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By: **Delegate Moe**

Rules suspended

Introduced and read first time: March 8, 2005

Assigned to: Rules and Executive Nominations

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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 a customer's records that contain certain personal information of  
5 the customer in a certain manner; requiring a certain business that owns or  
6 licenses 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 own, license, or maintain certain records that include  
9 certain personal information of an individual residing in the State to notify  
10 certain persons 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 compliance with certain provisions of this Act does  
15 not relieve a certain business from a duty to comply with certain other  
16 requirements of federal, State, or local law; providing that a violation of this Act  
17 is an unfair or deceptive trade practice within the meaning of the Maryland  
18 Consumer Protection Act and is subject to certain enforcement and penalty  
19 provisions; establishing a private right of action for an individual affected by a  
20 violation of this Act; defining certain terms; and generally relating to the  
21 protection of personal information owned or leased by businesses or included in  
22 records owned, licensed, or maintained by businesses.

23 BY adding to

24 Article - Commercial Law

25 Section 14-3301 through 14-3305, inclusive, to be under the new subtitle

26 "Subtitle 33. Maryland Personal Information Protection Act"

27 Annotated Code of Maryland

28 (2000 Replacement Volume and 2004 Supplement)

29 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF

30 MARYLAND, That the Laws of Maryland read as follows:

1 **Article - Commercial Law**2 **SUBTITLE 33. MARYLAND PERSONAL INFORMATION PROTECTION ACT.**

3 14-3301.

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 AT A 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 OR

29 (VII) 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 14-3302.

2 (A) IN THIS SECTION, "CUSTOMER" MEANS AN INDIVIDUAL RESIDING IN THE  
3 STATE WHO PROVIDES PERSONAL INFORMATION TO A BUSINESS FOR THE PURPOSE  
4 OF PURCHASING OR LEASING A PRODUCT OR OBTAINING A SERVICE FROM THE  
5 BUSINESS.

6 (B) WHEN A BUSINESS IS DESTROYING A CUSTOMER'S RECORDS THAT  
7 CONTAIN PERSONAL INFORMATION OF THE CUSTOMER, THE BUSINESS SHALL TAKE  
8 ALL REASONABLE STEPS TO DESTROY OR ARRANGE FOR THE DESTRUCTION OF THE  
9 RECORDS IN A MANNER THAT MAKES THE PERSONAL INFORMATION UNREADABLE  
10 OR UNDECIPHERABLE THROUGH ANY MEANS.

11 14-3303.

12 (A) A BUSINESS THAT OWNS OR LICENSES PERSONAL INFORMATION OF AN  
13 INDIVIDUAL RESIDING IN THE STATE SHALL IMPLEMENT AND MAINTAIN  
14 REASONABLE SECURITY PROCEDURES AND PRACTICES APPROPRIATE TO THE  
15 NATURE OF THE PERSONAL INFORMATION OWNED OR LICENSED TO PROTECT THE  
16 PERSONAL INFORMATION FROM UNAUTHORIZED ACCESS, DESTRUCTION, USE,  
17 MODIFICATION, OR DISCLOSURE.

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

22 14-3304.

23 (A) IN THIS SECTION:

24 (1) "BREACH OF THE SECURITY OF A SYSTEM" MEANS THE  
25 UNAUTHORIZED ACQUISITION OF RECORDS CONTAINING PERSONAL INFORMATION  
26 THAT COMPROMISES THE SECURITY, CONFIDENTIALITY, OR INTEGRITY OF THE  
27 PERSONAL INFORMATION MAINTAINED BY A BUSINESS; AND

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

33 (B) (1) A BUSINESS THAT OWNS OR LICENSES RECORDS THAT INCLUDE  
34 PERSONAL INFORMATION OF AN INDIVIDUAL RESIDING IN THE STATE SHALL NOTIFY  
35 THE INDIVIDUAL OF A BREACH OF THE SECURITY OF A SYSTEM IF, AS A RESULT OF  
36 THE BREACH, THE INDIVIDUAL'S PERSONAL INFORMATION:

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

1 (II) IS REASONABLY BELIEVED TO HAVE BEEN ACQUIRED BY AN  
2 UNAUTHORIZED PERSON.

3 (2) EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, THE  
4 NOTIFICATION REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE  
5 GIVEN AS SOON AS PRACTICABLE AFTER THE BUSINESS DISCOVERS OR IS NOTIFIED  
6 OF THE BREACH OF THE SECURITY OF A SYSTEM.

7 (C) (1) A BUSINESS THAT MAINTAINS RECORDS THAT INCLUDE PERSONAL  
8 INFORMATION THAT THE BUSINESS DOES NOT OWN SHALL NOTIFY THE OWNER OR  
9 LICENSEE OF THE PERSONAL INFORMATION OF A BREACH OF THE SECURITY OF A  
10 SYSTEM IF, AS A RESULT OF THE BREACH, THE PERSONAL INFORMATION OF AN  
11 INDIVIDUAL RESIDING IN THE STATE:

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

13 (II) IS REASONABLY BELIEVED TO HAVE BEEN ACQUIRED BY AN  
14 UNAUTHORIZED PERSON.

15 (2) EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, THE  
16 NOTIFICATION REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE  
17 GIVEN AS SOON AS PRACTICABLE AFTER THE BUSINESS DISCOVERS OR IS NOTIFIED  
18 OF THE BREACH OF THE SECURITY OF A SYSTEM.

19 (D) (1) THE NOTIFICATION REQUIRED UNDER SUBSECTIONS (B) AND (C) OF  
20 THIS SECTION MAY BE DELAYED:

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

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

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

29 (E) THE NOTIFICATION REQUIRED UNDER SUBSECTIONS (B) AND (C) OF THIS  
30 SECTION MAY BE GIVEN BY:

31 (1) WRITTEN NOTICE; OR

32 (2) ELECTRONIC NOTICE, IF THE ELECTRONIC NOTICE IS CONSISTENT  
33 WITH THE REQUIREMENTS FOR ELECTRONIC RECORDS AND SIGNATURES UNDER 15  
34 U.S.C. § 7001.

35 (F) A BUSINESS SHALL PROVIDE NOTICE OF A BREACH OF THE SECURITY OF A  
36 SYSTEM TO THE OFFICE OF THE ATTORNEY GENERAL WITHIN 24 HOURS AFTER THE  
37 BUSINESS BECOMES AWARE OF THE BREACH.

1 (G) A WAIVER OF ANY PROVISION OF THIS SECTION IS CONTRARY TO PUBLIC  
2 POLICY AND IS VOID AND UNENFORCEABLE.

3 (H) COMPLIANCE WITH THIS SECTION DOES NOT RELIEVE A BUSINESS FROM  
4 A DUTY TO COMPLY WITH ANY OTHER REQUIREMENTS OF FEDERAL, STATE, OR  
5 LOCAL LAW RELATING TO THE PROTECTION AND PRIVACY OF PERSONAL  
6 INFORMATION.

7 14-3305.

8 (A) A VIOLATION OF THIS SUBTITLE:

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

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

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

16 (1) REASONABLE ATTORNEY'S FEES; AND

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

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

19 (II) ACTUAL DAMAGES SUSTAINED AS A RESULT OF THE  
20 VIOLATION.

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

23 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
24 October 1, 2005.