

SENATE BILL 1005

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CF HB 957

By: **Senator Feldman**

Introduced and read first time: February 7, 2020

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Commercial Law – Internet Privacy and Net Neutrality**

3 FOR the purpose of specifying the circumstances under which a broadband Internet access
4 service provider may handle certain customer personal information in a certain
5 manner; establishing a mechanism through which a broadband Internet access
6 service provider may obtain customer consent to have certain personal information
7 handled in a certain manner; prohibiting a broadband Internet access service
8 provider from taking certain actions based on whether a customer has consented to
9 have certain customer personal information handled in a certain manner; specifying
10 the circumstances under which a broadband Internet access service provider may
11 handle certain customer personal information in a certain manner without consent
12 from a customer; authorizing a broadband Internet access service provider to handle
13 certain customer personal information in a certain manner for the purpose of
14 advertising or marketing to the customer; requiring a broadband Internet access
15 service provider to disclose certain customer personal information under certain
16 circumstances; requiring a broadband Internet access service provider to implement
17 certain measures to protect certain customer personal information; authorizing a
18 broadband Internet access service provider to take certain actions to comply with the
19 requirement to implement certain measures to protect certain customer personal
20 information; prohibiting a broadband Internet access service provider from retaining
21 certain customer personal information for longer than a certain amount of time,
22 subject to certain exceptions; requiring a broadband Internet access service provider
23 to provide certain notice; specifying that a certain term in a contract is void and
24 unenforceable under certain circumstances; providing for the enforcement of this
25 Act; providing that State funds may be used only by the State, a political subdivision,
26 or a unit, an agency, or any instrumentality of the State or a political subdivision or
27 by a person awarded a contract or grant by certain persons to procure services from
28 an Internet service provider that does not block certain content applications,
29 services, and devices, impair or degrade certain Internet traffic on a certain basis, or
30 engage in certain commercial traffic preferencing; declaring the intent of the General
31 Assembly to prohibit the State and municipalities that provide broadband service

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



from imposing certain restrictions; providing for the construction and application of this Act; defining certain terms; and generally relating to Internet privacy and usage.

BY adding to

Article – Commercial Law

Section 14–4201 through 14–4209 to be under the new subtitle “Subtitle 42. Internet Privacy and Net Neutrality”

Annotated Code of Maryland

(2013 Replacement Volume and 2019 Supplement)

BY adding to

Article – State Finance and Procurement

Section 2–901 to be under the new subtitle “Subtitle 9. Restrictions on the Use of State Funds”

Annotated Code of Maryland

(2015 Replacement Volume and 2019 Supplement)

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

Article – Commercial Law

SUBTITLE 42. INTERNET PRIVACY AND NET NEUTRALITY.

14–4201.

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) “AGGREGATE CUSTOMER PERSONAL INFORMATION DATASET” MEANS COLLECTIVE DATA THAT:

(1) RELATES TO A GROUP OR A CATEGORY OF CUSTOMERS, FROM WHICH INDIVIDUAL CUSTOMER IDENTITIES AND CHARACTERISTICS HAVE BEEN REMOVED; AND

(2) IS NOT LINKED OR ABLE TO BE LINKED THROUGH REASONABLE EFFORTS TO AN INDIVIDUAL, A HOUSEHOLD, OR A DEVICE.

(C) (1) “BROADBAND INTERNET ACCESS SERVICE” OR “BIAS” MEANS A MASS-MARKET RETAIL SERVICE BY WIRE OR RADIO THAT PROVIDES THE CAPABILITY TO TRANSMIT DATA TO AND TO RECEIVE DATA FROM ALL OR SUBSTANTIALLY ALL INTERNET ENDPOINTS.

