

HOUSE BILL 249

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By: **Delegates C. Watson and Carey**

Introduced and read first time: January 17, 2020

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Consumer Protection – Right to Opt Out of Third-Party Disclosure**

3 FOR the purpose of authorizing consumers to demand that a business not disclose the
4 consumer's personal information to third parties and to exercise the right to opt out
5 of third-party disclosure through a certain setting; prohibiting a business from
6 disclosing the personal information of a consumer to a third party if the business has
7 certain knowledge or willfully disregards a certain fact; prohibiting certain
8 businesses from disclosing certain personal information to third parties except under
9 certain circumstances and from requiring certain authorization to disclose certain
10 information to third parties for at least a certain time period; requiring a business
11 to provide a certain link on a certain homepage; prohibiting a business from
12 requiring a consumer to create an account in order to exercise a certain right;
13 authorizing a consumer to authorize another person to act on the consumer's behalf
14 solely for the purpose of opting out of the sale or disclosure of certain information;
15 requiring a business to comply with an opt-out request received from a certain
16 person on the consumer's behalf; prohibiting a business from discriminating against
17 a consumer who exercises the consumer's rights under this Act; making a violation
18 of this Act an unfair or deceptive trade practice under the Maryland Consumer
19 Protection Act and subject to certain enforcement and penalty provisions; making a
20 technical correction; defining certain terms; providing for a delayed effective date;
21 and generally relating to a consumer's right to opt out of third-party disclosure.

22 BY repealing and reenacting, with amendments,
23 Article – Commercial Law
24 Section 13–301(14)(xxxii) and (xxxiii)
25 Annotated Code of Maryland
26 (2013 Replacement Volume and 2019 Supplement)

27 BY adding to
28 Article – Commercial Law
29 Section 13–301(14)(xxxiv); and 14–4201 through 14–4203 to be under the new

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 subtitle "Subtitle 42. Consumer Personal Information Privacy"
2 Annotated Code of Maryland
3 (2013 Replacement Volume and 2019 Supplement)

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

6 **Article – Commercial Law**

7 13–301.

8 Unfair, abusive, or deceptive trade practices include any:

9 (14) Violation of a provision of:

10 (xxxii) [the] **THE** federal Military Lending Act; [or]

11 (xxxiii) [the] **THE** federal Servicemembers Civil Relief Act; or

12 (xxxiv) **TITLE 14, SUBTITLE 42 OF THIS ARTICLE; OR**

13 **SUBTITLE 42. CONSUMER PERSONAL INFORMATION PRIVACY.**

14 **14–4201.**

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

17 (B) **“BUSINESS” MEANS AN ENTITY THAT:**

18 (1) (I) IS ORGANIZED OR OPERATED FOR THE PROFIT OR
19 FINANCIAL BENEFIT OF ITS SHAREHOLDERS OR OTHER OWNERS;

20 (II) COLLECTS THE PERSONAL INFORMATION OF CONSUMERS;
21 AND

22 (III) SATISFIES ONE OR MORE OF THE FOLLOWING THRESHOLDS:

23 1. HAS ANNUAL GROSS REVENUES IN EXCESS OF
24 **\$25,000,000;**

25 2. ANNUALLY BUYS, RECEIVES FOR THE BUSINESS’S
26 COMMERCIAL PURPOSES, SELLS, OR SHARES FOR COMMERCIAL PURPOSES, ALONE
27 OR IN COMBINATION, THE PERSONAL INFORMATION OF 100,000 OR MORE
28 CONSUMERS, HOUSEHOLDS, OR DEVICES; OR

1 **3. DERIVES AT LEAST 50% OF ITS ANNUAL REVENUES**
2 **FROM SELLING CONSUMERS' PERSONAL INFORMATION; OR**

3 **(2) (I) CONTROLS OR IS CONTROLLED BY A BUSINESS DESCRIBED**
4 **UNDER ITEM (1) OF THIS SUBSECTION; AND**

5 **(II) SHARES A NAME, SERVICE MARK, OR TRADEMARK WITH**
6 **THAT BUSINESS.**

7 **(C) (1) "COLLECT" MEANS TO BUY, RENT, GATHER, OBTAIN, RECEIVE, OR**
8 **ACCESS ANY PERSONAL INFORMATION PERTAINING TO A CONSUMER BY ANY MEANS.**

9 **(2) "COLLECT" INCLUDES TO RECEIVE INFORMATION FROM THE**
10 **CONSUMER, EITHER ACTIVELY OR PASSIVELY, OR BY OBSERVING THE CONSUMER'S**
11 **BEHAVIOR.**

12 **(D) "CONSUMER" MEANS AN INDIVIDUAL WHO RESIDES IN THE STATE.**

13 **(E) "DE-IDENTIFIED" MEANS PERSONAL INFORMATION THAT CANNOT**
14 **REASONABLY IDENTIFY, RELATE TO, DESCRIBE, BE ASSOCIATED WITH, OR BE**
15 **LINKED TO, DIRECTLY OR INDIRECTLY, A PARTICULAR CONSUMER IF THE BUSINESS:**

