

SENATE BILL 676

P1, L6

3lr2899
CF HB 959

By: **Senator Pugh (Commission on Maryland Cybersecurity Innovation and Excellence)**

Introduced and read first time: February 1, 2013

Assigned to: Education, Health, and Environmental Affairs

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 27, 2013

CHAPTER _____

1 AN ACT concerning

2 **Governmental Procedures – Security and Protection of Information**

3 FOR the purpose of requiring a certain unit, when destroying ~~a resident's~~ an
4 individual's records that contain certain personal ~~or private~~ information of the
5 ~~resident~~ individual, to take certain steps to protect against the unauthorized
6 acquisition or use of the personal ~~or private~~ information under certain
7 circumstances; requiring certain units that collect certain personal ~~or private~~
8 information of ~~a resident~~ an individual to implement and maintain certain
9 security procedures and practices under certain circumstances; requiring
10 certain units that collect or maintain computerized data that include certain
11 personal ~~or private~~ information of ~~a resident~~ an individual to conduct a certain
12 investigation under certain circumstances ~~and, requiring, except under certain~~
13 circumstances, a unit or, under certain circumstances, a nonaffiliated third
14 party to notify certain persons of a breach of the security of a system under
15 certain circumstances; specifying the time at which notification must be given;
16 specifying the contents of the notification; authorizing notification to be given in
17 a certain manner; requiring certain units to retain certain records for a certain
18 period of time under certain circumstances; providing that a waiver of certain
19 provisions of this Act is contrary to public policy and is void and unenforceable;
20 providing that compliance with certain provisions of this Act does not relieve a
21 certain unit from a duty to comply with certain other requirements of federal
22 law; providing that the provisions of this Act are exclusive and shall preempt
23 any provision of local law; requiring a unit to report to certain consumer
24 reporting agencies on the breach of the security of a system under certain

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 circumstances; requiring a unit to provide notice of a breach of the security of a
 2 system to the Office of Attorney General and the Department of Information
 3 Technology under certain circumstances; ~~establishing a private right of action~~
 4 ~~for a resident affected by a violation of this Act; requiring the Department, in~~
 5 ~~consultation with the Office of the Attorney General and the Department of~~
 6 ~~Budget and Management, to adopt certain rules and regulations; providing that~~
 7 a unit or nonaffiliated third party that complies with certain provisions of
 8 federal law is deemed to be in compliance with this Act; defining certain terms;
 9 providing for the applicability application of a certain provision of this Act;
 10 providing for a delayed effective date; and generally relating to the protection of
 11 information collected by units or included in computerized data that is collected
 12 and maintained by units.

13 BY adding to

14 Article – State Government

15 Section 10–1301 through ~~10–1309~~ 10–1308 to be under the new subtitle

16 “Subtitle 13. Protection of Information by Government Agencies”

17 Annotated Code of Maryland

18 (2009 Replacement Volume and 2012 Supplement)

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

21 **Article – State Government**

22 **SUBTITLE 13. PROTECTION OF INFORMATION BY GOVERNMENT AGENCIES.**

23 **10–1301.**

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

26 (B) ~~“ENCRYPTED ENCRYPTION”~~ **“ENCRYPTION”** MEANS THE PROTECTION OF DATA IN
 27 ELECTRONIC OR OPTICAL FORM, IN STORAGE OR IN TRANSIT, USING ~~AN~~
 28 ~~ENCRYPTION A~~ **ENCRYPTION A** TECHNOLOGY THAT ~~HAS BEEN ADOPTED BY AN ESTABLISHED~~
 29 ~~STANDARDS SETTING BODY OF THE FEDERAL GOVERNMENT, INCLUDING:~~

30 **(1) IS CERTIFIED TO MEET OR EXCEED THE LEVEL THAT HAS**
 31 **BEEN ADOPTED BY THE FEDERAL INFORMATION PROCESSING STANDARDS**
 32 **ISSUED BY THE NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY;**
 33 **WHICH; AND**

34 **(2) RENDERS SUCH DATA INDECIPHERABLE WITHOUT AN**
 35 **ASSOCIATED CRYPTOGRAPHIC KEY NECESSARY TO ENABLE DECRYPTION OF**
 36 **SUCH DATA.**

1 (C) ~~(1) “PERSONAL INFORMATION” MEANS ANY INFORMATION~~
2 ~~CONCERNING A NATURAL PERSON THAT, BECAUSE OF NAME, NUMBER,~~
3 ~~PERSONAL MARK, UNIQUE BIOMETRIC OR GENERIC PRINT, IMAGE OR DATA, OR~~
4 ~~OTHER IDENTIFIER, CAN BE USED TO IDENTIFY SUCH A NATURAL PERSON.~~

