
By: **Senators Teitelbaum, Britt, Conway, Forehand, Frosh, Green, Grosfeld,
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Introduced and read first time: February 2, 2006

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Consumer Protection - Personal Information Protection Act**

3 FOR the purpose of requiring a certain business to destroy or arrange for the
4 destruction of records that contain certain personal information in a certain
5 manner; requiring a certain business that compiles, maintains, or makes
6 available certain personal information of an individual residing in the State to
7 implement and maintain certain security procedures and practices; requiring
8 certain businesses that compile, maintain, or make available certain records
9 that include certain personal information of an individual residing in the State
10 to notify certain individuals of a breach of the security of a system under certain
11 circumstances; specifying the time at which notification must be given;
12 authorizing notification to be given in a certain manner; providing that a waiver
13 of certain provisions of this Act is contrary to public policy and is void and
14 unenforceable; providing that certain provisions of this Act do not relieve a
15 certain business from a duty to comply with certain other requirements of
16 federal, State, or local law; providing that compliance with a federal or State law
17 is deemed compliance with this Act with regard to the subject matter of that law
18 under certain circumstances; providing that a violation of this Act is an unfair or
19 deceptive trade practice within the meaning of the Maryland Consumer
20 Protection Act and is subject to certain enforcement and penalty provisions;
21 establishing a private right of action for an individual affected by a violation of
22 this Act; defining certain terms; and generally relating to the protection of
23 personal information owned or leased by businesses or included in records
24 compiled, maintained, or made available by businesses.

25 BY adding to

26 Article - Commercial Law

27 Section 14-3501 through 14-3506, inclusive, to be under the new subtitle

28 "Subtitle 35. Maryland Personal Information Protection Act"

29 Annotated Code of Maryland

30 (2005 Replacement Volume)

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

1 **Article - Commercial Law**

2 SUBTITLE 35. MARYLAND PERSONAL INFORMATION PROTECTION ACT.

3 14-3501.

4 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
5 INDICATED.6 (B) (1) "BUSINESS" MEANS A SOLE PROPRIETORSHIP, PARTNERSHIP,
7 CORPORATION, ASSOCIATION, OR ANY OTHER BUSINESS ENTITY, WHETHER OR NOT
8 ORGANIZED TO OPERATE FOR PROFIT.9 (2) "BUSINESS" INCLUDES A FINANCIAL INSTITUTION ORGANIZED,
10 CHARTERED, LICENSED, OR OTHERWISE AUTHORIZED UNDER THE LAWS OF THIS
11 STATE, ANY OTHER STATE, THE UNITED STATES, OR ANY OTHER COUNTRY, AND THE
12 PARENT OR SUBSIDIARY OF A FINANCIAL INSTITUTION.13 (C) "MEDICAL INFORMATION" MEANS ANY INDIVIDUALLY IDENTIFIABLE
14 INFORMATION, IN ELECTRONIC OR PHYSICAL FORM, REGARDING AN INDIVIDUAL'S
15 MEDICAL HISTORY OR MEDICAL TREATMENT OR DIAGNOSIS BY A HEALTH CARE
16 PROFESSIONAL.17 (D) (1) "PERSONAL INFORMATION" MEANS THE FOLLOWING INFORMATION
18 WHEN THE INFORMATION IS CAPABLE OF BEING ASSOCIATED WITH A PARTICULAR
19 INDIVIDUAL AND IS NOT ENCRYPTED:

20 (I) A SIGNATURE;

21 (II) A SOCIAL SECURITY NUMBER;

22 (III) A DRIVER'S LICENSE NUMBER;

23 (IV) A FINANCIAL ACCOUNT NUMBER, INCLUDING A CREDIT CARD
24 NUMBER OR DEBIT CARD NUMBER;25 (V) ANY REQUIRED SECURITY CODE, ACCESS CODE, OR PASSWORD
26 THAT WOULD PERMIT ACCESS TO AN INDIVIDUAL'S FINANCIAL ACCOUNT;

27 (VI) A CONSUMER REPORT, AS DEFINED IN § 14-1201 OF THIS TITLE;

28 (VII) ANY INSURANCE INFORMATION; OR

29 (VIII) ANY MEDICAL INFORMATION.

