

HB0901/823620/1

BY: Economic Matters Committee

AMENDMENTS TO HOUSE BILL 901
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, after line 10, insert:

“BY repealing and reenacting, with amendments,
Article - Commercial Law
Section 13-301(14)(xxxv)
Annotated Code of Maryland
(2013 Replacement Volume and 2022 Supplement)

BY repealing and reenacting, without amendments,
Article - Commercial Law
Section 13-301(14)(xxxvi)
Annotated Code of Maryland
(2013 Replacement Volume and 2022 Supplement)”;

and in line 13, after “Section” insert “13-301(14)(xxxvii); and”.

AMENDMENT NO. 2

On page 3, after line 8, insert:

“13-301.

Unfair, abusive, or deceptive trade practices include any:

(14) Violation of a provision of:

(xxxv) Section 11-210 of the Education Article; [or]

(xxxvi) Title 14, Subtitle 44 of this article; or

(XXXVII) TITLE 14, SUBTITLE 45 OF THIS ARTICLE; OR”;

after line 20, insert:

“(C) (1) “BIOMETRIC INFORMATION” MEANS INFORMATION GENERATED BY AUTOMATIC MEASUREMENTS OF AN INDIVIDUAL’S BIOLOGICAL CHARACTERISTICS.

(2) “BIOMETRIC INFORMATION” INCLUDES:

(I) A FINGERPRINT;

(II) A VOICEPRINT;

(III) EYE RETINA OR IRIS PATTERN; OR

(IV) ANY OTHER UNIQUE BIOLOGICAL PATTERNS OR CHARACTERISTICS THAT ARE USED TO IDENTIFY A SPECIFIC INDIVIDUAL.

(3) “BIOMETRIC INFORMATION” DOES NOT INCLUDE:

(I) A DIGITAL OR PHYSICAL PHOTOGRAPH;

(II) AN AUDIO OR VIDEO RECORDING; OR

(III) ANY DATA GENERATED FROM A DIGITAL OR PHYSICAL PHOTOGRAPH, OR AN AUDIO OR VIDEO RECORDING, UNLESS THE DATA IS GENERATED TO IDENTIFY A SPECIFIC INDIVIDUAL.”;

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and in line 21, strike “(C)” and substitute “(D)”.

On page 4, in lines 18, 19, 22, 25, and 27, strike “(D)”, “(E)”, “(F)”, “(G)”, and “(H)”, respectively, and substitute “(E)”, “(F)”, “(G)”, “(H) (1)”, and “(I)”, respectively; strike beginning with “ACTIVELY” in line 19 down through “MEANS” in line 21 and substitute “BUY, RENT, GATHER, OBTAIN, RECEIVE, OR ACCESS ANY PERSONAL INFORMATION RELATING TO A CONSUMER”; and after line 26, insert:

“(2) “CONSUMER” DOES NOT INCLUDE AN INDIVIDUAL ACTING IN A COMMERCIAL OR EMPLOYMENT CONTEXT OR AS AN EMPLOYEE, OWNER, DIRECTOR, OFFICER, OR CONTRACTOR OF A COMPANY, PARTNERSHIP, SOLE PROPRIETORSHIP, NONPROFIT ORGANIZATION, OR GOVERNMENT AGENCY WHOSE COMMUNICATIONS OR TRANSACTIONS WITH THE BUSINESS OCCUR SOLELY WITHIN THE CONTEXT OF THAT INDIVIDUAL’S ROLE WITH THE COMPANY, PARTNERSHIP, SOLE PROPRIETORSHIP, NONPROFIT, OR GOVERNMENT AGENCY.”

On page 5 in lines 6, 9, 14, and 16, strike “(I)”, “(J)”, “(K)”, and “(L)”, respectively, and substitute “(J)”, “(K)”, “(L)”, and “(M)”, respectively; in line 16, after “CANNOT” insert “REASONABLY”; in line 17, strike “REASONABLY”; in line 18, strike “A PARTICULAR” and substitute “AN IDENTIFIED OR IDENTIFIABLE”; and in line 21, strike “ASSOCIATED” and substitute “LINKED”.

On page 6 in lines 1, 18, and 25, strike “(M)”, “(N)”, and “(O)”, respectively, and substitute “(N)”, “(O)”, and “(P)”, respectively; in line 22, strike “OR”; in line 23, strike “DELIVERY” and substitute “SALE, DELIVERY,”; and in line 24, after “RETAILER” insert “; OR”

(III) A BROADBAND INTERNET ACCESS SERVICE, AS DEFINED IN 47 C.F.R. § 8.1(B)”.

