

HB0259/453726/1

BY: Economic Matters Committee

AMENDMENTS TO HOUSE BILL 259
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in lines 2, strike “**Identifiers**” and substitute “**Data**”; in lines 3, 4, 6, and 8, in each instance, strike “identifiers” and substitute “data”; in line 7, after “entity” insert “under certain circumstances; making a violation of this Act an unfair, abusive, or deceptive trade practice that is subject to enforcement and penalties under the Maryland Consumer Protection Act”; after line 8, insert:

“BY repealing and reenacting, with amendments,

Article – Commercial Law

Section 13–301(14)(xxxiv) and (xxxv) and 13–408

Annotated Code of Maryland

(2013 Replacement Volume and 2021 Supplement)”;

in line 11, after “Section” insert “13–301(14)(xxxvi); and”; in the same line, strike “14–4405” and substitute “14–4406”; and in line 12, strike “Identifiers” and substitute “Data”.

AMENDMENT NO. 2

On page 1, after line 17, insert:

“13–301.

Unfair, abusive, or deceptive trade practices include any:

(14) Violation of a provision of:

(xxxiv) The federal Servicemembers Civil Relief Act; [or]

(xxxv) [§] SECTION 11–210 of the Education Article; or

(xxxvi) TITLE 14, SUBTITLE 44 OF THIS ARTICLE; OR

13–408.

(a) In addition to any action by the Division or Attorney General authorized by this title and any other action otherwise authorized by law, any person may bring an action to recover for injury or loss sustained by [him] THE PERSON as the result of a practice prohibited by this title.

(b) Any person who brings an action to recover for injury or loss under this section and who is awarded damages may also seek, and the court may award, reasonable attorney’s fees.

(c) If it appears to the satisfaction of the court, at any time, that an action is brought in bad faith or is of a frivolous nature, the court may order the offending party to pay to the other party reasonable attorney’s fees.

(d) Notwithstanding any other provision of this section, a person may not bring an action under this section to recover for injuries sustained as a result of the professional services provided by a health care provider, as defined in § 3–2A–01 of the Courts Article.”;

and in line 18, strike “**IDENTIFIERS**” and substitute “**DATA**”.

On page 2, strike in their entirety lines 1 through 28, inclusive, and substitute:

“(B) (1) “BIOMETRIC DATA” MEANS DATA GENERATED BY AUTOMATIC MEASUREMENTS OF THE BIOLOGICAL CHARACTERISTICS OF AN INDIVIDUAL,

SUCH AS A FINGERPRINT, A VOICEPRINT, AN EYE RETINA, AN EYE IRIS, OR ANY OTHER UNIQUE BIOLOGICAL PATTERNS OR CHARACTERISTICS, THAT IS USED TO IDENTIFY A SPECIFIC INDIVIDUAL.

(2) “BIOMETRIC DATA” DOES NOT INCLUDE:

(I) A PHYSICAL OR DIGITAL PHOTOGRAPH;

(II) A VIDEO OR AUDIO RECORDING; OR

(III) INFORMATION COLLECTED, USED, OR STORED FOR HEALTH CARE TREATMENT, PAYMENT, OR OPERATIONS UNDER THE FEDERAL HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996.”

On page 3, strike in their entirety lines 9 through 17, inclusive, and substitute:

“(D) (1) “CONSENT” MEANS A SPECIFIC, DISCRETE, FREELY GIVEN, UNAMBIGUOUS, AND INFORMED AGREEMENT GIVEN BY AN INDIVIDUAL WHO IS NOT UNDER ANY DURESS OR UNDUE INFLUENCE FROM A PRIVATE ENTITY OR THIRD PARTY TO COLLECT, USE, DISCLOSE, REDISCLOSE, OR OTHERWISE DISSEMINATE THE INDIVIDUAL’S BIOMETRIC DATA.

(2) “CONSENT” INCLUDES:

(I) A WRITTEN STATEMENT;

(II) A WRITTEN STATEMENT BY ELECTRONIC MEANS; AND

(III) IN THE CONTEXT OF EMPLOYMENT, A RELEASE EXECUTED BY AN EMPLOYEE AS A CONDITION OF EMPLOYMENT.”;

(Over)

in line 28, strike “(1)”; and in line 29, strike “IDENTIFIERS” and substitute “DATA”.

On page 4, strike in their entirety lines 1 through 7, inclusive, and substitute:

“(G) (1) “SELL” MEANS THE PROVISION OF BIOMETRIC DATA FOR MONETARY CONSIDERATION BY A PRIVATE ENTITY TO A THIRD PARTY.

