

HOUSE BILL 942

E1

3lr2350
CF SB 624

By: Delegate Lee (Commission on Maryland Cybersecurity Innovation and Excellence) and Delegates Arora, Conaway, DeBoy, Dumais, Glenn, Hough, McComas, McDonough, Mitchell, B. Robinson, Stocksdale, Stukes, Tarrant, F. Turner, Valderrama, Valentino-Smith, and Zucker

Introduced and read first time: February 7, 2013

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 18, 2013

CHAPTER _____

1 AN ACT concerning

2 **Identity Fraud – ~~Medical~~ Health Information and Health Care Records**

3 FOR the purpose of prohibiting a person from knowingly, willfully, and with
4 fraudulent intent, possessing, obtaining, or helping another to possess or obtain
5 personal identifying information to access ~~medical~~ health information or
6 ~~services~~ health care; prohibiting a person from knowingly and willfully
7 assuming the identity of a natural or a fictitious person with fraudulent intent
8 to access ~~medical~~ health information or ~~services~~ health care; prohibiting a
9 person from using a certain device knowingly, willfully, and with fraudulent
10 intent to access ~~medical~~ health information or ~~services~~ health care; providing
11 penalties for a violation of this Act; authorizing a court to order a certain person
12 to make restitution for clearing the ~~medical history or records~~ record or history
13 related to health information or health care of a victim; defining certain terms;
14 altering a certain definition; and generally relating to identity fraud.

15 BY repealing and reenacting, with amendments,
16 Article – Criminal Law
17 Section 8-301(a) through (d), (g), and (i)
18 Annotated Code of Maryland
19 (2012 Replacement Volume and 2012 Supplement)

20 BY repealing and reenacting, without amendments,

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.



1 Article – Criminal Law
2 Section 8–301(e), (f), (h), and (j)
3 Annotated Code of Maryland
4 (2012 Replacement Volume and 2012 Supplement)

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

7 **Article – Criminal Law**

8 8–301.

9 (a) (1) In this section the following words have the meanings indicated.

10 **(2) “HEALTH CARE” MEANS CARE, SERVICES, OR SUPPLIES**
11 **RELATED TO THE HEALTH OF AN INDIVIDUAL THAT INCLUDES THE FOLLOWING:**

12 **(I) PREVENTATIVE, DIAGNOSTIC, THERAPEUTIC,**
13 **REHABILITATIVE, MAINTENANCE CARE, PALLIATIVE CARE AND COUNSELING,**
14 **SERVICE ASSESSMENT, OR PROCEDURE:**

15 **1. WITH RESPECT TO THE PHYSICAL OR MENTAL**
16 **CONDITION OR FUNCTIONAL STATUS OF AN INDIVIDUAL; OR**

17 **2. THAT AFFECTS THE STRUCTURE OR FUNCTION OF**
18 **THE BODY; AND**

19 **(II) THE SALE OR DISPENSING OF A DRUG, DEVICE,**
20 **EQUIPMENT, OR OTHER ITEM IN ACCORDANCE WITH A PRESCRIPTION.**

21 **(3) “HEALTH INFORMATION” MEANS ANY INFORMATION,**
22 **WHETHER ORAL OR RECORDED IN ANY FORM OR MEDIUM, THAT:**

23 **(I) IS CREATED OR RECEIVED BY:**

24 **1. A HEALTH CARE PROVIDER;**

25 **2. A HEALTH CARE CARRIER;**

26 **3. A PUBLIC HEALTH AUTHORITY;**

27 **4. AN EMPLOYER;**

28 **5. A LIFE INSURER;**

1 **6. A SCHOOL OR UNIVERSITY; OR**

2 **7. A HEALTH CARE CLEARINGHOUSE; AND**

3 **(II) RELATES TO THE:**

4 **1. PAST, PRESENT, OR FUTURE PHYSICAL OR**
 5 **MENTAL HEALTH OR CONDITION OF AN INDIVIDUAL;**

6 **2. PROVISION OF HEALTH CARE TO AN INDIVIDUAL;**
 7 **OR**

8 **3. PAST, PRESENT, OR FUTURE PAYMENT FOR THE**
 9 **PROVISION OF HEALTH CARE TO AN INDIVIDUAL.**

10 ~~(2)~~ **(4)** “Payment device number” has the meaning stated in § 8–213 of
 11 this title.

12 ~~(3)~~ **(5) (I)** “Personal identifying information” includes a name, address,
 13 telephone number, driver’s license number, Social Security number, place of
 14 employment, employee identification number, **HEALTH INSURANCE**
 15 **IDENTIFICATION NUMBER, MEDICAL IDENTIFICATION NUMBER,** mother’s maiden
 16 name, bank or other financial institution account number, date of birth, personal
 17 identification number, **UNIQUE BIOMETRIC DATA, INCLUDING FINGERPRINT,**
 18 **VOICE PRINT, RETINA OR IRIS IMAGE OR OTHER UNIQUE PHYSICAL**
 19 **REPRESENTATION, DIGITAL SIGNATURE,** credit card number, or other payment
 20 device number.

21 **(II) “PERSONAL IDENTIFYING INFORMATION” MAY BE**
 22 **DERIVED FROM ANY ELEMENT IN SUBPARAGRAPH (I) OF THIS PARAGRAPH,**
 23 **ALONE OR IN CONJUNCTION WITH ANY OTHER INFORMATION TO IDENTIFY A**
 24 **SPECIFIC NATURAL OR FICTITIOUS INDIVIDUAL.**

25 ~~(4)~~ **(6)** “Re–encoder” means an electronic device that places encoded
 26 personal identifying information or a payment device number from the magnetic strip
 27 or stripe of a credit card onto the magnetic strip or stripe of a different credit card or
 28 any electronic medium that allows such a transaction to occur.

