

SENATE BILL 904

I3
HB 630/06 – ECM

71r3228
CF HB 123

By: **Senator Dyson**

Introduced and read first time: February 22, 2007

Assigned to: Rules

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
17 law is deemed compliance with this Act with regard to the subject matter of that
18 law under certain circumstances; providing that a violation of this Act is an
19 unfair or deceptive trade practice within the meaning of the Maryland
20 Consumer Protection Act and is subject to certain enforcement and penalty
21 provisions; establishing a private right of action for an individual affected by a
22 violation of this Act; defining certain terms; and generally relating to the
23 protection of personal information owned or leased by businesses or included in
24 records compiled, maintained, or made available by businesses.

25 BY adding to

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – Commercial Law

2 Section 14–3501 through 14–3506 to be under the new subtitle “Subtitle 35.
3 Maryland Personal Information Protection Act”

4 Annotated Code of Maryland

5 (2005 Replacement Volume and 2006 Supplement)

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

8 **Article – Commercial Law**

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

10 **14-3501.**

11 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
12 INDICATED.

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

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

20 (C) “MEDICAL INFORMATION” MEANS ANY INDIVIDUALLY
21 IDENTIFIABLE INFORMATION, IN ELECTRONIC OR PHYSICAL FORM, REGARDING
22 AN INDIVIDUAL’S MEDICAL HISTORY OR MEDICAL TREATMENT OR DIAGNOSIS BY
23 A HEALTH CARE PROFESSIONAL.

24 (D) (1) “PERSONAL INFORMATION” MEANS THE FOLLOWING
25 INFORMATION WHEN THE INFORMATION IS CAPABLE OF BEING ASSOCIATED
26 WITH A PARTICULAR INDIVIDUAL:

27 (I) A SIGNATURE;

28 (II) A SOCIAL SECURITY NUMBER;

1 (III) A DRIVER'S LICENSE NUMBER;

2 (IV) A FINANCIAL ACCOUNT NUMBER, INCLUDING A CREDIT
3 CARD NUMBER OR DEBIT CARD NUMBER;

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

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

9 (VII) ANY INSURANCE INFORMATION; OR

10 (VIII) ANY MEDICAL INFORMATION.

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

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

17 **14-3502.**

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

23 **14-3503.**

24 (A) A BUSINESS THAT COMPILES, MAINTAINS, OR MAKES AVAILABLE
25 PERSONAL INFORMATION OF AN INDIVIDUAL RESIDING IN THE STATE SHALL
26 IMPLEMENT AND MAINTAIN REASONABLE SECURITY PROCEDURES AND
27 PRACTICES APPROPRIATE TO THE NATURE OF THE PERSONAL INFORMATION TO

1 PROTECT THE PERSONAL INFORMATION FROM UNAUTHORIZED ACCESS,
2 DESTRUCTION, USE, MODIFICATION, OR DISCLOSURE.

3 (B) A BUSINESS THAT DISCLOSES PERSONAL INFORMATION ABOUT AN
4 INDIVIDUAL RESIDING IN THE STATE UNDER A CONTRACT WITH A
5 NONAFFILIATED THIRD PARTY SHALL REQUIRE BY CONTRACT THAT THE THIRD
6 PARTY COMPLY WITH THE REQUIREMENTS OF SUBSECTION (A) OF THIS
7 SECTION.

8 14-3504.

9 (A) IN THIS SECTION:

10 (1) "BREACH OF THE SECURITY OF A SYSTEM" MEANS THE
11 UNAUTHORIZED ACQUISITION OF RECORDS CONTAINING PERSONAL
12 INFORMATION THAT COMPROMISES THE SECURITY, CONFIDENTIALITY, OR
13 INTEGRITY OF THE PERSONAL INFORMATION MAINTAINED BY A BUSINESS; AND

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

19 (B) (1) A BUSINESS THAT COMPILES, MAINTAINS, OR MAKES
20 AVAILABLE RECORDS THAT INCLUDE PERSONAL INFORMATION OF AN
21 INDIVIDUAL RESIDING IN THE STATE SHALL NOTIFY THE INDIVIDUAL OF A
22 BREACH OF THE SECURITY OF A SYSTEM IF, AS A RESULT OF THE BREACH, THE
23 INDIVIDUAL'S PERSONAL INFORMATION:

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

26 (II) IS REASONABLY BELIEVED TO HAVE BEEN ACQUIRED BY
27 AN UNAUTHORIZED PERSON.

