

HOUSE BILL 1389

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By: **Delegate Love**

Introduced and read first time: February 7, 2020

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Personal Information Protection Act – Geolocation Information and**
3 **Unfair, Abusive, and Deceptive Trade Practices**

4 FOR the purpose of prohibiting a business from collecting, using, storing, or disclosing
5 certain geolocation information from a certain application on a mobile device of an
6 individual except in certain circumstances; authorizing a business to collect, use,
7 store, or disclose certain geolocation information from a certain application on a
8 mobile device of an individual if certain notification is provided to and consent is
9 obtained from the individual; authorizing a business to collect, use, store, or disclose
10 geolocation information without obtaining consent from a certain individual if it is
11 being used for certain purposes; requiring a business to obtain certain consent from
12 an individual to collect, use, store, or disclose certain information after obtaining an
13 initial consent under certain circumstances; requiring the Division of Consumer
14 Protection in the Office of the Attorney General to give certain notice and allow for
15 certain action on a certain finding after a certain investigation; establishing that
16 unfair, abusive, or deceptive trade practices under the Maryland Consumer
17 Protection Act include a violation of the Maryland Personal Information Protection
18 Act; defining certain terms; providing for the application of this Act; and generally
19 relating to the Maryland Personal Information Protection Act.

20 BY renumbering

21 Article – Commercial Law
22 Section 13–301(14)(xxxii) and (xxxiii), respectively
23 to be Section 13–301(14)(xxxiii) and (xxxiv), respectively
24 Annotated Code of Maryland
25 (2013 Replacement Volume and 2019 Supplement)

26 BY adding to

27 Article – Commercial Law
28 Section 13–301(14)(xxxii) and 14–3504.1
29 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(2013 Replacement Volume and 2019 Supplement)

BY repealing and reenacting, without amendments,
Article – Commercial Law
Section 13–401, 14–3501, and 14–3508
Annotated Code of Maryland
(2013 Replacement Volume and 2019 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That Section(s) 13–301(14)(xxxii) and (xxxiii), respectively, of Article – Commercial Law of
the Annotated Code of Maryland be renumbered to be Section(s) 13–301(14)(xxxiii) and
(xxxiv), respectively.

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read
as follows:

Article – Commercial Law

13–301.

Unfair, abusive, or deceptive trade practices include any:

(14) Violation of a provision of:

**(XXXII) TITLE 14, SUBTITLE 35 OF THIS ARTICLE, THE
MARYLAND PERSONAL INFORMATION PROTECTION ACT;**

13–401.

(a) A consumer who is subjected to a violation of this title may file with the
Division a written complaint which states:

(1) The name and address of the person alleged to have committed the
violation complained of;

(2) The particulars of the violation; and

(3) Any other information required by the Division.

(b) After the filing of a complaint, the Division shall investigate the allegations to
ascertain issues and facts. If appropriate, the Division shall refer a complaint to the Federal
Trade Commission.

(c) The Division may seek the cooperation of the licensing authorities and
contracting departments of the State in connection with its investigation of a person who
is licensed to do business in the State or who has a contractual relationship with the State.

(d) If the Division determines that the complaint lacks reasonable grounds on which to base a violation of this subtitle, it may:

(1) Dismiss the complaint; or

(2) Conduct any further investigation it considers necessary.

(e) This section does not prevent a consumer from:

(1) Exercising any right or seeking any remedy to which he might otherwise be entitled; or

(2) Filing a complaint with any other agency or court.

14–3501.

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

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

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

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

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

(e) (1) “Personal information” means:

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

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

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

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

4. Health information, including information about an individual's mental health;

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

6. Biometric data of an individual generated by automatic measurements of an individual's biological characteristics such as a fingerprint, voice print, genetic print, retina or iris image, or other unique biological characteristic, that can be used to uniquely authenticate the individual's identity when the individual accesses a system or account; or

(ii) A user name or e-mail address in combination with a password or security question and answer that permits access to an individual's e-mail account.

(2) "Personal information" does not include:

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

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

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

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

14-3504.1.

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

(2) (I) "GEOLOCATION INFORMATION" MEANS INFORMATION THAT IS:

1. GENERATED BY OR DERIVED FROM, IN WHOLE OR IN PART, THE OPERATION OF A MOBILE DEVICE INCLUDING A SMART PHONE, TABLET, OR LAPTOP COMPUTER;

1 2. SUFFICIENT TO DETERMINE OR INFER THE PRECISE
2 LOCATION OF THE MOBILE DEVICE; AND

3 3. NOT THE CONTENTS OF A COMMUNICATION.