29 ~~(5)~~ **(7)** “Skimming device” means a scanner, skimmer, reader, or any
 30 other electronic device that is used to access, read, scan, obtain, memorize, or store,
 31 temporarily or permanently, personal identifying information or a payment device
 32 number encoded on the magnetic strip or stripe of a credit card.

33 (b) A person may not knowingly, willfully, and with fraudulent intent
 34 possess, obtain, or help another to possess or obtain any personal identifying

1 information of an individual, without the consent of the individual, in order to use,
2 sell, or transfer the information to get a benefit, credit, good, service, or other thing of
3 value **OR TO ACCESS ~~MEDICAL~~ HEALTH INFORMATION OR ~~SERVICES~~ HEALTH**
4 **CARE** in the name of the individual.

5 (c) A person may not knowingly and willfully assume the identity of another,
6 including a fictitious person:

7 (1) to avoid identification, apprehension, or prosecution for a crime; or

8 (2) with fraudulent intent to:

9 (i) get a benefit, credit, good, service, or other thing of value;
10 [or]

11 (ii) **ACCESS ~~MEDICAL~~ HEALTH INFORMATION OR ~~SERVICES~~**
12 **HEALTH CARE; OR**

13 (iii) avoid the payment of debt or other legal obligation.

14 (d) A person may not knowingly, willfully, and with fraudulent intent to
15 obtain a benefit, credit, good, service, or other thing of value **OR TO ACCESS ~~MEDICAL~~**
16 **HEALTH INFORMATION OR ~~SERVICES~~ HEALTH CARE**, use:

17 (1) a re-encoder to place information encoded on the magnetic strip or
18 stripe of a credit card onto the magnetic strip or stripe of a different credit card or use
19 any other electronic medium that allows such a transaction to occur without the
20 consent of the individual authorized to use the credit card from which the personal
21 identifying information or payment device number is being re-encoded; or

22 (2) a skimming device to access, read, scan, obtain, memorize, or store
23 personal identifying information or a payment device number on the magnetic strip or
24 stripe of a credit card without the consent of the individual authorized to use the
25 credit card.

26 (e) A person may not knowingly, willfully, and with fraudulent intent
27 possess, obtain, or help another possess or obtain a re-encoder device or a skimming
28 device for the unauthorized use, sale, or transfer of personal identifying information or
29 a payment device number.

30 (f) A person may not knowingly and willfully claim to represent another
31 person without the knowledge and consent of that person, with the intent to solicit,
32 request, or take any other action to otherwise induce another person to provide
33 personal identifying information or a payment device number.

1 (g) (1) A person who violates this section where the benefit, credit, good,
2 service, ~~MEDICAL HEALTH INFORMATION OR SERVICES HEALTH CARE~~, or other
3 thing of value that is the subject of subsection (b), (c), or (d) of this section has a value
4 of \$500 or greater is guilty of a felony and on conviction is subject to imprisonment not
5 exceeding 15 years or a fine not exceeding \$25,000 or both.

6 (2) A person who violates this section where the benefit, credit, good,
7 service, ~~MEDICAL HEALTH INFORMATION OR SERVICES HEALTH CARE~~, or other
8 thing of value that is the subject of subsection (b), (c), or (d) of this section has a value
9 of less than \$500 is guilty of a misdemeanor and on conviction is subject to
10 imprisonment not exceeding 18 months or a fine not exceeding \$5,000 or both.

11 (3) A person who violates this section under circumstances that
12 reasonably indicate that the person's intent was to manufacture, distribute, or
13 dispense another individual's personal identifying information without that
14 individual's consent is guilty of a felony and on conviction is subject to imprisonment
15 not exceeding 15 years or a fine not exceeding \$25,000 or both.

16 (4) A person who violates subsection (c)(1), (e), or (f) of this section is
17 guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 18
18 months or a fine not exceeding \$5,000 or both.

19 (5) When the violation of this section is pursuant to one scheme or
20 continuing course of conduct, whether from the same or several sources, the conduct
21 may be considered as one violation and the value of the benefit, credit, good, service, or
22 other thing of value may be aggregated in determining whether the violation is a
23 felony or misdemeanor.

24 (h) A person described in subsection (g)(2) or (4) of this section is subject to §
25 5-106(b) of the Courts Article.

26 (i) In addition to restitution under Title 11, Subtitle 6 of the Criminal
27 Procedure Article, a court may order a person who pleads guilty or nolo contendere or
28 who is found guilty under this section to make restitution to the victim for reasonable
29 costs, including reasonable attorney's fees, incurred:

30 (1) for clearing the victim's credit history or credit rating; [and]

31 (2) **FOR CLEARING THE VICTIM'S ~~MEDICAL RECORD OR HISTORY~~**
32 **~~OR RECORDS~~ RELATED TO HEALTH INFORMATION OR HEALTH CARE; AND**

33 (3) in connection with a civil or administrative proceeding to satisfy a
34 debt, lien, judgment, or other obligation of the victim that arose because of the
35 violation.

1 (j) A sentence under this section may be imposed separate from and
2 consecutive to or concurrent with a sentence for any crime based on the act or acts
3 establishing the violation of this section.

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
5 October 1, 2013.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.