5 ~~(2) “PERSONAL INFORMATION” DOES NOT INCLUDE:~~

6 ~~(I) PUBLICLY AVAILABLE INFORMATION THAT IS~~
7 ~~LAWFULLY MADE AVAILABLE TO THE GENERAL PUBLIC FROM FEDERAL, STATE,~~
8 ~~OR LOCAL GOVERNMENT RECORDS;~~

9 ~~(II) INFORMATION THAT AN INDIVIDUAL HAS CONSENTED~~
10 ~~TO HAVE PUBLICLY DISSEMINATED OR LISTED; OR~~

11 ~~(III) INFORMATION THAT IS DISSEMINATED OR LISTED IN~~
12 ~~ACCORDANCE WITH THE FEDERAL HEALTH INSURANCE PORTABILITY AND~~
13 ~~ACCOUNTABILITY ACT AN INDIVIDUAL’S FIRST NAME OR FIRST INITIAL AND~~
14 ~~LAST NAME, PERSONAL MARK, OR UNIQUE BIOMETRIC OR GENETIC PRINT OR~~
15 ~~IMAGE, IN COMBINATION WITH ONE OR MORE OF THE FOLLOWING DATA~~
16 ~~ELEMENTS:~~

17 ~~(1) A SOCIAL SECURITY NUMBER;~~

18 ~~(2) A DRIVER’S LICENSE NUMBER, STATE IDENTIFICATION CARD~~
19 ~~NUMBER, OR OTHER INDIVIDUAL IDENTIFICATION NUMBER ISSUED BY A UNIT;~~

20 ~~(3) A PASSPORT NUMBER OR OTHER IDENTIFICATION NUMBER~~
21 ~~ISSUED BY THE UNITED STATES GOVERNMENT;~~

22 ~~(4) AN INDIVIDUAL TAXPAYER IDENTIFICATION NUMBER; OR~~

23 ~~(5) A FINANCIAL OR OTHER ACCOUNT NUMBER, A CREDIT CARD~~
24 ~~NUMBER, OR A DEBIT CARD NUMBER THAT, IN COMBINATION WITH ANY~~
25 ~~REQUIRED SECURITY CODE, ACCESS CODE, OR PASSWORD, WOULD PERMIT~~
26 ~~ACCESS TO AN INDIVIDUAL’S ACCOUNT.~~

27 ~~(D) “PRIVATE INFORMATION” MEANS PERSONAL INFORMATION IN~~
28 ~~COMBINATION WITH ANY ONE OR MORE OF THE FOLLOWING DATA ELEMENTS,~~
29 ~~WHETHER OR NOT ANY OF THE ELEMENTS ARE ENCRYPTED:~~

30 ~~(1) SOCIAL SECURITY NUMBER;~~

31 ~~(2) DRIVER’S LICENSE OR STATE IDENTIFICATION CARD NUMBER;~~

1 ~~(3) PASSPORT NUMBER OR OTHER UNITED STATES ISSUED~~
2 ~~IDENTIFICATION NUMBER; OR~~

3 ~~(4) ACCOUNT NUMBER, CREDIT OR DEBIT CARD NUMBER, IN~~
4 ~~COMBINATION WITH ANY REQUIRED SECURITY CODE, ACCESS CODE, OR~~
5 ~~PASSWORD THAT WOULD PERMIT ACCESS TO THE FINANCIAL ACCOUNT OF AN~~
6 ~~INDIVIDUAL.~~

7 ~~(E) (D) “REASONABLE SECURITY PROCEDURES AND PRACTICES”~~
8 ~~MEANS DATA SECURITY PROCEDURES AND PRACTICES DEVELOPED, IN GOOD~~
9 ~~FAITH, AND SET FORTH IN A WRITTEN INFORMATION SECURITY POLICY THAT~~
10 ~~CLEARLY DEMONSTRATES THAT THE PROCEDURES AND PRACTICES:~~

11 ~~(1) COORDINATE AN INFORMATION SECURITY PROGRAM;~~

12 ~~(2) REQUIRE A RISK ASSESSMENT TO IDENTIFY REASONABLY~~
13 ~~FORESEEABLE INTERNAL AND EXTERNAL RISKS TO THE SECURITY,~~
14 ~~CONFIDENTIALITY, AND INTEGRITY OF CUSTOMER INFORMATION AND TO~~
15 ~~ASSESS THE SUFFICIENCY OF ANY SAFEGUARDS IN PLACE TO CONTROL THESE~~
16 ~~RISKS;~~

