SENATE BILL 16

By: Senator Augustine
Requested: September 28, 2020
Introduced and read first time: January 13, 2021
Assigned to: Finance

A BILL ENTITLED

AN ACT concerning

Commercial Law – Consumer Protection – Biometric Identifiers and Biometric Information Privacy

FOR the purpose of requiring certain private entities in possession of biometric identifiers or biometric information to develop a certain policy, made available to the public, establishing a certain retention schedule and certain guidelines; prohibiting a private entity from being required to make publicly available a certain policy under certain circumstances; requiring each private entity in possession of biometric identifiers or biometric information to comply with the private entity’s retention schedule and destruction guidelines developed under a certain provision of this Act except under certain circumstances; requiring each private entity in possession of biometric identifiers or biometric information to store, transmit, and protect from disclosure biometric identifiers and biometric information in a certain manner; prohibiting private entities in possession of biometric identifiers or biometric information from selling, leasing, trading, or otherwise profiting from an individual’s biometric identifiers or biometric information; prohibiting a private entity in possession of biometric identifiers or biometric information from disclosing, redisclosing, or otherwise disseminating an individual’s biometric identifiers or biometric information except under certain circumstances; authorizing a certain individual to bring a certain civil action; authorizing a certain individual to recover certain damages and relief; defining certain terms; providing for a delayed effective date; and generally relating to biometric identifiers and biometric information privacy.

BY adding to

Article – Commercial Law
Section 14–4301 through 14–4304 to be under the new subtitle “Subtitle 43. Biometric Identifiers and Biometric Information Privacy Act”
Annotated Code of Maryland
(2013 Replacement Volume and 2020 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

That the Laws of Maryland read as follows:

Article – Commercial Law

SUBTITLE 43. BIOMETRIC IDENTIFIERS AND BIOMETRIC INFORMATION PRIVACY

Act.

14–4301.

(A) In this subtitle the following words have the meanings indicated.

(B) (1) “BIOMETRIC IDENTIFIER” means the data of an individual generated by automatic measurements of an individual’s biological characteristics such as a fingerprint, voiceprint, genetic print, retina or iris image, or any other unique biological characteristic that can be used to uniquely authenticate the individual’s identity.

(2) “BIOMETRIC IDENTIFIER” does not include:

(I) A writing sample or written signature;

(II) A photograph;

(III) A human biological sample used for valid scientific testing or screening;

(IV) Demographic data;

(V) A physical description, including height, weight, hair color, eye color, or a tattoo description;

(VI) Any donated portion of a human body stored on behalf of a recipient or potential recipient of a living or cadaveric transplant and obtained or stored by a federally designated organ procurement agency, including an organ, tissue, an eye, a bone, an artery, blood, and other fluid or serum;

(VII) Information captured from a patient in a health care setting or information collected, used, or stored for health care treatment, payment, or operations under the Federal Health Insurance Portability and Accountability Act of 1996; or
(VIII) Any image or film of the human anatomy used to diagnose, provide a prognosis, or treat an illness or other medical condition or to further validate scientific testing or screening, including an X-ray, a roentgen process, computed tomography, a magnetic resonance imaging image, a positron emission tomography scan, and mammography.

(c) (1) “Biometric information” means any information, regardless of how it is captured, converted, stored, or shared, based on an individual’s biometric identifier used to identify an individual.

(2) “Biometric information” does not include information derived from an item or a procedure excluded under the definition of a biometric identifier.

(d) “Confidential and sensitive information” means personal information that can be used to uniquely identify an individual or an individual’s account or property, including:

(1) A genetic marker;

(2) Genetic testing information;

(3) A unique identifier number to locate an account or property;

(4) An account number;

(5) A personal identification number;

(6) A passcode;

(7) A driver’s license number; and

(8) A social security number.

(e) (1) “Private entity” means any individual, partnership, corporation, limited liability company, association, or other group, however organized.

(2) “Private entity” does not include:

(i) A state or local government agency;
(II) A State court, clerk of the court, judge, or commissioner; or

(III) A business, or an affiliate of a business, subject to and in compliance with the federal Gramm–Leach–Bliley Act.

(f) “Written Release” means informed written consent or, in the context of employment, a release executed by an employee as a condition of employment.

14–4302.

(A) (1) Except as provided in subsection (B) of this section, each private entity in possession of biometric identifiers or biometric information shall develop a written policy, made available to the public, establishing a retention schedule and guidelines for permanently destroying biometric identifiers and biometric information on the earlier of the following:

(i) When the initial purpose for collecting or obtaining the biometric identifiers or biometric information has been satisfied; or

(ii) Within 3 years after the individual’s last interaction with the private entity in possession of the biometric identifiers or biometric information.

(2) Absent a valid warrant or subpoena, each private entity in possession of biometric identifiers or biometric information shall comply with the retention schedule and destruction guidelines developed under paragraph (1) of this subsection.

(B) A private entity may not be required to make publicly available a written policy developed under subsection (A) of this section if the policy:

(1) Applies only to the employees of the private entity; and

(2) Is used solely for internal company operations.

(C) Each private entity in possession of biometric identifiers or biometric information shall store, transmit, and protect from disclosure all biometric identifiers and biometric information:
(1) Using the reasonable standard of care within the
private entity’s industry; and

(2) In a manner that is as protective as or more protective
than the manner that the private entity stores, transmits, and protects
other confidential and sensitive information.

14–4303.

(A) A private entity in possession of biometric identifiers or
biometric information may not sell, lease, trade, or otherwise profit
from an individual’s biometric identifiers or biometric information.

(B) A private entity in possession of biometric identifiers or
biometric information may not disclose, redisclose, or otherwise
disseminate an individual’s biometric identifiers or biometric
information unless:

(1) The individual or the individual’s legally authorized
representative consents to the disclosure or redisclosure;

(2) The disclosure or redisclosure is necessary to
complete a financial transaction requested by the individual or the
individual’s legally authorized representative;

(3) The disclosure or redisclosure is required by federal,
state, or local law; or

(4) The disclosure or redisclosure is required by a valid
warrant or subpoena.

14–4304.

(A) An individual aggrieved by a violation of this subtitle may
bring a civil action against the offending private entity.

(B) An individual who prevails in a civil action under this section
may recover for each violation:

(1) Against a private entity that negligently violated a
provision of this subtitle, $1,000 or actual damages, whichever is
greater;

(2) Against a private entity that intentionally or
RECKLESSLY VIOLATED A PROVISION OF THIS SUBTITLE, $5,000 OR ACTUAL DAMAGES, WHICHEVER IS GREATER;

(3) Reasonable attorney’s fees and costs, including expert witness fees and other litigation expenses; and

(4) Other relief, including an injunction, as the court may determine appropriate.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect January 1, 2022.