

HOUSE BILL 23

P3

(PRE-FILED)

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CF SB 234

By: **Delegate Stein**

Requested: July 13, 2020

Introduced and read first time: January 13, 2021

Assigned to: Judiciary

Reassigned: Judiciary and Environment and Transportation, January 22, 2021

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 9, 2021

CHAPTER _____

1 AN ACT concerning

2 **Personal Information – State and Local Agencies – Restrictions on Access**
3 **(Maryland Driver Privacy Act)**

4 FOR the purpose of requiring an officer, an employee, an agent, or a contractor of the State
5 or a political subdivision to deny inspection by a federal agency seeking access for
6 certain immigration enforcement matters of the part of a public record that contains
7 personal information or a certain photograph under certain circumstances; requiring
8 an officer, an employee, an agent, or a contractor of the State or a political
9 subdivision to deny inspection using certain facial recognition searches by a federal
10 agency seeking access for certain immigration enforcement matters under certain
11 circumstances; prohibiting certain persons from disclosing certain information to a
12 federal agent or a federal agency under certain circumstances; requiring certain
13 State or local agencies to annually report certain information to the General
14 Assembly on a certain date; requiring law enforcement agencies operating certain
15 databases to require certain individuals accessing the databases to provide certain
16 information; requiring certain agencies to deny access to certain databases by an
17 individual seeking to enforce federal immigration law under certain circumstances;
18 defining certain terms; making a conforming change; and generally relating to access
19 to personal information held by State and local agencies.

20 BY repealing and reenacting, with amendments,
21 Article – General Provisions
22 Section 4–320

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.



1 Annotated Code of Maryland
2 (2019 Replacement Volume and 2020 Supplement)

3 BY adding to
4 Article – General Provisions
5 Section 4–320.1
6 Annotated Code of Maryland
7 (2019 Replacement Volume and 2020 Supplement)

8 BY adding to
9 Article – Public Safety
10 Section 3–523
11 Annotated Code of Maryland
12 (2018 Replacement Volume and 2020 Supplement)

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

15 **Article – General Provisions**

16 4–320.

17 (a) (1) In this section, “telephone solicitation” means the initiation of a
18 telephone call to an individual or to the residence or business of an individual to encourage
19 the purchase or rental of or investment in property, goods, or services.

20 (2) “Telephone solicitation” does not include a telephone call or message:

21 (i) to an individual who has given express permission to the person
22 making the telephone call;

23 (ii) to an individual with whom the person has an established
24 business relationship; or

25 (iii) by a tax–exempt, nonprofit organization.

26 (b) Except as provided in subsections (c) through (f) of this section, a custodian
27 may not knowingly disclose a public record of the Motor Vehicle Administration containing
28 personal information.

29 (c) A custodian shall disclose personal information when required by federal law.

30 (d) (1) This subsection applies only to the disclosure of personal information
31 for any use in response to a request for an individual motor vehicle record.

32 (2) The custodian may not disclose personal information without written
33 consent from the person in interest.

1 (3) (i) At any time the person in interest may withdraw consent to
2 disclose personal information by notifying the custodian.

3 (ii) The withdrawal by the person in interest of consent to disclose
4 personal information shall take effect as soon as practicable after it is received by the
5 custodian.

6 (e) (1) This subsection applies only to the disclosure of personal information
7 for inclusion in lists of information to be used for surveys, marketing, and solicitations.

8 (2) The custodian may not disclose personal information for surveys,
9 marketing, and solicitations without written consent from the person in interest.

10 (3) (i) At any time the person in interest may withdraw consent to
11 disclose personal information by notifying the custodian.

12 (ii) The withdrawal by the person in interest of consent to disclose
13 personal information shall take effect as soon as practicable after it is received by the
14 custodian.

15 (4) The custodian may not disclose personal information under this
16 subsection for use in telephone solicitations.

17 (5) Personal information disclosed under this subsection may be used only
18 for surveys, marketing, or solicitations and only for a purpose approved by the Motor
19 Vehicle Administration.