17 ~~(3) ONCE A RISK ASSESSMENT IS COMPLETED, INCLUDE DESIGN~~
18 ~~SAFEGUARDS TO CONTROL THE IDENTIFIED RISKS AND TO MONITOR~~
19 ~~REGULARLY THE EFFECTIVENESS OF THE CONTROLS;~~

20 ~~(4) CONTRACTUALLY ENSURE THAT SPECIFIED SERVICE~~
21 ~~PROVIDERS ARE CAPABLE OF PROVIDING APPROPRIATE SAFEGUARDS FOR THE~~
22 ~~PERSONAL AND PRIVATE INFORMATION OF CUSTOMERS; AND~~

23 ~~(5) EVALUATE AND ADJUST THE INFORMATION SECURITY~~
24 ~~PROGRAM BASED ON THE FOLLOWING:~~

25 ~~(I) THE FINDINGS OF THE REGULAR MONITORING AND~~
26 ~~TESTING OF INFORMATION SAFEGUARDS;~~

27 ~~(II) MATERIAL CHANGES TO OPERATIONS OR BUSINESS~~
28 ~~ARRANGEMENTS; OR~~

29 ~~(III) CIRCUMSTANCES THAT THE BUSINESS KNOWS OR HAS~~
30 ~~REASON TO KNOW MAY HAVE A MATERIAL IMPACT ON THE INFORMATION~~
31 ~~SECURITY PROGRAM OF THE BUSINESS.~~

1 ~~(F)~~ (E) “RECORDS” MEANS INFORMATION THAT IS INSCRIBED ON A
2 TANGIBLE MEDIUM OR THAT IS STORED IN AN ELECTRONIC OR OTHER MEDIUM
3 AND IS RETRIEVABLE IN PERCEIVABLE FORM.

4 ~~(G)~~ ~~“RESIDENT” MEANS AN INDIVIDUAL RESIDING IN THE STATE WHO~~
5 ~~PROVIDES PERSONAL OR PRIVATE INFORMATION TO A UNIT FOR THE PURPOSE~~
6 ~~OF OBTAINING A SERVICE, PRODUCT, OR DOCUMENT FROM THE GOVERNMENT~~
7 ~~AGENCY.~~

8 ~~(H)~~ (F) “UNIT” MEANS:

9 (1) AN EXECUTIVE, ~~LEGISLATIVE, OR JUDICIAL~~ AGENCY, OR A
10 DEPARTMENT, A BOARD, A COMMISSION, AN AUTHORITY, ~~AN~~ A PUBLIC
11 INSTITUTION OF HIGHER EDUCATION, A UNIT OR AN INSTRUMENTALITY OF THE
12 STATE; OR

13 (2) A COUNTY, MUNICIPALITY, BI-COUNTY, REGIONAL, OR
14 MULTICOUNTY AGENCY, COUNTY BOARD OF EDUCATION, PUBLIC CORPORATION
15 OR AUTHORITY, OR ANY OTHER POLITICAL SUBDIVISION OF THE STATE.

16 10-1302.

17 (A) THIS SUBTITLE DOES NOT APPLY TO PERSONAL INFORMATION
18 THAT:

19 (1) IS PUBLICLY AVAILABLE INFORMATION THAT IS LAWFULLY
20 MADE AVAILABLE TO THE GENERAL PUBLIC FROM FEDERAL, STATE, OR LOCAL
21 GOVERNMENT RECORDS;

22 (2) AN INDIVIDUAL HAS CONSENTED TO HAVE PUBLICLY
23 DISSEMINATED OR LISTED;

24 (3) EXCEPT FOR A MEDICAL RECORD THAT A PERSON IS
25 PROHIBITED FROM REDISCLOSING UNDER § 4-302(D) OF THE HEALTH -
26 GENERAL ARTICLE, IS DISCLOSED IN ACCORDANCE WITH THE FEDERAL
27 HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT; OR

28 (4) IS DISCLOSED IN ACCORDANCE WITH THE FEDERAL FAMILY
29 EDUCATIONAL RIGHTS AND PRIVACY ACT.

30 (B) THIS SUBTITLE DOES NOT APPLY TO THE LEGISLATIVE OR
31 JUDICIAL BRANCH OF STATE GOVERNMENT.

32 ~~10-1302.~~ 10-1303.

