

SENATE BILL 790

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3lr2177
CF HB 995

By: **Senator Hettleman**

Introduced and read first time: February 6, 2023

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Commercial Law – Health Data Privacy**

3 FOR the purpose of regulating the collection and use of consumer health data by private
4 entities; prohibiting a private entity from certain collection and use of certain health
5 data without the consent of the consumer; authorizing consumers to exercise certain
6 rights in regard to the consumer’s health data; requiring private entities that collect
7 consumer health data to make certain disclosures to consumers; prohibiting a
8 private entity that collects health data of a consumer from selling, leasing, or trading
9 the data; prohibiting a private entity or individual from establishing a geofence
10 around certain entities; authorizing a consumer alleging a violation of this Act to
11 bring a civil action against the offending private entity under certain circumstances;
12 making a violation of this Act an unfair, abusive, or deceptive trade practice that is
13 subject to enforcement and penalties under the Maryland Consumer Protection Act;
14 and generally relating to the privacy of health data.

15 BY repealing and reenacting, without amendments,
16 Article – Commercial Law
17 Section 13–301(14)(xxxiv) and (xxxvi)
18 Annotated Code of Maryland
19 (2013 Replacement Volume and 2022 Supplement)

20 BY repealing and reenacting, with amendments,
21 Article – Commercial Law
22 Section 13–301(14)(xxxv) and 13–408
23 Annotated Code of Maryland
24 (2013 Replacement Volume and 2022 Supplement)

25 BY adding to
26 Article – Commercial Law
27 Section 13–301(14)(xxxvii); and 14–4501 through 14–4507 to be under the new
28 subtitle “Subtitle 45. Health Data Privacy”

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland
2 (2013 Replacement Volume and 2022 Supplement)

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

5 **Article – Commercial Law**

6 13–301.

7 Unfair, abusive, or deceptive trade practices include any:

8 (14) Violation of a provision of:

9 (xxxiv) The federal Servicemembers Civil Relief Act;

10 (xxxv) Section 11–210 of the Education Article; [or]

11 (xxxvi) Title 14, Subtitle 44 of this article; or

12 **(XXXVII) TITLE 14, SUBTITLE 45 OF THIS ARTICLE; OR**

13 13–408.

14 (a) In addition to any action by the Division or Attorney General authorized by
15 this title and any other action otherwise authorized by law, any person may bring an action
16 to recover for injury or loss sustained by [him] **THE PERSON** as the result of a practice
17 prohibited by this title.

18 (b) Any person who brings an action to recover for injury or loss under this section
19 and who is awarded damages may also seek, and the court may award, reasonable
20 attorney’s fees.

21 (c) If it appears to the satisfaction of the court, at any time, that an action is
22 brought in bad faith or is of a frivolous nature, the court may order the offending party to
23 pay to the other party reasonable attorney’s fees.

24 (d) Notwithstanding any other provision of this section, a person may not bring
25 an action under this section to recover for injuries sustained as a result of the professional
26 services provided by a health care provider, as defined in § 3–2A–01 of the Courts Article.

27 **SUBTITLE 45. HEALTH DATA PRIVACY.**

28 14–4501.

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

3 **(B) (1) “BIOMETRIC DATA” MEANS DATA GENERATED BY AUTOMATIC**
4 **MEASUREMENTS OF THE BIOLOGICAL CHARACTERISTICS OF A CONSUMER THAT ARE**
5 **USED TO IDENTIFY A SPECIFIC CONSUMER.**

