

SENATE BILL 1200

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~~EMERGENCY BILL~~

7lr3821
CF 7lr3819

By: Senators Rosapepe, Lee, Astle, Benson, Conway, Currie, Feldman, Ferguson, Guzzone, Kagan, Kasemeyer, Kelley, King, Madaleno, Manno, Mathias, McFadden, Middleton, Muse, Nathan-Pulliam, Oaks, Peters, Pinsky, Ramirez, Robinson, Smith, Young, and Zucker

Constitutional Requirements Complied with for Introduction in the last 35 Days of Session
Introduced and read first time: March 29, 2017

Assigned to: Finance

Committee Report: Favorable with amendments
Senate action: Adopted with floor amendments
Read second time: April 2, 2017

CHAPTER _____

1 AN ACT concerning

2 **Internet Consumer Privacy Rights Act of 2017**

3 FOR the purpose of making it an unfair or deceptive trade practice under the Maryland
4 Consumer Protection Act for an Internet service provider to sell or transfer for a
5 certain purpose a consumer's personally identifying information under certain
6 circumstances; making it an unfair or deceptive trade practice under the Maryland
7 Consumer Protection Act for an Internet service provider to display or send certain
8 advertisements to a consumer; making it an unfair or deceptive trade practice under
9 the Maryland Consumer Protection Act for an Internet service provider to refuse to
10 provide services to a consumer because the consumer refuses to take a certain action;
11 providing certain exceptions to certain provisions of this Act; establishing that a
12 violation of certain provisions of this Act is subject to certain enforcement and
13 penalty provisions under the Maryland Consumer Protection Act, with a certain
14 exception; requiring the Joint Committee on Cybersecurity, Information Technology,
15 and Biotechnology to monitor the enforcement of certain provisions of this Act and
16 the impact of the provisions on consumers, Internet service providers, and other
17 businesses in the State; requiring the Joint Committee on Cybersecurity,
18 Information Technology, and Biotechnology to include certain findings and
19 recommendations in a certain report; defining certain terms; ~~making this Act an~~
20 ~~emergency measure~~ requiring the Attorney General to monitor certain federal
21 actions and provide a certain notification to the Department of Legislative Services;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



providing for the termination of this Act under certain circumstances; and generally relating to limitations on the use of personally identifying information and browser history.

BY repealing and reenacting, without amendments,
Article – Commercial Law
Section 13–101(b) and (c) and 13–301(14)(i)
Annotated Code of Maryland
(2013 Replacement Volume and 2016 Supplement)

BY adding to
Article – Commercial Law
Section 13–321
Annotated Code of Maryland
(2013 Replacement Volume and 2016 Supplement)

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

Article – Commercial Law

13–101.

(b) (1) “Advertisement” means the publication, dissemination, or circulation of any oral or written matter, including labeling, which directly or indirectly tends to induce a person to enter into an obligation, sign a contract, or acquire title or interest in any merchandise, real property, intangibles, or service.

(2) “Advertisement” includes every device to disguise any form of business solicitation by using:

(i) A word such as “renewal”, “invoice”, “bill”, “statement”, or “reminder” to create an impression of an existing obligation if there is none; or

(ii) Other language to mislead a person in relation to a proposed commercial transaction.

(c) (1) “Consumer” means an actual or prospective purchaser, lessee, or recipient of consumer goods, consumer services, consumer realty, or consumer credit.

(2) “Consumer” includes:

(i) A co-obligor or surety for a consumer;

(ii) A licensee or recipient of computer information or computer programs under a consumer contract as defined in § 22–102 of this article;

(iii) An individual who sells or offers for sale to a merchant consumer goods or consumer realty that the individual acquired primarily for personal, household, family, or agricultural purposes; or

(iv) A fraternal, religious, civic, patriotic, educational, or charitable organization that purchases, rents, or leases goods or services for the benefit of the members of the organization.

13-301.

Unfair or deceptive trade practices include any:

(14) Violation of a provision of:

(i) This title;

13-321.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "BROWSING HISTORY" MEANS INFORMATION THAT SHOWS THAT A CONSUMER HAS ACCESSED A SPECIFIC WEB SITE.

(3) "INTERNET SERVICE PROVIDER" MEANS A PERSON THAT PROVIDES ACCESS TO THE INTERNET.

(4) "PERSONALLY IDENTIFYING INFORMATION" MEANS THE FOLLOWING INFORMATION RELATING TO A CONSUMER USING AN INTERNET SERVICE PROVIDER TO ACCESS THE INTERNET:

(I) THE CONSUMER'S NAME;

(II) THE CONSUMER'S SOCIAL SECURITY NUMBER;

(III) THE CONSUMER'S ADDRESS;

(IV) THE INTERNET PROTOCOL ADDRESS ASSOCIATED WITH AN ELECTRONIC DEVICE THAT BELONGS TO THE CONSUMER; OR

(V) THE CONSUMER'S BROWSING HISTORY.