(Over)

On page 7 in lines 5, 10, 17, and 27, strike “(P)”, “(Q)”, “(R)”, and “(S)”, respectively, and substitute “(Q)”, “(R)”, “(S)”, and “(T) (1)”, respectively; in line 10, strike “(1)”; in line 11, after “EVALUATE” insert “OR PREDICT”; strike beginning with the period in line 12 down through “CONCERNING” in line 14 and substitute “INCLUDING”; and after line 31, insert:

“(2) “SELL” DOES NOT INCLUDE:

(I) THE DISCLOSURE OF PERSONAL INFORMATION TO A SERVICE PROVIDER THAT PROCESSES PERSONAL INFORMATION ON BEHALF OF THE BUSINESS;

(II) THE DISCLOSURE OF PERSONAL INFORMATION TO A THIRD PARTY FOR PURPOSES OF PROVIDING A PRODUCT OR SERVICE REQUESTED BY THE CONSUMER;

(III) THE DISCLOSURE OF PERSONAL INFORMATION WHERE THE CONSUMER DIRECTS THE BUSINESS TO DISCLOSE THE PERSONAL INFORMATION OR INTENTIONALLY USES THE BUSINESS TO INTERACT WITH A THIRD PARTY; OR

(IV) THE DISCLOSURE OR TRANSFER OF PERSONAL INFORMATION TO A THIRD PARTY AS AN ASSET THAT IS PART OF AN ACTUAL OR PROPOSED MERGER, ACQUISITION, BANKRUPTCY, OR OTHER TRANSACTION, IN WHICH THE THIRD PARTY ASSUMES CONTROL OF ALL OR PART OF THE BUSINESS’S ASSETS.”.

On page 8 in lines 1 and 24, strike “(T)” and “(U)”, respectively, and substitute “(U)” and “(W)”, respectively; strike line 12 in its entirety; in lines 13 and 15, strike “6.” and “7.”, respectively, and substitute “5.” and “6.”, respectively; and after line 23, insert:

“(V) “SERVICE PROVIDER” MEANS A PERSON THAT PROCESSES PERSONAL INFORMATION ON BEHALF OF A BUSINESS AND THAT RECEIVES FROM OR ON BEHALF OF THE BUSINESS, A CONSUMER’S PERSONAL INFORMATION FOR A BUSINESS PURPOSE IN ACCORDANCE WITH A WRITTEN CONTRACT, IF THE CONTRACT PROHIBITS THE PERSON FROM:

(1) SELLING OR SHARING THE PERSONAL INFORMATION;

(2) RETAINING, USING, OR DISCLOSING THE PERSONAL INFORMATION FOR ANY PURPOSE OTHER THAN FOR THE BUSINESS PURPOSES SPECIFIED IN THE CONTRACT FOR THE BUSINESS, INCLUDING RETAINING, USING, OR DISCLOSING THE PERSONAL INFORMATION FOR A COMMERCIAL PURPOSE OTHER THAN THE BUSINESS PURPOSES SPECIFIED IN THE CONTRACT WITH THE BUSINESS, OR AS OTHERWISE ALLOWED UNDER THIS SUBTITLE;

(3) RETAINING, USING, OR DISCLOSING THE PERSONAL INFORMATION OUTSIDE OF THE DIRECT BUSINESS RELATIONSHIP BETWEEN THE SERVICE PROVIDER AND THE BUSINESS; AND

(4) COMBINING THE PERSONAL INFORMATION THAT THE SERVICE PROVIDER RECEIVES FROM, OR ON BEHALF OF, THE BUSINESS WITH PERSONAL INFORMATION THAT IT RECEIVES FROM, OR ON BEHALF OF, ANOTHER PERSON OR PERSONS, OR COLLECTS FROM ITS OWN INTERACTION WITH THE CONSUMER.”

On page 9, in line 1, strike “CROSS-CONTEXT BEHAVIORAL” and substitute “TARGETED”; after line 2, insert:

(Over)

“(X) (1) “TARGETED ADVERTISING” MEANS DISPLAYING ADVERTISEMENTS TO A CONSUMER WHERE THE ADVERTISEMENT IS SELECTED BASED ON PERSONAL INFORMATION OBTAINED OR INFERRED FROM THAT CONSUMER’S ACTIVITIES OVER TIME AND ACROSS NONAFFILIATED INTERNET WEBSITES OR ONLINE APPLICATIONS TO PREDICT THE CONSUMER’S PREFERENCES OR INTERESTS.

(2) “TARGETED ADVERTISING” DOES NOT INCLUDE:

(I) ADVERTISEMENTS BASED ON ACTIVITIES WITHIN A BUSINESS’S OWN INTERNET WEBSITES OR ONLINE APPLICATIONS;

(II) ADVERTISEMENTS BASED ON THE CONTEXT OF A CONSUMER’S CURRENT SEARCH QUERY, VISIT TO AN INTERNET WEBSITE OR ONLINE APPLICATION;

(III) ADVERTISEMENTS DIRECTED TO A CONSUMER IN RESPONSE TO THE CONSUMER’S REQUEST FOR INFORMATION OR FEEDBACK; OR

(IV) PROCESSING PERSONAL INFORMATION SOLELY TO MEASURE OR REPORT ADVERTISING FREQUENCY, PERFORMANCE, OR REACH.”;

and in line 3, strike “(V)” and substitute “(Y)”.

