

SENATE BILL 514

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HB 873/06 – ECM

71r0373

By: **Senator Forehand**
Introduced and read first time: February 2, 2007
Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Consumer Protection – Protection of Personal Information from Security**
3 **Breaches**

4 FOR the purpose of requiring certain businesses and State entities that own, license,
5 or maintain certain records that include certain personal information of an
6 individual residing in the State to notify certain persons of a breach of the
7 security of a system under certain circumstances; specifying the time at which
8 notification must be given; authorizing notification to be given in a certain
9 manner; requiring certain businesses and State entities to notify certain
10 consumer reporting agencies of a breach of the security of a system under
11 certain circumstances; requiring a certain notice to contain certain information;
12 providing that a waiver of certain provisions of this Act is contrary to public
13 policy and is void and unenforceable; providing that compliance with certain
14 provisions of this Act does not relieve a certain business or State entity from a
15 duty to comply with certain other requirements of federal, State, or local law;
16 providing that a violation of this Act is an unfair or deceptive trade practice
17 within the meaning of the Maryland Consumer Protection Act and is subject to
18 certain enforcement and penalty provisions; establishing a private right of
19 action for an individual affected by a violation of certain provisions of this Act;
20 providing for the application of certain provisions of this Act; defining certain
21 terms; and generally relating to the protection of personal information included
22 in records owned, licensed, or maintained by businesses and State entities.

23 BY adding to
24 Article – Commercial Law

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 14–3501 through 14–3503 to be under the new subtitle “Subtitle 35.
2 Protection of Personal Information from Security Breaches”
3 Annotated Code of Maryland
4 (2005 Replacement Volume and 2006 Supplement)

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

7 **Article – Commercial Law**

8 **SUBTITLE 35. PROTECTION OF PERSONAL INFORMATION FROM SECURITY**
9 **BREACHES.**

10 **14–3501.**

11 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
12 INDICATED.

13 (B) (1) “BREACH OF THE SECURITY OF A SYSTEM” MEANS THE
14 UNAUTHORIZED ACQUISITION OF RECORDS CONTAINING PERSONAL
15 INFORMATION THAT COMPROMISES THE SECURITY, CONFIDENTIALITY, OR
16 INTEGRITY OF THE PERSONAL INFORMATION MAINTAINED BY A BUSINESS OR
17 STATE ENTITY.

18 (2) “BREACH OF THE SECURITY OF A SYSTEM” DOES NOT
19 INCLUDE THE GOOD FAITH ACQUISITION OF PERSONAL INFORMATION BY AN
20 EMPLOYEE OR AGENT OF A BUSINESS OR STATE ENTITY FOR THE PURPOSES OF
21 THE BUSINESS OR STATE ENTITY, PROVIDED THAT THE PERSONAL
22 INFORMATION IS NOT USED OR SUBJECT TO FURTHER UNAUTHORIZED
23 DISCLOSURE.

24 (C) (1) “BUSINESS” MEANS A SOLE PROPRIETORSHIP, PARTNERSHIP,
25 CORPORATION, ASSOCIATION, OR ANY OTHER BUSINESS ENTITY, WHETHER OR
26 NOT ORGANIZED TO OPERATE AT A PROFIT.

27 (2) “BUSINESS” INCLUDES A FINANCIAL INSTITUTION
28 ORGANIZED, CHARTERED, LICENSED, OR OTHERWISE AUTHORIZED UNDER THE
29 LAWS OF THIS STATE, ANY OTHER STATE, THE UNITED STATES, OR ANY OTHER
30 COUNTRY, AND THE PARENT OR SUBSIDIARY OF A FINANCIAL INSTITUTION.

