
By: **Delegate Howard**
 Introduced and read first time: February 8, 2006
 Assigned to: Economic Matters

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
 25 Section 14-3501 through 14-3503, inclusive, to be under the new subtitle
 26 "Subtitle 35. Protection of Personal Information from Security Breaches"
 27 Annotated Code of Maryland
 28 (2005 Replacement Volume)

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 35. PROTECTION OF PERSONAL INFORMATION FROM SECURITY
3 BREACHES.

4 14-3501.

5 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
6 INDICATED.7 (B) (1) "BREACH OF THE SECURITY OF A SYSTEM" MEANS THE
8 UNAUTHORIZED ACQUISITION OF RECORDS CONTAINING PERSONAL INFORMATION
9 THAT COMPROMISES THE SECURITY, CONFIDENTIALITY, OR INTEGRITY OF THE
10 PERSONAL INFORMATION MAINTAINED BY A BUSINESS OR STATE ENTITY.11 (2) "BREACH OF THE SECURITY OF A SYSTEM" DOES NOT INCLUDE THE
12 GOOD FAITH ACQUISITION OF PERSONAL INFORMATION BY AN EMPLOYEE OR AGENT
13 OF A BUSINESS OR STATE ENTITY FOR THE PURPOSES OF THE BUSINESS OR STATE
14 ENTITY, PROVIDED THAT THE PERSONAL INFORMATION IS NOT USED OR SUBJECT TO
15 FURTHER UNAUTHORIZED DISCLOSURE.16 (C) (1) "BUSINESS" MEANS A SOLE PROPRIETORSHIP, PARTNERSHIP,
17 CORPORATION, ASSOCIATION, OR ANY OTHER BUSINESS ENTITY, WHETHER OR NOT
18 ORGANIZED TO OPERATE AT A PROFIT.19 (2) "BUSINESS" INCLUDES A FINANCIAL INSTITUTION ORGANIZED,
20 CHARTERED, LICENSED, OR OTHERWISE AUTHORIZED UNDER THE LAWS OF THIS
21 STATE, ANY OTHER STATE, THE UNITED STATES, OR ANY OTHER COUNTRY, AND THE
22 PARENT OR SUBSIDIARY OF A FINANCIAL INSTITUTION.23 (D) (1) "PERSONAL INFORMATION" MEANS THE FOLLOWING INFORMATION
24 WHEN THE INFORMATION IS CAPABLE OF BEING ASSOCIATED WITH A PARTICULAR
25 INDIVIDUAL AND IS NOT ENCRYPTED:

26 (I) A SIGNATURE;

27 (II) A SOCIAL SECURITY NUMBER;

28 (III) A DRIVER'S LICENSE NUMBER;

29 (IV) A FINANCIAL ACCOUNT NUMBER, INCLUDING A CREDIT CARD
30 NUMBER OR DEBIT CARD NUMBER;31 (V) A REQUIRED SECURITY CODE, ACCESS CODE, OR PASSWORD
32 THAT WOULD PERMIT ACCESS TO AN INDIVIDUAL'S FINANCIAL ACCOUNT;33 (VI) A CONSUMER REPORT, AS DEFINED IN § 14-1201 OF THIS TITLE;
34 OR

35 (VII) ANY MEDICAL INFORMATION.

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

3 (E) (1) "STATE ENTITY" MEANS A STATE BOARD, BUREAU, COMMITTEE,
4 COMMISSION, COUNCIL, DEPARTMENT, DIVISION, OFFICE, PUBLIC AUTHORITY,
5 PUBLIC BENEFIT CORPORATION, OR OTHER GOVERNMENTAL ENTITY THAT
6 PERFORMS A GOVERNMENTAL OR PROPRIETARY FUNCTION FOR THE STATE.

7 (2) "STATE ENTITY" DOES NOT INCLUDE:

8 (I) A UNIT OF THE JUDICIAL BRANCH OF STATE GOVERNMENT;

9 (II) A COUNTY; OR

10 (III) A MUNICIPAL CORPORATION.

11 14-3502.