20 (f) Notwithstanding subsections (d) and (e) of this section, **AND SUBJECT TO §**
21 **4-320.1 OF THIS SUBTITLE**, a custodian shall disclose personal information:

22 (1) for use by a federal, state, or local government, including a law
23 enforcement agency, or a court in carrying out its functions;

24 (2) for use in connection with matters of:

25 (i) motor vehicle or driver safety;

26 (ii) motor vehicle theft;

27 (iii) motor vehicle emissions;

28 (iv) motor vehicle product alterations, recalls, or advisories;

29 (v) performance monitoring of motor vehicle parts and dealers; and

1 (vi) removal of nonowner records from the original records of motor
2 vehicle manufacturers;

3 (3) for use by a private detective agency licensed by the Secretary of State
4 Police under Title 13 of the Business Occupations and Professions Article or a security
5 guard service licensed by the Secretary of State Police under Title 19 of the Business
6 Occupations and Professions Article for a purpose allowed under this subsection;

7 (4) for use in connection with a civil, an administrative, an arbitral, or a
8 criminal proceeding in a federal, state, or local court or regulatory agency for service of
9 process, investigation in anticipation of litigation, and execution or enforcement of
10 judgments or orders;

11 (5) for purposes of research or statistical reporting as approved by the
12 Motor Vehicle Administration provided that the personal information is not published,
13 redisclosed, or used to contact the individual;

14 (6) for use by an insurer, an insurance support organization, or a
15 self-insured entity, or its employees, agents, or contractors, in connection with rating,
16 underwriting, claims investigating, and antifraud activities;

17 (7) for use in the normal course of business activity by a legitimate business
18 entity or its agents, employees, or contractors, but only:

19 (i) to verify the accuracy of personal information submitted by the
20 individual to that entity; and

21 (ii) if the information submitted is not accurate, to obtain correct
22 information only for the purpose of:

- 23 1. preventing fraud by the individual;
- 24 2. pursuing legal remedies against the individual; or
- 25 3. recovering on a debt or security interest against the
26 individual;

27 (8) for use by an employer or insurer to obtain or verify information
28 relating to a holder of a commercial driver's license that is required under the Commercial
29 Motor Vehicle Safety Act of 1986 (49 U.S.C. § 31101 et seq.);

30 (9) for use in connection with the operation of a private toll transportation
31 facility;

32 (10) for use in providing notice to the owner of a towed or impounded motor
33 vehicle;

1 (11) for use by an applicant who provides written consent from the
2 individual to whom the information pertains if the consent is obtained within the 6-month
3 period before the date of the request for personal information;

4 (12) for use in any matter relating to:

5 (i) the operation of a Class B (for hire), Class C (funeral and
6 ambulance), or Class Q (limousine) vehicle; and

7 (ii) public safety or the treatment by the operator of a member of the
8 public;

9 (13) for a use specifically authorized by State law, if the use is related to the
10 operation of a motor vehicle or public safety;

11 (14) for use by a hospital to obtain, for hospital security, information
12 relating to ownership of vehicles parked on hospital property;

13 (15) for use by a procurement organization requesting information under §
14 4-516 of the Estates and Trusts Article for the purposes of organ, tissue, and eye donation;

15 (16) for use by an electric company, as defined in § 1-101 of the Public
16 Utilities Article, but only:

17 (i) information describing a plug-in electric drive vehicle, as defined
18 in § 11-145.1 of the Transportation Article, and identifying the address of the registered
19 owner of the plug-in vehicle;

20 (ii) for use in planning for the availability and reliability of the
21 electric power supply; and

22 (iii) if the information is not:

23 1. published or redisclosed, including redisclosed to an
24 affiliate as defined in § 7-501 of the Public Utilities Article; or

25 2. used for marketing or solicitation; and

26 (17) for use by an attorney, a title insurance producer, or any other
27 individual authorized to conduct a title search of a manufactured home under Title 8B of
28 the Real Property Article.

29 (g) (1) A person receiving personal information under subsection (e) or (f) of
30 this section may not use or redisclose the personal information for a purpose other than the
31 purpose for which the custodian disclosed the personal information.

1 (2) A PERSON RECEIVING PERSONAL INFORMATION UNDER
2 SUBSECTION (D), (E), OR (F) OF THIS SECTION MAY NOT DISCLOSE THE PERSONAL
3 INFORMATION TO A FEDERAL AGENT OR FEDERAL AGENCY FOR THE PURPOSE OF
4 FEDERAL IMMIGRATION ENFORCEMENT UNLESS THE PERSON IS PRESENTED WITH
5 A VALID WARRANT ISSUED BY A FEDERAL COURT OR A COURT OF THIS STATE.

6 (3) A person receiving personal information under subsection (e) or (f) of
7 this section who rediscloses the personal information shall:

8 (i) keep a record for 5 years of the person to whom the information
9 is redisclosed and the purpose for which the information is to be used; and

10 (ii) make the record available to the custodian on request.

11 (h) (1) The custodian shall adopt regulations to implement and enforce this
12 section.

13 (2) (i) The custodian shall adopt regulations and procedures for
14 securing from a person in interest a waiver of privacy rights under this section when an
15 applicant requests personal information about the person in interest that the custodian is
16 not authorized to disclose under subsections (c) through (f) of this section.

