

SENATE BILL 643

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CF HB 962

By: **Senators Lee, Feldman, and Benson**
Introduced and read first time: February 3, 2022
Assigned to: Finance

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: March 7, 2022

CHAPTER _____

1 AN ACT concerning

2 **Commercial Law – Maryland Personal Information Protection Act – Revisions**

3 FOR the purpose of requiring a business that maintains personal information of an
4 individual residing in the State to implement and maintain certain security
5 procedures and practices; altering certain requirements related to notifications of
6 breaches of the security of systems, including the circumstances under which the
7 owner or licensee of certain computerized data is required to notify certain
8 individuals of a breach; and generally relating to personal information and the
9 Maryland Personal Information Protection Act.

10 BY repealing and reenacting, with amendments,
11 Article – Commercial Law
12 Section 14–3501, 14–3503(a), and 14–3504
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 14–3501.

19 (a) In this subtitle the following words have the meanings indicated.

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 (b) (1) “Business” means a sole proprietorship, partnership, corporation,
2 association, or any other business entity, whether or not organized to operate at a profit.

3 (2) “Business” includes a financial institution organized, chartered,
4 licensed, or otherwise authorized under the laws of this State, any other state, the United
5 States, or any other country, and the parent or subsidiary of a financial institution.

6 (c) “Encrypted” means the protection of data in electronic or optical form using
7 an encryption technology that renders the data indecipherable without an associated
8 cryptographic key necessary to enable decryption of the data.

9 ~~(d) “GENETIC TEST” MEANS AN ANALYSIS OF HUMAN DNA, RNA,~~
10 ~~CHROMOSOMES, PROTEINS, OR METABOLITES.~~

11 ~~[(d)] (E)~~ “Health information” means any information [created by an entity
12 covered by the federal Health Insurance Portability and Accountability Act of 1996]
13 regarding an individual’s medical history, medical condition, or medical treatment or
14 diagnosis.

15 ~~[(e)] (F)~~ (1) “Personal information” means:

16 (i) An individual’s first name or first initial and last name in
17 combination with any one or more of the following data elements, when [the name or] the
18 data elements are not encrypted, redacted, or otherwise protected by another method that
19 renders the information unreadable or unusable:

20 1. A Social Security number, an Individual Taxpayer
21 Identification Number, a passport number, or other identification number issued by the
22 federal government;

23 2. A driver’s license number or State identification card
24 number;

25 3. An account number, a credit card number, or a debit card
26 number, in combination with any required security code, access code, or password, that
27 permits access to an individual’s financial account;

28 4. Health information, including information about an
29 individual’s mental health;

30 5. A health insurance policy or certificate number or health
31 insurance subscriber identification number, in combination with a unique identifier used
32 by an insurer or an employer that is self-insured, that permits access to an individual’s
33 health information; ~~or~~

- 1 **4. GENES;**
- 2 **5. CHROMOSOMES;**
- 3 **6. ALLELES;**
- 4 **7. GENOMES;**
- 5 **8. ALTERATIONS OR MODIFICATIONS TO**
6 **DEOXYRIBONUCLEIC ACIDS OR RIBONUCLEIC ACIDS;**
- 7 **9. SINGLE NUCLEOTIDE POLYMORPHISMS;**
- 8 **10. UNINTERRUPTED DATA THAT RESULTS FROM THE**
9 **ANALYSIS OF A BIOLOGICAL SAMPLE FROM THE INDIVIDUAL OR OTHER SOURCES;**
10 **AND**
- 11 **11. INFORMATION EXTRAPOLATED, DERIVED, OR**
12 **INFERRED FROM ITEM 1, 2, 3, 4, 5, 6, 7, 8, 9, OR 10 OF THIS ITEM.**

13 (2) "Personal information" does not include:

14 (i) Publicly available information that is lawfully made available to
15 the general public from federal, State, or local government records;

16 (ii) Information that an individual has consented to have publicly
17 disseminated or listed; or

18 (iii) Information that is disseminated or listed in accordance with the
19 federal Health Insurance Portability and Accountability Act.

20 ~~[(f)] (c)~~ "Records" means information that is inscribed on a tangible medium or
21 that is stored in an electronic or other medium and is retrievable in perceivable form.

22 14-3503.

23 (a) To protect personal information from unauthorized access, use, modification,
24 or disclosure, a business that owns, **MAINTAINS**, or licenses personal information of an
25 individual residing in the State shall implement and maintain reasonable security
26 procedures and practices that are appropriate to the nature of the personal information
27 owned, **MAINTAINED**, or licensed and the nature and size of the business and its
28 operations.

29 14-3504.