(B) (1) AN INTERNET SERVICE PROVIDER MAY NOT SELL OR TRANSFER FOR MARKETING PURPOSES A CONSUMER'S PERSONALLY IDENTIFYING

1 INFORMATION TO A PERSON WITHOUT THE CONSUMER'S EXPRESS AND
2 AFFIRMATIVE PERMISSION.

3 (2) AN INTERNET SERVICE PROVIDER MAY NOT SEND OR DISPLAY TO
4 A CONSUMER AN ADVERTISEMENT THAT HAS BEEN SELECTED TO BE SENT OR
5 DISPLAYED DIRECTLY AND EXCLUSIVELY BY THE INTERNET SERVICE PROVIDER
6 BECAUSE OF THE CONSUMER'S BROWSING HISTORY WITHOUT THE CONSUMER'S
7 EXPRESS AND AFFIRMATIVE PERMISSION.

8 (3) AN INTERNET SERVICE PROVIDER MAY NOT REFUSE TO PROVIDE
9 ITS SERVICES TO A CONSUMER BECAUSE OF THE CONSUMER'S REFUSAL TO PROVIDE
10 EXPRESS AND AFFIRMATIVE PERMISSION TO THE INTERNET SERVICE PROVIDER
11 UNDER PARAGRAPHS (1) AND (2) OF THIS SUBSECTION.

12 (C) THIS SECTION DOES NOT APPLY TO AN INTERNET SERVICE PROVIDER
13 THAT TRANSMITS A CONSUMER'S PERSONALLY IDENTIFYING INFORMATION:

14 (1) IN RESPONSE TO A SUBPOENA, SUMMONS, WARRANT, OR COURT
15 ORDER THAT APPEARS ON ITS FACE TO HAVE BEEN ISSUED IN ACCORDANCE WITH
16 LAWFUL AUTHORITY; ~~OR~~

17 (2) TO THE CONSUMER TO WHOM THE PERSONALLY IDENTIFYING
18 INFORMATION PERTAINS; OR

19 (3) TO PROVIDE THE UNDERLYING INTERNET SERVICE PROVIDED BY
20 THE INTERNET SERVICE PROVIDER.

21 (D) A VIOLATION OF THIS SECTION IS SUBJECT TO THE ENFORCEMENT AND
22 PENALTY PROVISIONS CONTAINED IN THIS TITLE, EXCEPT § 13-408 OF THIS TITLE.

23 SECTION 2. AND BE IT FURTHER ENACTED, That the Joint Committee on
24 Cybersecurity, Information Technology, and Biotechnology shall:

25 (1) monitor the enforcement of § 13-321 of the Commercial Law Article, as
26 enacted by Section 1 of this Act, and the impact of § 13-321 on consumers, Internet service
27 providers, and other businesses in the State; and

28 (2) include its findings and any recommended changes that are needed to
29 § 13-321 of the Commercial Law Article, as enacted by Section 1 of this Act, in its annual
30 report that is due on or before December 1, 2018, under § 2-10A-13 of the State
31 Government Article.

32 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall remain effective
33 until a federal law, regulation, or rule is adopted and becomes effective that prohibits an
34 Internet service provider from engaging in the conduct prohibited under § 13-321 of the

1 Commercial Law Article, as enacted by Section 1 of this Act. If a federal law, regulation, or
2 rule is adopted and becomes effective that prohibits an Internet service provider from
3 engaging in the conduct prohibited under § 13–321, with no further action required by the
4 General Assembly, this Act shall be abrogated and of no further force and effect. The
5 Attorney General shall monitor federal actions regarding the adoption and enactment of
6 laws, regulations, and rules relating to the conduct of Internet service providers and shall
7 promptly provide notification of the adoption and enactment of a federal law, regulation, or
8 rule that prohibits an Internet service provider from engaging in the conduct prohibited
9 under § 13–321, including providing a copy of the federal law, regulation, or rule, to the
10 Department of Legislative Services, 90 State Circle, Annapolis, Maryland 21401.

11 SECTION ~~2~~ 4. AND BE IT FURTHER ENACTED, That this Act ~~is an emergency~~
12 ~~measure, is necessary for the immediate preservation of the public health or safety, has~~
13 ~~been passed by a ye-a and nay vote supported by three-fifths of all the members elected to~~
14 ~~each of the two Houses of the General Assembly, and shall take effect from the date it is~~
15 ~~enacted~~ shall take effect October 1, 2017.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.