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**SECOND SUBSTITUTE SENATE BILL 5064**

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**State of Washington**

**66th Legislature**

**2019 Regular Session**

**By** Senate Ways & Means (originally sponsored by Senators Nguyen, Darneille, Hasegawa, Wellman, Keiser, Zeiger, Kuderer, and Saldaña; by request of Attorney General)

READ FIRST TIME 03/01/19.

1 AN ACT Relating to breach of security systems protecting personal  
2 information; amending RCW 19.255.010 and 42.56.590; adding new  
3 sections to chapter 19.255 RCW; adding new sections to chapter 42.56  
4 RCW; and providing an effective date.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 19.255  
7 RCW to read as follows:

8 The definitions in this section apply throughout this chapter  
9 unless the context clearly requires otherwise.

10 (1) "Breach of the security of the system" means unauthorized  
11 acquisition of data that compromises the security, confidentiality,  
12 or integrity of personal information maintained by the person or  
13 business. Good faith acquisition of personal information by an  
14 employee or agent of the person or business for the purposes of the  
15 person or business is not a breach of the security of the system when  
16 the personal information is not used or subject to further  
17 unauthorized disclosure.

18 (2)(a) "Personal information" means:

19 (i) An individual's first name or first initial and last name in  
20 combination with any one or more of the following data elements:

21 (A) Social security number;

1 (B) Driver's license number or Washington identification card  
2 number;

3 (C) Account number or credit or debit card number, in combination  
4 with any required security code, access code, or password that would  
5 permit access to an individual's financial account, or any other  
6 numbers or information that can be used to access a person's  
7 financial account;

8 (D) Full date of birth;

9 (E) Private key that is unique to an individual and that is used  
10 to authenticate or sign an electronic record;

11 (F) Student, military, or passport identification number;

12 (G) Health insurance policy number or health insurance  
13 identification number;

14 (H) Any information about a consumer's medical history or mental  
15 or physical condition or about a health care professional's medical  
16 diagnosis or treatment of the consumer; or

17 (I) Biometric data generated by automatic measurements of an  
18 individual's biological characteristics such as a fingerprint,  
19 voiceprint, eye retinas, irises, or other unique biological patterns  
20 or characteristics that is used to identify a specific individual;

21 (ii) Username or email address in combination with a password or  
22 security questions and answers that would permit access to an online  
23 account; and

24 (iii) Any of the data elements or any combination of the data  
25 elements described in (a)(i) of this subsection without the  
26 consumer's first name or first initial and last name if:

27 (A) Encryption, redaction, or other methods have not rendered the  
28 data element or combination of data elements unusable; and

29 (B) The data element or combination of data elements would enable  
30 a person to commit identity theft against a consumer.

31 (b) Personal information does not include publicly available  
32 information that is lawfully made available to the general public  
33 from federal, state, or local government records.

34 (3) "Secured" means encrypted in a manner that meets or exceeds  
35 the national institute of standards and technology standard or is  
36 otherwise modified so that the personal information is rendered  
37 unreadable, unusable, or undecipherable by an unauthorized person.

38 **Sec. 2.** RCW 19.255.010 and 2015 c 64 s 2 are each amended to  
39 read as follows:

1 (1) Any person or business that conducts business in this state  
2 and that owns or licenses data that includes personal information  
3 shall disclose any breach of the security of the system (~~following~~  
4 ~~discovery or notification of the breach in the security of the data~~)  
5 to any resident of this state whose personal information was, or is  
6 reasonably believed to have been, acquired by an unauthorized person  
7 and the personal information was not secured. Notice is not required  
8 if the breach of the security of the system is not reasonably likely  
9 to subject consumers to a risk of harm. The breach of secured  
10 personal information must be disclosed if the information acquired  
11 and accessed is not secured during a security breach or if the  
12 confidential process, encryption key, or other means to decipher the  
13 secured information was acquired by an unauthorized person.