(2) “BROADBAND INTERNET ACCESS SERVICE” OR “BIAS”

1 INCLUDES:

2 (I) CAPABILITIES THAT ARE INCIDENTAL TO AND ENABLE
3 OPERATION OF THE COMMUNICATIONS SERVICE; AND

4 (II) SERVICE THAT THE FEDERAL COMMUNICATIONS
5 COMMISSION DETERMINES PROVIDES A FUNCTIONAL EQUIVALENT OF THE SERVICE
6 DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION.

7 (3) "BROADBAND INTERNET ACCESS SERVICE" OR "BIAS" DOES NOT
8 INCLUDE DIAL-UP INTERNET ACCESS SERVICE.

9 (D) "BROADBAND INTERNET ACCESS SERVICE PROVIDER" OR "BIAS
10 PROVIDER" MEANS AN INDIVIDUAL OR A PERSON ENGAGED IN THE PROVISION OF
11 BROADBAND INTERNET ACCESS SERVICE.

12 (E) "CUSTOMER" MEANS AN INDIVIDUAL OR ANY OTHER PERSON WHO IS:

13 (1) AN APPLICANT FOR BROADBAND INTERNET ACCESS SERVICE; OR

14 (2) A CURRENT OR FORMER SUBSCRIBER TO BROADBAND INTERNET
15 ACCESS SERVICE.

16 (F) (1) "CUSTOMER PERSONAL INFORMATION" MEANS INFORMATION
17 THAT IS COLLECTED BY OR MADE AVAILABLE TO A BROADBAND INTERNET ACCESS
18 SERVICE PROVIDER SOLELY THROUGH THE CUSTOMER-PROVIDER RELATIONSHIP.

19 (2) "CUSTOMER PERSONAL INFORMATION" INCLUDES:

20 (I) NAME AND BILLING INFORMATION;

21 (II) GOVERNMENT-ISSUED IDENTIFIERS, SUCH AS A SOCIAL
22 SECURITY NUMBER OR A DRIVER'S LICENSE NUMBER;

23 (III) OTHER CONTACT INFORMATION, SUCH AS A PHYSICAL
24 ADDRESS, AN E-MAIL ADDRESS, OR A TELEPHONE NUMBER;

25 (IV) DEMOGRAPHIC INFORMATION, SUCH AS DATE OF BIRTH,
26 AGE, RACE, ETHNICITY, NATIONALITY, RELIGION, POLITICAL BELIEFS, GENDER, OR
27 SEXUAL ORIENTATION;

28 (V) FINANCIAL INFORMATION, HEALTH INFORMATION, OR
29 INFORMATION PERTAINING TO CHILDREN;

(VI) GEOLOCATION INFORMATION THAT IS SUFFICIENT TO IDENTIFY A STREET NAME AND THE NAME OF A CITY OR TOWN;

(VII) INFORMATION THAT RELATES TO THE QUANTITY, TECHNICAL CONFIGURATION, TYPE, DESTINATION, LOCATION, AND AMOUNT OF USE OF THE BROADBAND INTERNET ACCESS SERVICE, INCLUDING WEB-BROWSING HISTORY, APPLICATION USAGE HISTORY, TIMING OF USE, QUANTITY OF USE, AND SOURCE AND DESTINATION INTERNET PROTOCOL ADDRESSES OF ALL TRAFFIC;

(VIII) CONTENT OF COMMUNICATIONS, INCLUDING ANY PART OF THE SUBSTANCE, PURPOSE, OR MEANING OF A COMMUNICATION OR ANY OTHER PART OF A COMMUNICATION THAT IS HIGHLY SUGGESTIVE OF THE SUBSTANCE, PURPOSE, OR MEANING OF A COMMUNICATION, SUCH AS APPLICATION PAYLOAD;

(IX) DEVICE IDENTIFIERS, SUCH AS A MEDIA ACCESS CONTROL ADDRESS, AN INTERNATIONAL MOBILE EQUIPMENT IDENTITY NUMBER, AND AN INTERNET PROTOCOL ADDRESS;

(X) CUSTOMER INFORMATION THAT IS COLLECTED OR MADE AVAILABLE AND MAINTAINED IN A WAY THAT THE INFORMATION IS LINKED OR ABLE TO BE LINKED THROUGH REASONABLE EFFORTS TO A CUSTOMER OR A DEVICE; AND

(XI) INFORMATION THAT IS RELATED TO A CUSTOMER, DESPITE THE CUSTOMER'S IDENTITY AND CHARACTERISTICS HAVING BEEN REMOVED.