1 **WHEN A UNIT IS DESTROYING RECORDS OF ~~A RESIDENT~~ AN INDIVIDUAL**
 2 **THAT CONTAIN PERSONAL ~~OR PRIVATE~~ INFORMATION OF THE ~~RESIDENT~~**
 3 **INDIVIDUAL, THE UNIT SHALL TAKE REASONABLE STEPS TO PROTECT AGAINST**
 4 **UNAUTHORIZED ACCESS TO OR USE OF THE PERSONAL ~~OR PRIVATE~~**
 5 **INFORMATION, TAKING INTO ACCOUNT:**

6 **(1) THE SENSITIVITY OF THE RECORDS;**

7 **(2) THE NATURE ~~AND SIZE~~ OF THE UNIT AND ITS OPERATIONS;**

8 **(3) THE COSTS AND BENEFITS OF DIFFERENT DESTRUCTION**
 9 **METHODS; AND**

10 **(4) AVAILABLE TECHNOLOGY.**

11 **~~10-1303.~~ 10-1304.**

12 **(A) TO PROTECT ~~PRIVATE~~ PERSONAL INFORMATION FROM**
 13 **UNAUTHORIZED ACCESS, USE, MODIFICATION, OR DISCLOSURE, A UNIT THAT**
 14 **COLLECTS PERSONAL INFORMATION OF ~~A RESIDENT~~ AN INDIVIDUAL SHALL**
 15 **IMPLEMENT AND MAINTAIN REASONABLE SECURITY PROCEDURES AND**
 16 **PRACTICES THAT ARE APPROPRIATE TO THE NATURE OF THE PERSONAL ~~OR~~**
 17 **~~PRIVATE~~ INFORMATION COLLECTED AND THE NATURE ~~AND SIZE~~ OF THE UNIT**
 18 **AND ITS OPERATIONS.**

19 **(B) (1) THIS SUBSECTION SHALL APPLY TO A WRITTEN CONTRACT OR**
 20 **AGREEMENT THAT IS ENTERED INTO ON OR AFTER ~~JANUARY~~ JULY 1, 2014.**

21 **(2) A UNIT THAT USES A NONAFFILIATED THIRD PARTY AS A**
 22 **SERVICE PROVIDER TO PERFORM SERVICES FOR THE UNIT AND DISCLOSES**
 23 **PERSONAL ~~OR PRIVATE~~ INFORMATION ABOUT ~~A RESIDENT~~ AN INDIVIDUAL**
 24 **UNDER A WRITTEN CONTRACT OR AGREEMENT WITH THE THIRD PARTY SHALL**
 25 **REQUIRE BY WRITTEN CONTRACT OR AGREEMENT THAT THE THIRD PARTY**
 26 **IMPLEMENT AND MAINTAIN REASONABLE SECURITY PROCEDURES AND**
 27 **PRACTICES THAT:**

28 **(I) ARE APPROPRIATE TO THE NATURE OF THE PERSONAL**
 29 **~~OR PRIVATE~~ INFORMATION DISCLOSED TO THE NONAFFILIATED THIRD PARTY;**
 30 **AND**

31 **(II) ARE REASONABLY DESIGNED TO HELP PROTECT THE**
 32 **PERSONAL ~~OR PRIVATE~~ INFORMATION FROM UNAUTHORIZED ACCESS, USE,**
 33 **MODIFICATION, DISCLOSURE, OR DESTRUCTION.**

1 ~~10-1304. 10-1305.~~

2 (A) (1) IN THIS SECTION ~~THE FOLLOWING WORDS HAVE THE~~
3 ~~MEANINGS INDICATED.~~

4 ~~(2)~~ ~~(1)~~ “BREACH, “BREACH OF THE SECURITY OF A SYSTEM”
5 MEANS THE UNAUTHORIZED ACQUISITION OF COMPUTERIZED DATA THAT
6 COMPROMISES THE SECURITY, CONFIDENTIALITY, OR INTEGRITY OF THE
7 PERSONAL ~~OR PRIVATE~~ INFORMATION MAINTAINED BY A UNIT.

8 ~~(H)~~ ~~(2)~~ “BREACH OF THE SECURITY OF A SYSTEM” DOES
9 NOT INCLUDE THE GOOD FAITH ACQUISITION OF PERSONAL INFORMATION BY
10 AN EMPLOYEE OR AGENT OF A UNIT FOR THE PURPOSES OF THE UNIT,
11 PROVIDED THAT THE PERSONAL ~~OR PRIVATE~~ INFORMATION IS NOT USED OR
12 SUBJECT TO FURTHER UNAUTHORIZED DISCLOSURE.

