

# SENATE BILL 194

I3, P1  
SB 134/06 – FIN

71r1670  
CF HB 208

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By: **Senators Kelley, Astle, Garagiola, Klausmeier, and Middleton**

Introduced and read first time: January 26, 2007

Assigned to: Finance

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 14, 2007

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

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

3 FOR the purpose of requiring a certain business, when destroying a customer's records  
4 that contain certain personal information of the customer, to take certain steps  
5 to protect against unauthorized access to or use of the personal information  
6 under certain circumstances; requiring a certain business that owns or licenses  
7 certain personal information of an individual residing in the State to implement  
8 and maintain certain security procedures and practices under certain  
9 circumstances; requiring certain businesses that own, license, or maintain  
10 computerized data that includes certain personal information of an individual  
11 residing in the State to conduct a certain investigation and notify certain  
12 persons of a breach of the security of a system under certain circumstances;  
13 specifying the time at which notification must be given; authorizing notification  
14 to be given in a certain manner; providing that a waiver of certain provisions of  
15 this Act is contrary to public policy and is void and unenforceable; providing  
16 that compliance with certain provisions of this Act does not relieve a certain  
17 business from a duty to comply with certain other requirements of federal law;  
18 providing that the provisions of this Act are exclusive and shall preempt any  
19 provision of local law; requiring a business to report to certain consumer  
20 reporting agencies on the breach of the security of a system under certain  
21 circumstances; providing that certain businesses and affiliates shall be deemed

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**EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.**

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 to be in compliance with the requirements of this Act under certain  
2 circumstances; providing that a violation of this Act is an unfair or deceptive  
3 trade practice within the meaning of the Maryland Consumer Protection Act  
4 and is subject to certain enforcement and penalty provisions; defining certain  
5 terms; providing for a delayed effective date; and generally relating to the  
6 protection of personal information contained in the records of businesses, owned  
7 or licensed by businesses, or included in computerized data owned, licensed, or  
8 maintained by businesses.

9 BY adding to

10 Article – Commercial Law

11 Section 14–3501 through 14–3508 to be under the new subtitle “Subtitle 35.  
12 Maryland Personal Information Protection Act”

13 Annotated Code of Maryland

14 (2005 Replacement Volume and 2006 Supplement)

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

17 **Article – Commercial Law**

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

19 **14-3501.**

20 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS  
21 INDICATED.

22 (B) (1) “BUSINESS” MEANS A SOLE PROPRIETORSHIP, PARTNERSHIP,  
23 CORPORATION, ASSOCIATION, OR ANY OTHER BUSINESS ENTITY, WHETHER OR  
24 NOT ORGANIZED TO OPERATE AT A PROFIT.

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

29 (3) “BUSINESS” DOES NOT INCLUDE AN ENTITY THAT HAS AN  
30 ANNUAL GROSS INCOME OF LESS THAN \$1,000,000.

1 (C) (1) "PERSONAL INFORMATION" MEANS AN INDIVIDUAL'S FIRST  
2 NAME OR FIRST INITIAL AND LAST NAME IN COMBINATION WITH ANY ONE OR  
3 MORE OF THE FOLLOWING DATA ELEMENTS, WHEN THE NAME OR THE DATA  
4 ELEMENTS ARE NOT ENCRYPTED, REDACTED, OR OTHERWISE PROTECTED BY  
5 ANOTHER METHOD THAT RENDERS THE INFORMATION UNREADABLE OR  
6 UNUSABLE:

7 (I) A SOCIAL SECURITY NUMBER;

8 (II) A DRIVER'S LICENSE NUMBER; OR

9 (III) A FINANCIAL ACCOUNT NUMBER, INCLUDING A CREDIT  
10 CARD NUMBER OR DEBIT CARD NUMBER, THAT IN COMBINATION WITH ANY  
11 REQUIRED SECURITY CODE, ACCESS CODE, OR PASSWORD, WOULD PERMIT  
12 ACCESS TO AN INDIVIDUAL'S FINANCIAL ACCOUNT; ~~OR~~

13 ~~(IV) A CONSUMER REPORT, AS DEFINED IN § 14-1201 OF~~  
14 ~~THIS TITLE.~~

15 (2) "PERSONAL INFORMATION" DOES NOT INCLUDE:

16 (I) PUBLICLY AVAILABLE INFORMATION THAT IS  
17 LAWFULLY MADE AVAILABLE TO THE GENERAL PUBLIC FROM FEDERAL, STATE,  
18 OR LOCAL GOVERNMENT RECORDS;

19 (II) INFORMATION THAT AN INDIVIDUAL HAS CONSENTED  
20 TO HAVE PUBLICLY DISSEMINATED OR LISTED; OR

21 (III) INFORMATION THAT IS DISSEMINATED OR LISTED IN  
22 ACCORDANCE WITH THE FEDERAL HEALTH INSURANCE PORTABILITY AND  
23 ACCOUNTABILITY ACT.

