

SENATE BILL 16

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(PRE-FILED)

1r0760
CF HB 218

By: **Senator Augustine**

Requested: September 28, 2020

Introduced and read first time: January 13, 2021

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Commercial Law – Consumer Protection – Biometric Identifiers and Biometric**
3 **Information Privacy**

4 FOR the purpose of requiring certain private entities in possession of biometric identifiers
5 or biometric information to develop a certain policy, made available to the public,
6 establishing a certain retention schedule and certain guidelines; prohibiting a
7 private entity from being required to make publicly available a certain policy under
8 certain circumstances; requiring each private entity in possession of biometric
9 identifiers or biometric information to comply with the private entity's retention
10 schedule and destruction guidelines developed under a certain provision of this Act
11 except under certain circumstances; requiring each private entity in possession of
12 biometric identifiers or biometric information to store, transmit, and protect from
13 disclosure biometric identifiers and biometric information in a certain manner;
14 prohibiting private entities in possession of biometric identifiers or biometric
15 information from selling, leasing, trading, or otherwise profiting from an individual's
16 biometric identifiers or biometric information; prohibiting a private entity in
17 possession of biometric identifiers or biometric information from disclosing,
18 redisclosing, or otherwise disseminating an individual's biometric identifiers or
19 biometric information except under certain circumstances; authorizing a certain
20 individual to bring a certain civil action; authorizing a certain individual to recover
21 certain damages and relief; defining certain terms; providing for a delayed effective
22 date; and generally relating to biometric identifiers and biometric information
23 privacy.

24 BY adding to

25 Article – Commercial Law

26 Section 14–4301 through 14–4304 to be under the new subtitle “Subtitle 43.
27 Biometric Identifiers and Biometric Information Privacy Act”

28 Annotated Code of Maryland

29 (2013 Replacement Volume and 2020 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
2 That the Laws of Maryland read as follows:

3 **Article – Commercial Law**

4 **SUBTITLE 43. BIOMETRIC IDENTIFIERS AND BIOMETRIC INFORMATION PRIVACY**
5 **ACT.**

6 **14-4301.**

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

9 (B) (1) “BIOMETRIC IDENTIFIER” MEANS THE DATA OF AN INDIVIDUAL
10 GENERATED BY AUTOMATIC MEASUREMENTS OF AN INDIVIDUAL’S BIOLOGICAL
11 CHARACTERISTICS SUCH AS A FINGERPRINT, VOICEPRINT, GENETIC PRINT, RETINA
12 OR IRIS IMAGE, OR ANY OTHER UNIQUE BIOLOGICAL CHARACTERISTIC THAT CAN BE
13 USED TO UNIQUELY AUTHENTICATE THE INDIVIDUAL’S IDENTITY.

14 (2) “BIOMETRIC IDENTIFIER” DOES NOT INCLUDE:

15 (I) A WRITING SAMPLE OR WRITTEN SIGNATURE;

16 (II) A PHOTOGRAPH;

17 (III) A HUMAN BIOLOGICAL SAMPLE USED FOR VALID
18 SCIENTIFIC TESTING OR SCREENING;

19 (IV) DEMOGRAPHIC DATA;

20 (V) A PHYSICAL DESCRIPTION, INCLUDING HEIGHT, WEIGHT,
21 HAIR COLOR, EYE COLOR, OR A TATTOO DESCRIPTION;

22 (VI) ANY DONATED PORTION OF A HUMAN BODY STORED ON
23 BEHALF OF A RECIPIENT OR POTENTIAL RECIPIENT OF A LIVING OR CADAVERIC
24 TRANSPLANT AND OBTAINED OR STORED BY A FEDERALLY DESIGNATED ORGAN
25 PROCUREMENT AGENCY, INCLUDING AN ORGAN, TISSUE, AN EYE, A BONE, AN
26 ARTERY, BLOOD, AND OTHER FLUID OR SERUM;

27 (VII) INFORMATION CAPTURED FROM A PATIENT IN A HEALTH
28 CARE SETTING OR INFORMATION COLLECTED, USED, OR STORED FOR HEALTH CARE
29 TREATMENT, PAYMENT, OR OPERATIONS UNDER THE FEDERAL HEALTH INSURANCE
30 PORTABILITY AND ACCOUNTABILITY ACT OF 1996; OR

1 (VIII) ANY IMAGE OR FILM OF THE HUMAN ANATOMY USED TO
2 DIAGNOSE, PROVIDE A PROGNOSIS, OR TREAT AN ILLNESS OR OTHER MEDICAL
3 CONDITION OR TO FURTHER VALIDATE SCIENTIFIC TESTING OR SCREENING,
4 INCLUDING AN X-RAY, A ROENTGEN PROCESS, COMPUTED TOMOGRAPHY, A
5 MAGNETIC RESONANCE IMAGING IMAGE, A POSITRON EMISSION TOMOGRAPHY
6 SCAN, AND MAMMOGRAPHY.