16 **(1) TAKES REASONABLE MEASURES TO ENSURE THAT THE PERSONAL**
17 **INFORMATION CANNOT BE RE-IDENTIFIED;**

18 **(2) PUBLICLY COMMITS TO MAINTAIN AND USE ONLY PERSONAL**
19 **INFORMATION THAT CANNOT REASONABLY IDENTIFY, RELATE TO, DESCRIBE, BE**
20 **ASSOCIATED WITH, OR BE LINKED TO, DIRECTLY OR INDIRECTLY, A PARTICULAR**
21 **CONSUMER;**

22 **(3) CONTRACTUALLY PROHIBITS DOWNSTREAM RECIPIENTS OF THE**
23 **INFORMATION FROM ATTEMPTING TO RE-IDENTIFY THE INFORMATION; AND**

24 **(4) DOES NOT ATTEMPT TO RE-IDENTIFY THE INFORMATION.**

25 **(F) (1) "DISCLOSURE" MEANS A TRANSFER OF A CONSUMER'S PERSONAL**
26 **INFORMATION BY A BUSINESS TO A THIRD PARTY, INCLUDING SELLING, RENTING,**
27 **RELEASING, DISSEMINATING, MAKING AVAILABLE, TRANSFERRING, OR OTHERWISE**
28 **COMMUNICATING BY ANY MEANS.**

29 **(2) "DISCLOSURE" DOES NOT INCLUDE:**

30 **(I) A TRANSFER OF A CONSUMER'S PERSONAL INFORMATION**

1 BY A BUSINESS TO A SERVICE PROVIDER THAT IS NECESSARY TO THE PERFORMANCE
2 OF AN OPERATIONAL PURPOSE;

3 (II) IDENTIFICATION BY A BUSINESS OF A CONSUMER WHO HAS
4 OPTED OUT OF THE DISCLOSURE OF THE CONSUMER'S PERSONAL INFORMATION
5 FOR THE PURPOSE OF ALERTING THIRD PARTIES THAT THE CONSUMER HAS OPTED
6 OUT OF THE DISCLOSURE OF THE CONSUMER'S PERSONAL INFORMATION; OR

7 (III) THE TRANSFER BY A BUSINESS TO A THIRD PARTY OF A
8 CONSUMER'S PERSONAL INFORMATION AS AN ASSET THAT IS PART OF A
9 TRANSACTION IN WHICH THE THIRD PARTY ASSUMES CONTROL OF ALL OR PART OF
10 THE BUSINESS.

11 (G) "HOMEPAGE" MEANS:

12 (1) THE INTRODUCTORY PAGE OF AN INTERNET WEBSITE AND ANY
13 INTERNET WEBPAGE WHERE PERSONAL INFORMATION IS COLLECTED; OR

14 (2) IN THE CASE OF AN ONLINE SERVICE OR APPLICATION:

15 (I) THE SERVICE OR APPLICATION PLATFORM PAGE OR
16 DOWNLOAD PAGE; OR

17 (II) A LINK WITHIN THE SERVICE OR APPLICATION, SUCH AS
18 FROM THE SERVICE OR APPLICATION CONFIGURATION, "ABOUT", "INFORMATION",
19 OR SETTINGS PAGE.

20 (H) "OPERATIONAL PURPOSE" MEANS THE USE, WHEN REASONABLY
21 NECESSARY AND PROPORTIONATE, OF PERSONAL INFORMATION TO:

22 (1) IDENTIFY AND REPAIR ERRORS THAT IMPAIR EXISTING INTENDED
23 FUNCTIONALITY;

24 (2) UNDERTAKE INTERNAL RESEARCH FOR TECHNOLOGICAL
25 DEVELOPMENT, ANALYTICS, OR PRODUCT IMPROVEMENT, BASED ON INFORMATION
26 COLLECTED BY THE BUSINESS;

27 (3) UNDERTAKE ACTIVITIES TO VERIFY OR MAINTAIN THE QUALITY
28 OR SAFETY OF A SERVICE OR DEVICE THAT IS OWNED, MANUFACTURED,
29 MANUFACTURED FOR, OR CONTROLLED BY THE BUSINESS, OR TO IMPROVE,
30 UPGRADE, OR ENHANCE THE SERVICE OR DEVICE THAT IS OWNED, MANUFACTURED,
31 MANUFACTURED FOR, OR CONTROLLED BY THE BUSINESS;

(4) CUSTOMIZE CONTENT BASED ON INFORMATION COLLECTED BY THE BUSINESS; OR

(5) CUSTOMIZE ADVERTISING OR MARKETING BASED ON INFORMATION COLLECTED BY THE BUSINESS.

(I) (1) “PERSONAL INFORMATION” MEANS INFORMATION THAT REASONABLY IDENTIFIES, RELATES TO, DESCRIBES, OR COULD REASONABLY BE LINKED TO, DIRECTLY OR INDIRECTLY, A PARTICULAR CONSUMER, HOUSEHOLD, OR CONSUMER’S DEVICE.