24 (D) "RECORDS" MEANS INFORMATION THAT IS INSCRIBED ON A  
25 TANGIBLE MEDIUM OR THAT IS STORED IN AN ELECTRONIC OR OTHER MEDIUM  
26 AND IS RETRIEVABLE IN PERCEIVABLE FORM.

27 **14-3502.**

28 (A) IN THIS SECTION, "CUSTOMER" MEANS AN INDIVIDUAL RESIDING IN  
29 THE STATE WHO PROVIDES PERSONAL INFORMATION TO A BUSINESS FOR THE

1 **PURPOSE OF PURCHASING OR LEASING A PRODUCT OR OBTAINING A SERVICE**  
2 **FROM THE BUSINESS.**

3 **(B) WHEN A BUSINESS IS DESTROYING A CUSTOMER'S RECORDS THAT**  
4 **CONTAIN PERSONAL INFORMATION OF THE CUSTOMER, THE BUSINESS SHALL**  
5 **TAKE REASONABLE STEPS TO PROTECT AGAINST UNAUTHORIZED ACCESS TO OR**  
6 **USE OF THE PERSONAL INFORMATION, TAKING INTO ACCOUNT:**

7 **(1) THE SENSITIVITY OF THE RECORDS;**

8 **(2) THE NATURE AND SIZE OF THE BUSINESS AND ITS**  
9 **OPERATIONS;**

10 **(3) THE COSTS AND BENEFITS OF DIFFERENT DESTRUCTION**  
11 **METHODS; AND**

12 **(4) AVAILABLE TECHNOLOGY.**

13 **14-3503.**

14 **(A) TO PROTECT PERSONAL INFORMATION FROM UNAUTHORIZED**  
15 **ACCESS, USE, MODIFICATION, OR DISCLOSURE, A BUSINESS THAT OWNS OR**  
16 **LICENSES PERSONAL INFORMATION OF AN INDIVIDUAL RESIDING IN THE STATE**  
17 **SHALL IMPLEMENT AND MAINTAIN REASONABLE SECURITY PROCEDURES AND**  
18 **PRACTICES THAT ARE APPROPRIATE TO THE NATURE OF THE PERSONAL**  
19 **INFORMATION OWNED OR LICENSED AND THE NATURE AND SIZE OF THE**  
20 **BUSINESS AND ITS OPERATIONS.**

21 **(B) (1) A BUSINESS THAT USES A NONAFFILIATED THIRD PARTY AS A**  
22 **SERVICE PROVIDER TO PERFORM SERVICES FOR THE BUSINESS AND DISCLOSES**  
23 **PERSONAL INFORMATION ABOUT AN INDIVIDUAL RESIDING IN THE STATE**  
24 **UNDER A WRITTEN CONTRACT WITH THE THIRD PARTY SHALL REQUIRE BY**  
25 **CONTRACT THAT THE THIRD PARTY IMPLEMENT AND MAINTAIN REASONABLE**  
26 **SECURITY PROCEDURES AND PRACTICES THAT:**

27 **(I) ARE APPROPRIATE TO THE NATURE OF THE PERSONAL**  
28 **INFORMATION DISCLOSED TO THE NONAFFILIATED THIRD PARTY; AND**

1                   (II) ARE REASONABLY DESIGNED TO HELP PROTECT THE  
2 PERSONAL INFORMATION FROM UNAUTHORIZED ACCESS, USE, MODIFICATION,  
3 DISCLOSURE, OR DESTRUCTION.