12 (A) (1) A BUSINESS OR STATE ENTITY THAT OWNS OR LICENSES RECORDS
13 THAT INCLUDE PERSONAL INFORMATION OF AN INDIVIDUAL RESIDING IN THE
14 STATE SHALL NOTIFY THE INDIVIDUAL OF A BREACH OF THE SECURITY OF A SYSTEM
15 IF, AS A RESULT OF THE BREACH, THE INDIVIDUAL'S PERSONAL INFORMATION:

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

17 (II) IS REASONABLY BELIEVED TO HAVE BEEN ACQUIRED BY AN
18 UNAUTHORIZED PERSON.

19 (2) EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, THE
20 NOTIFICATION REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE
21 GIVEN AS SOON AS PRACTICABLE AFTER THE BUSINESS OR STATE ENTITY
22 DISCOVERS OR IS NOTIFIED OF THE BREACH OF THE SECURITY OF A SYSTEM.

23 (B) (1) A BUSINESS OR STATE ENTITY THAT MAINTAINS RECORDS THAT
24 INCLUDE PERSONAL INFORMATION THAT THE BUSINESS OR STATE ENTITY DOES
25 NOT OWN SHALL NOTIFY THE OWNER OR LICENSEE OF THE PERSONAL
26 INFORMATION OF A BREACH OF THE SECURITY OF A SYSTEM IF, AS A RESULT OF THE
27 BREACH, THE PERSONAL INFORMATION OF AN INDIVIDUAL RESIDING IN THE STATE:

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

29 (II) IS REASONABLY BELIEVED TO HAVE BEEN ACQUIRED BY AN
30 UNAUTHORIZED PERSON.

31 (2) EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, THE
32 NOTIFICATION REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE
33 GIVEN AS SOON AS PRACTICABLE AFTER THE BUSINESS OR STATE ENTITY
34 DISCOVERS OR IS NOTIFIED OF THE BREACH OF THE SECURITY OF A SYSTEM.

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

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

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

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

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

11 (I) WRITTEN NOTICE;

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

15 (III) SUBSTITUTE NOTICE, IF THE BUSINESS OR STATE ENTITY
16 DEMONSTRATES THAT:

17 1. THE COST OF PROVIDING NOTICE WOULD EXCEED
18 \$250,000;

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

21 3. THE BUSINESS OR STATE ENTITY DOES NOT HAVE
22 SUFFICIENT CONTACT INFORMATION.

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

25 (I) ELECTRONIC MAIL NOTICE, IF THE BUSINESS OR STATE ENTITY
26 HAS AN ELECTRONIC MAIL ADDRESS;

27 (II) CONSPICUOUS POSTING OF THE NOTICE ON THE INTERNET
28 WEBSITE PAGE OF THE BUSINESS OR STATE ENTITY, IF THE BUSINESS OR STATE
29 ENTITY MAINTAINS ONE; AND

30 (III) NOTICE TO MAJOR STATEWIDE MEDIA.

31 (3) REGARDLESS OF THE METHOD BY WHICH THE NOTIFICATION IS
32 GIVEN UNDER THIS SUBSECTION, THE NOTIFICATION SHALL INCLUDE:

33 (I) CONTACT INFORMATION FOR THE BUSINESS OR STATE ENTITY
34 PROVIDING THE NOTIFICATION; AND

1 (II) A DESCRIPTION OF THE CATEGORIES OF INFORMATION
2 ACQUIRED OR BELIEVED TO HAVE BEEN ACQUIRED BY AN UNAUTHORIZED PERSON.

3 (E) A BUSINESS OR STATE ENTITY SHALL PROVIDE NOTIFICATION OF A
4 BREACH OF THE SECURITY OF A SYSTEM TO THE OFFICE OF THE ATTORNEY
5 GENERAL WITHIN 24 HOURS AFTER THE BUSINESS OR STATE ENTITY BECOMES
6 AWARE OF THE BREACH OF THE SECURITY OF A SYSTEM.

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

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

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

17 14-3503.

18 (A) A VIOLATION OF THIS SUBTITLE:

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

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

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

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

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

28 (II) ACTUAL DAMAGES SUSTAINED AS A RESULT OF THE
29 VIOLATION; AND

30 (2) REASONABLE ATTORNEY'S FEES.

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

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