

SENATE BILL 335

I3
SB 16/21 – FIN

2lr1321
CF HB 259

By: **Senators Feldman, Augustine, Benson, Elfreth, Hayes, Jackson, Kagan, King, Kramer, Klausmeier, Lam, Lee, Patterson, and Watson**

Introduced and read first time: January 20, 2022

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Commercial Law – Consumer Protection – Biometric Identifiers Privacy**

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

9 BY adding to

10 Article – Commercial Law

11 Section 14–4401 through 14–4405 to be under the new subtitle “Subtitle 44.
12 Biometric Identifiers Privacy Act”

13 Annotated Code of Maryland

14 (2013 Replacement Volume and 2021 Supplement)

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

17 **Article – Commercial Law**

18 **SUBTITLE 44. BIOMETRIC IDENTIFIERS PRIVACY ACT.**

19 **14–4401.**

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **(B) (1) “BIOMETRIC IDENTIFIER” MEANS THE DATA OF AN INDIVIDUAL**
2 **GENERATED BY AUTOMATIC MEASUREMENTS OF AN INDIVIDUAL’S UNIQUE**
3 **BIOLOGICAL CHARACTERISTICS SUCH AS A FACEPRINT, FINGERPRINT, VOICEPRINT,**
4 **RETINA OR IRIS IMAGE, OR ANY OTHER BIOLOGICAL CHARACTERISTIC THAT CAN BE**
5 **USED TO UNIQUELY AUTHENTICATE THE INDIVIDUAL’S IDENTITY.**

6 **(2) “BIOMETRIC IDENTIFIER” DOES NOT INCLUDE:**

7 **(I) A WRITING SAMPLE OR WRITTEN SIGNATURE;**

8 **(II) A PHOTOGRAPH OR VIDEO;**

9 **(III) A HUMAN BIOLOGICAL SAMPLE USED FOR VALID**
10 **SCIENTIFIC TESTING OR SCREENING;**

11 **(IV) DEMOGRAPHIC DATA;**

12 **(V) A PHYSICAL DESCRIPTION, INCLUDING HEIGHT, WEIGHT,**
13 **HAIR COLOR, EYE COLOR, OR A TATTOO DESCRIPTION;**

14 **(VI) ANY DONATED PORTION OF A HUMAN BODY STORED ON**
15 **BEHALF OF A RECIPIENT OR POTENTIAL RECIPIENT OF A LIVING OR CADAVERIC**
16 **TRANSPLANT AND OBTAINED OR STORED BY A FEDERALLY DESIGNATED ORGAN**
17 **PROCUREMENT AGENCY, INCLUDING AN ORGAN, TISSUE, AN EYE, A BONE, AN**
18 **ARTERY, BLOOD, AND ANY OTHER FLUID OR SERUM;**

19 **(VII) INFORMATION CAPTURED FROM A PATIENT IN A HEALTH**
20 **CARE SETTING OR INFORMATION COLLECTED, USED, OR STORED FOR HEALTH CARE**
21 **TREATMENT, PAYMENT, OR OPERATIONS UNDER THE FEDERAL HEALTH INSURANCE**
22 **PORTABILITY AND ACCOUNTABILITY ACT OF 1996; OR**

23 **(VIII) ANY IMAGE OR FILM OF THE HUMAN ANATOMY USED TO**
24 **DIAGNOSE, PROVIDE A PROGNOSIS FOR, OR TREAT AN ILLNESS OR OTHER MEDICAL**
25 **CONDITION OR TO FURTHER VALIDATE SCIENTIFIC TESTING OR SCREENING,**
26 **INCLUDING AN X-RAY, A ROENTGEN PROCESS, COMPUTED TOMOGRAPHY, A**
27 **MAGNETIC RESONANCE IMAGING IMAGE, A POSITRON EMISSION TOMOGRAPHY**
28 **SCAN, AND MAMMOGRAPHY.**