14 (2) Any person or business that maintains or possesses data that  
15 may include(~~s~~) personal information that the person or business  
16 does not own or license shall notify the owner or licensee of the  
17 information of any breach of the security of the data immediately  
18 following discovery, if the personal information was, or is  
19 reasonably believed to have been, acquired by an unauthorized person.

20 (3) The notification required by this section may be delayed if  
21 the data owner or licensee contacts a law enforcement agency after  
22 discovery of a breach of the security of the system and a law  
23 enforcement agency determines that the notification will impede a  
24 criminal investigation. The notification required by this section  
25 shall be made after the law enforcement agency determines that it  
26 will not compromise the investigation.

27 (4) (~~For purposes of this section, "breach of the security of~~  
28 ~~the system" means unauthorized acquisition of data that compromises~~  
29 ~~the security, confidentiality, or integrity of personal information~~  
30 ~~maintained by the person or business. Good faith acquisition of~~  
31 ~~personal information by an employee or agent of the person or~~  
32 ~~business for the purposes of the person or business is not a breach~~  
33 ~~of the security of the system when the personal information is not~~  
34 ~~used or subject to further unauthorized disclosure.~~

35 ~~(5) For purposes of this section, "personal information" means an~~  
36 ~~individual's first name or first initial and last name in combination~~  
37 ~~with any one or more of the following data elements:~~

38 ~~(a) Social security number;~~

39 ~~(b) Driver's license number or Washington identification card~~  
40 ~~number; or~~

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

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

8 ~~(7) For purposes of this section, "secured" means encrypted in a~~  
9 ~~manner that meets or exceeds the national institute of standards and~~  
10 ~~technology (NIST) standard or is otherwise modified so that the~~  
11 ~~personal information is rendered unreadable, unusable, or~~  
12 ~~undecipherable by an unauthorized person.~~

13 ~~(8) For purposes of this section and except under subsections (9)~~  
14 ~~and (10) of this section,)) "Notice" may be provided by one of the~~  
15 ~~following methods:~~

16 (a) Written notice;

17 (b) Electronic notice, if the notice provided is consistent with  
18 the provisions regarding electronic records and signatures set forth  
19 in 15 U.S.C. Sec. 7001; ~~((e))~~

20 (c) Substitute notice, if the person or business demonstrates  
21 that the cost of providing notice would exceed two hundred fifty  
22 thousand dollars, or that the affected class of subject persons to be  
23 notified exceeds five hundred thousand, or the person or business  
24 does not have sufficient contact information. Substitute notice shall  
25 consist of all of the following:

26 (i) Email notice when the person or business has an email address  
27 for the subject persons;

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

30 (iii) Notification to major statewide media; or

31 (d) (i) Electronic or other form, if the breach of the security of  
32 the system involves personal information including a user name or  
33 password. The notice must direct the person whose personal  
34 information has been breached to promptly change his or her password  
35 and security question or answer, as applicable, or to take other  
36 appropriate steps to protect the online account with the person or  
37 business and all other online accounts for which the person whose  
38 personal information has been breached uses the same user name or  
39 email address and password or security question or answer;

1 (ii) However, when the breach of the security of the system  
2 involves login credentials of an email account furnished by the  
3 person or business, the person or business may not comply with this  
4 section by providing the notification to that email address, but must  
5 comply with this section by providing notice using another method  
6 described in this section or by clear and conspicuous notice  
7 delivered to the resident online when the resident is connected to  
8 the online account from an internet protocol address or online  
9 location from which the person or business knows the resident  
10 customarily accesses the account.

11 ~~((9))~~ (5) A person or business that maintains its own  
12 notification procedures as part of an information security policy for  
13 the treatment of personal information and is otherwise consistent  
14 with the timing requirements of this section is in compliance with  
15 the notification requirements of this section if the person or  
16 business notifies subject persons in accordance with its policies in  
17 the event of a breach of security of the system.

