

HOUSE BILL 90

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By: **Delegates Shewell, Boteler, Eckardt, Elliott, Frank, Impallaria, Kach, McComas, Minnick, Shank, Stocksdale, Stull, and Weldon**

Introduced and read first time: January 22, 2007

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Consumer Protection – Personal Information Protection Act**

3 FOR the purpose of requiring certain businesses to destroy or arrange for the
4 destruction of records that contain certain personal information in a certain
5 manner; requiring certain businesses that own or license certain personal
6 information of an individual residing in the State to implement and maintain
7 certain security procedures and practices; requiring certain businesses that own
8 or license computerized data that include certain personal information of an
9 individual residing in the State to notify the individual of a breach of the
10 security of a system under certain circumstances; specifying the time at which
11 notification must be given; authorizing notification to be given in a certain
12 manner; requiring the notification to include certain information; requiring
13 certain businesses to give certain notice to certain consumer reporting agencies;
14 requiring certain businesses to provide notice of a breach of the security of a
15 system to the Office of the Attorney General and the Maryland Department of
16 Homeland Security at a certain time; providing that a waiver of certain
17 provisions of this Act is contrary to public policy and is void and unenforceable;
18 providing that compliance with certain provisions of this Act does not relieve a
19 certain business from a duty to comply with certain other requirements of
20 federal or State law; providing that compliance with a federal or State law is
21 deemed to be compliance with this Act with regard to the subject matter of that
22 law under certain circumstances; providing that a violation of this Act is an
23 unfair or deceptive trade practice within the meaning of the Maryland
24 Consumer Protection Act and is subject to certain enforcement and penalty
25 provisions; defining certain terms; providing for a delayed effective date; and

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 generally relating to the protection of personal information owned or leased by
2 businesses or included in computerized data owned or licensed by businesses.

3 BY adding to

4 Article – Commercial Law

5 Section 14–3501 through 14–3506 to be under the new subtitle “Subtitle 35.

6 Maryland Personal Information Protection Act”

7 Annotated Code of Maryland

8 (2005 Replacement Volume and 2006 Supplement)

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

11 **Article – Commercial Law**

12 **SUBTITLE 35. MARYLAND PERSONAL INFORMATION PROTECTION ACT.**

13 **14–3501.**

14 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
15 INDICATED.

16 (B) (1) “BUSINESS” MEANS A SOLE PROPRIETORSHIP, PARTNERSHIP,
17 CORPORATION, ASSOCIATION, OR ANY OTHER BUSINESS ENTITY, WHETHER OR
18 NOT ORGANIZED TO OPERATE FOR PROFIT.

19 (2) “BUSINESS” INCLUDES A FINANCIAL INSTITUTION
20 ORGANIZED, CHARTERED, LICENSED, OR OTHERWISE AUTHORIZED UNDER THE
21 LAWS OF THIS STATE, ANY OTHER STATE, THE UNITED STATES, OR ANY OTHER
22 COUNTRY, AND THE PARENT OR SUBSIDIARY OF A FINANCIAL INSTITUTION.

23 (C) (1) “PERSONAL INFORMATION” MEANS AN INDIVIDUAL’S FIRST
24 NAME OR FIRST INITIAL AND LAST NAME IN COMBINATION WITH ONE OR MORE
25 OF THE FOLLOWING DATA ELEMENTS, WHEN EITHER THE NAME OR THE DATA
26 ELEMENT IS NOT ENCRYPTED, REDACTED, OR SECURED BY ANY OTHER METHOD
27 RENDERING THE ELEMENT UNREADABLE OR UNUSABLE:

28 (I) A SOCIAL SECURITY NUMBER;

29 (II) A DRIVER’S LICENSE NUMBER;

1 (III) A FINANCIAL ACCOUNT NUMBER, INCLUDING A CREDIT
2 CARD NUMBER OR DEBIT CARD NUMBER;

3 (IV) ANY REQUIRED SECURITY CODE, ACCESS CODE, OR
4 PASSWORD THAT WOULD PERMIT ACCESS TO AN INDIVIDUAL'S FINANCIAL
5 ACCOUNT; OR

6 (V) A CONSUMER REPORT, AS DEFINED IN § 14-1201 OF
7 THIS TITLE.