13 ~~(3)~~ “IDENTITY FRAUD” HAS THE MEANING STATED IN §
14 ~~§ 301(B) OR (C) OF THE CRIMINAL LAW ARTICLE.~~

15 (B) (1) IF A UNIT THAT COLLECTS COMPUTERIZED DATA THAT
16 INCLUDES ~~PRIVATE~~ PERSONAL INFORMATION OF ~~A RESIDENT~~ AN INDIVIDUAL
17 DISCOVERS OR IS NOTIFIED OF A BREACH OF THE SECURITY OF A SYSTEM, THE
18 UNIT SHALL CONDUCT IN GOOD FAITH A REASONABLE AND PROMPT
19 INVESTIGATION TO DETERMINE WHETHER THE UNAUTHORIZED ACQUISITION
20 OF ~~PRIVATE~~ PERSONAL INFORMATION OF THE ~~RESIDENT~~ HAS CREATED OR IS
21 REASONABLY LIKELY TO CREATE A MATERIAL RISK OF IDENTITY FRAUD
22 INDIVIDUAL HAS RESULTED IN OR IS LIKELY TO RESULT IN THE MISUSE OF THE
23 INFORMATION.

24 (2) (I) ~~IF~~ EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF
25 THIS PARAGRAPH, IF AFTER THE INVESTIGATION IS CONCLUDED, THE UNIT
26 DETERMINES THAT THE ~~UNAUTHORIZED ACQUISITION~~ MISUSE OF THE
27 ~~RESIDENT'S~~ INDIVIDUAL'S PERSONAL ~~OR PRIVATE~~ INFORMATION HAS ~~CREATED~~
28 OCCURRED OR IS ~~REASONABLY~~ LIKELY TO ~~CREATE A MATERIAL RISK OF~~
29 ~~IDENTITY FRAUD~~ OCCUR, THE UNIT OR THE NONAFFILIATED THIRD PARTY, IF
30 AUTHORIZED UNDER A WRITTEN CONTRACT OR AGREEMENT WITH THE UNIT,
31 SHALL NOTIFY THE ~~RESIDENT~~ INDIVIDUAL OF THE BREACH.

32 (II) UNLESS THE UNIT OR NONAFFILIATED THIRD PARTY
33 KNOWS THAT THE ENCRYPTION KEY HAS BEEN BROKEN, A UNIT OR THE
34 NONAFFILIATED THIRD PARTY IS NOT REQUIRED TO NOTIFY AN INDIVIDUAL
35 UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH IF:

1 **1. THE PERSONAL INFORMATION OF THE**
2 **INDIVIDUAL WAS SECURED BY ENCRYPTION OR REDACTED; AND**

3 **2. THE ENCRYPTION KEY HAS NOT BEEN**
4 **COMPROMISED OR DISCLOSED.**

5 **(3) EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION,**
6 **THE NOTIFICATION REQUIRED UNDER PARAGRAPH (2) OF THIS SUBSECTION**
7 **SHALL BE GIVEN AS SOON AS REASONABLY PRACTICABLE, ~~BUT NOT LATER THAN~~**
8 **~~45 DAYS~~ AFTER THE UNIT CONDUCTS THE INVESTIGATION REQUIRED UNDER**
9 **PARAGRAPH (1) OF THIS SUBSECTION.**

10 **(4) IF, AFTER THE INVESTIGATION REQUIRED UNDER**
11 **PARAGRAPH (1) OF THIS SUBSECTION IS CONCLUDED, THE UNIT DETERMINES**
12 **THAT NOTIFICATION UNDER PARAGRAPH (2) OF THIS SUBSECTION IS NOT**
13 **REQUIRED, THE UNIT SHALL MAINTAIN RECORDS THAT REFLECT ITS**
14 **DETERMINATION FOR 3 YEARS AFTER THE DETERMINATION IS MADE.**

15 **(C) (1) A NONAFFILIATED THIRD PARTY THAT MAINTAINS**
16 **COMPUTERIZED DATA THAT INCLUDES ~~PRIVATE~~ PERSONAL INFORMATION**
17 **PROVIDED BY A UNIT SHALL NOTIFY THE UNIT OF A BREACH OF THE SECURITY**
18 **OF A SYSTEM IF THE UNAUTHORIZED ACQUISITION OF THE ~~RESIDENT'S PRIVATE~~**
19 **INDIVIDUAL'S PERSONAL INFORMATION HAS ~~CREATED~~ OCCURRED OR IS**
20 **~~REASONABLY LIKELY TO CREATE A MATERIAL RISK OF IDENTITY FRAUD~~ OCCUR.**