(G) "MATERIAL CHANGE" MEANS ANY CHANGE THAT A CUSTOMER WOULD REASONABLY CONSIDER IMPORTANT TO THE CUSTOMER'S DECISIONS REGARDING THE CUSTOMER'S PRIVACY.

(H) "OPT-IN CONSENT" MEANS AFFIRMATIVE, EXPRESS CUSTOMER APPROVAL FOR THE REQUESTED USE, DISCLOSURE, SALE, OR ACCESS TO CUSTOMER PERSONAL INFORMATION AFTER THE CUSTOMER HAS BEEN PROVIDED APPROPRIATE NOTIFICATION OF A BIAS PROVIDER'S PRACTICES UNDER § 14-4206 OF THIS SUBTITLE.

14-4202.

THIS SUBTITLE APPLIES ONLY TO A BIAS PROVIDER OPERATING IN THE STATE WHEN THE BIAS PROVIDER IS PROVIDING BIAS TO CUSTOMERS IN THE STATE.

14-4203.

1 (A) A BIAS PROVIDER MAY USE, DISCLOSE, SELL, OR PROVIDE ACCESS TO
2 CUSTOMER PERSONAL INFORMATION IF THE BIAS PROVIDER OBTAINS OPT-IN
3 CONSENT THAT A CUSTOMER HAS NOT REVOKED.

4 (B) EXCEPT AS PROVIDED IN § 14-4204 OF THIS SUBTITLE, A BIAS
5 PROVIDER MAY NOT USE, DISCLOSE, SELL, OR PROVIDE ACCESS TO CUSTOMER
6 PERSONAL INFORMATION WITHOUT OPT-IN CONSENT FROM A CUSTOMER.

7 (C) IN ORDER TO DETERMINE WHETHER A BIAS PROVIDER HAS RECEIVED
8 OPT-IN CONSENT, THE BIAS PROVIDER SHALL DEVELOP A MECHANISM FOR A
9 CUSTOMER TO GRANT, DENY, OR REVOKE CONSENT THAT IS:

10 (1) EASY TO USE AND UNDERSTAND;

11 (2) NOT MISLEADING;

12 (3) CONTINUOUSLY AVAILABLE THROUGH ALL METHODS THAT THE
13 BIAS PROVIDER USES TO MANAGE ACCOUNTS;

14 (4) IN THE LANGUAGE THAT THE BIAS PROVIDER PRIMARILY USES
15 TO CONDUCT BUSINESS WITH THE CUSTOMER; AND

16 (5) MADE AVAILABLE TO THE CUSTOMER FOR NO ADDITIONAL
17 CHARGE.

18 (D) A CUSTOMER'S GRANT, DENIAL, OR REVOCATION OF CONSENT SHALL BE
19 GIVEN EFFECT PROMPTLY AND REMAIN IN EFFECT UNTIL THE CUSTOMER REVOKES
20 OR LIMITS THE GRANT, DENIAL, OR REVOCATION OF CONSENT.

21 (E) A BIAS PROVIDER MAY NOT:

22 (1) REFUSE TO SERVE A CUSTOMER WHO DOES NOT PROVIDE
23 CONSENT UNDER THIS SECTION; OR

24 (2) CHARGE A CUSTOMER A HIGHER PRICE OR OFFER A CUSTOMER A
25 DISCOUNTED PRICE BASED ON THE CUSTOMER'S DECISION TO PROVIDE OR NOT
26 PROVIDE OPT-IN CONSENT.