8 (2) "PERSONAL INFORMATION" DOES NOT INCLUDE PUBLICLY
9 AVAILABLE INFORMATION THAT IS LAWFULLY MADE AVAILABLE TO THE
10 GENERAL PUBLIC FROM FEDERAL, STATE, OR LOCAL GOVERNMENT RECORDS.

11 (D) "RECORD" MEANS INFORMATION THAT:

12 (1) IS INSCRIBED ON A TANGIBLE MEDIUM; OR

13 (2) IS STORED IN AN ELECTRONIC OR OTHER MEDIUM AND IS
14 RETRIEVABLE IN PERCEIVABLE FORM.

15 **14-3502.**

16 WHEN A BUSINESS IS DESTROYING A RECORD THAT CONTAINS PERSONAL
17 INFORMATION, THE BUSINESS SHALL TAKE ALL REASONABLE STEPS TO
18 DESTROY OR ARRANGE FOR THE DESTRUCTION OF THE RECORD IN A MANNER
19 THAT MAKES THE PERSONAL INFORMATION UNREADABLE OR
20 UNDECIPHERABLE THROUGH ANY MEANS.

21 **14-3503.**

22 (A) TO PROTECT PERSONAL INFORMATION FROM UNAUTHORIZED
23 ACCESS, DESTRUCTION, USE, MODIFICATION, OR DISCLOSURE, A BUSINESS
24 THAT OWNS OR LICENSES PERSONAL INFORMATION OF AN INDIVIDUAL
25 RESIDING IN THE STATE SHALL IMPLEMENT AND MAINTAIN REASONABLE
26 SECURITY PROCEDURES AND PRACTICES APPROPRIATE TO THE NATURE OF THE
27 PERSONAL INFORMATION.

1 **(B) (1) A BUSINESS THAT USES A NONAFFILIATED THIRD PARTY AS A**
2 **SERVICE TO PERFORM SERVICES FOR THE BUSINESS AND DISCLOSES PERSONAL**
3 **INFORMATION ABOUT AN INDIVIDUAL RESIDING IN THE STATE UNDER A**
4 **WRITTEN CONTRACT WITH THE THIRD PARTY SHALL REQUIRE BY CONTRACT**
5 **THAT THE THIRD PARTY IMPLEMENT AND MAINTAIN REASONABLE SECURITY**
6 **PROCEDURES AND PRACTICES APPROPRIATE TO THE NATURE OF THE**
7 **PERSONAL INFORMATION.**

8 **(2) THIS SUBSECTION SHALL APPLY TO A WRITTEN CONTRACT**
9 **THAT IS ENTERED INTO ON OR AFTER JANUARY 1, 2009.**

10 **14-3504.**

11 **(A) IN THIS SECTION:**

12 **(1) “BREACH OF THE SECURITY OF A SYSTEM” MEANS THE**
13 **UNAUTHORIZED ACQUISITION OF RECORDS CONTAINING PERSONAL**
14 **INFORMATION THAT COMPROMISES THE SECURITY, CONFIDENTIALITY, OR**
15 **INTEGRITY OF THE PERSONAL INFORMATION MAINTAINED BY A BUSINESS; AND**

16 **(2) “BREACH OF THE SECURITY OF A SYSTEM” DOES NOT**
17 **INCLUDE THE GOOD-FAITH ACQUISITION OF PERSONAL INFORMATION BY AN**
18 **EMPLOYEE OR AGENT OF A BUSINESS FOR THE PURPOSES OF THE BUSINESS,**
19 **PROVIDED THAT THE PERSONAL INFORMATION IS NOT USED OR SUBJECT TO**
20 **FURTHER UNAUTHORIZED DISCLOSURE.**

21 **(B) (1) A BUSINESS THAT OWNS OR LICENSES COMPUTERIZED DATA**
22 **THAT INCLUDE PERSONAL INFORMATION OF AN INDIVIDUAL RESIDING IN THE**
23 **STATE SHALL NOTIFY THE INDIVIDUAL OF A BREACH OF THE SECURITY OF A**
24 **SYSTEM IF, AS A RESULT OF THE BREACH, THE INDIVIDUAL’S PERSONAL**
25 **INFORMATION:**

