



SB 698 Consumer Protection - Online and Biometric Data Privacy

Section 14-4507. (note: text of paragraph (G) below begins on p. 25 and carries over to p. 26)

23 (G) (1) IF A CONSUMER’S DECISION TO OPT OUT OF THE PROCESSING OF
24 THE CONSUMER’S PERSONAL DATA FOR THE PURPOSES OF TARGETED ADVERTISING
25 OR THE SALE OF PERSONAL DATA THROUGH AN OPT-OUT PREFERENCE SIGNAL
26 SENT IN ACCORDANCE §14-4508(B)(4)(II) OF THIS SUBTITLE CONFLICTS WITH
27 THE CONSUMER’S EXISTING CONTROLLER-SPECIFIC PRIVACY SETTING ~~OR~~
28 ~~VOLUNTARY PARTICIPATION IN A CONTROLLER’S BONA FIDE LOYALTY, REWARDS~~
29 ~~PREMIUM FEATURES, DISCOUNTS, OR CLUB CARD PROGRAM,~~ THE CONTROLLER
30 SHALL COMPLY WITH THE CONSUMER’S OPT-OUT PREFERENCE SIGNAL.

31 (2) A CONTROLLER MAY:

1 (I) NOTIFY A CONSUMER OF THE CONFLICT BETWEEN AN
2 OPT-OUT PREFERENCE SIGNAL AND A CONTROLLER’S SPECIFIC PRIVACY SETTING;
3 AND

4 (II) PROVIDE TO THE CONSUMER THE CHOICE TO CONFIRM THE
5 CONTROLLER-SPECIFIC PRIVACY SETTING OR PARTICIPATION IN THE PROGRAM.

RETAILERS’ CONCERNS WITH TEXT OF SECTION 14-4507(G)(1) and (2)

- We recommend striking the highlighted text above of subparagraphs (G)(1) and (2) of HB 807 in order to avoid the significant anti-consumer effect of a new law that – in direct opposition to Maryland consumers’ specific and prior, voluntary opt-in choices – automatically cancels their participation in a customer loyalty program.
- Subparagraph (G) provides a mechanism for conflict resolution with an automatic or global opt-out option available to controllers (under section 14-4508(B)(4)(II) on p. 28, l. 3-8) “to allow consumers to opt-out...of targeted advertising, or any sale of data, through an opt-out preference signal” sent by a web browser or other mechanism. However, (G)(1) and (2) inappropriately includes in its text extra language related

to customer loyalty programs even though the opt-out signals are for other purposes.

- This raises significant concerns for retailers. Recent studies show that nearly 80% of all consumers participate in at least one customer loyalty program and American adults, on average, participate in nine. Consumers choose to voluntarily participate in loyalty programs; participation is not required as plans are offered on an opt-in basis. By participating, consumers typically earn points, discounts and/or higher levels of service that reward them for greater engagement with the business offering the program.
- Consumers would not expect a “privacy-promoting” web browser or other technology designed with signals to opt them out of “targeted ads” or “data sales” to also opt them out of a loyalty program they already voluntarily opted into. The highlighted text above of subparagraph (G)(1) upends consumers’ specific choices and threatens to cancel their customer loyalty accounts and points, well beyond the purpose of the signal.
- Additionally, subparagraph (G)(2) creates consumer confusion by forcing them to re-confirm their prior choices to avoid automatic cancellation of loyalty programs. If they fail to re-confirm that choice because they miss a notice or are confused by it, their account and points could be automatically terminated. It is likely consumers would be surprised the law overturns their prior opt-in choice by effectively creating a confusing and unnecessary “double opt-in” requirement for popular customer loyalty programs.