

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

A BILL ENTITLED

1 AN ACT concerning

2 **Consumer Protection – Children’s Online Privacy Protection**

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

14 BY adding to

15 Article – Commercial Law

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

18 Annotated Code of Maryland

19 (2005 Replacement Volume and 2012 Supplement)

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

22 **Article – Commercial Law**

23 **SUBTITLE 40. CHILDREN’S ONLINE PRIVACY PROTECTION.**

24 **14–4001.**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

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

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

7 (E) “OPERATOR” MEANS A PERSON THAT:

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

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

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

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

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

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

21 (I) “VERIFIABLE CONSENT” HAS THE MEANING STATED IN 16 C.F.R. §
22 312.2.

23 14–4002.

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

28 14–4003.

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

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

8 (I) WHAT INFORMATION THE OPERATOR COLLECTS FROM
9 CHILDREN;

10 (II) HOW THE OPERATOR USES THE INFORMATION IN
11 RELATION TO ADVERTISEMENTS; AND

12 (III) WHETHER THE OPERATOR DISCLOSES THE
13 INFORMATION TO ANY THIRD PARTY;

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

16 (3) CLEARLY IDENTIFIES THE ADVERTISEMENT AS AN
17 ADVERTISEMENT.

18 14-4004.

19 (A) A VIOLATION OF THIS SUBTITLE IS:

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

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

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

28 (1) REASONABLE ATTORNEY'S FEES; AND

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

- 1 **(I) \$500 FOR EACH VIOLATION; OR**
- 2 **(II) ACTUAL DAMAGES SUSTAINED AS A RESULT OF THE**
- 3 **VIOLATION.**

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