

March 16, 2022

The Honorable Delores Kelley
Chair, Senate Finance Committee
Miller Senate Office Building
11 Bladen Street
Annapolis, MD 21401

Re: Senate BILL 643 – THE MARYLAND PERSONAL INFORMATION PROTECTION ACT (Oppose unless Amended)

Dear Chair Kelley and Members of the Finance Committee:

I am writing on behalf of LexisNexis Risk Solutions (“LexisNexis”), a leading provider of credential verification and identification services for government agencies, Fortune 1000 businesses, and the property and casualty industry, to express concerns with Senate Bill 643, as introduced. We appreciate Senator Lee’s efforts to refine existing law and bring the law up to date to ensure robust consumer protections. We are very cognizant of the importance of data security from our work with public and private sector organization in Maryland to detect and prevent identity theft and fraud. LexisNexis respectfully requests that the Committee consider amending the proposed legislation to clarify definitions and remove proposed changes to the notification requirements.

Senate Bill 643 amends MPIPA to require that a business that maintains Maryland personal information that it does not own or license and that incurs a data breach, notify the owner or licensee of the personal information exposed within 10 days of discovering or being notified of the breach. While well-intentioned, this change would set a burdensome standard that would be challenging to meet in the context of complex security incidents. Existing law is better aligned with the contractually established mechanisms for notice between businesses in the marketplace. Additionally, the requirement for the business to notify upon the discovery or notification of the breach adds to the challenging process. Requiring the notification after the business determines a breach allows for a more thorough investigation to be done in a timely manner. We join with other industry stakeholders in requesting there be more time and flexibility for businesses that maintain Maryland personal information and that may incur a breach to adequately determine the incident scope.

Under MPIPA, notification required under 14-3504(b) and 14-3504(c) may be delayed if a law enforcement agency determines the notification will impede a criminal investigation or jeopardize homeland or national security. However, notification is required as soon as practicable and not later than 30 days after law enforcement determines it will not impede a criminal investigation. Senate Bill 643 amends the law to require that notification be given as soon as reasonably practicable, but not later than 7 days after law enforcement determines it will not impede a criminal investigation or jeopardize homeland or national security. This does not provide sufficient time for a business that is obligated to wait for law enforcement to conclude its own investigation and provide information that is necessary for the business to undertake an impact assessment of the security incident and work towards the other components of delivering consumer notice. Nearly every other state breach notification law permits delayed notification in the context of a law enforcement investigation. The overwhelming majority of

such laws do not establish any corresponding time frame for notification following the conclusion of a law enforcement investigation.

The definition of “health information” in current law is “any information created by an entity covered by the federal Health Insurance Portability and Accountability Act of 1996 regarding an individual’s medical history, medical condition, or medical treatment of diagnosis.” Senate Bill 643 removes “created by an entity covered by the federal Health Insurance Portability and Accountability Act of 1996” from the definition. This new definition is overly broad and should be refined to cover entities covered by the Health Insurance Portability and Accountability Act.

LexisNexis takes this opportunity to thank Senator Lee for her ongoing work on this issue and legislation and remains committed to working with him and the Committee to refine this legislation. Thank you for your consideration of LexisNexis’ feedback on the proposed legislation.

Please let us know if we can answer any questions or provide any additional information.

Respectfully submitted,

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