27 14-4204.

28 (A) NOTWITHSTANDING § 14-4203 OF THIS SUBTITLE, A BIAS PROVIDER
29 MAY USE, DISCLOSE, SELL, OR PROVIDE ACCESS TO CUSTOMER PERSONAL

1 INFORMATION WITHOUT OPT-IN CONSENT FROM A CUSTOMER TO:

2 (1) USE THE INFORMATION WHEN IT IS DERIVED FROM OR
3 NECESSARY FOR THE PROVISION OF BIAS;

4 (2) COMPLY WITH LEGAL PROCESS OR OTHER LAWS, COURT ORDERS,
5 OR ADMINISTRATIVE ORDERS;

6 (3) INITIATE, RENDER, BILL FOR, AND COLLECT PAYMENTS;

7 (4) PROTECT THE RIGHTS OR PROPERTY OF THE BIAS PROVIDER OR
8 PROTECT CUSTOMERS AND OTHER BIAS PROVIDERS FROM FRAUDULENT, ABUSIVE,
9 OR UNLAWFUL USE OF OR SUBSCRIPTION TO THE BIAS PROVIDER'S NETWORK; OR

10 (5) PROVIDE LOCATION INFORMATION CONCERNING THE
11 CUSTOMER:

12 (I) IF THE CUSTOMER HAS REQUESTED EMERGENCY SERVICES,
13 TO A PUBLIC SAFETY ANSWERING POINT, AN EMERGENCY MEDICAL SERVICE
14 PROVIDER OR AN EMERGENCY DISPATCH PROVIDER, A PUBLIC SAFETY, FIRE
15 SERVICE, OR LAW ENFORCEMENT OFFICIAL, OR A HOSPITAL EMERGENCY OR
16 TRAUMA CARE FACILITY;

17 (II) IF AN EMERGENCY SITUATION ARISES THAT INVOLVES THE
18 RISK OF DEATH OR SERIOUS INJURY, TO THE CUSTOMER'S LEGAL GUARDIAN,
19 MEMBERS OF THE CUSTOMER'S FAMILY, OR A PERSON REASONABLY BELIEVED BY
20 THE BIAS PROVIDER TO BE A CLOSE PERSONAL FRIEND OF THE CUSTOMER; OR

21 (III) IF THE DELIVERY OF EMERGENCY SERVICES IS NEEDED, TO
22 PROVIDERS OF INFORMATION OR DATABASE MANAGEMENT SERVICES.

23 (B) EXCEPT AS OTHERWISE PROVIDED IN STATE LAW, UNLESS A CUSTOMER
24 HAS OPTED OUT OF RECEIVING THE COMMUNICATION, A BIAS PROVIDER MAY USE,
25 DISCLOSE, SELL, OR PROVIDE ACCESS TO CUSTOMER PERSONAL INFORMATION TO
26 ADVERTISE OR MARKET THE BIAS PROVIDER'S COMMUNICATIONS-RELATED
27 SERVICES TO THE CUSTOMER.

28 (C) ON WRITTEN REQUEST BY A CUSTOMER, THE BIAS PROVIDER SHALL
29 DISCLOSE CUSTOMER PERSONAL INFORMATION TO THE CUSTOMER OR TO ANY
30 PERSON THAT THE CUSTOMER DESIGNATES.

31 14-4205.

(A) (1) A BIAS PROVIDER SHALL IMPLEMENT REASONABLE MEASURES TO PROTECT CUSTOMER PERSONAL INFORMATION FROM UNAUTHORIZED USE, DISCLOSURE, SALE, ACCESS, DESTRUCTION, OR MODIFICATION.