28 (2) EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION,
29 THE NOTIFICATION REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION

1 SHALL BE GIVEN AS SOON AS PRACTICABLE AFTER THE BUSINESS DISCOVERS
2 OR IS NOTIFIED OF THE BREACH OF THE SECURITY OF A SYSTEM.

3 (C) (1) THE NOTIFICATION REQUIRED UNDER SUBSECTION (B) OF
4 THIS SECTION MAY BE DELAYED:

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

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

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

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

15 (1) WRITTEN NOTICE;

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

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

22 (4) SUBSTITUTE NOTICE AS PROVIDED IN SUBSECTION (E) OF
23 THIS SECTION, IF:

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

27 (II) THE BUSINESS DOES NOT HAVE SUFFICIENT CONTACT
28 INFORMATION OR CONSENT TO SATISFY ITEMS (1), (2), OR (3) OF THIS

1 SUBSECTION, FOR ONLY THOSE INDIVIDUALS WITHOUT SUFFICIENT CONTACT
2 INFORMATION OR CONSENT; OR

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

6 (E) SUBSTITUTE NOTICE UNDER SUBSECTION (D)(4) OF THIS SECTION
7 SHALL CONSIST OF:

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

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

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

17 (F) THE NOTIFICATION REQUIRED UNDER SUBSECTION (B) OF THIS
18 SECTION SHALL INCLUDE:

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

24 (2) CONTACT INFORMATION FOR THE BUSINESS MAKING THE
25 NOTIFICATION INCLUDING THE ADDRESS AND TOLL-FREE CONTACT
26 TELEPHONE;

27 (3) THE TOLL-FREE TELEPHONE NUMBERS AND ADDRESSES FOR
28 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) A BUSINESS SHALL PROVIDE NOTICE OF A BREACH OF THE
9 SECURITY OF A SYSTEM TO THE OFFICE OF THE ATTORNEY GENERAL WITHIN
10 24 HOURS AFTER THE BUSINESS BECOMES AWARE OF THE BREACH.

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

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

17 **14-3505.**

18 (A) COMPLIANCE WITH A FEDERAL OR STATE LAW IS DEEMED
19 COMPLIANCE WITH THIS SUBTITLE WITH REGARD TO THE SUBJECT MATTER OF
20 THAT LAW IF THE FEDERAL OR STATE LAW PROVIDES:

21 (1) AT LEAST THE SAME PROTECTION TO PERSONAL
22 INFORMATION AS THE PROTECTION PROVIDED UNDER THIS SUBTITLE; AND

23 (2) DISCLOSURE REQUIREMENTS THAT ARE AT LEAST AS
24 THOROUGH AS THE DISCLOSURE REQUIREMENTS UNDER § 14-3504 OF THIS
25 SUBTITLE.

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

1 **14-3506.**

2 (A) **A VIOLATION OF THIS SUBTITLE:**

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

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

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

11 (1) **REASONABLE ATTORNEY'S FEES; AND**

12 (2) **DAMAGES IN THE AMOUNT OF THE GREATER OF:**

13 (I) **\$500 FOR EACH VIOLATION; OR**

14 (II) **ACTUAL DAMAGES SUSTAINED AS A RESULT OF THE**
15 **VIOLATION.**

16 (C) **FOR PURPOSES OF THIS SECTION, EACH INDIVIDUAL FAILURE TO**
17 **COMPLY WITH THE REQUIREMENTS OF THIS SUBTITLE IS A SEPARATE**
18 **VIOLATION.**

19 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
20 October 1, 2007.