30 (2) "PERSONAL INFORMATION" DOES NOT INCLUDE INFORMATION THAT
31 AN INDIVIDUAL HAS CONSENTED TO HAVE PUBLICLY DISSEMINATED OR LISTED.32 (E) "RECORDS" MEANS INFORMATION THAT IS INSCRIBED ON A TANGIBLE
33 MEDIUM OR THAT IS STORED IN AN ELECTRONIC OR OTHER MEDIUM AND IS
34 RETRIEVABLE IN PERCEIVABLE FORM.

1 14-3502.

2 WHEN A BUSINESS IS DESTROYING A RECORD THAT CONTAINS PERSONAL
3 INFORMATION, THE BUSINESS SHALL TAKE ALL REASONABLE STEPS TO DESTROY OR
4 ARRANGE FOR THE DESTRUCTION OF THE RECORD IN A MANNER THAT MAKES THE
5 PERSONAL INFORMATION UNREADABLE OR UNDECIPHERABLE THROUGH ANY
6 MEANS.

7 14-3503.

8 (A) A BUSINESS THAT COMPILES, MAINTAINS, OR MAKES AVAILABLE
9 PERSONAL INFORMATION OF AN INDIVIDUAL RESIDING IN THE STATE SHALL
10 IMPLEMENT AND MAINTAIN REASONABLE SECURITY PROCEDURES AND PRACTICES
11 APPROPRIATE TO THE NATURE OF THE PERSONAL INFORMATION TO PROTECT THE
12 PERSONAL INFORMATION FROM UNAUTHORIZED ACCESS, DESTRUCTION, USE,
13 MODIFICATION, OR DISCLOSURE.

14 (B) A BUSINESS THAT DISCLOSES PERSONAL INFORMATION ABOUT AN
15 INDIVIDUAL RESIDING IN THE STATE UNDER A CONTRACT WITH A NONAFFILIATED
16 THIRD PARTY SHALL REQUIRE BY CONTRACT THAT THE THIRD PARTY COMPLY WITH
17 THE REQUIREMENTS OF SUBSECTION (A) OF THIS SECTION.

18 14-3504.

19 (A) IN THIS SECTION:

20 (1) "BREACH OF THE SECURITY OF A SYSTEM" MEANS THE
21 UNAUTHORIZED ACQUISITION OF RECORDS CONTAINING PERSONAL INFORMATION
22 THAT COMPROMISES THE SECURITY, CONFIDENTIALITY, OR INTEGRITY OF THE
23 PERSONAL INFORMATION MAINTAINED BY A BUSINESS; AND

24 (2) "BREACH OF THE SECURITY OF A SYSTEM" DOES NOT INCLUDE THE
25 GOOD-FAITH ACQUISITION OF PERSONAL INFORMATION BY AN EMPLOYEE OR
26 AGENT OF A BUSINESS FOR THE PURPOSES OF THE BUSINESS, PROVIDED THAT THE
27 PERSONAL INFORMATION IS NOT USED OR SUBJECT TO FURTHER UNAUTHORIZED
28 DISCLOSURE.

29 (B) (1) A BUSINESS THAT COMPILES, MAINTAINS, OR MAKES AVAILABLE
30 RECORDS THAT INCLUDE PERSONAL INFORMATION OF AN INDIVIDUAL RESIDING IN
31 THE STATE SHALL NOTIFY THE INDIVIDUAL OF A BREACH OF THE SECURITY OF A
32 SYSTEM IF, AS A RESULT OF THE BREACH, THE INDIVIDUAL'S PERSONAL
33 INFORMATION:

34 (I) HAS BEEN ACQUIRED BY AN UNAUTHORIZED PERSON; OR

35 (II) IS REASONABLY BELIEVED TO HAVE BEEN ACQUIRED BY AN
36 UNAUTHORIZED PERSON.

37 (2) EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, THE
38 NOTIFICATION REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE

1 GIVEN AS SOON AS PRACTICABLE AFTER THE BUSINESS DISCOVERS OR IS NOTIFIED
2 OF THE BREACH OF THE SECURITY OF A SYSTEM.

3 (C) (1) THE NOTIFICATION REQUIRED UNDER SUBSECTION (B) OF THIS
4 SECTION MAY BE DELAYED:

5 (I) IF A LAW ENFORCEMENT AGENCY DETERMINES THAT THE
6 NOTIFICATION WILL IMPEDE A CRIMINAL INVESTIGATION; OR

7 (II) TO DETERMINE THE SCOPE OF THE BREACH OF THE SECURITY
8 OF A SYSTEM AND RESTORE THE INTEGRITY OF THE SYSTEM.