4 (ii) “GEOLOCATION INFORMATION” DOES NOT INCLUDE AN
5 INTERNET PROTOCOL ADDRESS.

6 (3) “LOCATION-BASED APPLICATION” MEANS A SOFTWARE
7 APPLICATION THAT IS DOWNLOADED OR INSTALLED ONTO A MOBILE DEVICE AND
8 COLLECTS, USES, OR STORES GEOLOCATION INFORMATION.

9 (b) EXCEPT AS PROVIDED IN SUBSECTIONS (C) THROUGH (E) OF THIS
10 SECTION, A BUSINESS MAY NOT COLLECT, USE, STORE, OR DISCLOSE GEOLOCATION
11 INFORMATION FROM A LOCATION-BASED APPLICATION ON A MOBILE DEVICE OF AN
12 INDIVIDUAL.

13 (c) A BUSINESS MAY COLLECT, USE, STORE, OR DISCLOSE GEOLOCATION
14 INFORMATION FROM A LOCATION-BASED APPLICATION ON A MOBILE DEVICE OF AN
15 INDIVIDUAL IF THE BUSINESS, BEFORE COLLECTING, USING, STORING, OR
16 DISCLOSING THE GEOLOCATION INFORMATION:

17 (1) CLEARLY AND CONSPICUOUSLY INFORMS THE INDIVIDUAL THAT
18 GEOLOCATION INFORMATION WILL BE COLLECTED, USED, STORED, OR DISCLOSED;

19 (2) CLEARLY AND CONSPICUOUSLY INFORMS THE INDIVIDUAL IN
20 WRITING OF THE SPECIFIC PURPOSES FOR WHICH THE GEOLOCATION INFORMATION
21 WILL BE COLLECTED, USED, STORED, OR DISCLOSED; AND

22 (3) OBTAINS EXPRESS AFFIRMATIVE CONSENT TO COLLECT, USE,
23 STORE, OR DISCLOSE THE INDIVIDUAL’S GEOLOCATION INFORMATION.

24 (d) A BUSINESS MAY COLLECT, USE, STORE, OR DISCLOSE GEOLOCATION
25 INFORMATION FROM A LOCATION-BASED APPLICATION ON A MOBILE DEVICE
26 WITHOUT RECEIVING AFFIRMATIVE EXPRESS CONSENT FROM THE INDIVIDUAL IF
27 THE COLLECTION, STORAGE, OR DISCLOSURE IS:

28 (1) FOR THE PURPOSE OF ALLOWING A PARENT OR LEGAL GUARDIAN
29 TO LOCATE AN UNEMANCIPATED MINOR CHILD;

30 (2) FOR THE PURPOSE OF ALLOWING A COURT-APPOINTED
31 GUARDIAN TO LOCATE A LEGALLY INCAPACITATED PERSON;

(3) FOR THE PURPOSE OF PROVIDING FIRE, MEDICAL, PUBLIC SAFETY, OR OTHER EMERGENCY SERVICE; OR

(4) FOR THE LIMITED PURPOSE OF PROVIDING STORAGE, SECURITY, OR AUTHENTICATION SERVICES.

(E) A BUSINESS SHALL OBTAIN AFFIRMATIVE EXPRESS CONSENT FROM AN INDIVIDUAL TO COLLECT, USE, STORE, OR DISCLOSE GEOLOCATION INFORMATION AFTER OBTAINING AN INITIAL CONSENT FROM THE INDIVIDUAL IF THE PREVIOUSLY AGREED-TO TERMS ARE MATERIALLY CHANGED.

(F) IF, AFTER AN INVESTIGATION UNDER TITLE 13 OF THIS ARTICLE, THE DIVISION FINDS THAT A BUSINESS IS IN VIOLATION OF THIS SECTION:

(1) THE DIVISION SHALL NOTIFY THE BUSINESS OF THE VIOLATION; AND

(2) THE BUSINESS SHALL HAVE 15 DAYS AFTER BEING NOTIFIED OF A VIOLATION TO REMEDY THE VIOLATION BEFORE THE DIVISION MAY TAKE FURTHER ACTION AS PROVIDED IN § 14-3508 OF THIS SUBTITLE.

14-3508.

A violation of this subtitle:

(1) Is an unfair or deceptive trade practice within the meaning of Title 13 of this article; and

(2) Is subject to the enforcement and penalty provisions contained in Title 13 of this article.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any location-based applications that were created or modified before the effective date of this Act.

SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2020.