1 (D) (1) **“PERSONAL INFORMATION” MEANS THE FOLLOWING**
2 **INFORMATION WHEN THE INFORMATION IS CAPABLE OF BEING ASSOCIATED**
3 **WITH A PARTICULAR INDIVIDUAL AND IS NOT ENCRYPTED:**

4 (I) **A SIGNATURE;**

5 (II) **A SOCIAL SECURITY NUMBER;**

6 (III) **A DRIVER’S LICENSE NUMBER;**

7 (IV) **A FINANCIAL ACCOUNT NUMBER, INCLUDING A CREDIT**
8 **CARD NUMBER OR DEBIT CARD NUMBER;**

9 (V) **A REQUIRED SECURITY CODE, ACCESS CODE, OR**
10 **PASSWORD THAT WOULD PERMIT ACCESS TO AN INDIVIDUAL’S FINANCIAL**
11 **ACCOUNT;**

12 (VI) **A CONSUMER REPORT, AS DEFINED IN § 14-1201 OF**
13 **THIS TITLE; OR**

14 (VII) **ANY MEDICAL INFORMATION.**

15 (2) **“PERSONAL INFORMATION” DOES NOT INCLUDE**
16 **INFORMATION THAT AN INDIVIDUAL HAS CONSENTED TO HAVE PUBLICLY**
17 **DISSEMINATED OR LISTED.**

18 (E) (1) **“STATE ENTITY” MEANS A STATE BOARD, BUREAU,**
19 **COMMITTEE, COMMISSION, COUNCIL, DEPARTMENT, DIVISION, OFFICE, PUBLIC**
20 **AUTHORITY, PUBLIC BENEFIT CORPORATION, OR OTHER GOVERNMENTAL**
21 **ENTITY THAT PERFORMS A GOVERNMENTAL OR PROPRIETARY FUNCTION FOR**
22 **THE STATE.**

23 (2) **“STATE ENTITY” DOES NOT INCLUDE:**

24 (I) **A UNIT OF THE JUDICIAL BRANCH OF STATE**
25 **GOVERNMENT;**

26 (II) **A COUNTY; OR**

1 **(III) A MUNICIPAL CORPORATION.**

2 **14-3502.**

3 **(A) (1) A BUSINESS OR STATE ENTITY THAT OWNS OR LICENSES**
4 **RECORDS THAT INCLUDE PERSONAL INFORMATION OF AN INDIVIDUAL**
5 **RESIDING IN THE STATE SHALL NOTIFY THE INDIVIDUAL OF A BREACH OF THE**
6 **SECURITY OF A SYSTEM IF, AS A RESULT OF THE BREACH, THE INDIVIDUAL'S**
7 **PERSONAL INFORMATION:**

8 **(I) HAS BEEN ACQUIRED BY AN UNAUTHORIZED PERSON;**
9 **OR**

10 **(II) IS REASONABLY BELIEVED TO HAVE BEEN ACQUIRED BY**
11 **AN UNAUTHORIZED PERSON.**

12 **(2) EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION,**
13 **THE NOTIFICATION REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION**
14 **SHALL BE GIVEN AS SOON AS PRACTICABLE AFTER THE BUSINESS OR STATE**
15 **ENTITY DISCOVERS OR IS NOTIFIED OF THE BREACH OF THE SECURITY OF A**
16 **SYSTEM.**

17 **(B) (1) A BUSINESS OR STATE ENTITY THAT MAINTAINS RECORDS**
18 **THAT INCLUDE PERSONAL INFORMATION THAT THE BUSINESS OR STATE ENTITY**
19 **DOES NOT OWN SHALL NOTIFY THE OWNER OR LICENSEE OF THE PERSONAL**
20 **INFORMATION OF A BREACH OF THE SECURITY OF A SYSTEM IF, AS A RESULT OF**
21 **THE BREACH, THE PERSONAL INFORMATION OF AN INDIVIDUAL RESIDING IN**
22 **THE STATE:**

23 **(I) HAS BEEN ACQUIRED BY AN UNAUTHORIZED PERSON;**
24 **OR**

25 **(II) IS REASONABLY BELIEVED TO HAVE BEEN ACQUIRED BY**
26 **AN UNAUTHORIZED PERSON.**

27 **(2) EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION,**
28 **THE NOTIFICATION REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION**
29 **SHALL BE GIVEN AS SOON AS PRACTICABLE AFTER THE BUSINESS OR STATE**