9 (2) IF NOTIFICATION IS DELAYED UNDER ITEM (1)(I) OF THIS
10 SUBSECTION, NOTIFICATION SHALL BE GIVEN AS SOON AS PRACTICABLE AFTER THE
11 LAW ENFORCEMENT AGENCY DETERMINES THAT IT WILL NOT IMPEDE A CRIMINAL
12 INVESTIGATION.

13 (D) THE NOTIFICATION REQUIRED UNDER SUBSECTION (B) OF THIS SECTION
14 MAY BE GIVEN BY:

15 (1) WRITTEN NOTICE;

16 (2) ELECTRONIC NOTICE, IF THE ELECTRONIC NOTICE IS CONSISTENT
17 WITH THE REQUIREMENTS FOR ELECTRONIC RECORDS AND SIGNATURES UNDER 15
18 U.S.C. § 7001; OR

19 (3) TELEPHONIC NOTICE, IF CONTACT IS MADE DIRECTLY WITH THE
20 INDIVIDUALS ENTITLED TO NOTIFICATION UNDER SUBSECTION (B) OF THIS
21 SECTION; OR

22 (4) (I) SUBSTITUTE NOTICE AS PROVIDED IN SUBSECTION (E) OF THIS
23 SECTION, IF:

24 1. THE BUSINESS DEMONSTRATES THAT THE COST OF
25 PROVIDING NOTICE WOULD EXCEED \$250,000 OR THAT THE NUMBER OF
26 INDIVIDUALS TO BE NOTIFIED EXCEEDS 500,000;

27 2. THE BUSINESS DOES NOT HAVE SUFFICIENT CONTACT
28 INFORMATION OR CONSENT TO SATISFY ITEMS (1), (2), OR (3) OF THIS SUBSECTION,
29 FOR ONLY THOSE INDIVIDUALS WITHOUT SUFFICIENT CONTACT INFORMATION OR
30 CONSENT; OR

31 3. THE BUSINESS IS UNABLE TO IDENTIFY AN INDIVIDUAL
32 ENTITLED TO NOTIFICATION UNDER SUBSECTION (B) OF THIS SECTION, FOR ONLY
33 THOSE UNIDENTIFIABLE AFFECTED PERSONS.

34 (E) SUBSTITUTE NOTICE UNDER SUBSECTION (D)(4) OF THIS SECTION SHALL
35 CONSIST OF:

1 (1) ELECTRONICALLY MAILING THE NOTICE TO AN INDIVIDUAL
2 ENTITLED TO NOTIFICATION UNDER SUBSECTION (B) OF THIS SECTION, IF THE
3 BUSINESS HAS AN ELECTRONIC MAIL ADDRESS FOR AN INDIVIDUAL TO BE
4 NOTIFIED;

5 (2) CONSPICUOUSLY POSTING OF THE NOTICE ON THE WEBSITE OF THE
6 BUSINESS, IF ONE IS MAINTAINED; AND

7 (3) PUBLISHING THE NOTICE, INCLUDING CONTACT INFORMATION FOR
8 THE BUSINESS WHERE AFFECTED INDIVIDUALS CAN OBTAIN MORE INFORMATION,
9 IN MAJOR STATEWIDE MEDIA.

10 (F) THE NOTIFICATION REQUIRED UNDER SUBSECTION (B) OF THIS SECTION
11 MUST INCLUDE:

12 (1) TO THE EXTENT POSSIBLE, A DESCRIPTION OF THE CATEGORIES OF
13 INFORMATION THAT WERE, OR ARE REASONABLY BELIEVED TO HAVE BEEN,
14 ACQUIRED BY A PERSON WITHOUT VALID AUTHORIZATION, INCLUDING WHICH OF
15 THE ELEMENTS OF PERSONAL INFORMATION WERE, OR ARE REASONABLY BELIEVED
16 TO HAVE BEEN, ACQUIRED;

