
SUBSTITUTE SENATE BILL 6043

State of Washington

59th Legislature

2005 Regular Session

By Senate Committee on Financial Institutions, Housing & Consumer Protection (originally sponsored by Senators Brandland, Fairley, Benson, Keiser, Schmidt, Spanel, Benton, Franklin, Berkey, Kohl-Welles and Rasmussen)

READ FIRST TIME 03/02/05.

1 AN ACT Relating to breaches of security that compromise personal
2 information; adding a new section to chapter 42.17 RCW; and adding a
3 new chapter to Title 19 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 42.17 RCW
6 under the subchapter heading "public records" to read as follows:

7 (1)(a) Any agency that owns or licenses computerized data that
8 includes personal information shall disclose any breach of the security
9 of the system following discovery or notification of the breach in the
10 security of the data to any resident of this state whose unencrypted
11 personal information was, or is reasonably believed to have been,
12 acquired by an unauthorized person. The disclosure shall be made in
13 the most expedient time possible and without unreasonable delay,
14 consistent with the legitimate needs of law enforcement, as provided in
15 subsection (3) of this section, or any measures necessary to determine
16 the scope of the breach and restore the reasonable integrity of the
17 data system.

18 (b) For purposes of this section, "agency" means the same as in RCW
19 42.17.020.

1 (2) Any agency that maintains computerized data that includes
2 personal information that the agency does not own shall notify the
3 owner or licensee of the information of any breach of the security of
4 the data immediately following discovery, if the personal information
5 was, or is reasonably believed to have been, acquired by an
6 unauthorized person.

7 (3) The notification required by this section may be delayed if a
8 law enforcement agency determines that the notification will impede a
9 criminal investigation. The notification required by this section
10 shall be made after the law enforcement agency determines that it will
11 not compromise the investigation.

12 (4) For purposes of this section, "breach of the security of the
13 system" means unauthorized acquisition of computerized data that
14 compromises the security, confidentiality, or integrity of personal
15 information maintained by the agency. Good faith acquisition of
16 personal information by an employee or agent of the agency for the
17 purposes of the agency is not a breach of the security of the system
18 when the personal information is not used or subject to further
19 unauthorized disclosure.

20 (5) For purposes of this section, "personal information" means an
21 individual's first name or first initial and last name in combination
22 with any one or more of the following data elements, when either the
23 name or the data elements are not encrypted:

24 (a) Social security number;

25 (b) Driver's license number or Washington identification card
26 number; or

27 (c) Account number or credit or debit card number, in combination
28 with any required security code, access code, or password that would
29 permit access to an individual's financial account.

30 (6) For purposes of this section, "personal information" does not
31 include publicly available information that is lawfully made available
32 to the general public from federal, state, or local government records.

33 (7) For purposes of this section and except under subsection (8) of
34 this section, notice may be provided by one of the following methods:

35 (a) Written notice;

36 (b) Electronic notice, if the notice provided is consistent with
37 the provisions regarding electronic records and signatures set forth in
38 15 U.S.C. Sec. 7001; or

1 (c) Substitute notice, if the agency demonstrates that the cost of
2 providing notice would exceed two hundred fifty thousand dollars, or
3 that the affected class of subject persons to be notified exceeds five
4 hundred thousand, or the agency does not have sufficient contact
5 information. Substitute notice shall consist of all of the following:

6 (i) E-mail notice when the agency has an e-mail address for the
7 subject persons;

8 (ii) Conspicuous posting of the notice on the agency's web site
9 page, if the agency maintains one; and

10 (iii) Notification to major statewide media.

11 (8) An agency that maintains its own notification procedures as
12 part of an information security policy for the treatment of personal
13 information and is otherwise consistent with the timing requirements of
14 this section is in compliance with the notification requirements of
15 this section if it notifies subject persons in accordance with its
16 policies in the event of a breach of security of the system.

17 (9) Any waiver of the provisions of this section is contrary to
18 public policy, and is void and unenforceable.

19 (10)(a) Any customer injured by a violation of this section may
20 institute a civil action to recover damages.

21 (b) Any business that violates, proposes to violate, or has
22 violated this section may be enjoined.