18 ~~((10) A covered entity under the federal health insurance~~  
19 ~~portability and accountability act of 1996, 42 U.S.C. Sec. 1320d et~~  
20 ~~seq., is deemed to have complied with the requirements of this~~  
21 ~~section with respect to protected health information if it has~~  
22 ~~complied with section 13402 of the federal health information~~  
23 ~~technology for economic and clinical health act, Public Law 111-5 as~~  
24 ~~it existed on July 24, 2015. Covered entities shall notify the~~  
25 ~~attorney general pursuant to subsection (15) of this section in~~  
26 ~~compliance with the timeliness of notification requirements of~~  
27 ~~section 13402 of the federal health information technology for~~  
28 ~~economic and clinical health act, Public Law 111-5 as it existed on~~  
29 ~~July 24, 2015, notwithstanding the notification requirement in~~  
30 ~~subsection (16) of this section.~~

31 ~~(11) A financial institution under the authority of the office of~~  
32 ~~the comptroller of the currency, the federal deposit insurance~~  
33 ~~corporation, the national credit union administration, or the federal~~  
34 ~~reserve system is deemed to have complied with the requirements of~~  
35 ~~this section with respect to "sensitive customer information" as~~  
36 ~~defined in the interagency guidelines establishing information~~  
37 ~~security standards, 12 C.F.R. Part 30, Appendix B, 12 C.F.R. Part~~  
38 ~~208, Appendix D-2, 12 C.F.R. Part 225, Appendix F, and 12 C.F.R. Part~~  
39 ~~364, Appendix B, and 12 C.F.R. Part 748, Appendices A and B, as they~~  
40 ~~existed on July 24, 2015, if the financial institution provides~~

1 ~~notice to affected consumers pursuant to the interagency guidelines~~  
2 ~~and the notice complies with the customer notice provisions of the~~  
3 ~~interagency guidelines establishing information security~~  
4 ~~standards and the interagency guidance on response programs for~~  
5 ~~unauthorized access to customer information and customer notice under~~  
6 ~~12 C.F.R. Part 364 as it existed on July 24, 2015. The entity shall~~  
7 ~~notify the attorney general pursuant to subsection (15) of this~~  
8 ~~section in addition to providing notice to its primary federal~~  
9 ~~regulator.~~

10 ~~(12) Any waiver of the provisions of this section is contrary to~~  
11 ~~public policy, and is void and unenforceable.~~

12 ~~(13)(a) Any consumer injured by a violation of this section may~~  
13 ~~institute a civil action to recover damages.~~

14 ~~(b) Any person or business that violates, proposes to violate, or~~  
15 ~~has violated this section may be enjoined.~~

16 ~~(c) The rights and remedies available under this section are~~  
17 ~~cumulative to each other and to any other rights and remedies~~  
18 ~~available under law.~~

19 ~~(14))~~ (6) Any person or business that is required to issue  
20 notification pursuant to this section shall meet all of the following  
21 requirements:

22 (a) The notification must be written in plain language; and

23 (b) The notification must include, at a minimum, the following  
24 information:

25 (i) The name and contact information of the reporting person or  
26 business subject to this section;

27 (ii) A list of the types of personal information that were or are  
28 reasonably believed to have been the subject of a breach; ~~((and))~~

29 (iii) A time frame of exposure, if known, including the date of  
30 the breach and the date of the discovery of the breach; and

31 (iv) The toll-free telephone numbers and addresses of the major  
32 credit reporting agencies if the breach exposed personal information.

33 ~~((15))~~ (7) Any person or business that is required to issue a  
34 notification pursuant to this section to more than five hundred  
35 Washington residents as a result of a single breach shall ~~((, by the~~  
36 ~~time notice is provided to affected consumers, electronically submit~~  
37 ~~a single sample copy of that security breach notification, excluding~~  
38 ~~any personally identifiable information, to the attorney general))~~  
39 notify the attorney general of the breach no more than thirty days  
40 after the breach was discovered.

