

LOSS OF PERSONAL INFORMATION

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Eric K. Hutchings

Senate Sponsor: _____

LONG TITLE

General Description:

This bill repeals and reenacts notification requirements when personal information is accessed or acquired by an unauthorized person.

Highlighted Provisions:

This bill:

- ▶ amends definitions;
- ▶ requires that a person who has or maintains a consumer's personal information that is accessed or acquired by an unauthorized person give the consumer notice;
- ▶ amends civil penalties; and
- ▶ makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

13-44-102, as enacted by Laws of Utah 2006, Chapter 343

13-44-301, as last amended by Laws of Utah 2008, Chapter 29

REPEALS AND REENACTS:

13-44-202, as enacted by Laws of Utah 2006, Chapter 343



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Be it enacted by the Legislature of the state of Utah:

Section 1. Section **13-44-102** is amended to read:

13-44-102. Definitions.

As used in this chapter:

(1) (a) "Breach of system security" means an unauthorized acquisition of ~~[computerized data]~~ personal information maintained by a person that compromises the security, confidentiality, or integrity of personal information.

(b) "Breach of system security" does not include the acquisition of personal information by an employee or agent of the person possessing ~~[unencrypted computerized data]~~ information unless the personal information is used for an unlawful purpose or disclosed in an unauthorized manner.

(2) "Consumer" means a natural person.

(3) ~~[(a)]~~ "Personal information" means ~~[a person's first name or first initial and last name, combined with any one or more of the following data elements relating to that person when either the name or data element is unencrypted or not protected by another method that renders the data unreadable or unusable]:~~

~~[(i) Social Security number;]~~

~~[(ii) (A) financial account number, or credit or debit card number; and]~~

~~[(B) any required security code, access code, or password that would permit access to the person's account; or]~~

~~[(iii) driver license number or state identification card number.]~~

~~[(b) "Personal information" does not include information regardless of its source, contained in federal, state, or local government records or in widely distributed media that are lawfully made available to the general public.]~~

(a) name;

(b) birth date;

(c) address;

(d) telephone number;

(e) driver license number;

(f) Social Security number;

- 59 (g) place of employment;
- 60 (h) employee identification numbers or other personal identification numbers;
- 61 (i) mother's maiden name;
- 62 (j) electronic identification numbers;
- 63 (k) electronic signatures under Title 46, Chapter 4, Uniform Electronic Transactions
- 64 Act; or

65 (l) any other numbers or information that can be used to access a person's financial
66 resources or medical information.

67 (4) "Record" includes materials maintained in any form, including paper and
68 electronic.

69 Section 2. Section **13-44-202** is repealed and reenacted to read:

70 **13-44-202. Personal information -- Disclosure of system security breach.**

71 (1) A person who has or maintains a consumer's personal information that has been
72 accessed or acquired by an unauthorized person shall:

73 (a) give notice to the consumer as required by this section; and

74 (b) immediately restore the reasonable integrity of the system breached by the
75 unauthorized person.

76 (2) (a) If the personal information described in Subsection (1) is used or may be used to
77 access a consumer's financial resources, a person shall immediately notify the consumer,
78 subject to legitimate investigative needs of law enforcement described in Subsection (3)(a).

79 (b) If personal information described in Subsection (1) is used or may be used to access
80 a consumer's medical records or Social Security information, the person who has or maintains
81 the information shall give the consumer notice within five business days after discovering that
82 the personal information has been accessed or acquired, subject to legitimate investigative
83 needs of law enforcement described in Subsection (3)(a).

84 (c) If personal information described in Subsection (1) is not subject to Subsection
85 (2)(a) or (b), the person who has or maintains the information shall give the consumer notice
86 within 14 days after discovering that the personal information in Subsection (1) has been
87 accessed or acquired, subject to legitimate investigative needs of law enforcement described in
88 Subsection (3)(a).

89 (3) (a) Notwithstanding Subsection (2), a person may delay providing notification at

90 the request of a law enforcement agency that determines that notification may impede a
91 criminal investigation.

92 (b) A person who delays providing notification pursuant to Subsection (3)(a) shall
93 provide notification in good faith without unreasonable delay in the most expedient time
94 possible after the law enforcement agency informs the person that notification will no longer
95 impede the criminal investigation.

