

NetChoice *Promoting Convenience, Choice, and Commerce on the Net*

Carl Szabo, Policy Counsel
NetChoice
1401 K St NW, Suite 502
Washington, DC 20005
202-420-7485
www.netchoice.org



Delegate Derek Davis, Chair
Room 231
House Office Building
Annapolis, MD 21401

February 9, 2016

RE: HB 305, Consumer Protection - Consumer Behavior and Shopping Habits – Required Notice

Dear Chairman Davis and members of the committee:

We ask that you support HB 305.

Merchants and online businesses strive to inform consumers of the privacy choices available to them. But making effective notice is often a challenge. When, where, and how to notify are all questions businesses test, retest, and update. We know that the most effective notice is one the customer is most likely to see just when they need to know what is happening. Finally, we know that notices out of context can often alarm rather than inform.

Fortunately, with HB 305 we can provide Maryland consumers with an effective and informative notice.

Under HB 305, when a merchant uses in-store cellular awareness, the merchant must provide notice that clearly and conspicuously discloses to the consumer that the merchant is using technology.

This bill allows merchants flexibility to make this clear and conspicuous disclosure in the manner most effective for their customers.

For example, a merchant might find that notice at the cash register is more effective than notice on the front door – the customer spends more time in the checkout line than looking at the window on their way into the store. Likewise, the merchant might want to provide notice on the consumer's wireless device when they enter the store. Or the merchant might provide notice when the consumer downloads the store's app.

Moreover, the bill does not require notice if the cellular awareness is used exclusively for safety or theft prevention.

Online services already take steps to notify consumers.

Today, online services explain the benefits, options, and privacy protections of the different in-store cellular-awareness systems.

For example, PayPal's App requires customers to twice authorize any collection of information:

First, customers agree to terms of service when they install the App.

Second, customers choose whether to participate with a specific store they enter, indicating "Always," "Never" or "One Time".

Likewise, the Apple Store App provides users short and long-form notices explaining iBeacon and in-store notifications.

Making the in-store experience better and more secure.

Cellular awareness systems streamline checkout and payment. For example, with the Apple Store App, consumers can purchase an item online and when they enter the store, the app can notify the cashier the customer has arrived to pick-up the product.

Cellular awareness protects against fraud. Services like PayPal's App allow customers to make purchases through a secure wireless connection – as opposed to handing over a credit card to a cashier.

Industry Self-Regulatory program is already being adopted.

Retail stores are already implementing a self-regulatory code around the use of mobile location analytics.¹ This code provides consumers:

- the ability to opt-out of in-store cellphone identification,
- requires stores to get affirmative consent if: (1) the analytics company will maintain personal information linked to a mobile device identifier, or (2) a customer will be contacted based on the analytic information, and
- requires stores to limit the collection and retention of data.

For these reasons we ask you adopt HB 305 and provide in-store cellphone awareness programs the chance to prove their worth to customers.

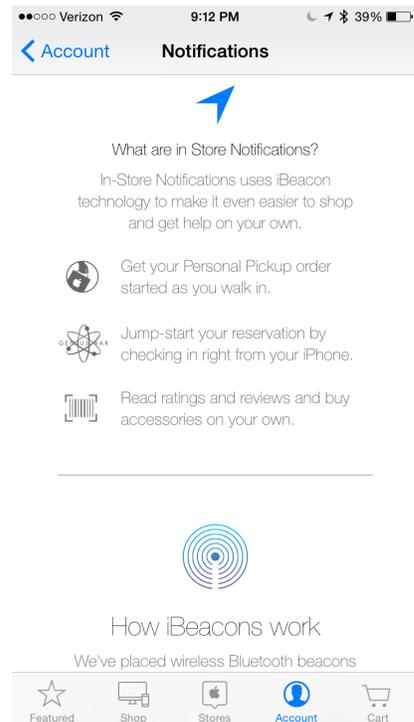
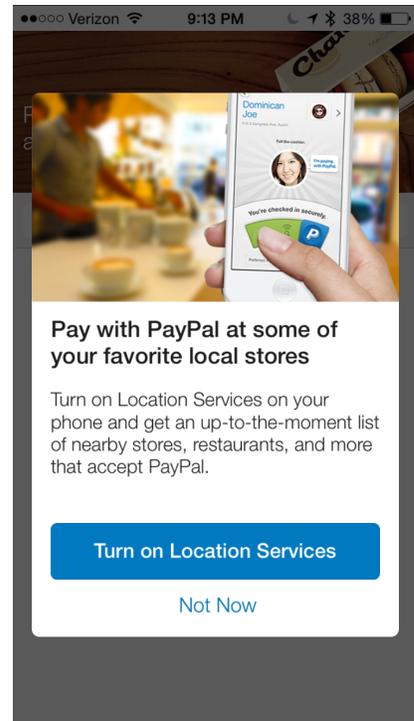
Thank you for considering our views. Please let me know if we can provide further information.

Sincerely,



Carl Szabo
Policy Counsel, NetChoice

NetChoice is a trade association of e-Commerce and online businesses. www.netchoice.org



¹ See, e.g., Smart Store Privacy, <https://fpf.org/wp-content/uploads/10.22.13-FINAL-MLA-Code.pdf>