(2) “SELL” DOES NOT INCLUDE THE DISCLOSURE OF BIOMETRIC DATA TO:

(I) A PROCESSOR THAT PROCESSES, STORES, OR OTHERWISE USES BIOMETRIC DATA ON BEHALF OF THE PRIVATE ENTITY; OR

(II) A THIRD PARTY FOR PURPOSES OF PROVIDING A SERVICE OR PRODUCT REQUESTED BY THE CONSUMER.”.

AMENDMENT NO. 3

On page 4, in line 9, after “IN” insert “PARAGRAPH (3) OF THIS SUBSECTION AND”; in line 16, strike “1 YEAR” and substitute “3 YEARS”; in line 24, strike “IDENTIFIERS OR BIOMETRIC INFORMATION” and substitute “DATA”; and after line 26, insert:

“(3) A PRIVATE ENTITY IN POSSESSION OF BIOMETRIC DATA FOR FRAUD PREVENTION OR SECURITY PURPOSES IS NOT REQUIRED TO DELETE AN INDIVIDUAL’S BIOMETRIC DATA IN ACCORDANCE WITH PARAGRAPH (1)(II) AND (III) OF THIS SUBSECTION IF THE INDIVIDUAL IS PART OF THE STATE VOLUNTARY EXCLUSION PROGRAM.”.

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On page 4 in lines 10, 13, 15, 18, and 20, on page 5 in lines 1, 29, and 31, and on page 6 in lines 1 and 3, in each instance, strike “IDENTIFIERS” and substitute “DATA”.

On page 5, strike beginning with “OR” in line 1 down through “INFORMATION” in line 2; and in line 3, strike “IDENTIFIERS AND BIOMETRIC INFORMATION” and substitute “DATA”.

AMENDMENT NO. 4

On page 5, strike in their entirety lines 9 through 27, inclusive; in line 28, strike “14-4404.” and substitute “14-4403.”; in line 30, after “LEASE,” insert “OR”; in the same line, strike “, OR OTHERWISE PROFIT FROM”; and after line 31, insert:

“(B) (1) A PRIVATE ENTITY MAY NOT CONDITION THE PROVISION OF A SERVICE ON THE COLLECTION, USE, DISCLOSURE, TRANSFER, SALE, OR PROCESSING OF BIOMETRIC DATA UNLESS BIOMETRIC DATA IS STRICTLY NECESSARY TO PROVIDE THE SERVICE.

“(2) A PRIVATE ENTITY MAY NOT CHARGE DIFFERENT PRICES OR RATES FOR GOODS OR SERVICES OR PROVIDE A DIFFERENT LEVEL OR QUALITY OF A GOOD OR SERVICE TO AN INDIVIDUAL WHO EXERCISES THE INDIVIDUAL’S RIGHTS UNDER THIS SUBTITLE.

“(C) (1) A PRIVATE ENTITY THAT CONTRACTS WITH A PROCESSOR TO PROCESS OR STORE BIOMETRIC DATA MAY NOT ALLOW THE PROCESSOR TO COLLECT, STORE, PROCESS, USE, DISCLOSE, OR TAKE ANY ACTION FOR MONETARY CONSIDERATION ON OR WITH THE BIOMETRIC DATA OF AN INDIVIDUAL EXCEPT FOR PURPOSES FOR WHICH THE PRIVATE ENTITY RECEIVED CONSENT FROM THE INDIVIDUAL.

(Over)

(2) EXCEPT AS AUTHORIZED BY A CONTRACT WITH A PRIVATE ENTITY THAT LEGALLY POSSESSES THE BIOMETRIC DATA, A PROCESSOR MAY NOT COLLECT, STORE, PROCESS, USE, DISCLOSE, OR TAKE ANY ACTION FOR MONETARY CONSIDERATION ON OR WITH THE BIOMETRIC DATA.

