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By: **Delegates Moe, Anderson, Bobo, Carter, Conroy, Donoghue, Feldman,  
Frush, Gutierrez, Heller, Jameson, Krysiak, Lee, Love, Mandel, McHale,  
Menes, Niemann, Pendergrass, Petzold, Quinter, Rosenberg, Rudolph,  
Taylor, F. Turner, and Vaughn**

Introduced and read first time: February 2, 2006

Assigned to: Economic Matters

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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 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)

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

3 **Article - Commercial Law**

4 SUBTITLE 35. MARYLAND PERSONAL INFORMATION PROTECTION ACT.

5 14-3501.

6 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS  
7 INDICATED.

8 (B) (1) "BUSINESS" MEANS A SOLE PROPRIETORSHIP, PARTNERSHIP,  
9 CORPORATION, ASSOCIATION, OR ANY OTHER BUSINESS ENTITY, WHETHER OR NOT  
10 ORGANIZED TO OPERATE FOR PROFIT.

11 (2) "BUSINESS" INCLUDES A FINANCIAL INSTITUTION ORGANIZED,  
12 CHARTERED, LICENSED, OR OTHERWISE AUTHORIZED UNDER THE LAWS OF THIS  
13 STATE, ANY OTHER STATE, THE UNITED STATES, OR ANY OTHER COUNTRY, AND THE  
14 PARENT OR SUBSIDIARY OF A FINANCIAL INSTITUTION.

15 (C) "MEDICAL INFORMATION" MEANS ANY INDIVIDUALLY IDENTIFIABLE  
16 INFORMATION, IN ELECTRONIC OR PHYSICAL FORM, REGARDING AN INDIVIDUAL'S  
17 MEDICAL HISTORY OR MEDICAL TREATMENT OR DIAGNOSIS BY A HEALTH CARE  
18 PROFESSIONAL.

19 (D) (1) "PERSONAL INFORMATION" MEANS THE FOLLOWING INFORMATION  
20 WHEN THE INFORMATION IS CAPABLE OF BEING ASSOCIATED WITH A PARTICULAR  
21 INDIVIDUAL:

22 (I) A SIGNATURE;

23 (II) A SOCIAL SECURITY NUMBER;

24 (III) A DRIVER'S LICENSE NUMBER;

25 (IV) A FINANCIAL ACCOUNT NUMBER, INCLUDING A CREDIT CARD  
26 NUMBER OR DEBIT CARD NUMBER;

27 (V) ANY REQUIRED SECURITY CODE, ACCESS CODE, OR PASSWORD  
28 THAT WOULD PERMIT ACCESS TO AN INDIVIDUAL'S FINANCIAL ACCOUNT;

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

30 (VII) ANY INSURANCE INFORMATION; OR

31 (VIII) ANY MEDICAL INFORMATION.

32 (2) "PERSONAL INFORMATION" DOES NOT INCLUDE INFORMATION THAT  
33 AN INDIVIDUAL HAS CONSENTED TO HAVE PUBLICLY DISSEMINATED OR LISTED.

1 (E) "RECORDS" MEANS INFORMATION THAT IS INSCRIBED ON A TANGIBLE  
2 MEDIUM OR THAT IS STORED IN AN ELECTRONIC OR OTHER MEDIUM AND IS  
3 RETRIEVABLE IN PERCEIVABLE FORM.

4 14-3502.

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

10 14-3503.

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

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

21 14-3504.

22 (A) IN THIS SECTION:

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

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

32 (B) (1) A BUSINESS THAT COMPILES, MAINTAINS, OR MAKES AVAILABLE  
33 RECORDS THAT INCLUDE PERSONAL INFORMATION OF AN INDIVIDUAL RESIDING IN  
34 THE STATE SHALL NOTIFY THE INDIVIDUAL OF A BREACH OF THE SECURITY OF A  
35 SYSTEM IF, AS A RESULT OF THE BREACH, THE INDIVIDUAL'S PERSONAL  
36 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 (C) 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) THE NOTIFICATION REQUIRED UNDER SUBSECTION (B) OF THIS  
8 SECTION MAY BE DELAYED:

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

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

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

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

19 (1) WRITTEN NOTICE;

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

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

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

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

31 2. THE BUSINESS DOES NOT HAVE SUFFICIENT CONTACT  
32 INFORMATION OR CONSENT TO SATISFY ITEMS (1), (2), OR (3) OF THIS SUBSECTION,  
33 FOR ONLY THOSE INDIVIDUALS WITHOUT SUFFICIENT CONTACT INFORMATION OR  
34 CONSENT; OR

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

1 (E) SUBSTITUTE NOTICE UNDER SUBSECTION (D)(4) OF THIS SECTION SHALL  
2 CONSIST OF:

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

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

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

12 (F) THE NOTIFICATION REQUIRED UNDER SUBSECTION (B) OF THIS SECTION  
13 MUST INCLUDE:

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

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

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

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

25 1. THE FEDERAL TRADE COMMISSION; AND

26 2. THE OFFICE OF THE ATTORNEY GENERAL; AND

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

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

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

35 (I) COMPLIANCE WITH THIS SECTION DOES NOT RELIEVE A BUSINESS FROM  
36 A DUTY TO COMPLY WITH ANY OTHER REQUIREMENTS OF FEDERAL, STATE, OR

1 LOCAL LAW RELATING TO THE PROTECTION AND PRIVACY OF PERSONAL  
2 INFORMATION.

3 14-3505.

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

6 (1) THE FEDERAL OR STATE LAW PROVIDES:

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

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

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

15 14-3506.

16 (A) A VIOLATION OF THIS SUBTITLE:

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

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

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

24 (1) REASONABLE ATTORNEY'S FEES; AND

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

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

27 (II) ACTUAL DAMAGES SUSTAINED AS A RESULT OF THE  
28 VIOLATION.

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

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