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

6 **14-3504.**

7                   (A) IN THIS SECTION:

8                   (1) "BREACH OF THE SECURITY OF A SYSTEM" MEANS THE  
9 UNAUTHORIZED ACQUISITION OF COMPUTERIZED DATA THAT COMPROMISES  
10 THE SECURITY, CONFIDENTIALITY, OR INTEGRITY OF THE PERSONAL  
11 INFORMATION MAINTAINED BY A BUSINESS AND WILL LIKELY RESULT IN A  
12 MATERIAL RISK OF IDENTITY THEFT; AND

13                   (2) "BREACH OF THE SECURITY OF A SYSTEM" DOES NOT  
14 INCLUDE THE GOOD FAITH ACQUISITION OF PERSONAL INFORMATION BY AN  
15 EMPLOYEE OR AGENT OF A BUSINESS FOR THE PURPOSES OF THE BUSINESS,  
16 PROVIDED THAT:

17                   (I) THE PERSONAL INFORMATION IS NOT USED OR  
18 SUBJECT TO FURTHER UNAUTHORIZED DISCLOSURE; AND

19                   (II) IT IS NOT LIKELY THAT THE ACQUISITION WILL RESULT  
20 IN A MATERIAL RISK OF IDENTITY THEFT.

21                   (B) (1) A BUSINESS THAT OWNS OR LICENSES COMPUTERIZED DATA  
22 THAT INCLUDES PERSONAL INFORMATION OF AN INDIVIDUAL RESIDING IN THE  
23 STATE, WHEN IT DISCOVERS OR IS NOTIFIED OF A BREACH OF THE SECURITY OF  
24 A SYSTEM, SHALL CONDUCT IN GOOD FAITH A REASONABLE AND PROMPT  
25 INVESTIGATION TO DETERMINE THE LIKELIHOOD THAT THE BREACH WILL  
26 RESULT IN A MATERIAL RISK OF IDENTITY THEFT.

27                   (2) IF, AFTER THE INVESTIGATION IS CONCLUDED, THE BUSINESS  
28 REASONABLY BELIEVES THAT THE BREACH OF THE SECURITY OF A SYSTEM HAS  
29 RESULTED OR WILL RESULT IN A MATERIAL RISK OF IDENTITY THEFT OF  
30 PERSONAL INFORMATION OF AN INDIVIDUAL RESIDING IN THE STATE, THE  
31 BUSINESS SHALL NOTIFY THE INDIVIDUAL OF THE BREACH.

1           **(3) EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION,**  
2 **THE NOTIFICATION REQUIRED UNDER PARAGRAPH (2) OF THIS SUBSECTION**  
3 **SHALL BE GIVEN AS SOON AS REASONABLY PRACTICABLE AFTER THE BUSINESS**  
4 **CONDUCTS THE INVESTIGATION REQUIRED UNDER PARAGRAPH (1) OF THIS**  
5 **SUBSECTION.**

6           **(C) (1) A BUSINESS THAT MAINTAINS COMPUTERIZED DATA THAT**  
7 **INCLUDES PERSONAL INFORMATION THAT THE BUSINESS DOES NOT OWN OR**  
8 **LICENSE SHALL NOTIFY THE OWNER OR LICENSEE OF THE PERSONAL**  
9 **INFORMATION OF A BREACH OF THE SECURITY OF A SYSTEM IF IT IS LIKELY**  
10 **THAT THE BREACH HAS RESULTED OR WILL RESULT IN A MATERIAL RISK OF**  
11 **IDENTITY THEFT OF PERSONAL INFORMATION OF AN INDIVIDUAL RESIDING IN**  
12 **THE STATE.**

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

17           **(D) (1) THE NOTIFICATION REQUIRED UNDER SUBSECTIONS (B) AND**  
18 **(C) OF THIS SECTION MAY BE DELAYED:**

19                   **(I) IF A LAW ENFORCEMENT AGENCY DETERMINES THAT**  
20 **THE NOTIFICATION WILL IMPEDE A CRIMINAL INVESTIGATION OR JEOPARDIZE**  
21 **HOMELAND OR NATIONAL SECURITY; OR**

22                   **(II) TO DETERMINE THE SCOPE OF THE BREACH OF THE**  
23 **SECURITY OF A SYSTEM, IDENTIFY THE INDIVIDUALS AFFECTED, OR RESTORE**  
24 **THE INTEGRITY OF THE SYSTEM.**

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

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

1           (1) BY WRITTEN NOTICE SENT TO THE MOST RECENT ADDRESS OF  
2 THE INDIVIDUAL IN THE RECORDS OF THE BUSINESS;