96 (4) (a) Except immediate notification described in Subsection (4)(b), a notification
97 required by this section may be provided:

98 (i) in writing by first-class mail to the most recent address the person has for the
99 resident;

100 (ii) electronically, if the person's primary method of communication with the consumer
101 is by electronic means or if provided in accordance with the consumer disclosure provisions of
102 15 U.S.C. Section 7001;

103 (iii) by telephone, including through the use of automatic dialing technology not
104 prohibited by other law; or

105 (iv) by an identity theft reporting website maintained by the attorney general pursuant
106 to Section 67-5-22.

107 (b) An immediate notification required by this section may be provided:

108 (i) by issuing a press release and notification through an identity theft reporting website
109 maintained by the attorney general pursuant to Section 67-5-22;

110 (ii) electronically, if the person's primary method of communication with the consumer
111 is by electronic means or if provided in accordance with the consumer disclosure provisions of
112 15 U.S.C. Section 7001; or

113 (iii) by telephone, including through the use of automatic dialing technology not
114 prohibited by law.

115 (c) A notification shall include:

116 (i) a detailed description of what personal information was accessed or acquired;

117 (ii) the level of encryption that was in effect at the time the personal information was
118 accessed or acquired;

119 (iii) the level of encryption of a pass phrase or password that authorized access to the
120 personal information;

- 121 (iv) a description of how the security system was breached;
- 122 (v) if known, an explanation of whether the security system breach was an internal or
- 123 external breach; and
- 124 (vi) a disclosure of the number of people whose personal information was or may be
- 125 accessed or acquired because of the security system breach.

126 (5) A waiver of this section is contrary to public policy and is void and unenforceable.

127 Section 3. Section **13-44-301** is amended to read:

128 **13-44-301. Enforcement.**

129 (1) The attorney general may enforce this chapter's provisions.

130 (2) (a) Nothing in this chapter creates a private right of action.

131 (b) Nothing in this chapter affects any private right of action existing under other law,
132 including contract or tort.

133 (3) A person who violates this chapter's provisions is subject to a civil fine of:

134 [~~(a) no greater than \$2,500 for a violation or series of violations concerning a specific~~
135 ~~consumer; and]~~

136 (a) \$1,000 for each day a consumer is not provided notice as required under this
137 chapter; and

138 (b) no greater than [~~\$100,000~~] \$500,000 in the aggregate for related violations
139 concerning more than one consumer.

140 (4) In addition to the penalties provided in Subsection (3), the attorney general may
141 seek injunctive relief to prevent future violations of this chapter in:

142 (a) the district court located in Salt Lake City; or

143 (b) the district court for the district in which resides a consumer who is affected by the
144 violation.

145 (5) In enforcing this chapter, the attorney general may:

146 (a) investigate the actions of any person alleged to violate Section 13-44-201 or
147 13-44-202;

148 (b) subpoena a witness;

149 (c) subpoena a document or other evidence;

150 (d) require the production of books, papers, contracts, records, or other information
151 relevant to an investigation; and

152 (e) conduct an adjudication in accordance with Title 63G, Chapter 4, Administrative
153 Procedures Act, to enforce a civil provision under this chapter.

154 (6) A subpoena issued under Subsection (5) may be served by certified mail.

155 (7) A person's failure to respond to a request or subpoena from the attorney general
156 under Subsection (5)(b), (c), or (d) is a violation of this chapter.

157 (8) (a) The attorney general may inspect and copy all records related to the business
158 conducted by the person alleged to have violated this chapter, including records located outside
159 the state.

160 (b) For records located outside of the state, the person who is found to have violated
161 this chapter shall pay the attorney general's expenses to inspect the records, including travel
162 costs.

163 (c) Upon notification from the attorney general of the attorney general's intent to
164 inspect records located outside of the state, the person who is found to have violated this
165 chapter shall pay the attorney general \$500, or a higher amount if \$500 is estimated to be
166 insufficient, to cover the attorney general's expenses to inspect the records.

167 (d) The attorney general shall deposit any amounts received under this Subsection (8)
168 in the Attorney General Litigation Fund established in Section 76-10-922.

169 (e) To the extent an amount paid to the attorney general by a person who is found to
170 have violated this chapter is not expended by the attorney general, the amount shall be refunded
171 to the person who is found to have violated this chapter.

172 (f) The Division of Corporations and Commercial Code or any other relevant entity
173 shall revoke any authorization to do business in this state of a person who fails to pay any
174 amount required under this Subsection (8).

H.B. 285 - Loss of Personal Information

Fiscal Note

2009 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
