

HOUSE BILL 316

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3lr1831
CF 3lr1583

By: **Delegate Davis**

Introduced and read first time: January 24, 2013

Assigned to: Economic Matters

A BILL ENTITLED

AN ACT concerning

Consumer Protection – Children’s Online Privacy Protection

FOR the purpose of prohibiting a person from violating the federal Children’s Online Privacy Protection Act; prohibiting certain persons who engage in certain activities relating to the Internet or an online service from using certain information to display or transmit an advertisement for a product or service to certain children under certain circumstances; providing that a violation of this Act is an unfair or deceptive trade practice under the Maryland Consumer Protection Act and is subject to certain enforcement actions and penalties; authorizing an individual who is affected by a violation of this Act to bring an action against the person that violates this Act to recover reasonable attorney’s fees and damages in a certain amount; defining certain terms; and generally relating to the protection of children’s online privacy.

BY adding to

Article – Commercial Law

Section 14–4001 through 14–4004 to be under the new subtitle “Subtitle 40.
Children’s Online Privacy Protection”

Annotated Code of Maryland

(2005 Replacement Volume and 2012 Supplement)

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

Article – Commercial Law

SUBTITLE 40. CHILDREN’S ONLINE PRIVACY PROTECTION.

14–4001.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

(B) “ADVERTISEMENT” HAS THE MEANING STATED IN § 13–101 OF THIS ARTICLE.

(C) “CHILD” MEANS AN INDIVIDUAL UNDER THE AGE OF 13 YEARS.

(D) “COLLECTS” HAS THE MEANING STATED IN 16 C.F.R. § 312.2.

(E) “OPERATOR” MEANS A PERSON THAT:

(1) OPERATES A WEB SITE OR AN ONLINE SERVICE AND COLLECTS OR MAINTAINS PERSONAL INFORMATION FROM OR ABOUT THE USERS OR VISITORS TO THE WEB SITE OR ONLINE SERVICE;

(2) COLLECTS PERSONAL INFORMATION DESCRIBED IN ITEM (1) OF THIS SUBSECTION ON BEHALF OF THE OPERATOR OF A WEB SITE OR ONLINE SERVICE UNDER ITEM (1) OF THIS SUBSECTION; OR

(3) OFFERS PRODUCTS OR SERVICES FOR SALE THROUGH A WEB SITE OR ONLINE SERVICE UNDER ITEM (1) OF THIS SUBSECTION.

(F) “PERSON” HAS THE MEANING STATED IN § 13–101 OF THIS ARTICLE.

(G) “PERSONAL INFORMATION” HAS THE MEANING STATED IN 16 C.F.R. § 312.2.

(H) “THIRD PARTY” HAS THE MEANING STATED IN 16 C.F.R. § 312.2.

(I) “VERIFIABLE CONSENT” HAS THE MEANING STATED IN 16 C.F.R. § 312.2.

14–4002.

A PERSON MAY NOT VIOLATE THE FEDERAL CHILDREN’S ONLINE PRIVACY PROTECTION ACT, 15 U.S.C. §§ 6501 THROUGH 6506, AS IMPLEMENTED BY THE FEDERAL TRADE COMMISSION IN THE CHILDREN’S ONLINE PRIVACY PROTECTION RULE (16 C.F.R. PART 312).

14–4003.

AN OPERATOR WHO KNOWS OR HAS REASON TO KNOW THAT THE OPERATOR IS COLLECTING OR MAINTAINING PERSONAL INFORMATION FROM A CHILD WHO RESIDES IN THE STATE MAY NOT USE THE PERSONAL INFORMATION TO DISPLAY OR TRANSMIT AN ADVERTISEMENT FOR A PRODUCT OR SERVICE TO THE CHILD UNLESS THE OPERATOR:

(1) PROVIDES NOTICE ON THE WEB SITE OR ONLINE SERVICE STATING:

(i) WHAT INFORMATION THE OPERATOR COLLECTS FROM CHILDREN;

(ii) HOW THE OPERATOR USES THE INFORMATION IN RELATION TO ADVERTISEMENTS; AND

(iii) WHETHER THE OPERATOR DISCLOSES THE INFORMATION TO ANY THIRD PARTY;

(2) OBTAINS VERIFIABLE CONSENT BEFORE DISPLAYING OR TRANSMITTING THE ADVERTISEMENT TO THE CHILD; AND

(3) CLEARLY IDENTIFIES THE ADVERTISEMENT AS AN ADVERTISEMENT.

14-4004.

(A) A VIOLATION OF THIS SUBTITLE IS:

(1) AN UNFAIR OR DECEPTIVE TRADE PRACTICE WITHIN THE MEANING OF TITLE 13 OF THIS ARTICLE; AND

(2) SUBJECT TO THE ENFORCEMENT AND PENALTY PROVISIONS CONTAINED IN TITLE 13 OF THIS ARTICLE.

(B) IN ADDITION TO THE REMEDIES PROVIDED IN § 13-408 OF THIS ARTICLE, AN INDIVIDUAL WHO IS AFFECTED BY A VIOLATION OF THIS SUBTITLE MAY BRING AN ACTION AGAINST A PERSON THAT VIOLATES THIS SUBTITLE TO RECOVER:

(1) REASONABLE ATTORNEY'S FEES; AND

(2) DAMAGES IN THE AMOUNT OF THE GREATER OF:

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(I) \$500 FOR EACH VIOLATION; OR

(II) ACTUAL DAMAGES SUSTAINED AS A RESULT OF THE VIOLATION.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2013.