29 **(C) “CONFIDENTIAL AND SENSITIVE INFORMATION” MEANS PERSONAL**
30 **INFORMATION THAT CAN BE USED TO UNIQUELY IDENTIFY AN INDIVIDUAL OR AN**
31 **INDIVIDUAL’S ACCOUNT OR PROPERTY, INCLUDING:**

32 **(1) A GENETIC MARKER;**

- 1 **(2) GENETIC TESTING INFORMATION;**
- 2 **(3) A UNIQUE IDENTIFIER NUMBER TO LOCATE AN ACCOUNT OR**
3 **PROPERTY;**
- 4 **(4) AN ACCOUNT NUMBER;**
- 5 **(5) A PERSONAL IDENTIFICATION NUMBER;**
- 6 **(6) A PASSCODE;**
- 7 **(7) A DRIVER’S LICENSE NUMBER; AND**
- 8 **(8) A SOCIAL SECURITY NUMBER.**

9 **(D) (1) “PERSONAL INFORMATION” MEANS INFORMATION THAT**
10 **DIRECTLY OR INDIRECTLY IDENTIFIES, RELATES TO, DESCRIBES, IS CAPABLE OF**
11 **BEING ASSOCIATED WITH, OR COULD REASONABLY BE LINKED TO A PARTICULAR**
12 **INDIVIDUAL, HOUSEHOLD, OR DEVICE.**

13 **(2) “PERSONAL INFORMATION” INCLUDES INFORMATION THAT CAN**
14 **BE REASONABLY LINKED TO A PARTICULAR INDIVIDUAL, HOUSEHOLD, OR DEVICE,**
15 **EITHER ON ITS OWN OR IN COMBINATION WITH OTHER REASONABLY AVAILABLE**
16 **INFORMATION, REGARDLESS OF WHETHER THE INFORMATION IS HELD BY THE**
17 **PRIVATE ENTITY.**

18 **(E) (1) “PRIVATE ENTITY” MEANS ANY INDIVIDUAL, PARTNERSHIP,**
19 **CORPORATION, LIMITED LIABILITY COMPANY, ASSOCIATION, OR OTHER GROUP,**
20 **HOWEVER ORGANIZED.**

21 **(2) “PRIVATE ENTITY” DOES NOT INCLUDE:**

22 **(I) A STATE OR LOCAL GOVERNMENT AGENCY;**

23 **(II) A STATE COURT, CLERK OF THE COURT, JUDGE, OR**
24 **COMMISSIONER;**

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

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

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

1 (G) "WRITTEN CONSENT" MEANS:

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

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

8 14-4402.

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

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

16 (II) WITHIN 1 YEAR AFTER THE INDIVIDUAL'S LAST
17 INTERACTION WITH THE PRIVATE ENTITY IN POSSESSION OF THE BIOMETRIC
18 IDENTIFIERS; OR

19 (III) WITHIN 30 DAYS AFTER THE PRIVATE ENTITY RECEIVES A
20 VERIFIED REQUEST TO DELETE THE BIOMETRIC IDENTIFIERS SUBMITTED BY THE
21 INDIVIDUAL OR THE INDIVIDUAL'S REPRESENTATIVE.

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

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

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

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

1 **(C) EACH PRIVATE ENTITY IN POSSESSION OF BIOMETRIC IDENTIFIERS OR**
2 **BIOMETRIC INFORMATION SHALL STORE, TRANSMIT, AND PROTECT FROM**
3 **DISCLOSURE ALL BIOMETRIC IDENTIFIERS AND BIOMETRIC INFORMATION:**

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

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

9 **14-4403.**

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

15 **(1) THE CATEGORIES OF BIOMETRIC IDENTIFIERS;**

16 **(2) SPECIFIC PIECES OF PERSONAL INFORMATION RELATED TO THE**
17 **BIOMETRIC IDENTIFIERS;**

18 **(3) THE CATEGORIES OF SOURCES THAT THE PRIVATE ENTITY**
19 **COLLECTED PERSONAL INFORMATION FROM LINKED TO THE BIOMETRIC**
20 **IDENTIFIER;**