1       ~~(a) The ((person or business))~~ notice to the attorney general  
2 shall ~~((also provide to the attorney general))~~ include the following  
3 information:

4       (i) The number of Washington consumers affected by the breach, or  
5 an estimate if the exact number is not known;

6       (ii) A list of the types of personal information that were or are  
7 reasonably believed to have been the subject of a breach;

8       (iii) A time frame of exposure, if known, including the date of  
9 the breach and the date of the discovery of the breach;

10       (iv) A summary of steps taken to contain the breach; and

11       (v) A single sample copy of the security breach notification,  
12 excluding any personally identifiable information.

13       (b) The notice to the attorney general must be updated if any of  
14 the information identified in (a) of this subsection is unknown at  
15 the time notice is due.

16       ~~((16))~~ (8) Notification to affected consumers ((and to the  
17 attorney general)) under this section must be made in the most  
18 expedient time possible ((and)), without unreasonable delay, and  
19 no more than ((forty-five)) thirty calendar days after the breach was  
20 discovered, unless the delay is at the request of law enforcement as  
21 provided in subsection (3) of this section, or the delay is due to  
22 any measures necessary to determine the scope of the breach and  
23 restore the reasonable integrity of the data system.

24       ~~((17) The attorney general may bring an action in the name of~~  
25 ~~the state, or as parens patriae on behalf of persons residing in the~~  
26 ~~state, to enforce this section. For actions brought by the attorney~~  
27 ~~general to enforce this section, the legislature finds that the~~  
28 ~~practices covered by this section are matters vitally affecting the~~  
29 ~~public interest for the purpose of applying the consumer protection~~  
30 ~~act, chapter 19.86 RCW. For actions brought by the attorney general~~  
31 ~~to enforce this section, a violation of this section is not~~  
32 ~~reasonable in relation to the development and preservation of~~  
33 ~~business and is an unfair or deceptive act in trade or commerce and~~  
34 ~~an unfair method of competition for purposes of applying the consumer~~  
35 ~~protection act, chapter 19.86 RCW. An action to enforce this section~~  
36 ~~may not be brought under RCW 19.86.090.)~~

37       NEW SECTION. Sec. 3. A new section is added to chapter 19.255  
38 RCW to read as follows:

1 (1) A covered entity under the federal health insurance  
2 portability and accountability act of 1996, 42 U.S.C. Sec. 1320d et  
3 seq., is deemed to have complied with the requirements of this  
4 chapter with respect to protected health information if it has  
5 complied with section 13402 of the federal health information  
6 technology for economic and clinical health act, P.L. 111-5 as it  
7 existed on July 24, 2015. Covered entities shall notify the attorney  
8 general pursuant to RCW 19.255.010(7) in compliance with the  
9 timeliness of notification requirements of section 13402 of the  
10 federal health information technology for economic and clinical  
11 health act, P.L. 111-5 as it existed on July 24, 2015,  
12 notwithstanding the timeline in RCW 19.255.010(7).

13 (2) A financial institution under the authority of the office of  
14 the comptroller of the currency, the federal deposit insurance  
15 corporation, the national credit union administration, or the federal  
16 reserve system is deemed to have complied with the requirements of  
17 this chapter with respect to "sensitive customer information" as  
18 defined in the interagency guidelines establishing information  
19 security standards, 12 C.F.R. Part 30, Appendix B, 12 C.F.R. Part  
20 208, Appendix D-2, 12 C.F.R. Part 225, Appendix F, and 12 C.F.R. Part  
21 364, Appendix B, and 12 C.F.R. Part 748, Appendices A and B, as they  
22 existed on July 24, 2015, if the financial institution provides  
23 notice to affected consumers pursuant to the interagency guidelines  
24 and the notice complies with the customer notice provisions of the  
25 interagency guidelines establishing information security standards  
26 and the interagency guidance on response programs for unauthorized  
27 access to customer information and customer notice under 12 C.F.R.  
28 Part 364 as it existed on July 24, 2015. The entity shall notify the  
29 attorney general pursuant to RCW 19.255.010 in addition to providing  
30 notice to its primary federal regulator.