3           (2) BY ELECTRONIC ~~NOTICE, IF THE ELECTRONIC NOTICE IS~~  
4 ~~CONSISTENT WITH THE REQUIREMENTS FOR ELECTRONIC RECORDS AND~~  
5 ~~SIGNATURES UNDER 15 U.S.C. § 7001~~ MAIL TO THE MOST RECENT ELECTRONIC  
6 MAIL ADDRESS OF THE INDIVIDUAL IN THE RECORDS OF THE BUSINESS;

7           (3) BY TELEPHONIC NOTICE, TO THE MOST RECENT TELEPHONE  
8 NUMBER OF THE INDIVIDUAL IN THE RECORDS OF THE BUSINESS; OR

9           (4) BY SUBSTITUTE NOTICE AS PROVIDED IN SUBSECTION (F) OF  
10 THIS SECTION, IF:

11           (I) THE BUSINESS DEMONSTRATES THAT THE COST OF  
12 PROVIDING NOTICE WOULD EXCEED \$25,000 OR THAT THE AFFECTED CLASS OF  
13 INDIVIDUALS TO BE NOTIFIED EXCEEDS 50,000; OR

14           (II) THE BUSINESS DOES NOT HAVE SUFFICIENT CONTACT  
15 INFORMATION TO GIVE NOTICE IN ACCORDANCE WITH ITEM (1), (2), OR (3) OF  
16 THIS SUBSECTION.

17           (F) SUBSTITUTE NOTICE UNDER SUBSECTION (E)(4) OF THIS SECTION  
18 SHALL CONSIST OF:

19           (1) ELECTRONICALLY MAILING THE NOTICE TO AN INDIVIDUAL  
20 ENTITLED TO NOTIFICATION UNDER SUBSECTION (B) OF THIS SECTION, IF THE  
21 BUSINESS HAS AN ELECTRONIC MAIL ADDRESS FOR THE INDIVIDUAL TO BE  
22 NOTIFIED;

23           (2) CONSPICUOUS POSTING OF THE NOTICE ON THE WEBSITE OF  
24 THE BUSINESS, IF THE BUSINESS MAINTAINS A WEBSITE; AND

25           (3) NOTIFICATION TO STATEWIDE MEDIA.

26           (G) ~~A~~ (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS  
27 SUBSECTION, A BUSINESS SHALL PROVIDE NOTICE OF A BREACH OF THE  
28 SECURITY OF A SYSTEM TO THE OFFICE OF THE ATTORNEY GENERAL WITHIN 5  
29 BUSINESS DAYS AFTER THE BUSINESS ~~BECOMES AWARE~~ DISCOVERS OR IS  
30 NOTIFIED OF THE BREACH.

1           **(2) (I) THE NOTIFICATION REQUIRED UNDER PARAGRAPH (1)**  
2 **OF THIS SUBSECTION MAY BE DELAYED IF A LAW ENFORCEMENT AGENCY**  
3 **DETERMINES THAT THE NOTIFICATION WILL IMPEDE A CRIMINAL**  
4 **INVESTIGATION OR JEOPARDIZE HOMELAND OR NATIONAL SECURITY.**

5           **(II) IF NOTIFICATION IS DELAYED UNDER SUBPARAGRAPH**  
6 **(I) OF THIS PARAGRAPH, NOTIFICATION SHALL BE GIVEN AS SOON AS**  
7 **REASONABLY PRACTICABLE AFTER THE LAW ENFORCEMENT AGENCY**  
8 **DETERMINES THAT IT WILL NOT IMPEDE A CRIMINAL INVESTIGATION AND WILL**  
9 **NOT JEOPARDIZE HOMELAND OR NATIONAL SECURITY.**

10           **(H) A WAIVER OF ANY PROVISION OF THIS SECTION IS CONTRARY TO**  
11 **PUBLIC POLICY AND IS VOID AND UNENFORCEABLE.**

12           **(I) COMPLIANCE WITH THIS SECTION DOES NOT RELIEVE A BUSINESS**  
13 **FROM A DUTY TO COMPLY WITH ANY OTHER REQUIREMENTS OF FEDERAL LAW**  
14 **RELATING TO THE PROTECTION AND PRIVACY OF PERSONAL INFORMATION.**

