

SENATE BILL 490

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SB 1047/18 – FIN

9lr2804

By: **Senator Kagan**

Introduced and read first time: February 4, 2019

Assigned to: Finance

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 8, 2019

CHAPTER _____

1 AN ACT concerning

2 **Consumer Protection – Scanning or Swiping Identification Cards and Driver’s**
3 **Licenses – Prohibition**

4 FOR the purpose of prohibiting a person from using a scanning device to scan or swipe an
5 identification card or a driver’s license of an individual to obtain the personal
6 information of the individual; prohibiting a person from retaining, selling, or
7 transferring to another person any information collected from scanning or swiping
8 an individual’s identification card or driver’s license under certain circumstances;
9 making a violation of this Act an unfair or deceptive trade practice under the
10 Maryland Consumer Protection Act and subject to certain enforcement and penalty
11 provisions; defining a certain term; providing for the application of this Act;
12 providing that this Act does not prohibit certain actions; and generally relating to
13 scanning or swiping identification cards and driver’s licenses.

14 BY repealing and reenacting, with amendments,
15 Article – Commercial Law
16 Section 13–301
17 Annotated Code of Maryland
18 (2013 Replacement Volume and 2018 Supplement)

19 BY adding to
20 Article – Commercial Law
21 Section 14–1327
22 Annotated Code of Maryland
23 (2013 Replacement Volume and 2018 Supplement)

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.



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

Article – Commercial Law

13–301.

Unfair, abusive, or deceptive trade practices include any:

(1) 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;

(2) Representation that:

(i) Consumer goods, consumer realty, or consumer services have a sponsorship, approval, accessory, characteristic, ingredient, use, benefit, or quantity which they do not have;

(ii) A merchant has a sponsorship, approval, status, affiliation, or connection which he does not have;

(iii) Deteriorated, altered, reconditioned, reclaimed, or secondhand consumer goods are original or new; or

(iv) Consumer goods, consumer realty, or consumer services are of a particular standard, quality, grade, style, or model which they are not;

(3) Failure to state a material fact if the failure deceives or tends to deceive;

(4) Disparagement of the goods, realty, services, or business of another by a false or misleading representation of a material fact;

(5) Advertisement or offer of consumer goods, consumer realty, or consumer services:

(i) Without intent to sell, lease, or rent them as advertised or offered; or

(ii) With intent not to supply reasonably expected public demand, unless the advertisement or offer discloses a limitation of quantity or other qualifying condition;

(6) False or misleading representation of fact which concerns:

(i) The reason for or the existence or amount of a price reduction; or

1 (ii) A price in comparison to a price of a competitor or to one's own
2 price at a past or future time;

3 (7) Knowingly false statement that a service, replacement, or repair is
4 needed;

5 (8) False statement which concerns the reason for offering or supplying
6 consumer goods, consumer realty, or consumer services at sale or discount prices;

7 (9) Deception, fraud, false pretense, false premise, misrepresentation, or
8 knowing concealment, suppression, or omission of any material fact with the intent that a
9 consumer rely on the same in connection with:

10 (i) The promotion or sale of any consumer goods, consumer realty,
11 or consumer service;

12 (ii) A contract or other agreement for the evaluation, perfection,
13 marketing, brokering or promotion of an invention; or

14 (iii) The subsequent performance of a merchant with respect to an
15 agreement of sale, lease, or rental;

16 (10) Solicitations of sales or services over the telephone without first clearly,
17 affirmatively, and expressly stating:

18 (i) The solicitor's name and the trade name of a person represented
19 by the solicitor;

20 (ii) The purpose of the telephone conversation; and

21 (iii) The kind of merchandise, real property, intangibles, or service
22 solicited;

23 (11) Use of any plan or scheme in soliciting sales or services over the
24 telephone that misrepresents the solicitor's true status or mission;

25 (12) Use of a contract related to a consumer transaction which contains a
26 confessed judgment clause that waives the consumer's right to assert a legal defense to an
27 action;