(2) THE REASONABLENESS OF THE BIAS PROVIDER'S SECURITY MEASURES SHALL BE BASED ON AN ASSESSMENT OF:

(I) THE NATURE AND SCOPE OF THE BIAS PROVIDER'S ACTIVITIES;

(II) THE SENSITIVITY OF THE DATA THE BIAS PROVIDER COLLECTS;

(III) THE SIZE OF THE BIAS PROVIDER; AND

(IV) THE TECHNICAL FEASIBILITY OF THE MEASURES.

(B) A BIAS PROVIDER MAY EMPLOY ANY LAWFUL SECURITY MEASURE TO COMPLY WITH THE REQUIREMENT UNDER SUBSECTION (A) OF THIS SECTION.

(C) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A BIAS PROVIDER MAY NOT RETAIN CUSTOMER PERSONAL INFORMATION FOR LONGER THAN REASONABLY NECESSARY TO ACCOMPLISH THE PURPOSES FOR WHICH THE INFORMATION WAS COLLECTED.

(2) A BIAS PROVIDER MAY RETAIN CUSTOMER PERSONAL INFORMATION FOR LONGER THAN REASONABLY NECESSARY IF:

(I) THE RETENTION IS REQUIRED BY § 14-4204 OF THIS SUBTITLE; OR

(II) THE DATA IS PART OF AN AGGREGATE CUSTOMER PERSONAL INFORMATION DATASET.

14-4206.

(A) A BIAS PROVIDER SHALL PROVIDE NOTICE OF THE REQUIREMENTS OF THIS SUBTITLE THAT IS:

(1) IN THE LANGUAGE THAT THE BIAS PROVIDER PRIMARILY USES TO CONDUCT BUSINESS WITH THE CUSTOMER; AND

(2) CONTINUOUSLY AVAILABLE THROUGH ALL METHODS THAT THE

BIAS PROVIDER USES TO MANAGE ACCOUNTS.

(B) THE NOTICE SHALL SPECIFY AND DESCRIBE OR LINK TO A RESOURCE THAT SPECIFIES AND DESCRIBES:

(1) THE TYPES OF CONSUMER PERSONAL INFORMATION THAT THE BIAS PROVIDER COLLECTS, THE WAYS IN WHICH THE BIAS PROVIDER USES THE INFORMATION, AND THE LENGTH OF TIME THAT THE BIAS PROVIDER RETAINS THE INFORMATION;

(2) THE CIRCUMSTANCES UNDER WHICH THE BIAS PROVIDER DISCLOSES, SELLS, OR PROVIDES ACCESS TO THE INFORMATION THAT IT COLLECTS;

(3) THE CATEGORIES OF ENTITIES TO WHICH THE BIAS PROVIDER DISCLOSES, SELLS, OR PROVIDES ACCESS TO CUSTOMER PERSONAL INFORMATION AND THE PURPOSES FOR WHICH EACH CATEGORY OF ENTITY WILL USE THE INFORMATION; AND

(4) THE CUSTOMER'S RIGHT TO CONSENT WITH REGARD TO THE USE, DISCLOSURE, SALE, OR ACCESS TO CUSTOMER PERSONAL INFORMATION AND HOW THAT RIGHT MAY BE EXERCISED.

(C) BEFORE A BIAS PROVIDER MAY MAKE MATERIAL CHANGES TO HOW IT USES, DISCLOSES, SELLS, OR PROVIDES ACCESS TO CUSTOMER PERSONAL INFORMATION, THE BIAS PROVIDER SHALL:

(1) PROVIDE ADVANCE NOTICE OF THE CHANGE; AND

(2) REMIND CUSTOMERS OF THE ABILITY TO GRANT, DENY, OR REVOKE CONSENT AT ANY TIME.

14-4207.

THIS SUBTITLE MAY NOT BE CONSTRUED TO RESTRICT A BIAS PROVIDER FROM:

(1) GENERATING AN AGGREGATE CUSTOMER PERSONAL INFORMATION DATASET USING CUSTOMER PERSONAL INFORMATION; OR

(2) USING, DISCLOSING, SELLING, OR AUTHORIZING ACCESS TO AN AGGREGATE CUSTOMER PERSONAL INFORMATION DATASET THAT THE BIAS PROVIDER HAS GENERATED.

