

HOUSE BILL 33

I3
HB 259/22 – ECM

(PRE-FILED)

3lr0773
CF 3lr0775

By: **Delegates Love, Charkoudian, Lehman, and Watson**

Requested: November 15, 2022

Introduced and read first time: January 11, 2023

Assigned to: Economic Matters

A BILL ENTITLED

AN ACT concerning

Commercial Law – Consumer Protection – Biometric Data Privacy

FOR the purpose of regulating the use of biometric data by private entities, including by requiring certain private entities in possession of biometric data to develop a policy, made available to the public, establishing a retention schedule and destruction guidelines for biometric 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 data privacy.

BY repealing and reenacting, without amendments,
Article – Commercial Law
Section 13–301(14)(xxxiv) and (xxxvi)
Annotated Code of Maryland
(2013 Replacement Volume and 2022 Supplement)

BY repealing and reenacting, with amendments,
Article – Commercial Law
Section 13–301(14)(xxxv) and 13–408
Annotated Code of Maryland
(2013 Replacement Volume and 2022 Supplement)

BY adding to
Article – Commercial Law
Section 13–301(14)(xxxvii); and 14–4501 through 14–4506 to be under the new
subtitle “Subtitle 45. Biometric Data Privacy Act”
Annotated Code of Maryland
(2013 Replacement Volume and 2022 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

13–301.

Unfair, abusive, or deceptive trade practices include any:

(14) Violation of a provision of:

(xxxiv) The federal Servicemembers Civil Relief Act;

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

(xxxvi) Title 14, Subtitle 44 of this article; or

(XXXVII) TITLE 14, SUBTITLE 45 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 45. BIOMETRIC DATA PRIVACY ACT.

14–4501.

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

(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.

(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) “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, EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, 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 ONLY AS A PROCESSOR FOR ANOTHER ENTITY.

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

(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.

14-4502.

(A) (1) EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION AND SUBSECTION (B) OF THIS SECTION, EACH PRIVATE ENTITY IN POSSESSION OF BIOMETRIC DATA SHALL DEVELOP A WRITTEN POLICY, MADE AVAILABLE TO THE PUBLIC, ESTABLISHING A RETENTION SCHEDULE AND GUIDELINES FOR

PERMANENTLY DESTROYING BIOMETRIC DATA ON THE EARLIEST OF THE FOLLOWING:

(I) THE DATE ON WHICH THE INITIAL PURPOSE FOR COLLECTING OR OBTAINING THE BIOMETRIC DATA HAS BEEN SATISFIED;

(II) WITHIN 3 YEARS AFTER THE INDIVIDUAL'S LAST INTERACTION WITH THE PRIVATE ENTITY IN POSSESSION OF THE BIOMETRIC DATA; OR

(III) WITHIN 30 DAYS AFTER THE PRIVATE ENTITY RECEIVES A VERIFIED REQUEST TO DELETE THE BIOMETRIC 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 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 DESTROY 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 DATA SHALL STORE, TRANSMIT, AND PROTECT FROM DISCLOSURE ALL BIOMETRIC 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 IN WHICH THE PRIVATE ENTITY STORES, TRANSMITS, AND PROTECTS OTHER CONFIDENTIAL AND SENSITIVE INFORMATION.

(A) A PRIVATE ENTITY THAT COLLECTS BIOMETRIC DATA MAY NOT SELL, LEASE, OR TRADE AN INDIVIDUAL'S BIOMETRIC 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.

14-4504.

(A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, A PRIVATE ENTITY THAT COLLECTS BIOMETRIC DATA MAY NOT COLLECT, USE, DISCLOSE, REDISCLOSE, OR OTHERWISE DISSEMINATE AN INDIVIDUAL'S BIOMETRIC DATA UNLESS:

(1) THE INDIVIDUAL OR THE INDIVIDUAL'S LEGALLY AUTHORIZED REPRESENTATIVE GIVES CONSENT TO THE PARTICULAR OR CATEGORY OF COLLECTION, USE, DISCLOSURE, REDISCLOSURE, OR DISSEMINATION; OR

(2) THE DISCLOSURE OR REDISCLOSURE IS REQUIRED:

(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 A FEDERAL, STATE, OR LOCAL LAW, RULE, OR REGULATION.

(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.

14-4505.

(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.

14-4506.

(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 § 14-4503(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, 2023.