7 (C) (1) "BIOMETRIC INFORMATION" MEANS ANY INFORMATION,
8 REGARDLESS OF HOW IT IS CAPTURED, CONVERTED, STORED, OR SHARED, BASED
9 ON AN INDIVIDUAL'S BIOMETRIC IDENTIFIER USED TO IDENTIFY AN INDIVIDUAL.

10 (2) "BIOMETRIC INFORMATION" DOES NOT INCLUDE INFORMATION
11 DERIVED FROM AN ITEM OR A PROCEDURE EXCLUDED UNDER THE DEFINITION OF A
12 BIOMETRIC IDENTIFIER.

13 (D) "CONFIDENTIAL AND SENSITIVE INFORMATION" MEANS PERSONAL
14 INFORMATION THAT CAN BE USED TO UNIQUELY IDENTIFY AN INDIVIDUAL OR AN
15 INDIVIDUAL'S ACCOUNT OR PROPERTY, INCLUDING:

16 (1) A GENETIC MARKER;

17 (2) GENETIC TESTING INFORMATION;

18 (3) A UNIQUE IDENTIFIER NUMBER TO LOCATE AN ACCOUNT OR
19 PROPERTY;

20 (4) AN ACCOUNT NUMBER;

21 (5) A PERSONAL IDENTIFICATION NUMBER;

22 (6) A PASSCODE;

23 (7) A DRIVER'S LICENSE NUMBER; AND

24 (8) A SOCIAL SECURITY NUMBER.

25 (E) (1) "PRIVATE ENTITY" MEANS ANY INDIVIDUAL, PARTNERSHIP,
26 CORPORATION, LIMITED LIABILITY COMPANY, ASSOCIATION, OR OTHER GROUP,
27 HOWEVER ORGANIZED.

28 (2) "PRIVATE ENTITY" DOES NOT INCLUDE:

29 (I) A STATE OR LOCAL GOVERNMENT AGENCY;

1 (II) A STATE COURT, CLERK OF THE COURT, JUDGE, OR
2 COMMISSIONER; OR

3 (III) A BUSINESS, OR AN AFFILIATE OF A BUSINESS, SUBJECT TO
4 AND IN COMPLIANCE WITH THE FEDERAL GRAMM-LEACH-BLILEY ACT.

5 (F) "WRITTEN RELEASE" MEANS INFORMED WRITTEN CONSENT OR, IN THE
6 CONTEXT OF EMPLOYMENT, A RELEASE EXECUTED BY AN EMPLOYEE AS A
7 CONDITION OF EMPLOYMENT.

8 14-4302.

9 (A) (1) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, EACH
10 PRIVATE ENTITY IN POSSESSION OF BIOMETRIC IDENTIFIERS OR BIOMETRIC
11 INFORMATION SHALL DEVELOP A WRITTEN POLICY, MADE AVAILABLE TO THE
12 PUBLIC, ESTABLISHING A RETENTION SCHEDULE AND GUIDELINES FOR
13 PERMANENTLY DESTROYING BIOMETRIC IDENTIFIERS AND BIOMETRIC
14 INFORMATION ON THE EARLIER OF THE FOLLOWING:

15 (I) WHEN THE INITIAL PURPOSE FOR COLLECTING OR
16 OBTAINING THE BIOMETRIC IDENTIFIERS OR BIOMETRIC INFORMATION HAS BEEN
17 SATISFIED; OR

18 (II) WITHIN 3 YEARS AFTER THE INDIVIDUAL'S LAST
19 INTERACTION WITH THE PRIVATE ENTITY IN POSSESSION OF THE BIOMETRIC
20 IDENTIFIERS OR BIOMETRIC INFORMATION.

21 (2) ABSENT A VALID WARRANT OR SUBPOENA, EACH PRIVATE ENTITY
22 IN POSSESSION OF BIOMETRIC IDENTIFIERS OR BIOMETRIC INFORMATION SHALL
23 COMPLY WITH THE RETENTION SCHEDULE AND DESTRUCTION GUIDELINES
24 DEVELOPED UNDER PARAGRAPH (1) OF THIS SUBSECTION.