1 14-4208.

2 A TERM IN A CONTRACT THAT PURPORTS TO WAIVE THE RIGHTS UNDER THIS
3 SUBTITLE IS VOID AND UNENFORCEABLE AS CONTRARY TO THE PUBLIC POLICY OF
4 THE STATE.

5 14-4209.

6 THE CONSUMER PROTECTION DIVISION IN THE OFFICE OF THE ATTORNEY
7 GENERAL SHALL ENFORCE THIS SUBTITLE.

8 Article – State Finance and Procurement

9 SUBTITLE 9. RESTRICTIONS ON THE USE OF STATE FUNDS.

10 2-901.

11 (A) (1) IN THIS SECTION, “REASONABLE NETWORK MANAGEMENT”
12 MEANS A NETWORK MANAGEMENT PRACTICE THAT HAS PRIMARILY TECHNICAL
13 NETWORK MANAGEMENT JUSTIFICATION.

14 (2) “REASONABLE NETWORK MANAGEMENT” INCLUDES A PRACTICE
15 THAT IS PRIMARILY USED FOR AND TAILORED TO ACHIEVING A LEGITIMATE
16 NETWORK MANAGEMENT PURPOSE, TAKING INTO ACCOUNT THE PARTICULAR
17 NETWORK ARCHITECTURE AND TECHNOLOGY OF THE BROADBAND INTERNET
18 ACCESS SERVICE.

19 (3) “REASONABLE NETWORK MANAGEMENT” DOES NOT INCLUDE
20 OTHER BUSINESS PRACTICES.

21 (B) STATE FUNDS MAY BE USED ONLY BY THE STATE, A POLITICAL
22 SUBDIVISION, OR A UNIT, AN AGENCY, OR ANY INSTRUMENTALITY OF THE STATE OR
23 A POLITICAL SUBDIVISION OR A PERSON AWARDED A CONTRACT OR GRANT BY THE
24 STATE, A POLITICAL SUBDIVISION, OR A UNIT, AN AGENCY, OR ANY
25 INSTRUMENTALITY OF THE STATE OR A POLITICAL SUBDIVISION TO PROCURE
26 SERVICES FROM AN INTERNET SERVICE PROVIDER THAT DOES NOT:

27 (1) BLOCK LAWFUL CONTENT, APPLICATIONS, SERVICES, OR
28 NONHARMFUL DEVICES, SUBJECT TO REASONABLE NETWORK MANAGEMENT;

29 (2) IMPAIR OR DEGRADE LAWFUL INTERNET TRAFFIC ON THE BASIS
30 OF INTERNET CONTENT, APPLICATION, OR SERVICE, OR USE OF A NONHARMFUL
31 DEVICE, SUBJECT TO REASONABLE NETWORK MANAGEMENT; AND

1 **(3) ENGAGE IN COMMERCIAL TRAFFIC PREFERENCING, INCLUDING**
2 **TRAFFIC SHAPING, PRIORITIZATION, RESOURCE RESERVATION, OR OTHER FORMS**
3 **OF PREFERENTIAL TRAFFIC MANAGEMENT:**

4 **(I) IN EXCHANGE FOR CONSIDERATION FROM A THIRD PARTY;**
5 **OR**

6 **(II) TO BENEFIT AN AFFILIATED ENTITY.**

7 SECTION 2. AND BE IT FURTHER ENACTED, That:

8 (a) In this section, “broadband Internet access service” means a service by wire or
9 radio that provides the capability to transmit data to and receive data from all or
10 substantially all Internet endpoints.

11 (b) It is the intent of the General Assembly that, if the State or a municipality
12 provides broadband Internet access service, the State or the municipality may not impose
13 use restrictions that prohibit the exercise of free speech.

14 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect June
15 1, 2020.