28 (13) Use by a seller, who is in the business of selling consumer realty, of a
29 contract related to the sale of single family residential consumer realty, including
30 condominiums and town houses, that contains a clause limiting or precluding the buyer's
31 right to obtain consequential damages as a result of the seller's breach or cancellation of
32 the contract;

(14) Violation of a provision of:

(i) This title;

(ii) An order of the Attorney General or agreement of a party relating to unit pricing under Title 14, Subtitle 1 of this article;

(iii) Title 14, Subtitle 2 of this article, the Maryland Consumer Debt Collection Act;

(iv) Title 14, Subtitle 3 of this article, the Maryland Door-to-Door Sales Act;

(v) Title 14, Subtitle 9 of this article, Kosher Products;

(vi) Title 14, Subtitle 10 of this article, Automotive Repair Facilities;

(vii) Section 14-1302 of this article;

(viii) Title 14, Subtitle 11 of this article, Maryland Layaway Sales Act;

(ix) Section 22-415 of the Transportation Article;

(x) Title 14, Subtitle 20 of this article;

(xi) Title 14, Subtitle 15 of this article, the Automotive Warranty Enforcement Act;

(xii) Title 14, Subtitle 21 of this article;

(xiii) Section 18-107 of the Transportation Article;

(xiv) Title 14, Subtitle 22 of this article, the Maryland Telephone Solicitations Act;

(xv) Title 14, Subtitle 23 of this article, the Automotive Crash Parts Act;

(xvi) Title 10, Subtitle 6 of the Real Property Article;

(xvii) Title 14, Subtitle 25 of this article, the Hearing Aid Sales Act;

(xviii) Title 14, Subtitle 26 of this article, the Maryland Door-to-Door Solicitations Act;

(xix) Title 14, Subtitle 31 of this article, the Maryland Household Goods Movers Act;

(xx) Title 14, Subtitle 32 of this article, the Maryland Telephone Consumer Protection Act;

(xxi) Title 14, Subtitle 34 of this article, the Social Security Number Privacy Act;

(xxii) Title 14, Subtitle 37 of this article, the Online Child Safety Act;

(xxiii) Section 14–1319, § 14–1320, or § 14–1322 of this article;

(xxiv) Section 7–304 of the Criminal Law Article;

(xxv) Title 7, Subtitle 3 of the Real Property Article, the Protection of Homeowners in Foreclosure Act;

(xxvi) Title 6, Subtitle 13 of the Environment Article;

(xxvii) Section 7–405(e)(2)(ii) of the Health Occupations Article;

(xxviii) Title 12, Subtitle 10 of the Financial Institutions Article;

(xxix) Title 19, Subtitle 7 of the Business Regulation Article;

(xxx) Section 15–311.3 of the Transportation Article;

(xxxi) Section 14–1326 of this article;

(xxxii) the federal Military Lending Act; [or]

(xxxiii) the federal Servicemembers Civil Relief Act; or

(XXXIV) SECTION 14–1327 OF THIS ARTICLE; OR

(15) Act or omission that relates to a residential building and that is chargeable as a misdemeanor under or otherwise violates a provision of the Energy Conservation Building Standards Act, Title 7, Subtitle 4 of the Public Utilities Article.

14–1327.

(A) IN THIS SECTION, “SCANNING DEVICE” MEANS A BAR CODE SCANNER, A MAGNETIC STRIPE READER, OR ANY OTHER DEVICE OR COMBINATION OF DEVICES THAT IS CAPABLE OF DECIPHERING, IN AN ELECTRONICALLY READABLE FORMAT, THE INFORMATION ELECTRONICALLY ENCODED IN A BAR CODE OR MAGNETIC STRIPE.

