

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

House Bill 1588
Economic Matters

(Delegate Moe)

Consumer Protection - Personal Information Protection Act

This bill imposes duties on a “business” to protect an individual’s “personal information” and to provide notice of a security breach relating to an individual’s personal information.

Violation of the bill is an unfair or deceptive trade practice under the Maryland Consumer Protection Act.

Fiscal Summary

State Effect: Assuming that the Consumer Protection Division receives fewer than 50 complaints per year stemming from this bill, any additional workload could be handled with existing resources.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: When a business is destroying a customer’s records containing the customer’s personal information, the business must take all reasonable steps to destroy or arrange for the destruction of the records in a manner that makes the information unreadable or undecipherable.

A business that owns or licenses personal information of a Maryland resident must implement and maintain reasonable and appropriate security procedures and practices to

protect the personal information from unauthorized access, destruction, use, modification, or disclosure. A business that discloses personal information under a contract with a nonaffiliated third party must require by contract that the third party comply with these requirements.

A business that owns, licenses, or maintains records that include a Maryland resident's personal information must notify that individual of a breach of the security of a system if, as a result of the breach, the individual's personal information: (1) has been acquired by an unauthorized person; or (2) is reasonably believed to have been acquired by an unauthorized person. Generally, the notice must be given as soon as practicable after the business discovers or is notified about the breach.

The notification may be delayed: (1) if a law enforcement agency determines that it will impede a criminal investigation; or (2) to determine the scope of the breach and restore the system's integrity.

The notification may be given by written notice or electronic notice, if the electronic notice meets the requirements for electronic records and signatures under the federal Electronic Signatures in Global and National Commerce Act. A business must notify the Office of the Attorney General of the breach within 24 hours after it becomes aware of the breach. A waiver of the bill's notification requirements is void and unenforceable. Compliance with the notification requirements does not relieve a business from a duty to comply with any other legal requirements relating to the protection and privacy of personal information.

In addition to the penalties under the Consumer Protection Act, an individual who is affected by a violation may bring a civil action against a violator to recover reasonable attorney's fees and the greater of \$500 per violation or actual damages.

Current Law: A business's practices regarding records that contain personal information is not specifically regulated.

The Consumer Protection Division within the Office of the Attorney General is responsible for pursuing unfair and deceptive trade practice claims under the Maryland Consumer Protection Act. Upon receiving a complaint, the division must determine whether there are "reasonable grounds" to believe that a violation of the Act has occurred. Generally, if the division does find reasonable grounds that a violation has occurred, the division must seek to conciliate the complaint. The division may also issue cease and desist orders, or seek action in court, including an injunction or civil damages, to enforce the Act. Violators of the Act are subject to: (1) civil penalties of \$1,000 for

the first violation and \$5,000 for subsequent violations; and (2) criminal sanction as a misdemeanor, with a fine of up to \$1,000 and/or up to one year's imprisonment.

Additional Information

Prior Introductions: None.

Cross File: SB 1002 (Senator Teitelbaum) –Rules.

Information Source(s): Office of the Attorney General (Consumer Protection Division),
Department of Legislative Services

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mam/jr

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