or a security
28 guard service licensed by the Secretary of State Police under Title 19 of the Business
29 Occupations and Professions Article for a purpose allowed under this subsection;

30 (4) for use in connection with a civil, an administrative, an arbitral, or a
31 criminal proceeding in a federal, state, or local court or regulatory agency for service of

1 process, investigation in anticipation of litigation, and execution or enforcement of
2 judgments or orders;

3 (5) for purposes of research or statistical reporting as approved by the
4 Motor Vehicle Administration provided that the personal information is not published,
5 redisclosed, or used to contact the individual;

6 (6) for use by an insurer, an insurance support organization, or a
7 self-insured entity, or its employees, agents, or contractors, in connection with rating,
8 underwriting, claims investigating, and antifraud activities;

9 (7) for use in the normal course of business activity by a legitimate business
10 entity or its agents, employees, or contractors, but only:

11 (i) to verify the accuracy of personal information submitted by the
12 individual to that entity; and

13 (ii) if the information submitted is not accurate, to obtain correct
14 information only for the purpose of:

15 1. preventing fraud by the individual;

16 2. pursuing legal remedies against the individual; or

17 3. recovering on a debt or security interest against the
18 individual;

19 (8) for use by an employer or insurer to obtain or verify information
20 relating to a holder of a commercial driver's license that is required under the Commercial
21 Motor Vehicle Safety Act of 1986 (49 U.S.C. § 31101 et seq.);

22 (9) for use in connection with the operation of a private toll transportation
23 facility;

24 (10) for use in providing notice to the owner of a towed or impounded motor
25 vehicle;

26 (11) for use by an applicant who provides written consent from the
27 individual to whom the information pertains if the consent is obtained within the 6-month
28 period before the date of the request for personal information;

29 (12) for use in any matter relating to:

30 (i) the operation of a Class B (for hire), Class C (funeral and
31 ambulance), or Class Q (limousine) vehicle; and

32 (ii) public safety or the treatment by the operator of a member of the

1 public;

2 (13) for a use specifically authorized by State law, if the use is related to the
3 operation of a motor vehicle or public safety;

4 (14) for use by a hospital to obtain, for hospital security, information
5 relating to ownership of vehicles parked on hospital property;

6 (15) for use by a procurement organization requesting information under §
7 4–516 of the Estates and Trusts Article for the purposes of organ, tissue, and eye donation;

8 (16) for use by an electric company, as defined in § 1–101 of the Public
9 Utilities Article, but only:

10 (i) information describing a plug–in electric drive vehicle, as defined
11 in § 11–145.1 of the Transportation Article, and identifying the address of the registered
12 owner of the plug–in vehicle;

13 (ii) for use in planning for the availability and reliability of the
14 electric power supply; and

15 (iii) if the information is not:

16 1. published or redisclosed, including redisclosed to an
17 affiliate as defined in § 7–501 of the Public Utilities Article; or

18 2. used for marketing or solicitation; and

19 (17) for use by an attorney, a title insurance producer, or any other
20 individual authorized to conduct a title search of a manufactured home under Title 8B of
21 the Real Property Article.

22 (g) (1) A person receiving personal information under subsection (e) or (f) of
23 this section may not use or redisclose the personal information for a purpose other than the
24 purpose for which the custodian disclosed the personal information.

25 (2) A person receiving personal information under subsection (e) or (f) of
26 this section who rediscloses the personal information shall:

27 (i) keep a record for 5 years of the person to whom the information
28 is redisclosed and the purpose for which the information is to be used; and

29 (ii) make the record available to the custodian on request.

30 (h) (1) The custodian shall adopt regulations to implement and enforce this
31 section.

1 (2) (i) The custodian shall adopt regulations and procedures for
2 securing from a person in interest a waiver of privacy rights under this section when an
3 applicant requests personal information about the person in interest that the custodian is
4 not authorized to disclose under subsections (c) through (f) of this section.

5 (ii) The regulations and procedures adopted under this paragraph
6 shall:

7 1. state the circumstances under which the custodian may
8 request a waiver; and

9 2. conform with the waiver requirements in the federal
10 Driver's Privacy Protection Act of 1994 and other federal law.

11 (i) The custodian may develop and implement methods for monitoring
12 compliance with this section and ensuring that personal information is used only for the
13 purposes for which it is disclosed.

14 **4-320.1.**

15 **(A) IN THIS SECTION, "FACIAL RECOGNITION" MEANS A BIOMETRIC**
16 **SOFTWARE APPLICATION THAT IDENTIFIES OR VERIFIES A PERSON BY COMPARING**
17 **AND ANALYZING PATTERNS BASED ON A PERSON'S FACIAL CONTOURS.**

18 **(B) (1) NOTWITHSTANDING ANY OTHER PROVISION OF THIS TITLE, AN**
19 **OFFICER, AN EMPLOYEE, AN AGENT, OR A CONTRACTOR OF THE STATE OR A**
20 **POLITICAL SUBDIVISION SHALL DENY INSPECTION OF THE PART OF A PUBLIC**
21 **RECORD THAT CONTAINS PERSONAL INFORMATION OR INSPECTION OF A**
22 **PHOTOGRAPH OF AN INDIVIDUAL BY ANY FEDERAL AGENCY SEEKING ACCESS FOR**
23 **THE PURPOSE OF:**

24 **(I) CIVIL IMMIGRATION ENFORCEMENT; OR**

25 **(II) CRIMINAL IMMIGRATION ENFORCEMENT, UNLESS THE**
26 **OFFICER, EMPLOYEE, AGENT, OR CONTRACTOR IS PROVIDED WITH A VALID**
27 **WARRANT ISSUED BY A FEDERAL COURT OR A COURT OF THIS STATE.**