15 **14-3505.**

16           **THE PROVISIONS OF THIS SUBTITLE ARE EXCLUSIVE AND SHALL**  
17 **PREEMPT ANY PROVISION OF LOCAL LAW.**

18 **14-3506.**

19           **(A) IF A BUSINESS IS REQUIRED UNDER § 14-3504 OF THIS SUBTITLE TO**  
20 **GIVE NOTICE OF A BREACH OF THE SECURITY OF A SYSTEM TO 1,000 OR MORE**  
21 **INDIVIDUALS, THE BUSINESS ALSO SHALL NOTIFY, WITHOUT UNREASONABLE**  
22 **DELAY, EACH CONSUMER REPORTING AGENCY THAT COMPILES AND MAINTAINS**  
23 **FILES ON CONSUMERS ON A NATIONWIDE BASIS, AS DEFINED BY 15 U.S.C. §**  
24 **1681A(P), OF THE TIMING, DISTRIBUTION, AND CONTENT OF THE NOTICES.**

25           **(B) THIS SECTION DOES NOT REQUIRE THE INCLUSION OF THE NAMES**  
26 **OR OTHER PERSONAL IDENTIFYING INFORMATION OF RECIPIENTS OF NOTICES**  
27 **OF THE BREACH OF THE SECURITY OF A SYSTEM.**

28 **14-3507.**



1           (A) IN THIS SECTION, "AFFILIATE" MEANS A COMPANY THAT CONTROLS,  
2 IS CONTROLLED BY, OR IS UNDER COMMON CONTROL WITH A BUSINESS  
3 DESCRIBED IN SUBSECTION (C)(1) OF THIS SECTION.

4           (B) A BUSINESS THAT COMPLIES WITH THE REQUIREMENTS FOR  
5 NOTIFICATION PROCEDURES, THE PROTECTION OR SECURITY OF PERSONAL  
6 INFORMATION, OR THE DESTRUCTION OF PERSONAL INFORMATION UNDER THE  
7 RULES, REGULATIONS, PROCEDURES, OR GUIDELINES ESTABLISHED BY THE  
8 PRIMARY OR FUNCTIONAL FEDERAL OR STATE REGULATOR OF THE BUSINESS  
9 SHALL BE DEEMED TO BE IN COMPLIANCE WITH THIS SUBTITLE.

10           (C) (1) A BUSINESS THAT IS SUBJECT TO AND IN COMPLIANCE WITH §  
11 501(B) OF THE FEDERAL GRAMM-LEACH-BLILEY ACT, 15 U.S.C. § 6801, § 216  
12 OF THE FEDERAL FAIR AND ACCURATE TRANSACTIONS ACT, 15 U.S.C. §  
13 1681W, THE FEDERAL INTERAGENCY GUIDELINES ESTABLISHING  
14 INFORMATION SECURITY STANDARDS, AND THE FEDERAL INTERAGENCY  
15 GUIDANCE ON RESPONSE PROGRAMS FOR UNAUTHORIZED ACCESS TO  
16 CUSTOMER INFORMATION AND CUSTOMER NOTICE, AND ANY REVISIONS,  
17 ADDITIONS, OR SUBSTITUTIONS, SHALL BE DEEMED TO BE IN COMPLIANCE  
18 WITH THIS SUBTITLE.

19           (2) AN AFFILIATE THAT COMPLIES WITH § 501(B) OF THE  
20 FEDERAL GRAMM-LEACH-BLILEY ACT, 15 U.S.C. § 6801, § 216 OF THE  
21 FEDERAL FAIR AND ACCURATE TRANSACTIONS ACT, 15 U.S.C. § 1681W, THE  
22 FEDERAL INTERAGENCY GUIDELINES ESTABLISHING INFORMATION SECURITY  
23 STANDARDS, AND THE FEDERAL INTERAGENCY GUIDANCE ON RESPONSE  
24 PROGRAMS FOR UNAUTHORIZED ACCESS TO CUSTOMER INFORMATION AND  
25 CUSTOMER NOTICE, AND ANY REVISIONS, ADDITIONS, OR SUBSTITUTIONS,  
26 SHALL BE DEEMED TO BE IN COMPLIANCE WITH THIS SUBTITLE.

27 **14-3508.**

28           **A VIOLATION OF THIS SUBTITLE:**

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

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

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

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.