26 **(I) HAS BEEN ACQUIRED BY AN UNAUTHORIZED PERSON;**
27 **OR**

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

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

5 **(C) (1) THE NOTIFICATION REQUIRED UNDER SUBSECTION (B) OF**
6 **THIS SECTION MAY BE DELAYED:**

7 **(I) IF A LAW ENFORCEMENT AGENCY DETERMINES THAT**
8 **THE NOTIFICATION WILL IMPEDE A CRIMINAL INVESTIGATION; OR**

9 **(II) TO DETERMINE THE SCOPE OF THE BREACH OF THE**
10 **SECURITY OF A SYSTEM AND RESTORE THE INTEGRITY OF THE SYSTEM.**

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

15 **(D) THE NOTIFICATION REQUIRED UNDER SUBSECTION (B) OF THIS**
16 **SECTION MAY BE GIVEN BY:**

17 **(1) WRITTEN NOTICE;**

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

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

24 **(4) SUBSTITUTE NOTICE AS PROVIDED IN SUBSECTION (E) OF**
25 **THIS SECTION, IF:**

26 **(I) THE BUSINESS DEMONSTRATES THAT THE COST OF**
27 **PROVIDING NOTICE WOULD EXCEED \$250,000 OR THAT THE NUMBER OF**
28 **INDIVIDUALS TO BE NOTIFIED EXCEEDS 500,000;**

1 **(II) THE BUSINESS DOES NOT HAVE SUFFICIENT CONTACT**
2 **INFORMATION OR CONSENT TO SATISFY ITEM (1), (2), OR (3) OF THIS**
3 **SUBSECTION, FOR ONLY THOSE INDIVIDUALS WITHOUT SUFFICIENT CONTACT**
4 **INFORMATION OR CONSENT; OR**

5 **(III) THE BUSINESS IS UNABLE TO IDENTIFY AN INDIVIDUAL**
6 **ENTITLED TO NOTIFICATION UNDER SUBSECTION (B) OF THIS SECTION, FOR**
7 **ONLY THOSE UNIDENTIFIABLE AFFECTED INDIVIDUALS.**

8 **(E) SUBSTITUTE NOTICE UNDER SUBSECTION (D)(4) OF THIS SECTION**
9 **SHALL CONSIST OF:**

10 **(1) ELECTRONICALLY MAILING THE NOTICE TO AN INDIVIDUAL**
11 **ENTITLED TO NOTIFICATION UNDER SUBSECTION (B) OF THIS SECTION, IF THE**
12 **BUSINESS HAS AN ELECTRONIC MAIL ADDRESS FOR THE INDIVIDUAL;**

13 **(2) CONSPICUOUS POSTING OF THE NOTICE ON THE WEBSITE OF**
14 **THE BUSINESS, IF ONE IS MAINTAINED; AND**

15 **(3) PUBLISHING THE NOTICE, INCLUDING CONTACT**
16 **INFORMATION FOR THE BUSINESS WHERE AFFECTED INDIVIDUALS CAN OBTAIN**
17 **MORE INFORMATION, IN MAJOR STATEWIDE MEDIA.**

18 **(F) THE NOTIFICATION REQUIRED UNDER SUBSECTION (B) OF THIS**
19 **SECTION MUST INCLUDE:**

20 **(1) TO THE EXTENT POSSIBLE, A DESCRIPTION OF THE**
21 **CATEGORIES OF INFORMATION THAT WERE, OR ARE REASONABLY BELIEVED TO**
22 **HAVE BEEN, ACQUIRED BY A PERSON WITHOUT VALID AUTHORIZATION,**
23 **INCLUDING WHICH OF THE ELEMENTS OF PERSONAL INFORMATION WERE, OR**
24 **ARE REASONABLY BELIEVED TO HAVE BEEN, ACQUIRED;**