6 **(2) “BIOMETRIC DATA” INCLUDES:**

7 **(I) A FINGERPRINT;**

8 **(II) A VOICEPRINT;**

9 **(III) EYE RETINA OR IRIS PATTERN;**

10 **(IV) BIOMETRIC SCANS CREATED FROM PHYSICAL OR DIGITAL**
11 **PHOTOGRAPHS; OR**

12 **(V) ANY OTHER UNIQUE BIOLOGICAL PATTERNS OR**
13 **CHARACTERISTICS.**

14 **(3) “BIOMETRIC DATA” DOES NOT INCLUDE:**

15 **(I) A PHYSICAL OR DIGITAL PHOTOGRAPH;**

16 **(II) A VIDEO OR AN AUDIO RECORDING; OR**

17 **(III) INFORMATION COLLECTED, USED, OR STORED FOR HEALTH**
18 **CARE TREATMENT, PAYMENT, OR OPERATIONS UNDER THE FEDERAL HEALTH**
19 **INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996.**

20 **(C) “DATA BROKERING” MEANS THE COLLECTION OF, PURCHASE OF,**
21 **LICENSURE OF, OR DRAWING OF INFERENCES FROM DATA ABOUT A CONSUMER AND**
22 **THE SUBSEQUENT SALE, LICENSURE, OR TRADING OF THAT DATA BY AN INDIVIDUAL**
23 **OR PRIVATE ENTITY.**

24 **(D) “DATA PROCESSING” MEANS THE COLLECTION, USE, DISCLOSURE,**
25 **RETENTION, OR PROCESSING OF HEALTH DATA OR OTHER PERSONAL INFORMATION**
26 **OF A CONSUMER BY AN INDIVIDUAL OR A PRIVATE ENTITY.**

27 **(E) “GEOFENCE” MEANS A VIRTUAL PERIMETER AROUND A PHYSICAL**
28 **LOCATION.**

1 **(F) (1) “HEALTH DATA” MEANS PERSONAL INFORMATION RELATING TO**
2 **PAST, PRESENT, OR FUTURE PHYSICAL OR MENTAL HEALTH OF A CONSUMER.**

3 **(2) “HEALTH DATA” INCLUDES INFORMATION RELATING TO:**

4 **(I) BODILY FUNCTIONS, VITAL SIGNS, MEASUREMENTS, OR**
5 **SYMPTOMS;**

6 **(II) DIAGNOSTIC TESTING;**

7 **(III) CONDITIONS, STATUS, DISEASES, OR DIAGNOSES OF A**
8 **CONSUMER;**

9 **(IV) LEGALLY PROTECTED HEALTH CARE;**

10 **(V) SOCIAL, BEHAVIORAL, AND MEDICAL TREATMENTS AND**
11 **INTERVENTIONS;**

12 **(VI) SURGERIES AND OTHER PROCEDURES; AND**

13 **(VII) THE USE OR PURCHASE OF MEDICATION.**

14 **(3) “HEALTH DATA” DOES NOT INCLUDE DATA PROTECTED UNDER**
15 **TITLE 4, SUBTITLE 3 OF THE HEALTH – GENERAL ARTICLE.**

16 **(G) “INFER” MEANS TO DERIVE INFORMATION, DATA, ASSUMPTIONS, OR**
17 **CONCLUSIONS FROM FACTS, EVIDENCE, OR ANOTHER SOURCE OF INFORMATION OR**
18 **DATA.**

19 **(H) “LEGALLY PROTECTED HEALTH CARE” MEANS ALL REPRODUCTIVE**
20 **HEALTH SERVICES, MEDICATIONS, AND SUPPLIES RELATED TO THE DIRECT**
21 **PROVISION OR SUPPORT OF THE PROVISION OF CARE RELATED TO PREGNANCY,**
22 **CONTRACEPTION, ASSISTED REPRODUCTION, AND ABORTION THAT IS LAWFUL IN**
23 **THE STATE.**

24 **(I) (1) “PERSONAL INFORMATION” MEANS INFORMATION THAT**
25 **IDENTIFIES, RELATES TO, DESCRIBES, IS REASONABLY CAPABLE OF BEING**
26 **ASSOCIATED WITH, OR COULD REASONABLY BE LINKED, DIRECTLY OR INDIRECTLY,**
27 **WITH A PARTICULAR CONSUMER OR A DEVICE USED BY THE CONSUMER.**