28 **(2) NOTWITHSTANDING ANY OTHER PROVISION OF THIS TITLE, AN**
29 **OFFICER, AN EMPLOYEE, AN AGENT, OR A CONTRACTOR OF THE STATE OR A**
30 **POLITICAL SUBDIVISION SHALL DENY INSPECTION USING A FACIAL RECOGNITION**
31 **SEARCH OF A DIGITAL PHOTOGRAPHIC IMAGE OR ACTUAL STORED DATA OF A**
32 **DIGITAL PHOTOGRAPHIC IMAGE BY ANY FEDERAL AGENCY SEEKING ACCESS FOR**
33 **THE PURPOSE OF:**

34 **(I) CIVIL IMMIGRATION ENFORCEMENT; OR**

1 (II) CRIMINAL IMMIGRATION ENFORCEMENT, UNLESS THE
2 OFFICER, EMPLOYEE, AGENT, OR CONTRACTOR IS PROVIDED WITH A VALID
3 WARRANT ISSUED BY A FEDERAL COURT OR A COURT OF THIS STATE.

4 (3) ON OR BEFORE JUNE 1, 2023, AND EACH JUNE 1 THEREAFTER,
5 ANY STATE OR LOCAL AGENCY THAT RECEIVES A REQUEST FROM A FEDERAL
6 AGENCY SEEKING ACCESS FOR THE PURPOSE OF CIVIL OR CRIMINAL IMMIGRATION
7 ENFORCEMENT FOR PERSONAL INFORMATION, A PHOTOGRAPH OF AN INDIVIDUAL,
8 OR A FACIAL RECOGNITION SEARCH SHALL REPORT TO THE GENERAL ASSEMBLY,
9 IN ACCORDANCE WITH § 2-1257 OF THE STATE GOVERNMENT ARTICLE, THE
10 FOLLOWING INFORMATION FOR THE IMMEDIATELY PRECEDING CALENDAR YEAR:

11 (I) THE NUMBER OF REQUESTS RECEIVED FROM ANY FEDERAL
12 AGENCY FOR PERSONAL INFORMATION, A PHOTOGRAPH OF AN INDIVIDUAL, OR A
13 FACIAL RECOGNITION SEARCH;

14 (II) THE NUMBER OF REQUESTS RECEIVED FROM ANY FEDERAL
15 AGENCY FOR PERSONAL INFORMATION, A PHOTOGRAPH OF AN INDIVIDUAL, OR A
16 FACIAL RECOGNITION SEARCH FOR WHICH A VALID WARRANT ISSUED BY A FEDERAL
17 COURT OR A COURT OF THIS STATE WAS PROVIDED;

18 (III) THE NUMBER AND PURPOSE OF FACIAL RECOGNITION
19 SEARCHES COMPLETED BY THE STATE OR LOCAL AGENCY FOR ANY FEDERAL
20 AGENCY BASED ON PERSONAL INFORMATION OR A PHOTOGRAPH OF AN INDIVIDUAL
21 PROVIDED TO THE FEDERAL AGENCY BY A STATE OR LOCAL AGENCY; AND

22 (IV) THE NUMBER OF INDIVIDUALS WHOSE PERSONAL
23 INFORMATION OR PHOTOGRAPH WAS PROVIDED TO ANY FEDERAL AGENCY BY THE
24 STATE OR LOCAL AGENCY.

25 Article – Public Safety

26 3-523.

27 (A) IN THIS SECTION, “DATABASE” MEANS ANY DATABASE OPERATED BY
28 STATE AND LOCAL LAW ENFORCEMENT AGENCIES, INCLUDING DATABASES
29 MAINTAINED FOR A LAW ENFORCEMENT AGENCY BY A PRIVATE VENDOR.

30 (B) AN ENTITY OPERATING A DATABASE SHALL:

31 (1) LIMIT ACCESS TO THE DATABASE TO INDIVIDUALS ACTING ON
32 BEHALF OF A LAW ENFORCEMENT AGENCY; AND

1 **(2) REQUIRE AN INDIVIDUAL ACCESSING THE DATABASE TO PROVIDE**
2 **TO THE ENTITY:**

3 **(I) THE INDIVIDUAL'S NAME;**

4 **(II) THE INDIVIDUAL'S CONTACT INFORMATION, INCLUDING A**
5 **TELEPHONE NUMBER, AN E-MAIL ADDRESS, AND A PHYSICAL ADDRESS;**

6 **(III) WHICH LAW ENFORCEMENT AGENCY THE INDIVIDUAL IS**
7 **ACTING ON BEHALF OF; AND**

8 **(IV) A STATEMENT BY THE INDIVIDUAL, UNDER PENALTY OF**
9 **PERJURY, THAT THE INDIVIDUAL IS ACCESSING THE DATABASE FOR A LEGITIMATE**
10 **LAW ENFORCEMENT PURPOSE.**

11 **(C) IF AN INDIVIDUAL IS ACCESSING A DATABASE FOR THE PURPOSE OF**
12 **ENFORCING FEDERAL IMMIGRATION LAW, THE ENTITY OPERATING THE DATABASE**
13 **SHALL DENY THE INDIVIDUAL ACCESS TO THE DATABASE UNLESS THE ENTITY IS**
14 **PROVIDED WITH A VALID WARRANT ISSUED BY A FEDERAL COURT OR A COURT OF**
15 **THIS STATE.**

16 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
17 October 1, 2021.