1 ENTITY DISCOVERS OR IS NOTIFIED OF THE BREACH OF THE SECURITY OF A
2 SYSTEM.

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

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

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

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

13 (D) (1) THE NOTIFICATION REQUIRED UNDER SUBSECTIONS (A) AND
14 (B) OF THIS SECTION MAY BE GIVEN BY:

15 (I) WRITTEN NOTICE;

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

19 (III) SUBSTITUTE NOTICE, IF THE BUSINESS OR STATE
20 ENTITY DEMONSTRATES THAT:

21 1. THE COST OF PROVIDING NOTICE WOULD EXCEED
22 \$250,000;

23 2. THE AFFECTED CLASS OF INDIVIDUALS TO BE
24 NOTIFIED EXCEEDS 500,000; OR

25 3. THE BUSINESS OR STATE ENTITY DOES NOT HAVE
26 SUFFICIENT CONTACT INFORMATION.

1 **(2) SUBSTITUTE NOTICE UNDER PARAGRAPH (1)(III) OF THIS**
2 **SUBSECTION SHALL CONSIST OF:**

3 **(I) ELECTRONIC MAIL NOTICE, IF THE BUSINESS OR STATE**
4 **ENTITY HAS AN ELECTRONIC MAIL ADDRESS;**

5 **(II) CONSPICUOUS POSTING OF THE NOTICE ON THE**
6 **INTERNET WEBSITE PAGE OF THE BUSINESS OR STATE ENTITY, IF THE**
7 **BUSINESS OR STATE ENTITY MAINTAINS ONE; AND**

8 **(III) NOTICE TO MAJOR STATEWIDE MEDIA.**

9 **(3) REGARDLESS OF THE METHOD BY WHICH THE NOTIFICATION**
10 **IS GIVEN UNDER THIS SUBSECTION, THE NOTIFICATION SHALL INCLUDE:**

11 **(I) CONTACT INFORMATION FOR THE BUSINESS OR STATE**
12 **ENTITY PROVIDING THE NOTIFICATION; AND**

13 **(II) A DESCRIPTION OF THE CATEGORIES OF INFORMATION**
14 **ACQUIRED OR BELIEVED TO HAVE BEEN ACQUIRED BY AN UNAUTHORIZED**
15 **PERSON.**

16 **(E) A BUSINESS OR STATE ENTITY SHALL PROVIDE NOTIFICATION OF A**
17 **BREACH OF THE SECURITY OF A SYSTEM TO THE OFFICE OF THE ATTORNEY**
18 **GENERAL WITHIN 24 HOURS AFTER THE BUSINESS OR STATE ENTITY BECOMES**
19 **AWARE OF THE BREACH OF THE SECURITY OF A SYSTEM.**

20 **(F) A BUSINESS OR STATE ENTITY SHALL NOTIFY ALL CONSUMER**
21 **REPORTING AGENCIES THAT COMPILE OR MAINTAIN CONSUMER CREDIT**
22 **INFORMATION ON A NATIONWIDE BASIS ABOUT A BREACH OF THE SECURITY OF**
23 **A SYSTEM THAT REQUIRES THE NOTIFICATION OF MORE THAN 5,000**
24 **INDIVIDUALS AT ONE TIME.**

25 **(G) A WAIVER OF ANY PROVISION OF THIS SECTION IS CONTRARY TO**
26 **PUBLIC POLICY AND IS VOID AND UNENFORCEABLE.**

27 **(H) COMPLIANCE WITH THIS SECTION DOES NOT RELIEVE A BUSINESS**
28 **OR STATE ENTITY FROM A DUTY TO COMPLY WITH ANY OTHER REQUIREMENTS**

1 OF FEDERAL, STATE, OR LOCAL LAW RELATING TO THE PROTECTION AND
2 PRIVACY OF PERSONAL INFORMATION.

3 **14-3503.**

4 (A) A VIOLATION OF THIS SUBTITLE:

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

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

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

13 (1) DAMAGES IN THE AMOUNT OF THE GREATER OF:

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

15 (II) ACTUAL DAMAGES SUSTAINED AS A RESULT OF THE
16 VIOLATION; AND

17 (2) REASONABLE ATTORNEY'S FEES.

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

21 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
22 October 1, 2007.