21 **(2) EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION,**
22 **THE NOTIFICATION REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION**
23 **SHALL BE GIVEN AS SOON AS REASONABLY PRACTICABLE, ~~BUT NOT LATER THAN~~**
24 **~~45 DAYS~~ AFTER THE ~~UNIT~~ NONAFFILIATED THIRD PARTY DISCOVERS OR IS**
25 **NOTIFIED OF THE BREACH OF THE SECURITY OF A SYSTEM.**

26 **(3) A NONAFFILIATED THIRD PARTY THAT IS REQUIRED TO**
27 **NOTIFY A UNIT OF A BREACH OF THE SECURITY OF A SYSTEM UNDER**
28 **PARAGRAPH (1) OF THIS SUBSECTION SHALL SHARE WITH THE UNIT**
29 **INFORMATION RELATING TO THE BREACH.**

30 **(D) (1) THE NOTIFICATION REQUIRED UNDER ~~SUBSECTIONS~~**
31 **SUBSECTION (B) AND (C) OF THIS SECTION MAY BE DELAYED:**

32 **(I) IF A LAW ENFORCEMENT AGENCY DETERMINES THAT**
33 **THE NOTIFICATION WILL IMPEDE A CRIMINAL INVESTIGATION OR JEOPARDIZE**
34 **HOMELAND OR NATIONAL SECURITY; OR**

1 **(II) TO DETERMINE THE SCOPE OF THE BREACH OF THE**
2 **SECURITY OF A SYSTEM, IDENTIFY THE INDIVIDUALS AFFECTED, OR RESTORE**
3 **THE INTEGRITY OF THE SYSTEM.**

4 **(2) IF NOTIFICATION IS DELAYED UNDER PARAGRAPH (1)(I) OF**
5 **THIS SUBSECTION, NOTIFICATION SHALL BE GIVEN AS SOON AS REASONABLY**
6 **PRACTICABLE, ~~BUT NOT LATER THAN 45 DAYS~~ AFTER THE LAW ENFORCEMENT**
7 **AGENCY DETERMINES THAT THE NOTIFICATION WILL NOT IMPEDE A CRIMINAL**
8 **INVESTIGATION AND WILL NOT JEOPARDIZE HOMELAND OR NATIONAL**
9 **SECURITY.**

10 **(E) THE NOTIFICATION REQUIRED UNDER SUBSECTION (B) OF THIS**
11 **SECTION MAY BE GIVEN:**

12 **(1) BY WRITTEN NOTICE SENT TO THE MOST RECENT ADDRESS OF**
13 **THE INDIVIDUAL IN THE RECORDS OF THE UNIT;**

14 **(2) BY ELECTRONIC MAIL TO THE MOST RECENT ELECTRONIC**
15 **MAIL ADDRESS OF THE ~~RESIDENT~~ INDIVIDUAL IN THE RECORDS OF THE UNIT IF:**

16 **(I) THE ~~RESIDENT~~ INDIVIDUAL HAS EXPRESSLY**
17 **CONSENTED TO RECEIVE ELECTRONIC NOTICE; OR**

18 **(II) THE UNIT CONDUCTS ITS DUTIES PRIMARILY THROUGH**
19 **INTERNET ACCOUNT TRANSACTIONS OR THE INTERNET;**

20 **(3) BY TELEPHONIC NOTICE, TO THE MOST RECENT TELEPHONE**
21 **NUMBER OF THE ~~RESIDENT~~ INDIVIDUAL IN THE RECORDS OF THE UNIT; OR**

22 **(4) BY SUBSTITUTE NOTICE AS PROVIDED IN SUBSECTION (F) OF**
23 **THIS SECTION IF:**

24 **(I) THE UNIT DEMONSTRATES THAT THE COST OF**
25 **PROVIDING NOTICE WOULD EXCEED \$100,000 OR THAT THE AFFECTED CLASS**
26 **OF INDIVIDUALS TO BE NOTIFIED EXCEEDS 175,000; OR**

27 **(II) THE UNIT DOES NOT HAVE SUFFICIENT CONTACT**
28 **INFORMATION TO GIVE NOTICE IN ACCORDANCE WITH ITEM (1), (2), OR (3) OF**
29 **THIS SUBSECTION.**

