

# SENATE BILL 374

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CF HB 316

By: Senators Astle, Ferguson, Forehand, Garagiola, Kelley, Kittleman,  
Klausmeier, Mathias, Middleton, Pugh, Ramirez, and Zirkin

Introduced and read first time: January 25, 2013

Assigned to: Finance

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 19, 2013

## CHAPTER \_\_\_\_\_

AN ACT concerning

### ~~Consumer Protection~~ Office of the Attorney General – Workgroup on 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~~ requiring the Office of the Attorney General to convene and direct a workgroup to examine certain issues relating to the protection of children’s online privacy; requiring the workgroup to include certain representatives; requiring the Office of the Attorney General to report the findings and any recommendations of the workgroup to certain committees of the General Assembly on or before a certain date; 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”~~

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.



~~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.~~

~~(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:~~

~~(i) \$500 FOR EACH VIOLATION; OR~~

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

(a) The Office of the Attorney General shall convene and direct a workgroup to examine issues relating to the protection of children's privacy while using the Internet and mobile applications ("children's online privacy"), including:

(1) the nature and extent of data collected about children through Internet-based and mobile application-based advertising ("online advertising");

(2) current and forthcoming federal and state regulation of children's online privacy and online advertising and associated data collection;

(3) the effects on children of online behavioral advertising, native advertising, social advertising, and other forms of online advertising;

(4) best practices used by the Internet industry and the mobile application industry to protect children's online privacy;

(5) best practices urged by consumer advocates, children's health advocates, and regulators to protect children's online privacy; and

(6) the effectiveness of voluntary standards as they relate to children's online privacy.

(b) (1) The workgroup required under subsection (a) of this section shall include representatives of State government, industry leaders, members of the academic community studying children's online privacy and the effects of online advertising on children, consumer advocates, and children's health advocates.

(2) The Office of the Attorney General shall invite representatives of relevant federal agencies to participate in the workgroup.

(c) On or before December 31, 2013, the Office of the Attorney General shall report to the Senate Finance Committee and House Economic Matters Committee, in

accordance with § 2-1246 of the State Government Article, on the findings of the workgroup and any resulting recommendations.

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

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.