

Chapter 453

(House Bill 744)

AN ACT concerning

Commercial Law – Consumer Protection – “Mug Shot” Web Sites

FOR the purpose of authorizing an individual to request an operator of a Web site to remove the individual’s photograph or digital image from the operator’s Web site under certain circumstances; requiring an individual to make a certain request for removal of a photograph or digital image in a certain manner; requiring an operator of a Web site to remove the photograph or digital image of an individual within a certain period of time and to send a certain written confirmation to the individual within a certain period of time, under certain circumstances; prohibiting an operator of a Web site from charging an individual for the removal of the individual’s photograph or digital image under this Act; making a violation of this Act an unfair or deceptive trade practice under the Maryland Consumer Protection Act and subject to certain enforcement and penalty provisions; providing for the application of this Act; and generally relating to the removal of photographs and digital images from Web sites.

BY adding to

Article – Commercial Law

Section 14–1324

Annotated Code of Maryland

(2013 Replacement Volume and 2014 Supplement)

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

Article – Commercial Law

14–1324.

(A) THIS SECTION APPLIES TO THE OPERATOR OF A WEB SITE THAT CHARGES A FEE TO REMOVE AN ARREST OR DETENTION PHOTOGRAPH OR DIGITAL IMAGE.

(B) AN INDIVIDUAL MAY REQUEST AN OPERATOR OF A WEB SITE TO REMOVE THE INDIVIDUAL’S PHOTOGRAPH OR DIGITAL IMAGE FROM THE OPERATOR’S WEB SITE IF:

(1) THE PHOTOGRAPH OR DIGITAL IMAGE WAS TAKEN DURING THE ARREST OR DETENTION OF THE INDIVIDUAL FOR A CRIMINAL OR TRAFFIC CHARGE OR SUSPECTED VIOLATION OF A CRIMINAL OR TRAFFIC LAW; AND

(2) (I) ~~THE INDIVIDUAL IS ENTITLED TO EXPUNGEMENT OF THE~~ COURT RECORD OR POLICE RECORD THAT CONTAINED THE PHOTOGRAPH OR DIGITAL IMAGE WAS EXPUNGED UNDER TITLE 10, SUBTITLE 1 OF THE CRIMINAL PROCEDURE ARTICLE;

(II) THE INDIVIDUAL HAS SUCCESSFULLY PETITIONED A COURT TO HAVE THE COURT RECORD OR POLICE RECORD THAT CONTAINED THE PHOTOGRAPH OR DIGITAL IMAGE SHIELDED OR OTHERWISE REMOVED FROM PUBLIC INSPECTION; OR

(III) THE INDIVIDUAL HAS SUCCESSFULLY PETITIONED A COURT TO VACATE THE JUDGMENT THAT RESULTED FROM THE ARREST OR DETENTION.

~~(B)~~ (C) AN INDIVIDUAL SHALL MAKE A REQUEST FOR REMOVAL OF A PHOTOGRAPH OR DIGITAL IMAGE UNDER SUBSECTION ~~(A)~~ (B) OF THIS SECTION BY:

(1) WRITTEN REQUEST SENT BY CERTIFIED MAIL; OR

(2) ELECTRONIC MAIL USING AN ELECTRONIC POSTMARK IF THE OPERATOR MAKES AVAILABLE A SECURE ELECTRONIC MAIL CONNECTION ON THE OPERATOR'S WEB SITE.

~~(C)~~ (D) AN OPERATOR OF A WEB SITE SHALL REMOVE THE PHOTOGRAPH OR DIGITAL IMAGE OF AN INDIVIDUAL WITHIN 30 DAYS AFTER RECEIVING A REQUEST UNDER SUBSECTION ~~(B)~~ (C) OF THIS SECTION.

~~(D)~~ (E) WITHIN 5 BUSINESS DAYS AFTER REMOVING A PHOTOGRAPH OR DIGITAL IMAGE OF AN INDIVIDUAL, THE OPERATOR OF A WEB SITE SHALL SEND A WRITTEN CONFIRMATION OF THE REMOVAL TO THE INDIVIDUAL.

~~(E)~~ (F) AN OPERATOR OF A WEB SITE MAY NOT CHARGE AN INDIVIDUAL FOR THE REMOVAL OF THE INDIVIDUAL'S PHOTOGRAPH OR DIGITAL IMAGE UNDER THIS SECTION.

~~(F)~~ (G) A VIOLATION OF THIS SECTION 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.

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

Approved by the Governor, May 12, 2015.