CHAPTER ______

AN ACT concerning

Commercial Law – Consumer Protection – Biometric Identifiers Data Privacy

FOR the purpose of regulating the use of biometric identifiers data by private entities, including by requiring certain private entities in possession of biometric identifiers data to develop a policy, made available to the public, establishing a retention schedule and destruction guidelines for biometric identifiers data; authorizing an individual alleging a violation of this Act to bring a civil action against the offending private entity 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; and generally relating to biometric identifiers data privacy.

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)

BY adding to

Article – Commercial Law
Section 13–301(14)(xxxvi); and 14–4401 through 14–4405 14–4406 to be under the new subtitle “Subtitle 44. Biometric Identifiers Data Privacy Act”
Annotated Code of Maryland
(2013 Replacement Volume and 2021 Supplement)

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.
SECTIO
1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYL
That the Laws of Maryland read as follows:

Article – Commercial Law

13–301.

Unfair, abusive, or deceptive trade practices include any:

(14) Violation of a provision of:

(xxiv) 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.

SUBTITLE 44. BIOMETRIC IDENTIFIERS DATA PRIVACY ACT.

14–4401.

(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 UNIQUE
BIOLOGICAL CHARACTERISTICS SUCH AS A FACEPRINT, FINGERPRINT, VOICEPRINT, RETINA OR Iris IMAGE, OR ANY OTHER 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 OR VIDEO;

(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 ANY 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 FOR, 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, APOSITRON EMISSION TOMOGRAPHY SCAN, AND MAMMOGRAPHY.

(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:
HOUSE BILL 259

(1) 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.

(C) “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.

(D) (1) “Personal information” means information that directly or indirectly identifies, relates to, describes, is capable of being associated with, or could reasonably be linked to a particular individual, household, or device.

(2) “Personal information” includes information that can be reasonably linked to a particular individual, household, or device, either on its own or in combination with other reasonably available information, regardless of whether the information is held by the private entity.

(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.

(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;

   (III) AN ENTITY, OR AN AFFILIATE OF AN ENTITY, SUBJECT TO AND IN COMPLIANCE WITH THE FEDERAL GRAMM–LEACH–BLILEY ACT; OR

   (IV) AN ENTITY ACTING AS A PROCESSOR FOR ANOTHER ENTITY.

(F) (1) “Processor” MEANS AN ENTITY THAT PROCESSES, STORES, OR OTHERWISE USES BIOMETRIC IDENTIFIERS DATA ON BEHALF OF A PRIVATE ENTITY.

(G) “Written consent” MEANS:

   (1) A SPECIFIC, DISCRETE, FREELY GIVEN, UNAMBIGUOUS, AND INFORMED CONSENT IN WRITING GIVEN BY AN INDIVIDUAL WHO IS NOT UNDER ANY DURESS OR UNDUE INFLUENCE FROM THE PRIVATE ENTITY OR THIRD PARTY TO WHOM THE CONSENT IS GIVEN AT THE TIME THE CONSENT IS GIVEN; OR

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

(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.

14–4402.

(A) (1) Except as provided in paragraph (3) of this subsection and subsection (b) of this section, each private entity in possession of biometric identifiers data shall develop a written policy, made available to the public, establishing a retention schedule and guidelines for permanently destroying biometric identifiers data on the earliest of the following:

(i) The date on which the initial purpose for collecting or obtaining the biometric identifiers data has been satisfied;

(ii) Within 1 year 3 years after the individual’s last interaction with the private entity in possession of the biometric identifiers data; or

(iii) Within 30 days after the private entity receives a verified request to delete the biometric identifiers data submitted by the individual or the individual’s representative.

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

(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.
(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 DATA:

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.

14-4403.

AT THE REQUEST OF AN INDIVIDUAL OR AN INDIVIDUAL’S LEGALLY AUTHORIZED REPRESENTATIVE, A PRIVATE ENTITY THAT COLLECTS, USES, SHARES, OR SELLS BIOMETRIC IDENTIFIERS SHALL DISCLOSE, FREE OF CHARGE, THE BIOMETRIC IDENTIFIER AND INFORMATION RELATED TO THE USE OF THE BIOMETRIC IDENTIFIER TO THE INDIVIDUAL, INCLUDING:

1. THE CATEGORIES OF BIOMETRIC IDENTIFIERS;
2. SPECIFIC PIECES OF PERSONAL INFORMATION RELATED TO THE BIOMETRIC IDENTIFIERS;
3. THE CATEGORIES OF SOURCES THAT THE PRIVATE ENTITY COLLECTED PERSONAL INFORMATION FROM LINKED TO THE BIOMETRIC IDENTIFIER;
4. THE PURPOSES FOR WHICH THE PRIVATE ENTITY USED THE BIOMETRIC IDENTIFIER AND PERSONAL INFORMATION;
5. THE CATEGORIES OF THIRD PARTIES WITH WHOM THE PRIVATE ENTITY SHARES THE PERSONAL INFORMATION AND THE PURPOSES OF SHARING THE PERSONAL INFORMATION; AND
(6) The categories of information that the business sells or discloses to third parties.

14-4404, 14-4403.

(A) A private entity that collects biometric identifiers data may not sell, lease, or trade, or otherwise profit from an individual’s biometric identifiers data.

(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.

(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.

14-4404.

(B) (A) Except as provided in subsection (B) of this section, a private entity that collects biometric identifiers data may not collect, use, disclose, redisclose, or otherwise disseminate an individual’s biometric identifiers data unless:

(1) The individual or the individual’s legally authorized representative provides written gives consent to the particular or category of collection, use disclosure, redisclosure, or dissemination; or

(2) The disclosure or redisclosure is required by:
(I) By a valid warrant or subpoena;

(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.

(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.

(C) (I) A private entity may not condition the provision of a service on the collection, use, disclosure, transfer, sale, or
PROCESSING OF BIOMETRIC IDENTIFIERS UNLESS BIOMETRIC IDENTIFIERS ARE 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 ANY INDIVIDUAL WHO EXERCISES THE INDIVIDUAL’S RIGHTS UNDER THIS SUBTITLE.

(D) (1) A PRIVATE ENTITY THAT CONTRACTS WITH A PROCESSOR TO PROCESS OR STORE BIOMETRIC IDENTIFIERS MAY NOT ALLOW THE PROCESSOR TO COLLECT, STORE, PROCESS, USE, DISCLOSE, OR CONDUCT ANY ACTION FOR PROFIT OR OTHERWISE ON OR WITH THE BIOMETRIC IDENTIFIERS EXCEPT FOR PURPOSES FOR WHICH THE PRIVATE ENTITY RECEIVED EXPRESS WRITTEN CONSENT FROM THE INDIVIDUAL.

(2) A PROCESSOR MAY NOT COLLECT, STORE, PROCESS, USE, DISCLOSE, OR CONDUCT ANY ACTION FOR PROFIT OR OTHERWISE ON OR WITH BIOMETRIC IDENTIFIERS, EXCEPT AS AUTHORIZED BY A CONTRACT WITH A PRIVATE ENTITY THAT LEGALLY POSSESS THE BIOMETRIC IDENTIFIERS.

14–4405.

(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.

14–4405.

(A) AN INDIVIDUAL ALLEGING 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.

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 this article.

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