17 (2) CONTACT INFORMATION FOR THE BUSINESS MAKING THE
18 NOTIFICATION INCLUDING THE ADDRESS AND TOLL-FREE CONTACT TELEPHONE;

19 (3) THE TOLL-FREE TELEPHONE NUMBERS AND ADDRESSES FOR THE
20 MAJOR CONSUMER REPORTING AGENCIES; AND

21 (4) (I) THE TOLL-FREE TELEPHONE NUMBERS, ADDRESSES, AND
22 WEBSITE ADDRESSES FOR:

23 1. THE FEDERAL TRADE COMMISSION; AND

24 2. THE OFFICE OF THE ATTORNEY GENERAL; AND

25 (II) A STATEMENT THAT AN INDIVIDUAL CAN OBTAIN
26 INFORMATION FROM THESE SOURCES ABOUT STEPS THE INDIVIDUAL CAN TAKE TO
27 AVOID IDENTITY THEFT.

28 (G) A BUSINESS SHALL PROVIDE NOTICE OF A BREACH OF THE SECURITY OF A
29 SYSTEM TO THE OFFICE OF THE ATTORNEY GENERAL WITHIN 24 HOURS AFTER THE
30 BUSINESS BECOMES AWARE OF THE BREACH.

31 (H) A WAIVER OF ANY PROVISION OF THIS SECTION IS CONTRARY TO PUBLIC
32 POLICY AND IS VOID AND UNENFORCEABLE.

33 (I) COMPLIANCE WITH THIS SECTION DOES NOT RELIEVE A BUSINESS FROM
34 A DUTY TO COMPLY WITH ANY OTHER REQUIREMENTS OF FEDERAL, STATE, OR
35 LOCAL LAW RELATING TO THE PROTECTION AND PRIVACY OF PERSONAL
36 INFORMATION.

1 14-3505.

2 (A) COMPLIANCE WITH A FEDERAL OR STATE LAW IS DEEMED COMPLIANCE
3 WITH THIS SUBTITLE WITH REGARD TO THE SUBJECT MATTER OF THAT LAW IF:

4 (1) THE FEDERAL OR STATE LAW PROVIDES:

5 (I) AT LEAST THE SAME PROTECTION TO PERSONAL INFORMATION
6 THAN THE PROTECTION PROVIDED UNDER THIS SUBTITLE; AND

7 (II) DISCLOSURE REQUIREMENTS THAT ARE AT LEAST AS
8 THOROUGH AS THE DISCLOSURE REQUIREMENTS UNDER § 14-3504 OF THIS
9 SUBTITLE.

10 (B) THIS SECTION DOES NOT RELIEVE A BUSINESS FROM A DUTY TO COMPLY
11 WITH ANY OTHER REQUIREMENTS OF FEDERAL, STATE, OR LOCAL LAW RELATING TO
12 THE PROTECTION AND PRIVACY OF PERSONAL INFORMATION.

13 14-3506.

14 (A) A VIOLATION OF THIS SUBTITLE:

15 (1) IS AN UNFAIR OR DECEPTIVE TRADE PRACTICE WITHIN THE
16 MEANING OF TITLE 13 OF THIS ARTICLE; AND

17 (2) IS SUBJECT TO THE ENFORCEMENT AND PENALTY PROVISIONS
18 CONTAINED IN TITLE 13 OF THIS ARTICLE.

19 (B) IN ADDITION TO THE REMEDIES PROVIDED IN § 13-408 OF THIS ARTICLE,
20 AN INDIVIDUAL WHO IS AFFECTED BY A VIOLATION OF THIS SUBTITLE MAY BRING
21 AN ACTION AGAINST A PERSON THAT VIOLATES THIS SUBTITLE TO RECOVER:

22 (1) REASONABLE ATTORNEY'S FEES; AND

23 (2) DAMAGES IN THE AMOUNT OF THE GREATER OF:

24 (I) \$500 FOR EACH VIOLATION; OR

25 (II) ACTUAL DAMAGES SUSTAINED AS A RESULT OF THE
26 VIOLATION.

27 (C) FOR PURPOSES OF THIS SECTION, EACH INDIVIDUAL FAILURE TO COMPLY
28 WITH THE REQUIREMENTS OF THIS SUBTITLE IS A SEPARATE VIOLATION.

29 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
30 October 1, 2006.