30 **(F) SUBSTITUTE NOTICE UNDER SUBSECTION (E)(4) OF THIS SECTION**
31 **SHALL CONSIST OF:**

1 (1) ELECTRONICALLY MAILING THE NOTICE TO ~~A RESIDENT AN~~
2 INDIVIDUAL ENTITLED TO NOTIFICATION UNDER SUBSECTION (B) OF THIS
3 SECTION IF THE UNIT HAS AN ELECTRONIC MAIL ADDRESS FOR THE ~~RESIDENT~~
4 INDIVIDUAL TO BE NOTIFIED;

5 (2) CONSPICUOUS POSTING OF THE NOTICE ON THE WEB SITE OF
6 THE UNIT IF THE UNIT MAINTAINS A WEB SITE; AND

7 (3) NOTIFICATION TO ~~STATEWIDE~~ APPROPRIATE MEDIA.

8 (G) THE NOTIFICATION REQUIRED UNDER SUBSECTION (B) OF THIS
9 SECTION SHALL INCLUDE:

10 (1) TO THE EXTENT POSSIBLE, A DESCRIPTION OF THE
11 CATEGORIES OF INFORMATION THAT WERE, OR ARE REASONABLY BELIEVED TO
12 HAVE BEEN, ACQUIRED BY AN UNAUTHORIZED PERSON, INCLUDING WHICH OF
13 THE ELEMENTS OF PERSONAL ~~OR PRIVATE~~ INFORMATION WERE, OR ARE
14 REASONABLY BELIEVED TO HAVE BEEN, ACQUIRED;

15 (2) CONTACT INFORMATION FOR THE UNIT MAKING THE
16 NOTIFICATION, INCLUDING THE UNIT'S ADDRESS, TELEPHONE NUMBER, AND
17 TOLL-FREE TELEPHONE NUMBER IF ONE IS MAINTAINED;

18 (3) THE TOLL-FREE TELEPHONE NUMBERS AND ADDRESSES FOR
19 THE MAJOR CONSUMER REPORTING AGENCIES; AND

20 (4) (I) THE TOLL-FREE TELEPHONE NUMBERS, ADDRESSES,
21 AND WEB SITE ADDRESSES FOR:

22 1. THE FEDERAL TRADE COMMISSION; AND

23 2. THE OFFICE OF THE ATTORNEY GENERAL; AND

24 (II) A STATEMENT THAT ~~A RESIDENT AN~~ INDIVIDUAL CAN
25 OBTAIN INFORMATION FROM THESE SOURCES ABOUT STEPS THE ~~RESIDENT~~
26 INDIVIDUAL CAN TAKE TO AVOID IDENTITY THEFT.

27 (H) (1) BEFORE GIVING THE NOTIFICATION REQUIRED UNDER
28 SUBSECTION (B) OF THIS SECTION ~~AND SUBJECT TO SUBSECTION (D) OF THIS~~
29 ~~SECTION~~, A UNIT SHALL PROVIDE NOTICE OF A BREACH OF THE SECURITY OF A
30 SYSTEM TO THE OFFICE OF THE ATTORNEY GENERAL.

31 (2) IN ADDITION TO THE NOTICE REQUIRED UNDER PARAGRAPH
32 (1) OF THIS SUBSECTION, A UNIT, AS DEFINED IN ~~§ 10-1301(H)(1)~~ §

1 10-1301(F)(1) OF THIS SUBTITLE, SHALL PROVIDE NOTICE OF A BREACH OF
2 SECURITY TO THE DEPARTMENT OF INFORMATION TECHNOLOGY.

3 (I) A WAIVER OF ANY PROVISION OF THIS SECTION IS CONTRARY TO
4 PUBLIC POLICY AND IS VOID AND UNENFORCEABLE.

5 (J) COMPLIANCE WITH THIS SECTION DOES NOT RELIEVE A UNIT FROM
6 A DUTY TO COMPLY WITH ANY OTHER REQUIREMENTS OF FEDERAL LAW
7 RELATING TO THE PROTECTION AND PRIVACY OF PERSONAL ~~OR PRIVATE~~
8 INFORMATION.

9 ~~10-1305.~~ 10-1306.

10 THE PROVISIONS OF THIS SUBTITLE ARE EXCLUSIVE AND SHALL
11 PREEMPT ANY PROVISION OF LOCAL LAW.

12 ~~10-1306.~~ 10-1307.

