

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 29
Finance

(Senator Simonaire)

Protection of Information by Businesses - Definition of Personal Information

This bill expands the definition of “personal information” for provisions of law relating to protection of information by businesses. Identification numbers issued by the State or local governments and passport numbers are added to the existing definition.

Violation of the bill is an unfair or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), subject to MCPA’s civil and criminal penalty provisions.

Fiscal Summary

State Effect: The bill’s expansion of the definition of “personal information” does not have a material impact on State finances or operations. If the Consumer Protection Division of the Office of the Attorney General (OAG) receives fewer than 50 complaints per year stemming from the bill, the additional workload can be handled with existing resources.

Local Effect: The bill’s expansion of the definition of “personal information” does not have a material impact on local government finances or operations.

Small Business Effect: Potential minimal. Few small businesses collect state identification numbers or passport numbers during routine business operations, and thus the overall impact is likely minimal.

Analysis

Current Law: State law defines personal information as an individual’s first name or first initial and last name in combination with any one or more of the following data

elements (when the name or the data elements are not encrypted, redacted, or otherwise protected by another method that renders the information unreadable or unusable):

- a Social Security number;
- a driver's license number;
- a financial account number, including a credit card number or debit card number, that in combination with any required security code, access code, or password, would permit access to an individual's financial account; or
- an Individual Taxpayer Identification Number.

To protect personal information from unauthorized access, use, modification, or disclosure, a business that owns or licenses personal information of a Maryland resident must implement and maintain reasonable and appropriate security procedures and practices.

A business that uses a nonaffiliated third party as a service provider and discloses personal information about a Maryland resident under a written contract with the third party must require, by contract, that the third party implement and maintain reasonable security procedures and practices that are (1) appropriate to the nature of the disclosed information and (2) reasonably designed to help protect the information from unauthorized access, use, modification, disclosure, or destruction. This provision applies to a written contract that is entered into on or after January 1, 2009.

An unfair or deceptive trade practice under MCPA includes, among other acts, any false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers. The prohibition against engaging in any unfair or deceptive trade practice encompasses the offer for or actual sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer services; the extension of consumer credit; the collection of consumer debt; or the offer for or actual purchase of consumer goods or consumer realty from a consumer by a merchant whose business includes paying off consumer debt in connection with the purchase of any consumer goods or consumer realty from a consumer.

The Consumer Protection Division is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter, issue a cease and desist order, or file a civil action in court. A merchant who violates MCPA is subject to a fine of up to \$1,000 for the first violation and up to \$5,000 for each subsequent violation. In addition to any civil penalties that may be imposed, any person who violates MCPA is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$1,000 and/or imprisonment for up to one year.

Background: According to the Consumer Sentinel Network (a consortium of national and international law enforcement and private security entities), the Federal Trade Commission received 332,646 identity theft complaints in calendar 2014, compared to 290,099 in calendar 2013. In Maryland, residents reported 5,734 instances of identity theft in 2014, or 95.9 complaints per 100,000 population, ranking Maryland tenth in the nation for identity theft. The most common type of identity theft in Maryland was government documents or benefits fraud, which comprised 35% of all complaints. The second most prevalent type of identity fraud involved credit card fraud, representing 18% of all complaints.

In addition, in its *2015 Data Breach Industry Forecast*, Experian (one of the three largest nationwide consumer credit reporting companies) reported that the risk of businesses experiencing a data breach is at an all-time high. Almost half of businesses suffered at least one security incident in the last 12 months. As a result, 48% of businesses increased investments in security technologies and 73% developed a data breach response plan within the same timeframe. The report also detailed new kinds of data breaches to expect as a result of technology trends. For example, as more data is stored using “cloud” technology, hackers will increasingly target consumer online credentials (*e.g.*, passwords). Additionally, as more companies use interconnected systems and products, cyberattacks will likely increase using data accessed from third-party vendors.

On its website, OAG provides charts with information on security breach notifications organized by the year the breach occurred. It has received notifications for each calendar year since 2008. In 2015, OAG received 346 security breach notifications from businesses.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Office of the Attorney General; Department of Labor, Licensing, and Regulation; Federal Trade Commission (Consumer Sentinel Network); Experian; Department of Legislative Services

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