31 NEW SECTION. **Sec. 4.** A new section is added to chapter 19.255  
32 RCW to read as follows:

33 (1) Any waiver of the provisions of this chapter is contrary to  
34 public policy, and is void and unenforceable.

35 (2) The attorney general may bring an action in the name of the  
36 state, or as parens patriae on behalf of persons residing in the  
37 state, to enforce this chapter. For actions brought by the attorney  
38 general to enforce this chapter, the legislature finds that the  
39 practices covered by this chapter are matters vitally affecting the

1 public interest for the purpose of applying the consumer protection  
2 act, chapter 19.86 RCW. For actions brought by the attorney general  
3 to enforce this chapter, a violation of this chapter is not  
4 reasonable in relation to the development and preservation of  
5 business and is an unfair or deceptive act in trade or commerce and  
6 an unfair method of competition for purposes of applying the consumer  
7 protection act, chapter 19.86 RCW. An action to enforce this chapter  
8 may not be brought under RCW 19.86.090.

9 (3) (a) Any consumer injured by a violation of this chapter may  
10 institute a civil action to recover damages.

11 (b) Any person or business that violates, proposes to violate, or  
12 has violated this chapter may be enjoined.

13 (c) The rights and remedies available under this chapter are  
14 cumulative to each other and to any other rights and remedies  
15 available under law.

16 **Sec. 5.** RCW 42.56.590 and 2015 c 64 s 3 are each amended to read  
17 as follows:

18 (1) ~~((a))~~ Any agency that owns or licenses data that includes  
19 personal information shall disclose any breach of the security of the  
20 system ~~((following discovery or notification of the breach in the  
21 security of the data))~~ to any resident of this state whose personal  
22 information was, or is reasonably believed to have been, acquired by  
23 an unauthorized person and the personal information was not secured.  
24 Notice is not required if the breach of the security of the system is  
25 not reasonably likely to subject consumers to a risk of harm. The  
26 breach of secured personal information must be disclosed if the  
27 information acquired and accessed is not secured during a security  
28 breach or if the confidential process, encryption key, or other means  
29 to decipher the secured information was acquired by an unauthorized  
30 person.

31 ~~((b) For purposes of this section, "agency" means the same as in  
32 RCW 42.56.010.))~~

33 (2) Any agency that maintains or possesses data that may  
34 include ~~((s))~~ personal information that the agency does not own or  
35 license shall notify the owner or licensee of the information of any  
36 breach of the security of the data immediately following discovery,  
37 if the personal information was, or is reasonably believed to have  
38 been, acquired by an unauthorized person.

1 (3) The notification required by this section may be delayed if  
2 the data owner or licensee contacts a law enforcement agency after  
3 discovery of a breach of the security of the system and a law  
4 enforcement agency determines that the notification will impede a  
5 criminal investigation. The notification required by this section  
6 shall be made after the law enforcement agency determines that it  
7 will not compromise the investigation.

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

16 ~~(5) For purposes of this section, "personal information" means an~~  
17 ~~individual's first name or first initial and last name in combination~~  
18 ~~with any one or more of the following data elements:~~

19 ~~(a) Social security number;~~

20 ~~(b) Driver's license number or Washington identification card~~  
21 ~~number; or~~

22 ~~(c) Full account number, credit or debit card number, or any~~  
23 ~~required security code, access code, or password that would permit~~  
24 ~~access to an individual's financial account.~~

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

29 ~~(7) For purposes of this section, "secured" means encrypted in a~~  
30 ~~manner that meets or exceeds the national institute of standards and~~  
31 ~~technology (NIST) standard or is otherwise modified so that the~~  
32 ~~personal information is rendered unreadable, unusable, or~~  
33 ~~undecipherable by an unauthorized person.~~

34 ~~(8)) For purposes of this section and except under subsection((s~~  
35 ~~(9) and (10)) (5) of this section and section 6 of this act,~~  
36 ~~"notice" may be provided by one of the following methods:~~

37 ~~(a) Written notice;~~

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

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

6 (i) Email notice when the agency has an email 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 ~~((9))~~ (5) An agency that maintains its own notification  
12 procedures as part of an information security policy for the  
13 treatment of personal information and is otherwise consistent with  
14 the timing requirements of this section is in compliance with the  
15 notification requirements of this section if it notifies subject  
16 persons in accordance with its policies in the event of a breach of  
17 security of the system.