28 **(2) “PERSONAL INFORMATION” INCLUDES:**

29 **(I) UNIQUE IDENTIFIERS;**

1 (II) CHARACTERISTICS OF PROTECTED CLASSIFICATIONS
2 UNDER STATE OR FEDERAL LAW;

3 (III) COMMERCIAL INFORMATION, INCLUDING:

4 1. RECORDS OF PERSONAL PROPERTY;

5 2. PRODUCTS OR SERVICES PURCHASED, OBTAINED, OR
6 CONSIDERED BY A CONSUMER; AND

7 3. OTHER PURCHASING OR CONSUMING HISTORIES OR
8 TENDENCIES OF A CONSUMER;

9 (IV) BIOMETRIC DATA;

10 (V) INTERNET OR OTHER ELECTRONIC NETWORK ACTIVITY
11 INFORMATION, INCLUDING BROWSING HISTORY, SEARCH HISTORY, AND
12 INFORMATION REGARDING A CONSUMER'S INTERACTION WITH A WEBSITE,
13 APPLICATION, OR ADVERTISEMENT;

14 (VI) GEOLOCATION DATA; AND

15 (VII) INFERENCES DRAWN FROM ANY OF THE INFORMATION
16 IDENTIFIED IN THIS SUBSECTION TO CREATE A PROFILE ABOUT A CONSUMER
17 REFLECTING THE CONSUMER'S PREFERENCES, CHARACTERISTICS,
18 PSYCHOLOGICAL TRENDS, PREDISPOSITIONS, OR BEHAVIOR.

19 (J) "UNIQUE IDENTIFIER" MEANS A PERSISTENT IDENTIFIER THAT CAN BE
20 USED TO RECOGNIZE A CONSUMER OR A DEVICE THAT IS LINKED TO A CONSUMER
21 OR HOUSEHOLD, OVER TIME AND ACROSS DIFFERENT TECHNOLOGIES, INCLUDING:

22 (1) A DEVICE IDENTIFIER;

23 (2) AN INTERNET PROTOCOL ADDRESS;

24 (3) A COOKIE, BEACON, PIXEL TAG, MOBILE AD IDENTIFIER, OR
25 SIMILAR TECHNOLOGY;

26 (4) A CONSUMER NUMBER, UNIQUE PSEUDONYM, OR USER ALIAS; OR

1 **(5) A TELEPHONE NUMBER OR ANY OTHER FORM OF PERSISTENT**
2 **IDENTIFIER THAT CAN BE USED TO IDENTIFY A PARTICULAR DEVICE USED BY THE**
3 **CONSUMER.**

4 **14-4502.**

5 **(A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, A PRIVATE**
6 **ENTITY MAY NOT COLLECT, USE, DISCLOSE, REDISCLOSE, OR OTHERWISE**
7 **DISSEMINATE HEALTH DATA OF A CONSUMER UNLESS THE CONSUMER, OR THE**
8 **CONSUMER'S LEGALLY AUTHORIZED REPRESENTATIVE, GIVES CONSENT TO THE**
9 **PARTICULAR OR CATEGORY OF COLLECTION, USE, DISCLOSURE, REDISCLOSURE, OR**
10 **DISSEMINATION.**

11 **(B) (1) A PRIVATE ENTITY MAY COLLECT, USE, DISCLOSE, REDISCLOSE,**
12 **OR OTHERWISE DISSEMINATE BIOMETRIC DATA OF A CONSUMER WITHOUT**
13 **COMPLYING WITH SUBSECTION (A) OF THIS SECTION IF THE PRIVATE ENTITY:**

14 **(I) COLLECTS, USES, DISCLOSES, REDISCLOSES, OR**
15 **OTHERWISE DISSEMINATES THE BIOMETRIC DATA FOR FRAUD PREVENTION OR**
16 **SECURITY PURPOSES; AND**