25 (B) A PRIVATE ENTITY MAY NOT BE REQUIRED TO MAKE PUBLICLY
26 AVAILABLE A WRITTEN POLICY DEVELOPED UNDER SUBSECTION (A) OF THIS
27 SECTION IF THE POLICY:

28 (1) APPLIES ONLY TO THE EMPLOYEES OF THE PRIVATE ENTITY; AND

29 (2) IS USED SOLELY FOR INTERNAL COMPANY OPERATIONS.

30 (C) EACH PRIVATE ENTITY IN POSSESSION OF BIOMETRIC IDENTIFIERS OR
31 BIOMETRIC INFORMATION SHALL STORE, TRANSMIT, AND PROTECT FROM
32 DISCLOSURE ALL BIOMETRIC IDENTIFIERS AND BIOMETRIC INFORMATION:

1 **(1) USING THE REASONABLE STANDARD OF CARE WITHIN THE**
2 **PRIVATE ENTITY'S INDUSTRY; AND**

3 **(2) IN A MANNER THAT IS AS PROTECTIVE AS OR MORE PROTECTIVE**
4 **THAN THE MANNER THAT THE PRIVATE ENTITY STORES, TRANSMITS, AND PROTECTS**
5 **OTHER CONFIDENTIAL AND SENSITIVE INFORMATION.**

6 **14-4303.**

7 **(A) A PRIVATE ENTITY IN POSSESSION OF BIOMETRIC IDENTIFIERS OR**
8 **BIOMETRIC INFORMATION MAY NOT SELL, LEASE, TRADE, OR OTHERWISE PROFIT**
9 **FROM AN INDIVIDUAL'S BIOMETRIC IDENTIFIERS OR BIOMETRIC INFORMATION.**

10 **(B) A PRIVATE ENTITY IN POSSESSION OF BIOMETRIC IDENTIFIERS OR**
11 **BIOMETRIC INFORMATION MAY NOT DISCLOSE, REDISCLOSE, OR OTHERWISE**
12 **DISSEMINATE AN INDIVIDUAL'S BIOMETRIC IDENTIFIERS OR BIOMETRIC**
13 **INFORMATION UNLESS:**

14 **(1) THE INDIVIDUAL OR THE INDIVIDUAL'S LEGALLY AUTHORIZED**
15 **REPRESENTATIVE CONSENTS TO THE DISCLOSURE OR REDISCLOSURE;**

16 **(2) THE DISCLOSURE OR REDISCLOSURE IS NECESSARY TO**
17 **COMPLETE A FINANCIAL TRANSACTION REQUESTED BY THE INDIVIDUAL OR THE**
18 **INDIVIDUAL'S LEGALLY AUTHORIZED REPRESENTATIVE;**

19 **(3) THE DISCLOSURE OR REDISCLOSURE IS REQUIRED BY FEDERAL,**
20 **STATE, OR LOCAL LAW; OR**

21 **(4) THE DISCLOSURE OR REDISCLOSURE IS REQUIRED BY A VALID**
22 **WARRANT OR SUBPOENA.**

23 **14-4304.**

24 **(A) AN INDIVIDUAL AGGRIEVED BY A VIOLATION OF THIS SUBTITLE MAY**
25 **BRING A CIVIL ACTION AGAINST THE OFFENDING PRIVATE ENTITY.**

26 **(B) AN INDIVIDUAL WHO PREVAILS IN A CIVIL ACTION UNDER THIS SECTION**
27 **MAY RECOVER FOR EACH VIOLATION:**

28 **(1) AGAINST A PRIVATE ENTITY THAT NEGLIGENTLY VIOLATED A**
29 **PROVISION OF THIS SUBTITLE, \$1,000 OR ACTUAL DAMAGES, WHICHEVER IS**
30 **GREATER;**

31 **(2) AGAINST A PRIVATE ENTITY THAT INTENTIONALLY OR**

1 RECKLESSLY VIOLATED A PROVISION OF THIS SUBTITLE, \$5,000 OR ACTUAL
2 DAMAGES, WHICHEVER IS GREATER;

3 (3) REASONABLE ATTORNEY'S FEES AND COSTS, INCLUDING EXPERT
4 WITNESS FEES AND OTHER LITIGATION EXPENSES; AND

5 (4) OTHER RELIEF, INCLUDING AN INJUNCTION, AS THE COURT MAY
6 DETERMINE APPROPRIATE.

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