18 ~~((10) A covered entity under the federal health insurance~~  
19 ~~portability and accountability act of 1996, 42 U.S.C. Sec. 1320d et~~  
20 ~~seq., is deemed to have complied with the requirements of this~~  
21 ~~section with respect to protected health information if it has~~  
22 ~~complied with section 13402 of the federal health information~~  
23 ~~technology for economic and clinical health act, Public Law 111-5 as~~  
24 ~~it existed on July 24, 2015. Covered entities shall notify the~~  
25 ~~attorney general pursuant to subsection (14) of this section in~~  
26 ~~compliance with the timeliness of notification requirements of~~  
27 ~~section 13402 of the federal health information technology for~~  
28 ~~economic and clinical health act, Public Law 111-5 as it existed on~~  
29 ~~July 24, 2015, notwithstanding the notification requirement in~~  
30 ~~subsection (15) of this section.~~

31 ~~(11) Any waiver of the provisions of this section is contrary to~~  
32 ~~public policy, and is void and unenforceable.~~

33 ~~(12)(a) Any individual injured by a violation of this section may~~  
34 ~~institute a civil action to recover damages.~~

35 ~~(b) Any agency that violates, proposes to violate, or has~~  
36 ~~violated this section may be enjoined.~~

37 ~~(c) The rights and remedies available under this section are~~  
38 ~~cumulative to each other and to any other rights and remedies~~  
39 ~~available under law.~~

1       ~~(13))~~ (6) Any agency that is required to issue notification  
2 pursuant to this section shall meet all of the following  
3 requirements:

4       (a) The notification must be written in plain language; and

5       (b) The notification must include, at a minimum, the following  
6 information:

7       (i) The name and contact information of the reporting agency  
8 subject to this section;

9       (ii) A list of the types of personal information that were or are  
10 reasonably believed to have been the subject of a breach;

11       (iii) A time frame of exposure, if known, including the date of  
12 the breach and the date of the discovery of the breach; and

13       (iv) The toll-free telephone numbers and addresses of the major  
14 credit reporting agencies if the breach exposed personal information.

15       ~~((14))~~ (7) Any agency that is required to issue a notification  
16 pursuant to this section to more than five hundred Washington  
17 residents as a result of a single breach shall ~~(, by the time notice~~  
18 ~~is provided to affected individuals, electronically submit a single~~  
19 ~~sample copy of that security breach notification, excluding any~~  
20 ~~personally identifiable information, to)~~ notify the attorney general  
21 of the breach no more than thirty days after the breach was  
22 discovered.

23       (a) ~~The ((agency shall also provide))~~ notice to the attorney  
24 general must include the following information:

25       (i) The number of Washington residents affected by the breach, or  
26 an estimate if the exact number is not known;

27       (ii) A list of the types of personal information that were or are  
28 reasonably believed to have been the subject of a breach;

29       (iii) A time frame of exposure, if known, including the date of  
30 the breach and the date of the discovery of the breach;

31       (iv) A summary of steps taken to contain the breach; and

32       (v) A single sample copy of the security breach notification,  
33 excluding any personally identifiable information.

34       (b) The notice to the attorney general must be updated if any of  
35 the information identified in (a) of this subsection is unknown at  
36 the time notice is due.