13 (A) IF A UNIT IS REQUIRED UNDER ~~§ 10-1304~~ § 10-1305 OF THIS
14 SUBTITLE TO GIVE NOTICE OF A BREACH OF THE SECURITY OF A SYSTEM TO
15 1,000 OR MORE INDIVIDUALS, THE UNIT ALSO SHALL NOTIFY, WITHOUT
16 UNREASONABLE DELAY, EACH CONSUMER REPORTING AGENCY THAT COMPILES
17 AND MAINTAINS FILES ON CONSUMERS ON A NATIONWIDE BASIS, AS DEFINED BY
18 15 U.S.C. § 1681A(P), OF THE TIMING, DISTRIBUTION, AND CONTENT OF THE
19 NOTICES.

20 (B) THIS SECTION DOES NOT REQUIRE THE INCLUSION OF THE NAMES
21 OR OTHER PERSONAL IDENTIFYING INFORMATION OF RECIPIENTS OF NOTICES
22 OF THE BREACH OF THE SECURITY OF A SYSTEM.

23 ~~10-1307.~~ 10-1308.

24 (A) ~~IN THIS SECTION, "AFFILIATE" MEANS AN ENTITY THAT CONTRACTS~~
25 ~~WITH A UNIT IN SUBSECTION (C) OF THIS SECTION.~~

26 (B) ~~A UNIT THAT COMPLIES WITH THE REQUIREMENTS FOR~~
27 ~~NOTIFICATION PROCEDURES, THE PROTECTION OR SECURITY OF PERSONAL OR~~
28 ~~PRIVATE INFORMATION, OR THE DESTRUCTION OF PERSONAL OR PRIVATE~~
29 ~~INFORMATION UNDER THE RULES, REGULATIONS, PROCEDURES, OR~~
30 ~~GUIDELINES ESTABLISHED BY THE PRIMARY OR FUNCTIONAL FEDERAL OR~~
31 ~~STATE REGULATOR OF THE UNIT SHALL BE DEEMED TO BE IN COMPLIANCE~~
32 ~~WITH THIS SUBTITLE.~~

1 ~~(C) AN AFFILIATE~~ A UNIT OR NONAFFILIATED THIRD PARTY THAT
2 COMPLIES WITH § 501(B) OF THE FEDERAL GRAMM-LEACH-BLILEY ACT; 15
3 U.S.C. § 6801, § 216 OF THE FEDERAL FAIR AND ACCURATE CREDIT
4 TRANSACTIONS ACT; 15 U.S.C. § 1681W DISPOSAL OF RECORDS; THE FEDERAL
5 INTERAGENCY GUIDELINES ESTABLISHING INFORMATION SECURITY
6 STANDARDS; AND THE FEDERAL INTERAGENCY GUIDANCE ON RESPONSE
7 PROGRAMS FOR UNAUTHORIZED ACCESS TO CUSTOMER INFORMATION AND
8 CUSTOMER NOTICE; AND ANY REVISIONS, ADDITIONS, OR SUBSTITUTIONS OF
9 THOSE ENACTMENTS, SHALL BE DEEMED TO BE IN COMPLIANCE WITH THIS
10 SUBTITLE.

11 ~~10-1308.~~

12 ~~(A) IF A UNIT VIOLATES THE PROVISIONS OF THIS SUBTITLE, A~~
13 ~~RESIDENT MAY FILE A CIVIL ACTION FOR DAMAGES UNDER THE APPLICABLE~~
14 ~~PROVISIONS OF:~~

15 ~~(1) THE MARYLAND TORT CLAIMS ACT, AS SET FORTH IN TITLE~~
16 ~~12 OF THIS ARTICLE; OR~~

17 ~~(2) THE LOCAL GOVERNMENT TORT CLAIMS ACT, AS SET FORTH~~
18 ~~IN TITLE 5, SUBTITLE 3 OF THE COURTS ARTICLE.~~

19 ~~(B) A CIVIL ACTION UNDER THIS SECTION SHALL BE FILED IN THE~~
20 ~~COUNTY IN WHICH THE RESIDENT RESIDES.~~

21 ~~10-1309.~~

22 ~~THE SECRETARY OF INFORMATION TECHNOLOGY, IN CONSULTATION~~
23 ~~WITH THE DEPARTMENT OF BUDGET AND MANAGEMENT AND THE DIVISION OF~~
24 ~~CONSUMER PROTECTION IN THE OFFICE OF THE ATTORNEY GENERAL, SHALL~~
25 ~~ADOPT REGULATIONS TO CARRY OUT THE PROVISIONS OF THIS SUBTITLE FOR~~
26 ~~THE GOVERNMENT AGENCIES SPECIFIED IN § 10-1301(H)(1) OF THIS SUBTITLE.~~

27 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
28 ~~October 1, 2013~~ July 1, 2014.