17 (ii) The regulations and procedures adopted under this paragraph
18 shall:

19 1. state the circumstances under which the custodian may
20 request a waiver; and

21 2. conform with the waiver requirements in the federal
22 Driver's Privacy Protection Act of 1994 and other federal law.

23 (i) The custodian may develop and implement methods for monitoring
24 compliance with this section and ensuring that personal information is used only for the
25 purposes for which it is disclosed.

26 **4-320.1.**

27 (A) IN THIS SECTION, "FACIAL RECOGNITION" MEANS A BIOMETRIC
28 SOFTWARE APPLICATION THAT IDENTIFIES OR VERIFIES A PERSON BY COMPARING
29 AND ANALYZING PATTERNS BASED ON A PERSON'S FACIAL CONTOURS.

30 (B) (1) NOTWITHSTANDING ANY OTHER PROVISION OF THIS TITLE, AN
31 OFFICER, AN EMPLOYEE, AN AGENT, OR A CONTRACTOR OF THE STATE OR A
32 POLITICAL SUBDIVISION SHALL DENY INSPECTION OF THE PART OF A PUBLIC
33 RECORD THAT CONTAINS PERSONAL INFORMATION OR INSPECTION OF A

1 PHOTOGRAPH OF AN INDIVIDUAL BY ANY FEDERAL AGENCY SEEKING ACCESS FOR
2 THE PURPOSE OF:

3 ~~(I) CIVIL IMMIGRATION ENFORCEMENT; OR~~

4 ~~(II) CRIMINAL IMMIGRATION ENFORCEMENT ENFORCING~~
5 FEDERAL IMMIGRATION LAW, UNLESS THE OFFICER, EMPLOYEE, AGENT, OR
6 CONTRACTOR IS PROVIDED WITH A VALID WARRANT ISSUED BY A FEDERAL COURT
7 OR A COURT OF THIS STATE.

8 (2) NOTWITHSTANDING ANY OTHER PROVISION OF THIS TITLE, AN
9 OFFICER, AN EMPLOYEE, AN AGENT, OR A CONTRACTOR OF THE STATE OR A
10 POLITICAL SUBDIVISION SHALL DENY INSPECTION USING A FACIAL RECOGNITION
11 SEARCH OF A DIGITAL PHOTOGRAPHIC IMAGE OR ACTUAL STORED DATA OF A
12 DIGITAL PHOTOGRAPHIC IMAGE BY ANY FEDERAL AGENCY SEEKING ACCESS FOR
13 THE PURPOSE OF:

14 ~~(I) CIVIL IMMIGRATION ENFORCEMENT; OR~~

15 ~~(II) CRIMINAL IMMIGRATION ENFORCEMENT ENFORCING~~
16 FEDERAL IMMIGRATION LAW, UNLESS THE OFFICER, EMPLOYEE, AGENT, OR
17 CONTRACTOR IS PROVIDED WITH A VALID WARRANT ISSUED BY A FEDERAL COURT
18 OR A COURT OF THIS STATE.

19 (3) ON OR BEFORE JUNE 1, 2023, AND EACH JUNE 1 THEREAFTER,
20 ~~ANY STATE OR LOCAL AGENCY THAT RECEIVES A REQUEST FROM A FEDERAL~~
21 ~~AGENCY~~ THE MOTOR VEHICLE ADMINISTRATION, THE DEPARTMENT OF STATE
22 POLICE, AND THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL
23 SERVICES SHALL, WITH RESPECT TO REQUESTS FROM FEDERAL AGENCIES SEEKING
24 ACCESS FOR THE PURPOSE OF ~~CIVIL OR CRIMINAL~~ FEDERAL IMMIGRATION
25 ENFORCEMENT FOR PERSONAL INFORMATION, A PHOTOGRAPH OF AN INDIVIDUAL,
26 OR A FACIAL RECOGNITION SEARCH SHALL, WHETHER OR NOT THE REQUEST WAS
27 INITIATED THROUGH A STATE OR LOCAL LAW ENFORCEMENT AGENCY, REPORT TO
28 THE GENERAL ASSEMBLY, IN ACCORDANCE WITH § 2-1257 OF THE STATE
29 GOVERNMENT ARTICLE, THE FOLLOWING INFORMATION FOR THE IMMEDIATELY
30 PRECEDING CALENDAR YEAR:

31 (I) THE NUMBER OF REQUESTS RECEIVED FROM ANY FEDERAL
32 AGENCY FOR PERSONAL INFORMATION, A PHOTOGRAPH OF AN INDIVIDUAL, OR A
33 FACIAL RECOGNITION SEARCH;