(2) “PERSONAL INFORMATION” DOES NOT INCLUDE:

(I) INFORMATION THAT IS LAWFULLY MADE AVAILABLE FROM FEDERAL, STATE, OR LOCAL GOVERNMENT RECORDS; OR

(II) CONSUMER INFORMATION THAT IS DE-IDENTIFIED OR AGGREGATE CONSUMER INFORMATION.

(J) “SERVICE PROVIDER” MEANS AN ENTITY THAT PROCESSES PERSONAL INFORMATION DISCLOSED BY A BUSINESS OR ON BEHALF OF A BUSINESS IN ACCORDANCE WITH A WRITTEN CONTRACT IF THE CONTRACT PROHIBITS THE ENTITY RECEIVING THE INFORMATION FROM:

(1) RETAINING, USING, OR DISCLOSING THE PERSONAL INFORMATION FOR ANY PURPOSE OTHER THAN FOR THE SPECIFIC PURPOSE OF PERFORMING THE SERVICES SPECIFIED IN THE CONTRACT FOR THE BUSINESS, OR AS OTHERWISE ALLOWED BY THIS SUBTITLE; AND

(2) COMBINING THE PERSONAL INFORMATION WITH PERSONAL INFORMATION RECEIVED BY THE ENTITY FROM ANOTHER SOURCE.

14-4202.

(A) (1) A CONSUMER MAY, AT ANY TIME, DEMAND THAT A BUSINESS NOT DISCLOSE THE CONSUMER’S PERSONAL INFORMATION TO THIRD PARTIES.

(2) THIS RIGHT MAY BE REFERRED TO AS THE “RIGHT TO OPT OUT OF THIRD-PARTY DISCLOSURE”.

(3) A CONSUMER MAY EXERCISE THE RIGHT TO OPT OUT OF THIRD-PARTY DISCLOSURE 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.

(B) NOTWITHSTANDING SUBSECTION (A) OF THIS SECTION, A BUSINESS MAY NOT DISCLOSE THE PERSONAL INFORMATION OF A CONSUMER TO A THIRD PARTY IF THE BUSINESS HAS ACTUAL KNOWLEDGE OF OR WILLFULLY DISREGARDS THE FACT THAT THE CONSUMER IS UNDER THE AGE OF 18 YEARS.

(C) (1) A BUSINESS THAT HAS RECEIVED DIRECTION FROM A CONSUMER NOT TO DISCLOSE THE CONSUMER'S PERSONAL INFORMATION TO THIRD PARTIES MAY NOT DISCLOSE THE CONSUMER'S PERSONAL INFORMATION TO THIRD PARTIES UNLESS THE CONSUMER LATER PROVIDES EXPRESS AUTHORIZATION FOR THAT DISCLOSURE.

(2) A BUSINESS THAT HAS RECEIVED DIRECTION FROM A CONSUMER NOT TO DISCLOSE THE CONSUMER'S PERSONAL INFORMATION TO THIRD PARTIES MAY NOT REQUEST AUTHORIZATION TO DISCLOSE THE CONSUMER'S PERSONAL INFORMATION TO THIRD PARTIES FOR AT LEAST 12 MONTHS.

(D) (1) A BUSINESS SHALL PROVIDE A CLEAR AND CONSPICUOUS LINK ON THE INTERNET HOMEPAGE OF THE BUSINESS TO AN INTERNET WEBPAGE THAT ENABLES A CONSUMER, OR A PERSON AUTHORIZED BY THE CONSUMER, TO OPT OUT OF THE THIRD-PARTY DISCLOSURE OF THE CONSUMER'S PERSONAL INFORMATION.

(2) A BUSINESS MAY NOT REQUIRE A CONSUMER TO CREATE AN ACCOUNT IN ORDER TO EXERCISE THE RIGHT TO OPT OUT OF THE THIRD-PARTY DISCLOSURE OF THE CONSUMER'S PERSONAL INFORMATION.

(E) (1) 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.

(2) A BUSINESS SHALL COMPLY WITH AN OPT-OUT REQUEST RECEIVED FROM A PERSON AUTHORIZED BY THE CONSUMER TO ACT ON THE CONSUMER'S BEHALF.

14-4203.

A BUSINESS MAY NOT DISCRIMINATE AGAINST A CONSUMER BECAUSE THE CONSUMER EXERCISED ANY OF THE CONSUMER'S RIGHTS UNDER THIS SUBTITLE, INCLUDING BY:

(1) DENYING GOODS OR SERVICES TO THE CONSUMER;

1 **(2) CHARGING DIFFERENT PRICES OR RATES FOR GOODS OR**
2 **SERVICES, INCLUDING THROUGH THE USE OF DISCOUNTS OR OTHER BENEFITS OR**
3 **IMPOSING PENALTIES;**

4 **(3) PROVIDING A DIFFERENT LEVEL OR QUALITY OF GOODS OR**
5 **SERVICES TO THE CONSUMER; OR**

6 **(4) SUGGESTING THAT THE CONSUMER WILL RECEIVE A DIFFERENT**
7 **PRICE OR RATE FOR GOODS OR SERVICES OR A DIFFERENT LEVEL OR QUALITY OF**
8 **GOODS OR SERVICES.**

9 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
10 January 1, 2021.