30 (a) In this section:

1 (1) "Breach of the security of a system" means the unauthorized acquisition
2 of computerized data that compromises the security, confidentiality, or integrity of the
3 personal information maintained by a business; and

4 (2) "Breach of the security of a system" does not include the good faith
5 acquisition of personal information by an employee or agent of a business for the purposes
6 of the business, provided that the personal information is not used or subject to further
7 unauthorized disclosure.

8 (b) (1) A business that owns, licenses, or maintains computerized data that
9 includes personal information of an individual residing in the State, when it discovers or is
10 notified that it incurred a breach of the security of a system, shall conduct in good faith a
11 reasonable and prompt investigation to determine the likelihood that personal information
12 of the individual has been or will be misused as a result of the breach.

13 (2) Subject to subsection (c)(4) of this section, [if, after the investigation is
14 concluded,] **UNLESS** the business **REASONABLY** determines that the breach of the security
15 of the system [creates] **DOES NOT CREATE** a likelihood that personal information has been
16 or will be misused, the owner or licensee of the computerized data shall notify the individual
17 of the breach.

18 (3) Except as provided in subsection (d) of this section, the notification
19 required under paragraph (2) of this subsection shall be given as soon as reasonably
20 practicable, but not later than 45 days after the business [concludes the investigation
21 required under paragraph (1) of this subsection] **DISCOVERS OR IS NOTIFIED OF THE**
22 **BREACH OF THE SECURITY OF A SYSTEM.**

23 (4) If after the investigation required under paragraph (1) of this
24 subsection is concluded, the business determines that notification under paragraph (2) of
25 this subsection is not required, the business shall maintain records that reflect its
26 determination for 3 years after the determination is made.

27 (c) (1) A business that maintains computerized data that includes personal
28 information of an individual residing in the State that the business does not own or license,
29 when it discovers or is notified of a breach of the security of a system, shall notify, as soon
30 as practicable, the owner or licensee of the personal information of the breach of the security
31 of a system.

32 (2) Except as provided in subsection (d) of this section, the notification
33 required under paragraph (1) of this subsection shall be given as soon as reasonably
34 practicable, but not later than [45] **10** days after the business discovers or is notified of the
35 breach of the security of a system.

1 (3) A business that is required to notify an owner or licensee of personal
2 information of a breach of the security of a system under paragraph (1) of this subsection
3 shall share with the owner or licensee information relative to the breach.

4 (4) (i) If the business that incurred the breach of the security of a
5 system is not the owner or licensee of the computerized data, the business may not charge
6 the owner or licensee of the computerized data a fee for providing information that the
7 owner or licensee needs to make a notification under subsection (b)(2) of this section.

8 (ii) The owner or licensee of the computerized data may not use
9 information relative to the breach of the security of a system for purposes other than:

10 1. Providing notification of the breach;

11 2. Protecting or securing personal information; or

12 3. Providing notification to national information security
13 organizations created for information-sharing and analysis of security threats, to alert and
14 avert new or expanded breaches.

15 (d) (1) The notification required under subsections (b) and (c) of this section
16 may be delayed:

17 (i) If a law enforcement agency determines that the notification will
18 impede a criminal investigation or jeopardize homeland or national security; or

19 (ii) To determine the scope of the breach of the security of a system,
20 identify the individuals affected, or restore the integrity of the system.

21 (2) If notification is delayed under paragraph (1)(i) of this subsection,
22 notification shall be given as soon as reasonably practicable, but not later than:

23 (i) **FOR A NOTIFICATION REQUIRED UNDER SUBSECTION (B)**
24 **OF THIS SECTION:**

25 1. [30] 7 days after the law enforcement agency determines
26 that it will not impede a criminal investigation and will not jeopardize homeland or national
27 security **IF THE ORIGINAL 45-DAY PERIOD HAS ALREADY ELAPSED; OR**

28 2. **THE END OF THE ORIGINAL 45-DAY PERIOD; OR**

29 (ii) **FOR A NOTIFICATION REQUIRED UNDER SUBSECTION (C)**
30 **OF THIS SECTION, 7 DAYS AFTER THE LAW ENFORCEMENT AGENCY DETERMINES**
31 **THAT IT WILL NOT IMPEDE A CRIMINAL INVESTIGATION AND WILL NOT JEOPARDIZE**
32 **HOMELAND OR NATIONAL SECURITY.**

1 (e) The notification required under subsection (b) of this section [may] **SHALL** be
2 given:

3 (1) By written notice sent to the most recent address of the individual in
4 the records of the business;

5 (2) By electronic mail to the most recent electronic mail address of the
6 individual in the records of the business, if:

7 (i) The individual has expressly consented to receive electronic
8 notice; or

9 (ii) The business conducts its business primarily through Internet
10 account transactions or the Internet;

11 (3) By telephonic notice, to the most recent telephone number of the
12 individual in the records of the business; or

13 (4) By substitute notice [as provided in subsection (f) of this section, if:

14 (i) The business demonstrates that the cost of providing notice
15 would exceed \$100,000 or that the affected class of individuals to be notified exceeds
16 175,000; or

17 (ii) The] **IF THE** business does not have sufficient contact
18 information to give notice in accordance with item (1), (2), or (3) of this subsection.