(B) (1) THIS SECTION DOES NOT APPLY TO A PERSON WHO USES A SCANNING DEVICE TO SCAN OR SWIPE AN INDIVIDUAL'S IDENTIFICATION CARD OR DRIVER'S LICENSE TO:

(I) VERIFY THE AUTHENTICITY OF THE IDENTIFICATION CARD OR DRIVER'S LICENSE;

(II) VERIFY THE AGE OR IDENTITY OF THE INDIVIDUAL WHO POSSESSES THE IDENTIFICATION CARD OR DRIVER'S LICENSE;

(III) RECORD, RETAIN, OR TRANSMIT INFORMATION AS REQUIRED BY LAW;

(IV) TRANSMIT THE NAME AND IDENTIFICATION CARD NUMBER OR DRIVER'S LICENSE NUMBER OF AN INDIVIDUAL TO A CHECK SERVICE COMPANY:

1. FOR THE PURPOSE OF APPROVING, EFFECTING, ADMINISTERING, OR ENFORCING NEGOTIABLE INSTRUMENTS, ELECTRONIC FUNDS TRANSFERS, OR OTHER SIMILAR METHODS OF PAYMENT; OR

2. TO PREVENT FRAUD OR OTHER CRIMINAL ACTIVITY;
OR

(V) PREVENT FRAUD OR OTHER CRIMINAL ACTIVITY IF:

1. THE INDIVIDUAL RETURNS AN ITEM OR REQUESTS A REFUND OR EXCHANGE FOR AN ITEM PURCHASED FROM THE PERSON;

2. THE PERSON USES A FRAUD PREVENTION SERVICE COMPANY OR SYSTEM; AND

3. THE INFORMATION COLLECTED OR RETAINED IS LIMITED TO THE INDIVIDUAL'S NAME, ADDRESS, AND DATE OF BIRTH, AND THE NUMBER AND ISSUING STATE OF THE INDIVIDUAL'S IDENTIFICATION CARD OR DRIVER'S LICENSE.

(2) THIS SECTION DOES NOT APPLY TO A DEPOSITORY INSTITUTION THAT USES A SCANNING DEVICE TO SCAN OR SWIPE AN INDIVIDUAL'S IDENTIFICATION CARD OR DRIVER'S LICENSE IN CONNECTION WITH:

(I) A DEPOSIT ACCOUNT OPENED OR TO BE OPENED BY THE INDIVIDUAL AT THE DEPOSITORY INSTITUTION; ~~OR~~

1 (II) A LOAN MADE OR TO BE MADE TO THE INDIVIDUAL OR HELD
2 OR SERVICED BY THE DEPOSITORY INSTITUTION; OR

3 (III) ANOTHER SERVICE OR PRODUCT REQUESTED BY THE
4 INDIVIDUAL FROM THE DEPOSITORY INSTITUTION.

5 (3) THIS SECTION DOES NOT PROHIBIT A PERSON, FOR A LEGITIMATE
6 BUSINESS PURPOSE, FROM:

7 (I) SCANNING ONLY THE NAME AND ADDRESS FIELDS OF AN
8 INDIVIDUAL'S IDENTIFICATION CARD OR DRIVER'S LICENSE AND RETAINING THE
9 INFORMATION COLLECTED TO FILL IN FIELDS ON FORMS USED BY THE PERSON FOR
10 THE CONVENIENCE OF THE PERSON'S CUSTOMERS; OR

11 (II) PHOTOCOPYING THE IDENTIFICATION CARD OR DRIVER'S
12 LICENSE OF AN INDIVIDUAL AND RETAINING THE PHOTOGRAPHIC COPY.

13 (C) A PERSON MAY NOT:

14 (1) USE A SCANNING DEVICE TO SCAN OR SWIPE AN IDENTIFICATION
15 CARD OR A DRIVER'S LICENSE OF AN INDIVIDUAL TO OBTAIN PERSONAL
16 INFORMATION OF THE INDIVIDUAL;

17 (2) RETAIN ANY INFORMATION COLLECTED FROM SCANNING OR
18 SWIPING AN INDIVIDUAL'S IDENTIFICATION CARD OR DRIVER'S LICENSE; OR

19 (3) SELL OR TRANSFER TO ANOTHER PERSON ANY INFORMATION
20 COLLECTED FROM SCANNING OR SWIPING AN INDIVIDUAL'S IDENTIFICATION CARD
21 OR DRIVER'S LICENSE EXCEPT AS REQUIRED BY LAW.

22 (D) A VIOLATION OF THIS SECTION IS:

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

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

27 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
28 October 1, 2019.