On page 10, in line 15, strike “JULY 1, 2024” and substitute “APRIL 1, 2025”;
after line 12, insert:

“14-4504.

WHEN DETERMINING WHETHER AN ACTION IS IN THE BEST INTERESTS OF CHILDREN, A BUSINESS SHALL CONSIDER CHILDREN’S:

- (1) PRIVACY;**
- (2) SAFETY;**
- (3) PHYSICAL HEALTH; AND**
- (4) MENTAL HEALTH.”;**

in line 13, strike “**14-4504.**” and substitute “**14-4505.**”; and strike in their entirety lines 26 through 28 and substitute:

“(I) WHETHER ALGORITHMS USED BY THE ONLINE PRODUCT COULD RESULT IN HARM TO CHILDREN;”.

On page 11, in lines 1, 4, and 7, in each instance, strike “**DESIGN**” and substitute “**DATA MANAGEMENT PRACTICES**”; in line 8, strike “**A**”; in line 9, strike “**CONTACT**” and substitute “**CONTACTS**”; strike in their entirety lines 10 and 11; in lines 12, 14, and 20, strike “**(VI)**”, “**(VII)**”, and “**(VIII)**”, respectively, and substitute “**(V)**”, “**(VI)**”, and “**(VII)**”, respectively; and strike beginning with “**CONTAIN**” in line 27 down through “**ADDRESSED**” in line 29 and substitute “**ADDRESS A SET OF SIMILAR PROCESSING OPERATIONS THAT PRESENT SIMILAR RISKS PROVIDED NO INDIVIDUAL RISKS ARE MINIMIZED**”.

On page 12, in line 2, strike “**JUNE 30, 2024**” and substitute “**APRIL 1, 2025**”; and in line 4, strike “**14-4505.**” and substitute “**14-4506.**”.

(Over)

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On page 13, in line 11, strike “**14-4506.**” and substitute “**14-4507.**”; and strike beginning with “, **TO**” in line 18 down through “**SATISFACTION,**” in line 19.

On page 14, in line 28, strike “**14-4507.**” and substitute “**14-4508.**”; and in line 33, strike “**14-4504**” and substitute “**14-4505**”.

On page 15, strike beginning with the second “**ATTORNEY**” in line 2 down through “**GENERAL**” in line 3 and substitute “**DIVISION**”; in lines 9 and 26, strike “**14-4508.**” and “**14-4509.**”, respectively, and substitute “**14-4509.**” and “**14-4510.**”, respectively; strike beginning with “**THE**” in line 10 down through “**BOTH**” in line 12 and substitute “**A VIOLATION OF THIS SUBTITLE:**”

(1) IS AN UNFAIR, ABUSIVE, OR DECEPTIVE TRADE PRACTICE; AND

(2) EXCEPT FOR § 13-410 OF THIS ARTICLE, IS SUBJECT TO THE ENFORCEMENT PROVISIONS CONTAINED IN TITLE 13 OF THIS ARTICLE”;

strike beginning with “**SHALL**” in line 13 down through “**THAN**” in line 14 and substitute “**IS SUBJECT TO A CIVIL PENALTY NOT EXCEEDING**”; strike in their entirety lines 19 through 21, inclusive; in line 22, strike “**(D)**” and substitute “**(C)**”; strike beginning with “**CIVIL**” in line 22 down through “**IN**” in line 23 and substitute “**THE COMMISSIONER SHALL PAY ALL FINES, PENALTIES, AND EXPENSES COLLECTED BY THE COMMISSIONER UNDER THIS SUBSECTION INTO**”; in line 24, strike “**THEY**” and substitute “**FINES, PENALTIES, AND EXPENSES**”; in the same line, after “**OFFSET**” insert “**ANY**”; in line 28, strike “**14-4504**” and substitute “**14-4505**”; in line 28, strike “**14-4506**” and substitute “**14-4507**”; and in line 30, strike “**14-4508**” and substitute “**14-4509**”.

On page 16, strike beginning with “**ATTORNEY**” in line 2 down through “**GENERAL**” in line 3 and substitute “**DIVISION**”; in line 7, strike “**ATTORNEY**”

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GENERAL'S" and substitute "**DIVISION'S**"; in line 14, strike "**14-4510.**" and substitute "**14-4511.**"; and strike in their entirety lines 17 through 20, inclusive.

On page 14 in lines 30 and 31 and 32, on page 15 in lines 2 and 29, and on page 16 in lines 10 and 13, in each instance, strike "**ATTORNEY GENERAL**" and substitute "**DIVISION**".