23 (c) The rights and remedies available under this section are
24 cumulative to each other and to any other rights and remedies available
25 under law.

26 (d) An agency shall not be required to disclose a technical breach
27 of the security system that does not seem reasonably likely to subject
28 customers to a risk of criminal activity.

29 NEW SECTION. **Sec. 2.** (1) Any person or business that conducts
30 business in this state and that owns or licenses computerized data that
31 includes personal information shall disclose any breach of the security
32 of the system following discovery or notification of the breach in the
33 security of the data to any resident of this state whose unencrypted
34 personal information was, or is reasonably believed to have been,
35 acquired by an unauthorized person. The disclosure shall be made in
36 the most expedient time possible and without unreasonable delay,
37 consistent with the legitimate needs of law enforcement, as provided in

1 subsection (3) of this section, or any measures necessary to determine
2 the scope of the breach and restore the reasonable integrity of the
3 data system.

4 (2) Any person or business that maintains computerized data that
5 includes personal information that the person or business does not own
6 shall notify the owner or licensee of the information of any breach of
7 the security of the data immediately following discovery, if the
8 personal information was, or is reasonably believed to have been,
9 acquired by an unauthorized person.

10 (3) The notification required by this section may be delayed if a
11 law enforcement agency determines that the notification will impede a
12 criminal investigation. The notification required by this section
13 shall be made after the law enforcement agency determines that it will
14 not compromise the investigation.

15 (4) For purposes of this section, "breach of the security of the
16 system" means unauthorized acquisition of computerized data that
17 compromises the security, confidentiality, or integrity of personal
18 information maintained by the person or business. Good faith
19 acquisition of personal information by an employee or agent of the
20 person or business for the purposes of the person or business is not a
21 breach of the security of the system when the personal information is
22 not used or subject to further unauthorized disclosure.

23 (5) For purposes of this section, "personal information" means an
24 individual's first name or first initial and last name in combination
25 with any one or more of the following data elements, when either the
26 name or the data elements are not encrypted:

27 (a) Social security number;

28 (b) Driver's license number or Washington identification card
29 number; or

30 (c) Account number or credit or debit card number, in combination
31 with any required security code, access code, or password that would
32 permit access to an individual's financial account.

33 (6) For purposes of this section, "personal information" does not
34 include publicly available information that is lawfully made available
35 to the general public from federal, state, or local government records.

36 (7) For purposes of this section and except under subsection (8) of
37 this section, "notice" may be provided by one of the following methods:

38 (a) Written notice;

1 (b) Electronic notice, if the notice provided is consistent with
2 the provisions regarding electronic records and signatures set forth in
3 15 U.S.C. Sec. 7001; or

4 (c) Substitute notice, if the person or business demonstrates that
5 the cost of providing notice would exceed two hundred fifty thousand
6 dollars, or that the affected class of subject persons to be notified
7 exceeds five hundred thousand, or the person or business does not have
8 sufficient contact information. Substitute notice shall consist of all
9 of the following:

10 (i) E-mail notice when the person or business has an e-mail address
11 for the subject persons;

12 (ii) Conspicuous posting of the notice on the web site page of the
13 person or business, if the person or business maintains one; and

14 (iii) Notification to major statewide media.

15 (8) A person or business that maintains its own notification
16 procedures as part of an information security policy for the treatment
17 of personal information and is otherwise consistent with the timing
18 requirements of this section is in compliance with the notification
19 requirements of this section if the person or business notifies subject
20 persons in accordance with its policies in the event of a breach of
21 security of the system.

22 (9) Any waiver of the provisions of this section is contrary to
23 public policy, and is void and unenforceable.

24 (10)(a) Any customer injured by a violation of this section may
25 institute a civil action to recover damages.

26 (b) Any business that violates, proposes to violate, or has
27 violated this section may be enjoined.

28 (c) The rights and remedies available under this section are
29 cumulative to each other and to any other rights and remedies available
30 under law.

31 (d) A person or business under this section shall not be required
32 to disclose a technical breach of the security system that does not
33 seem reasonably likely to subject customers to a risk of criminal
34 activity.

35 NEW SECTION. **Sec. 3.** Section 2 of this act constitutes a new

1 chapter in Title 19 RCW.

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