17 **(II) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION:**

18 **1. FOR A PRIVATE ENTITY THAT COLLECTS BIOMETRIC**
19 **DATA AT A PHYSICAL PREMISES, POSTS CONSPICUOUS WRITTEN NOTICE OF THE**
20 **COLLECTION OF BIOMETRIC DATA AT EACH POINT OF ENTRY; AND**

21 **2. FOR A PRIVATE ENTITY THAT COLLECTS BIOMETRIC**
22 **DATA OF A CONSUMER DURING AN ONLINE ENCOUNTER WITH THE CONSUMER,**
23 **POSTS CONSPICUOUS WRITTEN NOTICE OF THE COLLECTION OF BIOMETRIC DATA**
24 **ON THE WEBSITE OF THE PRIVATE ENTITY.**

25 **(2) (I) THE COLLECTION, USE, DISCLOSURE, REDISCLOSURE, OR**
26 **OTHER DISSEMINATION OF BIOMETRIC DATA UNDER THIS SUBSECTION MUST BE**
27 **DIRECTLY TIED TO THE SERVICES BEING PROVIDED BY THE PRIVATE ENTITY.**

28 **(II) A PRIVATE ENTITY THAT COLLECTS, USES, DISCLOSES,**
29 **REDISCLOSES, OR OTHERWISE DISSEMINATES BIOMETRIC DATA UNDER THIS**
30 **SUBSECTION MAY COLLECT, USE, DISCLOSE, REDISCLOSE, OR OTHERWISE**
31 **DISSEMINATE ONLY WHAT IS STRICTLY NECESSARY FOR FRAUD PREVENTION AND**
32 **SECURITY PURPOSES.**

1 **(3) THE NOTICE REQUIRED IN PARAGRAPH (1) OF THIS SUBSECTION**
2 **SHALL INFORM CONSUMERS OF:**

3 **(I) THE CATEGORIES OF BIOMETRIC DATA TO BE COLLECTED;**
4 **AND**

5 **(II) THE PURPOSES FOR WHICH THE CATEGORIES OF**
6 **BIOMETRIC DATA WILL BE USED.**

7 **14-4503.**

8 **A CONSUMER HAS THE RIGHT TO:**

9 **(1) REQUEST A COPY OF THE CONSUMER'S HEALTH DATA;**

10 **(2) REQUEST DELETION OF THE CONSUMER'S HEALTH DATA;**

11 **(3) OPT OUT OF THIRD-PARTY DISCLOSURE OF THE CONSUMER'S**
12 **HEALTH DATA; AND**

13 **(4) WITHDRAW CONSENT TO THE COLLECTION AND USE OF THE**
14 **CONSUMER'S HEALTH DATA.**

15 **14-4504.**

16 **(A) A PRIVATE ENTITY THAT COLLECTS HEALTH DATA OF A CONSUMER**
17 **SHALL:**

18 **(1) AT OR BEFORE THE POINT OF COLLECTION, CLEARLY AND**
19 **CONSPICUOUSLY NOTIFY THE CONSUMER OF:**

20 **(I) THE CATEGORIES OF HEALTH DATA THE PRIVATE ENTITY**
21 **WILL COLLECT ABOUT THE CONSUMER;**

22 **(II) THE PURPOSE FOR WHICH THE CATEGORIES OF HEALTH**
23 **DATA MAY BE USED;**

24 **(III) THE CONSUMER'S RIGHTS UNDER § 14-4503 OF THIS**
25 **SUBTITLE; AND**

26 **(IV) THE CONSUMER'S RIGHT TO WITHDRAW CONSENT TO THE**
27 **COLLECTION AND USE OF THE HEALTH DATA; AND**

1 **(2) ALLOW THE CONSUMER TO WITHDRAW CONSENT TO THE**
2 **COLLECTION AND USE OF THE CONSUMER'S HEALTH DATA AT ANY TIME.**

