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THE MARYLAND HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401

HB 962 - Consumer Law – Personal Information Protection Act – Revisions – as amended

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Cross-file: SB 643

House Economic Matters Committee, February 25, 2021

Chairman Wilson, Vice Chair Crosby and Members of the Committee,

House Bill 962 is a bill that strengthens the Maryland Personal Information and Protection Act (MPIPA) in response to changes in the type of data being collected about consumers.

An important note about this bill: **HB 962 addresses responses to data breaches**, not to be confused with data privacy bills. This bill does not address the type of data companies can or cannot maintain – it simply seeks to ensure that whatever data they have is protected, and that you are notified in a reasonable time frame if their system is breached and your data falls into the wrong hands.

The data collection landscape has changed dramatically since the last update of MPIPA in 2017, and continues to evolve. Consumers are giving new and even more personal information in order to take advantage of new technology of apps and services that can enhance their lives.

This bill, accordingly,

(1) **Expands the definition of personal information in the statute to include genetic information.** Genetic testing services offer the benefit of connecting you with relatives and helping you discover your lineage; they can help you with health plans and provide numerous other services. At the same time, your DNA is among the most personal and sensitive pieces of information that companies can collect about you, and should clearly be included under the definition of personal information. Your DNA does not need to be connected to your name for someone to find you; a case where that worked in favor of the public good was the capture of the Golden State Killer. They didn't have his name. They didn't even have his own DNA; they found him through the DNA of a relative. If this technology can be used for good, then it follows that a bad actor can find you for nefarious purposes.

(2) **HB 962 also streamlines the industry response to data breaches by expediting the notification process**, giving consumers the power to make changes before they experience a problem as a result of the breach.

- Many businesses (data owners or licensees) store and protect their data through a third party (maintainer of data). This bill changes the time frame for a maintainer to notify the owner/licensee from 45 days to a maximum of 10. This requires the maintainer of the data and the owner of the data to start the dialogue early and remain in contact throughout investigation.
- **Consumer notification and trigger:**
Under current law, once a data owner or licensee discovers or receives notice that there has been a data breach, they have 45 days to notify consumers **AFTER they've concluded their investigation**. Because of this, companies can extend their investigations over months and even years – as in the case of Google, who notified consumers three years after a breach. **This bill requires them to give notice no more than 45 days from the time they are made aware of the breach**. This is a necessary change, because under current practice, by the time the consumer is notified, it has become moot. There are provisions in the bill that allow for a pause if notification would impede a criminal investigation or undermine national security.

(3) **This bill also strives to ensure consumers actually receive notification by no longer allowing the substitute notice to be the primary means of notification**, such as setting up a webpage for consumers to check if their information was compromised. Data owners and licenses are required to notify consumers directly by written notice, electronic mail or hard mail. The only exception is if the company has neither the email or address or any other means of notifying consumers.

House Bill 962 is basically the same bill I presented to this Committee last year - HB 148 - that was passed out of Committee. 2021's HB 148 was a result of two years of collaboration to a good end. The protections and notification provisions of the bill were agreed upon. This year, for House Bill 962, we continued with that spirit of collaboration to make minor changes that helped to clarify intent and definitions and we believe these changes are helpful. Please see the amendments.

As I mentioned, we haven't updated these significant elements of MIPPA since 2017. Five years is a long time in the cyber world. These updates are necessary to protect Maryland consumers in this rapidly changing cyber environment.

For this reason, I urge a favorable report on HB 962 as amended.