19 (f) Substitute notice under subsection (e)(4) of this section shall consist of:

20 (1) Electronically mailing the notice to an individual entitled to notification
21 under subsection (b) of this section, if the business has an electronic mail address for the
22 individual to be notified;

23 (2) Conspicuous posting of the notice on the website of the business, if the
24 business maintains a website; and

25 (3) Notification to [statewide media] **MAJOR PRINT OR BROADCAST**
26 **MEDIA IN GEOGRAPHIC AREAS WHERE THE INDIVIDUALS AFFECTED BY THE BREACH**
27 **LIKELY RESIDE.**

28 (g) Except as provided in subsection (i) of this section, the notification required
29 under subsection (b) of this section shall include:

30 (1) To the extent possible, a description of the categories of information
31 that were, or are reasonably believed to have been, acquired by an unauthorized person,

1 including which of the elements of personal information were, or are reasonably believed
2 to have been, acquired;

3 (2) Contact information for the business making the notification, including
4 the business' address, telephone number, and toll-free telephone number if one is
5 maintained;

6 (3) The toll-free telephone numbers and addresses for the major consumer
7 reporting agencies; and

8 (4) (i) The toll-free telephone numbers, addresses, and website
9 addresses for:

10 1. The Federal Trade Commission; and

11 2. The Office of the Attorney General; and

12 (ii) A statement that an individual can obtain information from
13 these sources about steps the individual can take to avoid identity theft.

14 (h) (1) Prior to giving the notification required under subsection (b) of this
15 section and subject to subsection (d) of this section, a business shall provide notice of a
16 breach of the security of a system to the Office of the Attorney General.

17 (2) **THE NOTICE REQUIRED UNDER PARAGRAPH (1) OF THIS**
18 **SUBSECTION SHALL INCLUDE, AT A MINIMUM:**

19 (I) **THE NUMBER OF AFFECTED INDIVIDUALS RESIDING IN THE**
20 **STATE;**

21 (II) **A DESCRIPTION OF THE BREACH OF THE SECURITY OF A**
22 **SYSTEM, INCLUDING WHEN AND HOW IT OCCURRED;**

23 (III) **ANY STEPS THE BUSINESS HAS TAKEN OR PLANS TO TAKE**
24 **RELATING TO THE BREACH OF THE SECURITY OF A SYSTEM; AND**

25 (IV) **THE FORM OF NOTICE THAT WILL BE SENT TO AFFECTED**
26 **INDIVIDUALS AND A SAMPLE NOTICE.**

27 (i) (1) In the case of a breach of the security of a system involving personal
28 information that permits access to an individual's e-mail account under §
29 ~~14-3501(e)(1)(ii)~~ ~~14-3501(F)(1)(ii)~~ of this subtitle and no other personal information
30 under § ~~14-3501(e)(1)(i)~~ ~~14-3501(F)(1)(i)~~ of this subtitle, the business may comply with
31 the notification requirement under subsection (b) of this section by providing the
32 notification in electronic or other form that directs the individual whose personal
33 information has been breached promptly to:

1 (i) Change the individual’s password and security question or
2 answer, as applicable; or

3 (ii) Take other steps appropriate to protect the e–mail account with
4 the business and all other online accounts for which the individual uses the same user name
5 or e–mail and password or security question or answer.

6 (2) Subject to paragraph (3) of this subsection, the notification provided
7 under paragraph (1) of this subsection may be given to the individual by any method
8 described in this section.

9 (3) (i) Except as provided in subparagraph (ii) of this paragraph, the
10 notification provided under paragraph (1) of this subsection may not be given to the
11 individual by sending notification by e–mail to the e–mail account affected by the breach.

12 (ii) The notification provided under paragraph (1) of this subsection
13 may be given by a clear and conspicuous notice delivered to the individual online while the
14 individual is connected to the affected e–mail account from an Internet Protocol address or
15 online location from which the business knows the individual customarily accesses the
16 account.

17 (j) A waiver of any provision of this section is contrary to public policy and is void
18 and unenforceable.

19 (k) Compliance with this section does not relieve a business from a duty to comply
20 with any other requirements of federal law relating to the protection and privacy of
21 personal information.

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

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.