

# 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

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 11, 2020

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## CHAPTER \_\_\_\_\_

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

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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.



~~date;~~ and generally relating to biometric identifiers and biometric information privacy.

BY adding to

Article – Commercial Law

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

Annotated Code of Maryland

(2013 Replacement Volume and 2019 Supplement)

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~~ THE DATA OF AN INDIVIDUAL GENERATED BY AUTOMATIC MEASUREMENTS OF AN INDIVIDUAL’S BIOLOGICAL CHARACTERISTICS SUCH AS A FINGERPRINT, VOICEPRINT, GENETIC PRINT, RETINA OR IRIS IMAGE, OR ANY OTHER UNIQUE BIOLOGICAL CHARACTERISTIC THAT CAN BE USED TO UNIQUELY AUTHENTICATE THE INDIVIDUAL’S IDENTITY.**

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

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

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

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

(1) A GENETIC MARKER;

(2) GENETIC TESTING INFORMATION;

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

(4) AN ACCOUNT NUMBER;

(5) A PERSONAL IDENTIFICATION NUMBER;

(6) A PASSCODE;

(7) A DRIVER’S LICENSE NUMBER; AND

(8) A SOCIAL SECURITY NUMBER.

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

(2) "PRIVATE ENTITY" DOES NOT INCLUDE:

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

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

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

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

14-4202.

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

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

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

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

1       **(B) A PRIVATE ENTITY MAY NOT BE REQUIRED TO MAKE PUBLICLY**  
2 **AVAILABLE A WRITTEN POLICY DEVELOPED UNDER SUBSECTION (A) OF THIS**  
3 **SECTION IF THE POLICY:**

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

5               **(2) IS USED SOLELY FOR INTERNAL COMPANY OPERATIONS.**

6       ~~(B)~~ **(C) EACH PRIVATE ENTITY IN POSSESSION OF BIOMETRIC**  
7 **IDENTIFIERS OR BIOMETRIC INFORMATION SHALL STORE, TRANSMIT, AND PROTECT**  
8 **FROM DISCLOSURE ALL BIOMETRIC IDENTIFIERS AND BIOMETRIC INFORMATION:**

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

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

14 **14-4203.**

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

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

20                       **(i) THAT BIOMETRIC IDENTIFIERS OR BIOMETRIC**  
21 **INFORMATION IS BEING COLLECTED OR STORED; AND**

22                       **(ii) OF THE SPECIFIC PURPOSE AND LENGTH OF TIME THAT**  
23 **BIOMETRIC IDENTIFIERS OR BIOMETRIC INFORMATION IS BEING COLLECTED,**  
24 **STORED, OR USED; AND**

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

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

30       **(C) A PRIVATE ENTITY IN POSSESSION OF BIOMETRIC IDENTIFIERS OR**  
31 **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) AGAINST A PRIVATE ENTITY THAT NEGLIGENTLY VIOLATED A PROVISION OF THIS SUBTITLE, \$1,000 OR ACTUAL DAMAGES, WHICHEVER IS GREATER;

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

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

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

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect ~~October 1, 2020~~ January 1, 2021.