34 (II) THE NUMBER OF REQUESTS RECEIVED FROM ANY FEDERAL
35 AGENCY FOR PERSONAL INFORMATION, A PHOTOGRAPH OF AN INDIVIDUAL, OR A

1 FACIAL RECOGNITION SEARCH FOR WHICH A VALID WARRANT ISSUED BY A FEDERAL
2 COURT OR A COURT OF THIS STATE WAS PROVIDED;

3 (III) THE NUMBER AND PURPOSE OF FACIAL RECOGNITION
4 SEARCHES COMPLETED ~~BY THE STATE OR LOCAL AGENCY~~ FOR ANY FEDERAL
5 AGENCY BASED ON PERSONAL INFORMATION OR A PHOTOGRAPH OF AN INDIVIDUAL
6 PROVIDED TO THE FEDERAL AGENCY BY ~~A STATE OR LOCAL AGENCY~~ THE MOTOR
7 VEHICLE ADMINISTRATION, THE DEPARTMENT OF STATE POLICE, OR THE
8 DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES; AND

9 (IV) THE NUMBER OF INDIVIDUALS WHOSE PERSONAL
10 INFORMATION OR PHOTOGRAPH WAS PROVIDED TO ANY FEDERAL AGENCY BY ~~THE~~
11 ~~STATE OR LOCAL AGENCY,~~ RESPECTIVELY, THE MOTOR VEHICLE
12 ADMINISTRATION, THE DEPARTMENT OF STATE POLICE, AND THE DEPARTMENT
13 OF PUBLIC SAFETY AND CORRECTIONAL SERVICES.

14 Article – Public Safety

15 3-523.

16 (A) (1) IN THIS SECTION, THE FOLLOWING WORDS HAVE THE MEANINGS
17 INDICATED.

18 (2) ~~“DATABASE DATABASE”~~ “DATABASE” MEANS ANY DATABASE OPERATED BY
19 STATE AND LOCAL LAW ENFORCEMENT AGENCIES, INCLUDING DATABASES
20 MAINTAINED FOR A LAW ENFORCEMENT AGENCY BY A PRIVATE VENDOR.

21 (3) (I) “LAW ENFORCEMENT AGENCY” MEANS A FEDERAL, STATE,
22 OR LOCAL AGENCY AUTHORIZED TO ENFORCE CRIMINAL LAWS.

23 (II) “LAW ENFORCEMENT AGENCY” INCLUDES THE MARYLAND
24 DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES.

25 (III) “LAW ENFORCEMENT AGENCY” DOES NOT INCLUDE THE
26 U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT AGENCY.

27 (B) AN ENTITY OPERATING A DATABASE SHALL:

28 (1) LIMIT ACCESS TO THE DATABASE TO INDIVIDUALS ACTING ON
29 BEHALF OF A LAW ENFORCEMENT AGENCY OR THE MARYLAND JUDICIARY; AND

30 (2) REQUIRE AN INDIVIDUAL ACCESSING THE DATABASE TO PROVIDE
31 TO THE ENTITY:

1 (I) THE INDIVIDUAL’S NAME;

2 (II) THE INDIVIDUAL’S CONTACT INFORMATION, INCLUDING A
3 TELEPHONE NUMBER, AN E-MAIL ADDRESS, AND A PHYSICAL ADDRESS;

4 (III) A STATEMENT ON WHETHER THE INDIVIDUAL IS ACTING ON
5 BEHALF OF THE MARYLAND JUDICIARY OR A LAW ENFORCEMENT AGENCY AND, IF
6 ACTING ON BEHALF OF A LAW ENFORCEMENT AGENCY, WHICH LAW ENFORCEMENT
7 AGENCY THE INDIVIDUAL IS ACTING ON BEHALF OF; AND

8 (IV) A STATEMENT BY THE INDIVIDUAL, UNDER PENALTY OF
9 PERJURY, THAT THE INDIVIDUAL IS ACCESSING THE DATABASE FOR A LEGITIMATE
10 LAW ENFORCEMENT PURPOSE.

11 (C) IF AN INDIVIDUAL IS ACCESSING A DATABASE FOR THE PURPOSE OF
12 ENFORCING FEDERAL IMMIGRATION LAW, THE ENTITY OPERATING THE DATABASE
13 SHALL DENY THE INDIVIDUAL ACCESS TO THE DATABASE UNLESS THE ENTITY IS
14 PROVIDED WITH A VALID WARRANT ISSUED BY A FEDERAL COURT OR A COURT OF
15 THIS STATE.

16 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
17 October 1, 2021.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.