

Chapter 301

(House Bill 942)

AN ACT concerning

Identity Fraud – ~~Medical~~ Health Information and Health Care Records

FOR the purpose of prohibiting a person from knowingly, willfully, and with fraudulent intent, possessing, obtaining, or helping another to possess or obtain personal identifying information to access ~~medical~~ health information or ~~services~~ health care; prohibiting a person from knowingly and willfully assuming the identity of a natural or a fictitious person with fraudulent intent to access ~~medical~~ health information or ~~services~~ health care; prohibiting a person from using a certain device knowingly, willfully, and with fraudulent intent to access ~~medical~~ health information or ~~services~~ health care; providing penalties for a violation of this Act; authorizing a court to order a certain person to make restitution for clearing the ~~medical history or records~~ record or history related to health information or health care of a victim; defining certain terms; altering a certain definition; and generally relating to identity fraud.

BY repealing and reenacting, with amendments,
Article – Criminal Law
Section 8–301(a) through (d), (g), and (i)
Annotated Code of Maryland
(2012 Replacement Volume and 2012 Supplement)

BY repealing and reenacting, without amendments,
Article – Criminal Law
Section 8–301(e), (f), (h), and (j)
Annotated Code of Maryland
(2012 Replacement Volume and 2012 Supplement)

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

Article – Criminal Law

8–301.

(a) (1) In this section the following words have the meanings indicated.

(2) “HEALTH CARE” MEANS CARE, SERVICES, OR SUPPLIES RELATED TO THE HEALTH OF AN INDIVIDUAL THAT INCLUDES THE FOLLOWING:

(I) PREVENTATIVE, DIAGNOSTIC, THERAPEUTIC, REHABILITATIVE, MAINTENANCE CARE, PALLIATIVE CARE AND COUNSELING, SERVICE ASSESSMENT, OR PROCEDURE:

1. WITH RESPECT TO THE PHYSICAL OR MENTAL CONDITION OR FUNCTIONAL STATUS OF AN INDIVIDUAL; OR

2. THAT AFFECTS THE STRUCTURE OR FUNCTION OF THE BODY; AND

(II) THE SALE OR DISPENSING OF A DRUG, DEVICE, EQUIPMENT, OR OTHER ITEM IN ACCORDANCE WITH A PRESCRIPTION.

(3) "HEALTH INFORMATION" MEANS ANY INFORMATION, WHETHER ORAL OR RECORDED IN ANY FORM OR MEDIUM, THAT:

(I) IS CREATED OR RECEIVED BY:

1. A HEALTH CARE PROVIDER;

2. A HEALTH CARE CARRIER;

3. A PUBLIC HEALTH AUTHORITY;

4. AN EMPLOYER;

5. A LIFE INSURER;

6. A SCHOOL OR UNIVERSITY; OR

7. A HEALTH CARE CLEARINGHOUSE; AND

(II) RELATES TO THE:

1. PAST, PRESENT, OR FUTURE PHYSICAL OR MENTAL HEALTH OR CONDITION OF AN INDIVIDUAL;

2. PROVISION OF HEALTH CARE TO AN INDIVIDUAL;
OR

3. PAST, PRESENT, OR FUTURE PAYMENT FOR THE PROVISION OF HEALTH CARE TO AN INDIVIDUAL.

~~(2)~~ **(4)** “Payment device number” has the meaning stated in § 8–213 of this title.

~~(3)~~ **(5) (I)** “Personal identifying information” includes a name, address, telephone number, driver’s license number, Social Security number, place of employment, employee identification number, **HEALTH INSURANCE IDENTIFICATION NUMBER, MEDICAL IDENTIFICATION NUMBER,** mother’s maiden name, bank or other financial institution account number, date of birth, personal identification number, **UNIQUE BIOMETRIC DATA, INCLUDING FINGERPRINT, VOICE PRINT, RETINA OR IRIS IMAGE OR OTHER UNIQUE PHYSICAL REPRESENTATION, DIGITAL SIGNATURE,** credit card number, or other payment device number.

(II) “PERSONAL IDENTIFYING INFORMATION” MAY BE DERIVED FROM ANY ELEMENT IN SUBPARAGRAPH (I) OF THIS PARAGRAPH, ALONE OR IN CONJUNCTION WITH ANY OTHER INFORMATION TO IDENTIFY A SPECIFIC NATURAL OR FICTITIOUS INDIVIDUAL.

~~(4)~~ **(6)** “Re–encoder” means an electronic device that places encoded personal identifying information or a payment device number from the magnetic strip or stripe of a credit card onto the magnetic strip or stripe of a different credit card or any electronic medium that allows such a transaction to occur.

