

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 305
Economic Matters

(Delegate Smith, *et al.*)

Finance

Consumer Protection - Monitoring Consumer Behavior and Shopping Habits -
Required Notice

This bill prohibits a merchant from using any technology to monitor the behavior or shopping habits of consumers unless the merchant provides a notice through specified methods that clearly and conspicuously discloses that the merchant is using the tracking technology. Violation of the bill is an unfair or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), subject to MCPA's civil and criminal penalty provisions.

Fiscal Summary

State Effect: The bill's imposition of existing penalty provisions does not have a material impact on State finances or operations. If the Consumer Protection Division of the Office of the Attorney General receives fewer than 50 complaints per year stemming from the bill, the additional workload can be handled with existing resources.

Local Effect: The bill's imposition of existing penalty provisions does not have a material impact on local government finances or operations.

Small Business Effect: Minimal.

Analysis

Bill Summary: The required notice must be displayed (1) at each entrance to the merchant's business premises; (2) on the consumer's wireless device; or (3) through any other means that is reasonably calculated to provide the notice to consumers. A notice on a merchant's website is not considered to be reasonably calculated to provide notice unless

the notice is displayed in a conspicuous location on the website and the consumer affirmatively consents to being monitored.

The bill does not apply to the use of a mobile application or similar technology that a consumer chooses to download onto the consumer's wireless device or to technology used by a merchant exclusively for safety or theft prevention purposes.

Current Law: An unfair or deceptive trade practice under MCPA includes, among other acts, any false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers. The prohibition against engaging in any unfair or deceptive trade practice encompasses the offer for or actual sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer services; the extension of consumer credit; the collection of consumer debt; or the offer for or actual purchase of consumer goods or consumer realty from a consumer by a merchant whose business includes paying off consumer debt in connection with the purchase of any consumer goods or consumer realty from a consumer.

The Consumer Protection Division is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter, issue a cease and desist order, or file a civil action in court. A merchant who violates MCPA is subject to a fine of up to \$1,000 for the first violation and up to \$5,000 for each subsequent violation. In addition to any civil penalties that may be imposed, any person who violates MCPA is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$1,000 and/or imprisonment for up to one year.

Background: A number of retailers have been testing technology that uses a customer's cell phone Wi-Fi signal to track shopping behavior. A July 2013 *New York Times* article listed several uses for tracking Wi-Fi signals, including determining (1) how many customers enter the store and how many are repeat customers; (2) how many people walk by a store compared to how many enter; and (3) how customers navigate throughout the store.

Additional Information

Prior Introductions: HB 1094 of 2015 passed the House as amended but received an unfavorable report from the Senate Finance Committee. HB 924 of 2014, a similar bill, passed the House and received a hearing in the Senate Finance Committee, but no further action was taken. Its cross file, SB 950, also received a hearing in the Senate Finance Committee, but no further action was taken.

Cross File: None.

Information Source(s): Office of the Attorney General (Consumer Protection Division),
New York Times, Department of Legislative Services

Fiscal Note History: First Reader - February 8, 2016
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