21 **(4) THE PURPOSES FOR WHICH THE PRIVATE ENTITY USED THE**
22 **BIOMETRIC IDENTIFIER AND PERSONAL INFORMATION;**

23 **(5) THE CATEGORIES OF THIRD PARTIES WITH WHOM THE PRIVATE**
24 **ENTITY SHARES THE PERSONAL INFORMATION AND THE PURPOSES OF SHARING THE**
25 **PERSONAL INFORMATION; AND**

26 **(6) THE CATEGORIES OF INFORMATION THAT THE BUSINESS SELLS**
27 **OR DISCLOSES TO THIRD PARTIES.**

28 **14-4404.**

29 **(A) A PRIVATE ENTITY THAT COLLECTS BIOMETRIC IDENTIFIERS MAY NOT**
30 **SELL, LEASE, TRADE, OR OTHERWISE PROFIT FROM AN INDIVIDUAL'S BIOMETRIC**
31 **IDENTIFIERS.**

1 **(B) A PRIVATE ENTITY THAT COLLECTS BIOMETRIC IDENTIFIERS MAY NOT**
2 **COLLECT, USE, DISCLOSE, REDISCLOSE, OR OTHERWISE DISSEMINATE AN**
3 **INDIVIDUAL’S BIOMETRIC IDENTIFIERS UNLESS:**

4 **(1) THE INDIVIDUAL OR THE INDIVIDUAL’S LEGALLY AUTHORIZED**
5 **REPRESENTATIVE PROVIDES WRITTEN CONSENT TO THE PARTICULAR OR**
6 **CATEGORY OF COLLECTION, USE DISCLOSURE, REDISCLOSURE, OR DISSEMINATION;**
7 **OR**

8 **(2) THE DISCLOSURE OR REDISCLOSURE IS REQUIRED BY A VALID**
9 **WARRANT OR SUBPOENA.**

10 **(C) (1) A PRIVATE ENTITY MAY NOT CONDITION THE PROVISION OF A**
11 **SERVICE ON THE COLLECTION, USE, DISCLOSURE, TRANSFER, SALE, OR**
12 **PROCESSING OF BIOMETRIC IDENTIFIERS UNLESS BIOMETRIC IDENTIFIERS ARE**
13 **STRICTLY NECESSARY TO PROVIDE THE SERVICE.**

14 **(2) A PRIVATE ENTITY MAY NOT CHARGE DIFFERENT PRICES OR**
15 **RATES FOR GOODS OR SERVICES OR PROVIDE A DIFFERENT LEVEL OR QUALITY OF**
16 **A GOOD OR SERVICE TO ANY INDIVIDUAL WHO EXERCISES THE INDIVIDUAL’S RIGHTS**
17 **UNDER THIS SUBTITLE.**

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

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

28 **14-4405.**

29 **(A) AN INDIVIDUAL ALLEGING A VIOLATION OF THIS SUBTITLE MAY BRING**
30 **A CIVIL ACTION AGAINST THE OFFENDING PRIVATE ENTITY.**

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

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

4 **(2) AGAINST A PRIVATE ENTITY THAT INTENTIONALLY OR**
5 **RECKLESSLY VIOLATED A PROVISION OF THIS SUBTITLE, \$5,000 OR ACTUAL**
6 **DAMAGES, WHICHEVER IS GREATER;**

7 **(3) REASONABLE ATTORNEY’S FEES AND COSTS, INCLUDING EXPERT**
8 **WITNESS FEES AND OTHER LITIGATION EXPENSES; AND**

9 **(4) OTHER RELIEF, INCLUDING AN INJUNCTION, AS THE COURT MAY**
10 **DETERMINE APPROPRIATE.**

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