On page 6, before line 1, insert "**14-4404.**"; in line 1, strike "**(B)**" and substitute "**(A)**"; in the same line, strike "**A**" and substitute "**EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, A**"; in line 5, strike "**PROVIDES WRITTEN**" and substitute "**GIVES**"; in line 8, strike "**BY**" and substitute "**:**

(I) BY;

in line 9, after "**SUBPOENA**" insert "**:**

(II) TO COMPLY WITH FEDERAL, STATE, OR LOCAL LAWS, RULES, OR REGULATIONS; OR

(III) TO COOPERATE WITH LAW ENFORCEMENT CONCERNING CONDUCT OR ACTIVITY THAT THE PRIVATE ENTITY OR THE PROCESSOR REASONABLY AND IN GOOD FAITH BELIEVES VIOLATES FEDERAL, STATE, OR LOCAL LAWS, RULES, OR REGULATIONS;

after line 9, insert:

(B) (1) A PRIVATE ENTITY MAY COLLECT, USE, DISCLOSE, REDISCLOSE, OR OTHERWISE DISSEMINATE AN INDIVIDUAL'S BIOMETRIC DATA WITHOUT COMPLYING WITH SUBSECTION (A) OF THIS SECTION IF THE PRIVATE ENTITY:

(I) COLLECTS, USES, DISCLOSES, REDISCLOSES, OR OTHERWISE DISSEMINATES THE BIOMETRIC DATA FOR FRAUD PREVENTION OR SECURITY PURPOSES; AND

(II) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, POSTS CONSPICUOUS WRITTEN NOTICE OF THE COLLECTION OF BIOMETRIC DATA AT EACH POINT OF ENTRY.

(2) (I) THE COLLECTION, USE, DISCLOSURE, REDISCLOSURE, OR OTHER DISSEMINATION OF BIOMETRIC DATA UNDER THIS SUBSECTION SHALL BE DIRECTLY TIED TO THE SERVICES BEING PROVIDED BY THE PRIVATE ENTITY.

(II) A PRIVATE ENTITY THAT COLLECTS, USES, DISCLOSES, REDISCLOSES, OR OTHERWISE DISSEMINATES BIOMETRIC DATA UNDER THIS SUBSECTION MAY COLLECT, USE, DISCLOSE, REDISCLOSE, OR OTHERWISE DISSEMINATE ONLY WHAT IS STRICTLY NECESSARY FOR FRAUD PREVENTION AND SECURITY PURPOSES.

(3) THE NOTICE REQUIRED IN PARAGRAPH (1) OF THIS SUBSECTION SHALL INFORM CONSUMERS OF:

(I) THE CATEGORIES OF BIOMETRIC DATA TO BE COLLECTED; AND

(II) THE PURPOSES FOR WHICH THE CATEGORIES OF BIOMETRIC DATA WILL BE USED.”;

strike in their entirety lines 10 through 27, inclusive; and after line 27, insert:

“14-4405.

(Over)

(A) AT THE REQUEST OF AN INDIVIDUAL OR AN INDIVIDUAL’S LEGALLY AUTHORIZED REPRESENTATIVE, A PRIVATE ENTITY THAT COLLECTS, USES, DISCLOSES, OR REDISCLOSES BIOMETRIC DATA OF THE INDIVIDUAL SHALL DISCLOSE, FREE OF CHARGE, THE BIOMETRIC DATA AND INFORMATION RELATED TO THE USE OF THE BIOMETRIC DATA TO THE INDIVIDUAL, INCLUDING:

(1) THE CATEGORIES OF BIOMETRIC DATA; AND

(2) THE PURPOSES FOR WHICH THE PRIVATE ENTITY USED THE BIOMETRIC DATA.

(B) A PRIVATE ENTITY MAY NOT BE REQUIRED TO PROVIDE AN INDIVIDUAL OR THE INDIVIDUAL’S LEGALLY AUTHORIZED REPRESENTATIVE WITH THE INFORMATION IN SUBSECTION (A) OF THIS SECTION MORE THAN TWICE DURING ANY CONSECUTIVE 12-MONTH PERIOD.”

AMENDMENT NO. 5

On pages 6 and 7, strike in their entirety the lines beginning with line 28 on page 6 through line 10 on page 7, inclusive, and substitute:

“14-4406.

(A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, A VIOLATION OF THIS SUBTITLE IS:

(1) AN UNFAIR, ABUSIVE, OR DECEPTIVE TRADE PRACTICE WITHIN THE MEANING OF TITLE 13 OF THIS ARTICLE; AND

(2) SUBJECT TO THE ENFORCEMENT AND PENALTY PROVISIONS CONTAINED IN TITLE 13 OF THIS ARTICLE, EXCEPT FOR § 13-408 OF THIS ARTICLE.

(B) IN ADDITION TO THE REMEDIES AVAILABLE IN SUBSECTION (A) OF THIS SECTION, AN INDIVIDUAL WHO IS AFFECTED BY A VIOLATION OF § 14-4403(A) OF THIS SUBTITLE MAY BRING AN ACTION AGAINST THE PRIVATE ENTITY IN ACCORDANCE WITH § 13-408 OF ARTICLE.”