HOUSE BILL 1094

I3   5lr1283
HB 924/14 – ECM

By: **Delegates Smith, Barkley, Barron, Brooks, Carey, Carr, Carter, Dumais, Gaines, Glenn, Hixson, Jackson, Jalisi, Korman, Luedtke, Moon, Morales, Patterson, Platt, Tarlau, Turner, Valderrama, Valentino–Smith, Walker, C. Wilson, and K. Young**
Introduced and read first time: February 13, 2015
Assigned to: Economic Matters

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 15, 2015

CHAPTER _____

1   AN ACT concerning

2   **Consumer Protection – Monitoring Consumer Behavior and Shopping Habits –**
3   **Required Notice**

4   FOR the purpose of prohibiting a merchant from using ~~a wireless Internet signal or a~~
5   ~~cellular phone~~ <u>certain technology</u> to monitor the behavior or shopping habits of a
6   certain consumer unless the merchant ~~displays, at each entrance to the merchant's~~
7   ~~business premises,~~ <u>provides</u> a certain notice in a certain manner; providing that a
8   violation of this Act is an unfair or deceptive trade practice under the Maryland
9   Consumer Protection Act and is subject to certain enforcement and penalty
10   provisions; defining certain terms; <u>providing for the application of this Act;</u> and
11   generally relating to merchants and the use of technology to monitor consumer
12   behavior or shopping habits.

13   BY adding to
14   Article – Commercial Law
15   Section 14–1324
16   Annotated Code of Maryland
17   (2013 Replacement Volume and 2014 Supplement)

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

1   **Article – Commercial Law**

2   **14–1324.**

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

5   (2)   "CONSUMER" HAS THE MEANING STATED IN § 13–101 OF THIS
6   ARTICLE.

7   (3)   "MERCHANT" HAS THE MEANING STATED IN § 13–101 OF THIS
8   ARTICLE.

9   (B)   THIS SECTION DOES NOT APPLY TO:

10   (1)   THE USE OF ANY MOBILE APPLICATION OR SIMILAR TECHNOLOGY
11   THAT A CONSUMER AFFIRMATIVELY CHOOSES TO DOWNLOAD ONTO THE
12   CONSUMER'S WIRELESS DEVICE; OR

13   (2)   TECHNOLOGY USED BY A MERCHANT EXCLUSIVELY FOR
14   PURPOSES OF SAFETY OR THEFT PREVENTION.

15   (C)   (1) A MERCHANT MAY NOT USE ~~A WIRELESS INTERNET SIGNAL OR A~~
16   ~~CELLULAR PHONE~~ ANY TECHNOLOGY TO MONITOR THE BEHAVIOR OR SHOPPING
17   HABITS OF A CONSUMER WHO IS SHOPPING ON THE MERCHANT'S BUSINESS
18   PREMISES UNLESS THE MERCHANT ~~DISPLAYS AT EACH ENTRANCE TO THE~~
19   ~~MERCHANT'S BUSINESS PREMISES~~ PROVIDES A NOTICE THAT CLEARLY AND
20   CONSPICUOUSLY DISCLOSES TO THE CONSUMER THAT THE MERCHANT IS USING
21   TECHNOLOGY TO MONITOR CONSUMER BEHAVIOR OR SHOPPING HABITS.

22   (2)   A MERCHANT SHALL PROVIDE THE NOTICE REQUIRED UNDER
23   PARAGRAPH (1) OF THIS SUBSECTION BY DISPLAYING THE NOTICE:

24   (I)   AT EACH ENTRANCE TO THE MERCHANT'S BUSINESS
25   PREMISES;

26   (II)   ON THE CONSUMER'S WIRELESS DEVICE; OR

27   (III)   THROUGH ANY OTHER MEANS THAT IS REASONABLY
28   CALCULATED TO PROVIDE THE NOTICE TO CONSUMERS.

29   (3)   DISPLAY OF A NOTICE ON A MERCHANT'S WEB SITE MAY NOT BE
30   CONSIDERED TO BE REASONABLY CALCULATED TO PROVIDE NOTICE UNDER
31   PARAGRAPH (2)(III) OF THIS SUBSECTION UNLESS:

1   **(I)**   **THE NOTICE IS DISPLAYED IN A CONSPICUOUS LOCATION**
2 **ON THE MERCHANT'S WEB SITE; AND**

3   **(II)**   **THE CONSUMER AFFIRMATIVELY CONSENTS TO BEING**
4 **MONITORED.**

5   ~~(C)~~ **(D) A VIOLATION OF THIS SECTION:**

6   **(1)**   **IS AN UNFAIR OR DECEPTIVE TRADE PRACTICE UNDER TITLE 13**
7 **OF THIS ARTICLE; AND**

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

10   SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
11 October 1, 2015.

Approved:

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                                          Governor.

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                              Speaker of the House of Delegates.

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                                    President of the Senate.