25 **(2) CONTACT INFORMATION FOR THE BUSINESS MAKING THE**
26 **NOTIFICATION, INCLUDING AN ADDRESS AND TOLL-FREE CONTACT TELEPHONE**
27 **NUMBER;**

28 **(3) THE TOLL-FREE TELEPHONE NUMBERS AND ADDRESSES FOR**
29 **THE MAJOR CONSUMER REPORTING AGENCIES; AND**

1 **(4) (I) THE TOLL-FREE TELEPHONE NUMBERS, ADDRESSES,**
2 **AND WEBSITE ADDRESSES FOR:**

3 **1. THE FEDERAL TRADE COMMISSION; AND**

4 **2. THE OFFICE OF THE ATTORNEY GENERAL; AND**

5 **(II) A STATEMENT THAT AN INDIVIDUAL CAN OBTAIN**
6 **INFORMATION FROM THESE SOURCES ABOUT STEPS THE INDIVIDUAL CAN TAKE**
7 **TO AVOID IDENTITY THEFT.**

8 **(G) (1) A BUSINESS REQUIRED UNDER SUBSECTIONS OF THIS**
9 **SECTION TO GIVE NOTICE OF A BREACH OF THE SECURITY OF A SYSTEM TO**
10 **1,000 OR MORE INDIVIDUALS SHALL ALSO NOTIFY EACH CONSUMER REPORTING**
11 **AGENCY THAT COMPILES AND MAINTAINS FILES ON CONSUMERS ON A**
12 **NATIONWIDE BASIS, AS DEFINED BY 15 U.S.C. § 1681 (A), OF THE TIMING,**
13 **DISTRIBUTION, AND CONTENT OF THE NOTICES.**

14 **(2) THIS SUBSECTION DOES NOT REQUIRE A BUSINESS TO**
15 **PROVIDE A CONSUMER REPORTING AGENCY WITH THE NAMES OR OTHER**
16 **PERSONAL INFORMATION OF RECIPIENTS OF NOTICES OF A BREACH OF THE**
17 **SECURITY OF A SYSTEM.**

18 **(H) A BUSINESS SHALL PROVIDE NOTICE OF A BREACH OF THE**
19 **SECURITY OF A SYSTEM TO THE OFFICE OF THE ATTORNEY GENERAL AND THE**
20 **MARYLAND DEPARTMENT OF HOMELAND SECURITY WITHIN 72 HOURS AFTER**
21 **THE BUSINESS BECOMES AWARE OF THE BREACH.**

22 **(I) A WAIVER OF ANY PROVISION OF THIS SECTION IS CONTRARY TO**
23 **PUBLIC POLICY AND IS VOID AND UNENFORCEABLE.**

24 **(J) COMPLIANCE WITH THIS SECTION DOES NOT RELIEVE A BUSINESS**
25 **FROM A DUTY TO COMPLY WITH ANY OTHER REQUIREMENTS OF FEDERAL OR**
26 **STATE LAW RELATING TO THE PROTECTION AND PRIVACY OF PERSONAL**
27 **INFORMATION.**

28 **14-3505.**

1 **(A) COMPLIANCE WITH A FEDERAL OR STATE LAW IS DEEMED TO BE**
2 **COMPLIANCE WITH THIS SUBTITLE WITH REGARD TO THE SUBJECT MATTER OF**
3 **THAT LAW IF THE FEDERAL OR STATE LAW PROVIDES:**

4 **(1) AT LEAST THE SAME PROTECTION OF PERSONAL**
5 **INFORMATION AS THE PROTECTION PROVIDED UNDER THIS SUBTITLE; AND**

6 **(2) DISCLOSURE REQUIREMENTS THAT ARE AT LEAST AS**
7 **STRINGENT AS THE DISCLOSURE REQUIREMENTS UNDER § 14-3504 OF THIS**
8 **SUBTITLE.**

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

12 **14-3506.**

13 **A VIOLATION OF THIS SUBTITLE:**

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

16 **(2) IS SUBJECT TO THE ENFORCEMENT AND PENALTY**
17 **PROVISIONS CONTAINED IN TITLE 13 OF THIS ARTICLE.**

18 **SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect**
19 **January 1, 2008.**