~~(5)~~ **(7)** “Skimming device” means a scanner, skimmer, reader, or any other electronic device that is used to access, read, scan, obtain, memorize, or store, temporarily or permanently, personal identifying information or a payment device number encoded on the magnetic strip or stripe of a credit card.

(b) A person may not knowingly, willfully, and with fraudulent intent possess, obtain, or help another to possess or obtain any personal identifying information of an individual, without the consent of the individual, in order to use, sell, or transfer the information to get a benefit, credit, good, service, or other thing of value **OR TO ACCESS ~~MEDICAL~~ HEALTH INFORMATION OR ~~SERVICES~~ HEALTH CARE** in the name of the individual.

(c) A person may not knowingly and willfully assume the identity of another, including a fictitious person:

- (1) to avoid identification, apprehension, or prosecution for a crime; or
- (2) with fraudulent intent to:
 - (i) get a benefit, credit, good, service, or other thing of value;

[or]

(ii) **ACCESS ~~MEDICAL~~ HEALTH INFORMATION OR ~~SERVICES~~ HEALTH CARE; OR**

(iii) avoid the payment of debt or other legal obligation.

(d) A person may not knowingly, willfully, and with fraudulent intent to obtain a benefit, credit, good, service, or other thing of value **OR TO ACCESS ~~MEDICAL~~ HEALTH INFORMATION OR ~~SERVICES~~ HEALTH CARE**, use:

(1) a re-encoder to place information encoded on the magnetic strip or stripe of a credit card onto the magnetic strip or stripe of a different credit card or use any other electronic medium that allows such a transaction to occur without the consent of the individual authorized to use the credit card from which the personal identifying information or payment device number is being re-encoded; or

(2) a skimming device to access, read, scan, obtain, memorize, or store personal identifying information or a payment device number on the magnetic strip or stripe of a credit card without the consent of the individual authorized to use the credit card.

(e) A person may not knowingly, willfully, and with fraudulent intent possess, obtain, or help another possess or obtain a re-encoder device or a skimming device for the unauthorized use, sale, or transfer of personal identifying information or a payment device number.

(f) A person may not knowingly and willfully claim to represent another person without the knowledge and consent of that person, with the intent to solicit, request, or take any other action to otherwise induce another person to provide personal identifying information or a payment device number.

(g) (1) A person who violates this section where the benefit, credit, good, service, **~~MEDICAL~~ HEALTH INFORMATION OR ~~SERVICES~~ HEALTH CARE**, or other thing of value that is the subject of subsection (b), (c), or (d) of this section has a value of \$500 or greater is guilty of a felony and on conviction is subject to imprisonment not exceeding 15 years or a fine not exceeding \$25,000 or both.

(2) A person who violates this section where the benefit, credit, good, service, **~~MEDICAL~~ HEALTH INFORMATION OR ~~SERVICES~~ HEALTH CARE**, or other thing of value that is the subject of subsection (b), (c), or (d) of this section has a value of less than \$500 is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 18 months or a fine not exceeding \$5,000 or both.

(3) A person who violates this section under circumstances that reasonably indicate that the person's intent was to manufacture, distribute, or dispense another individual's personal identifying information without that

individual's consent is guilty of a felony and on conviction is subject to imprisonment not exceeding 15 years or a fine not exceeding \$25,000 or both.

(4) A person who violates subsection (c)(1), (e), or (f) of this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 18 months or a fine not exceeding \$5,000 or both.

(5) When the violation of this section is pursuant to one scheme or continuing course of conduct, whether from the same or several sources, the conduct may be considered as one violation and the value of the benefit, credit, good, service, or other thing of value may be aggregated in determining whether the violation is a felony or misdemeanor.

(h) A person described in subsection (g)(2) or (4) of this section is subject to § 5-106(b) of the Courts Article.

(i) In addition to restitution under Title 11, Subtitle 6 of the Criminal Procedure Article, a court may order a person who pleads guilty or nolo contendere or who is found guilty under this section to make restitution to the victim for reasonable costs, including reasonable attorney's fees, incurred:

(1) for clearing the victim's credit history or credit rating; [and]

(2) **FOR CLEARING THE VICTIM'S ~~MEDICAL~~ RECORD OR HISTORY OR RECORDS RELATED TO HEALTH INFORMATION OR HEALTH CARE; AND**

(3) in connection with a civil or administrative proceeding to satisfy a debt, lien, judgment, or other obligation of the victim that arose because of the violation.

(j) A sentence under this section may be imposed separate from and consecutive to or concurrent with a sentence for any crime based on the act or acts establishing the violation of this section.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2013.

Approved by the Governor, May 2, 2013.