

HOUSE BILL 307

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By: **Delegates Love, Charkoudian, Fraser-Hidalgo, R. Lewis, Moon, Palakovich Carr, Shetty, Stewart, and Terrasa**

Introduced and read first time: January 20, 2020

Assigned to: Economic Matters

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

24 BY adding to

25 Article – Commercial Law

26 Section 14–4201 through 14–4204 to be under the new subtitle “Subtitle 42.
27 Biometric Identifiers and Biometric Information Privacy Act”

28 Annotated Code of Maryland

29 (2013 Replacement Volume and 2019 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

Article – Commercial Law

**SUBTITLE 42. BIOMETRIC IDENTIFIERS AND BIOMETRIC INFORMATION PRIVACY
ACT.**

14-4201.

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

**(B) (1) “BIOMETRIC IDENTIFIER” MEANS A RETINA OR IRIS SCAN,
FINGERPRINT, VOICEPRINT, OR SCAN OF HAND OR FACE GEOMETRY.**

(2) “BIOMETRIC IDENTIFIER” DOES NOT INCLUDE:

(I) A WRITING SAMPLE OR WRITTEN SIGNATURE;

(II) A PHOTOGRAPH;

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

(IV) DEMOGRAPHIC DATA;

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

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

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

**(VIII) AN X-RAY, A ROENTGEN PROCESS, COMPUTED
TOMOGRAPHY, A MAGNETIC RESONANCE IMAGING IMAGE, A POSITRON EMISSION**

1 TOMOGRAPHY SCAN, MAMMOGRAPHY, OR ANY OTHER IMAGE OR FILM OF THE
2 HUMAN ANATOMY USED TO DIAGNOSE, PROVIDE A PROGNOSIS, OR TREAT AN
3 ILLNESS OR OTHER MEDICAL CONDITION OR TO FURTHER VALIDATE SCIENTIFIC
4 TESTING OR SCREENING.

5 (C) (1) “BIOMETRIC INFORMATION” MEANS ANY INFORMATION,
6 REGARDLESS OF HOW IT IS CAPTURED, CONVERTED, STORED, OR SHARED, BASED
7 ON AN INDIVIDUAL’S BIOMETRIC IDENTIFIER USED TO IDENTIFY AN INDIVIDUAL.

8 (2) “BIOMETRIC INFORMATION” DOES NOT INCLUDE INFORMATION
9 DERIVED FROM AN ITEM OR A PROCEDURE EXCLUDED UNDER THE DEFINITION OF A
10 BIOMETRIC IDENTIFIER.

11 (D) “CONFIDENTIAL AND SENSITIVE INFORMATION” MEANS PERSONAL
12 INFORMATION THAT CAN BE USED TO UNIQUELY IDENTIFY AN INDIVIDUAL OR AN
13 INDIVIDUAL’S ACCOUNT OR PROPERTY, INCLUDING:

14 (1) A GENETIC MARKER;

15 (2) GENETIC TESTING INFORMATION;

16 (3) A UNIQUE IDENTIFIER NUMBER TO LOCATE AN ACCOUNT OR
17 PROPERTY;

18 (4) AN ACCOUNT NUMBER;

19 (5) A PERSONAL IDENTIFICATION NUMBER;

20 (6) A PASSCODE;

21 (7) A DRIVER’S LICENSE NUMBER; AND

22 (8) A SOCIAL SECURITY NUMBER.

23 (E) (1) “PRIVATE ENTITY” MEANS ANY INDIVIDUAL, PARTNERSHIP,
24 CORPORATION, LIMITED LIABILITY COMPANY, ASSOCIATION, OR OTHER GROUP,
25 HOWEVER ORGANIZED.

26 (2) “PRIVATE ENTITY” DOES NOT INCLUDE:

27 (I) A STATE OR LOCAL GOVERNMENT AGENCY; OR

28 (II) A STATE COURT, CLERK OF THE COURT, JUDGE, OR

1 COMMISSIONER.

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

5 14-4202.

6 (A) (1) EACH PRIVATE ENTITY IN POSSESSION OF BIOMETRIC
7 IDENTIFIERS OR BIOMETRIC INFORMATION SHALL DEVELOP A WRITTEN POLICY,
8 MADE AVAILABLE TO THE PUBLIC, ESTABLISHING A RETENTION SCHEDULE AND
9 GUIDELINES FOR PERMANENTLY DESTROYING BIOMETRIC IDENTIFIERS AND
10 BIOMETRIC INFORMATION ON THE EARLIER OF THE FOLLOWING:

11 (I) WHEN THE INITIAL PURPOSE FOR COLLECTING OR
12 OBTAINING THE BIOMETRIC IDENTIFIERS OR BIOMETRIC INFORMATION HAS BEEN
13 SATISFIED; OR

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

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

21 (B) EACH PRIVATE ENTITY IN POSSESSION OF BIOMETRIC IDENTIFIERS OR
22 BIOMETRIC INFORMATION SHALL STORE, TRANSMIT, AND PROTECT FROM
23 DISCLOSURE ALL BIOMETRIC IDENTIFIERS AND BIOMETRIC INFORMATION:

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

26 (2) IN A MANNER THAT IS AS PROTECTIVE AS OR MORE PROTECTIVE
27 THAN THE MANNER THAT THE PRIVATE ENTITY STORES, TRANSMITS, AND PROTECTS
28 OTHER CONFIDENTIAL AND SENSITIVE INFORMATION.

29 14-4203.

30 (A) A PRIVATE ENTITY MAY NOT COLLECT, CAPTURE, PURCHASE, RECEIVE
31 THROUGH TRADE, OR OTHERWISE OBTAIN AN INDIVIDUAL'S BIOMETRIC
32 IDENTIFIERS OR BIOMETRIC INFORMATION UNLESS THE PRIVATE ENTITY FIRST:

(1) INFORMS THE INDIVIDUAL OR THE INDIVIDUAL'S LEGALLY AUTHORIZED REPRESENTATIVE IN WRITING:

(I) THAT BIOMETRIC IDENTIFIERS OR BIOMETRIC INFORMATION IS BEING COLLECTED OR STORED; AND

(II) OF THE SPECIFIC PURPOSE AND LENGTH OF TIME THAT BIOMETRIC IDENTIFIERS OR BIOMETRIC INFORMATION IS BEING COLLECTED, STORED, OR USED; AND

(2) RECEIVES A WRITTEN RELEASE EXECUTED BY THE INDIVIDUAL OR THE INDIVIDUAL'S LEGALLY AUTHORIZED REPRESENTATIVE.

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

(C) A PRIVATE ENTITY IN POSSESSION OF BIOMETRIC IDENTIFIERS OR BIOMETRIC INFORMATION MAY NOT DISCLOSE, REDISCLOSE, OR OTHERWISE DISSEMINATE AN INDIVIDUAL'S BIOMETRIC IDENTIFIERS OR BIOMETRIC INFORMATION UNLESS:

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

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

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

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

14-4204.

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

(B) AN INDIVIDUAL WHO PREVAILS IN A CIVIL ACTION UNDER THIS SECTION 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, 2020.