3 **(B) A PRIVATE ENTITY MAY NOT COLLECT OR USE ADDITIONAL CATEGORIES**
4 **OF HEALTH DATA, OR COLLECT OR USE HEALTH DATA FOR ADDITIONAL PURPOSES,**
5 **WITHOUT FIRST PROVIDING THE CONSUMER WITH THE NOTICE REQUIRED UNDER**
6 **SUBSECTION (A) OF THIS SECTION.**

7 **14-4505.**

8 **(A) A PRIVATE ENTITY THAT COLLECTS HEALTH DATA OF A CONSUMER**
9 **SHALL ESTABLISH AN EFFECTIVE MECHANISM FOR THE CONSUMER TO WITHDRAW**
10 **CONSENT TO THE COLLECTION AND USE OF THE CONSUMER'S HEALTH DATA.**

11 **(B) AFTER A CONSUMER WITHDRAWS CONSENT TO THE COLLECTION AND**
12 **USE OF THE CONSUMER'S HEALTH DATA A PRIVATE ENTITY MAY NOT, WITH RESPECT**
13 **TO THE CONSUMER'S HEALTH DATA AND PERSONAL INFORMATION, ENGAGE IN:**

14 **(1) DATA PROCESSING;**

15 **(2) DATA BROKERING; OR**

16 **(3) ANY OTHER USE OF THE PERSONAL INFORMATION OR HEALTH**
17 **DATA.**

18 **14-4506.**

19 **(A) A PRIVATE ENTITY THAT COLLECTS HEALTH DATA OF A CONSUMER MAY**
20 **NOT SELL, LEASE, OR TRADE THE CONSUMER'S HEALTH DATA.**

21 **(B) A PRIVATE ENTITY MAY NOT:**

22 **(1) CONDITION THE PROVISION OF A SERVICE TO A CONSUMER ON**
23 **THE COLLECTION, USE, DISCLOSURE, TRANSFER, SALE, OR PROCESSING OF HEALTH**
24 **DATA OF A CONSUMER UNLESS THE HEALTH DATA IS STRICTLY NECESSARY TO**
25 **PROVIDE THE SERVICE; OR**

26 **(2) CHARGE DIFFERENT PRICES OR RATES FOR GOODS OR SERVICES**
27 **OR PROVIDE A DIFFERENT LEVEL OF QUALITY OF A GOOD OR SERVICE TO A**
28 **CONSUMER WHO EXERCISES THE CONSUMER'S RIGHTS UNDER THIS SUBTITLE.**

29 **(C) A PRIVATE ENTITY OR INDIVIDUAL MAY NOT ESTABLISH A GEOFENCE**
30 **AROUND ANY ENTITY THAT PROVIDES IN-PERSON HEALTH CARE SERVICES IF THE**

1 GEOFENCE IS USED TO IDENTIFY, TRACK, COLLECT DATA FROM, OR SEND
2 NOTIFICATIONS OR MESSAGES TO A CONSUMER THAT ENTERS THE VIRTUAL
3 PERIMETER.

4 14-4507.

5 (A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, A
6 VIOLATION OF THIS SUBTITLE IS:

7 (1) AN UNFAIR, ABUSIVE, OR DECEPTIVE TRADE PRACTICE WITHIN
8 THE MEANING OF TITLE 13 OF THIS ARTICLE; AND

9 (2) SUBJECT TO THE ENFORCEMENT AND PENALTY PROVISIONS
10 CONTAINED IN TITLE 13 OF THIS ARTICLE, EXCEPT FOR § 13-408 OF THIS ARTICLE.

11 (B) IN ADDITION TO THE REMEDIES AVAILABLE IN SUBSECTION (A) OF THIS
12 SECTION, A CONSUMER WHO IS AFFECTED BY A PRIVATE ENTITY'S VIOLATION OF §
13 14-4506 OF THIS SUBTITLE MAY BRING AN ACTION AGAINST THE PRIVATE ENTITY
14 IN ACCORDANCE WITH § 13-408 OF THIS ARTICLE.

15 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
16 October 1, 2023.