37       ~~((15))~~ (8) Notification to affected individuals ~~((and to the~~  
38 ~~attorney general))~~ must be made in the most expedient time possible  
39 ~~((and)),~~ without unreasonable delay, and no more than ~~((forty-five))~~  
40 thirty calendar days after the breach was discovered, unless the

1 delay is at the request of law enforcement as provided in subsection  
2 (3) of this section, or the delay is due to any measures necessary to  
3 determine the scope of the breach and restore the reasonable  
4 integrity of the data system. An agency may delay notification to the  
5 affected individuals for up to an additional fourteen days to allow  
6 for notification to be translated into the primary language of the  
7 affected individuals.

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

16 (10)(a) For purposes of this section, "personal information"  
17 means:

18 (i) An individual's first name or first initial and last name in  
19 combination with any one or more of the following data elements:

20 (A) Social security number;

21 (B) Driver's license number or Washington identification card  
22 number;

23 (C) Account number, credit or debit card number, or any required  
24 security code, access code, or password that would permit access to  
25 an individual's financial account, or any other numbers or  
26 information that can be used to access a person's financial account;

27 (D) Full date of birth;

28 (E) Private key that is unique to an individual and that is used  
29 to authenticate or sign an electronic record;

30 (F) Student, military, or passport identification number;

31 (G) Health insurance policy number or health insurance  
32 identification number;

33 (H) Any information about a consumer's medical history or mental  
34 or physical condition or about a health care professional's medical  
35 diagnosis or treatment of the consumer; or

36 (I) Biometric data generated by automatic measurements of an  
37 individual's biological characteristics, such as a fingerprint,  
38 voiceprint, eye retinas, irises, or other unique biological patterns  
39 or characteristics that is used to identify a specific individual;

1 (ii) User name or email address in combination with a password or  
2 security questions and answers that would permit access to an online  
3 account; and

4 (iii) Any of the data elements or any combination of the data  
5 elements described in (a)(i) of this subsection without the  
6 consumer's first name or first initial and last name if:

7 (A) Encryption, redaction, or other methods have not rendered the  
8 data element or combination of data elements unusable; and

9 (B) The data element or combination of data elements would enable  
10 a person to commit identity theft against a consumer.

11 (b) Personal information does not include publicly available  
12 information that is lawfully made available to the general public  
13 from federal, state, or local government records.

14 (11) For purposes of this section, "secured" means encrypted in a  
15 manner that meets or exceeds the national institute of standards and  
16 technology standard or is otherwise modified so that the personal  
17 information is rendered unreadable, unusable, or undecipherable by an  
18 unauthorized person.

19 NEW SECTION. Sec. 6. A new section is added to chapter 42.56  
20 RCW to read as follows:

21 A covered entity under the federal health insurance portability  
22 and accountability act of 1996, Title 42 U.S.C. Sec. 1320d et seq.,  
23 is deemed to have complied with the requirements of this chapter with  
24 respect to protected health information if it has complied with  
25 section 13402 of the federal health information technology for  
26 economic and clinical health act, P.L. 111-5 as it existed on July  
27 24, 2015. Covered entities shall notify the attorney general pursuant  
28 to RCW 42.56.590(7) in compliance with the timeliness of notification  
29 requirements of section 13402 of the federal health information  
30 technology for economic and clinical health act, P.L. 111-5 as it  
31 existed on July 24, 2015, notwithstanding the timeline in RCW  
32 42.56.590(7).

33 NEW SECTION. Sec. 7. A new section is added to chapter 42.56  
34 RCW to read as follows:

35 (1) Any waiver of the provisions of RCW 42.56.590 or section 6 of  
36 this act is contrary to public policy, and is void and unenforceable.

37 (2)(a) Any consumer injured by a violation of RCW 42.56.590 may  
38 institute a civil action to recover damages.

1 (b) Any agency that violates, proposes to violate, or has  
2 violated RCW 42.56.590 may be enjoined.

3 (c) The rights and remedies available under this chapter are  
4 cumulative to each other and to any other rights and remedies  
5 available under law.

6 NEW SECTION. **Sec. 8.** This act takes effect March 1, 2020.

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