

---

ENGROSSED SUBSTITUTE HOUSE BILL 1078

---

State of Washington

64th Legislature

2015 Regular Session

By House Technology & Economic Development (originally sponsored by Representatives Hudgins, Morris, Robinson, Kirby, Gregerson, Stanford, Ryu, Magendanz, and Pollet; by request of Attorney General)

READ FIRST TIME 02/20/15.

1 AN ACT Relating to enhancing the protection of consumer financial  
2 information; amending RCW 19.255.010 and 42.56.590; and creating a  
3 new section.

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

5 NEW SECTION. **Sec. 1.** The legislature recognizes that data  
6 breaches of personal information can compromise financial security  
7 and be costly to consumers. The legislature intends to strengthen the  
8 data breach notification requirements to better safeguard personal  
9 information, prevent identity theft, and ensure that the attorney  
10 general receives notification when breaches occur so that appropriate  
11 action may be taken to protect consumers. The legislature also  
12 intends to provide consumers whose personal information has been  
13 jeopardized due to a data breach with the information needed to  
14 secure financial accounts and make the necessary reports in a timely  
15 manner to minimize harm from identity theft.

16 **Sec. 2.** RCW 19.255.010 and 2005 c 368 s 2 are each amended to  
17 read as follows:

18 (1) Any person or business that conducts business in this state  
19 and that owns or licenses ((computerized)) data that includes  
20 personal information shall disclose any breach of the security of the

1 system following discovery or notification of the breach in the  
2 security of the data to any resident of this state whose  
3 (~~unencrypted~~) personal information was, or is reasonably believed  
4 to have been, acquired by an unauthorized person and the personal  
5 information was not secured. (~~The disclosure shall be made in the~~  
6 ~~most expedient time possible and without unreasonable delay,~~  
7 ~~consistent with the legitimate needs of law enforcement, as provided~~  
8 ~~in subsection (3) of this section, or any measures necessary to~~  
9 ~~determine the scope of the breach and restore the reasonable~~  
10 ~~integrity of the data system.~~) Notice is not required if the breach  
11 of the security of the system is not reasonably likely to subject  
12 consumers to a risk of harm. The breach of secured personal  
13 information must be disclosed if the information acquired and  
14 accessed is not secured during a security breach or if the  
15 confidential process, encryption key, or other means to decipher the  
16 secured information was acquired by an unauthorized person.

17 (2) Any person or business that maintains (~~computerized~~) data  
18 that includes personal information that the person or business does  
19 not own shall notify the owner or licensee of the information of any  
20 breach of the security of the data immediately following discovery,  
21 if the personal information was, or is reasonably believed to have  
22 been, acquired by an unauthorized person.

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

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

38 (5) For purposes of this section, "personal information" means an  
39 individual's first name or first initial and last name in combination

1 with any one or more of the following data elements(~~(, when either~~  
2 ~~the name or the data elements are not encrypted)~~):

3 (a) Social security number;

4 (b) Driver's license number or Washington identification card  
5 number; or

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

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

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

18 (8) For purposes of this section and except under subsections  
19 ~~((+8))~~ (9) and (10) of this section, "notice" may be provided by one  
20 of the following methods:

21 (a) Written notice;

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

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

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

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

35 (iii) Notification to major statewide media.

36 ~~((+8))~~ (9) A person or business that maintains its own  
37 notification procedures as part of an information security policy for  
38 the treatment of personal information and is otherwise consistent  
39 with the timing requirements of this section is in compliance with  
40 the notification requirements of this section if the person or

1 business notifies subject persons in accordance with its policies in  
2 the event of a breach of security of the system.

3 ~~((+9))~~ (10) A covered entity under the federal health insurance  
4 portability and accountability act of 1996, 42 U.S.C. Sec. 1320d et  
5 seq., is deemed to have complied with the requirements of this  
6 section with respect to protected health information if it has  
7 complied with section 13402 of the federal health information  
8 technology for economic and clinical health act, Public Law 111-5 as  
9 it existed on the effective date of this section. Covered entities  
10 shall notify the attorney general pursuant to subsection (15) of this  
11 section in compliance with the timeliness of notification  
12 requirements of section 13402 of the federal health information  
13 technology for economic and clinical health act, Public Law 111-5 as  
14 it existed on the effective date of this section, notwithstanding the  
15 notification requirement in subsection (16) of this section.

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

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

37 ~~((+10))~~ (13)(a) Any ~~((customer))~~ consumer injured by a violation  
38 of this section may institute a civil action to recover damages.

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

1 (c) The rights and remedies available under this section are  
2 cumulative to each other and to any other rights and remedies  
3 available under law.

4 ~~((d) A person or business under this section shall not be  
5 required to disclose a technical breach of the security system that  
6 does not seem reasonably likely to subject customers to a risk of  
7 eriminal activity.))~~

8 (14) Any person or business that is required to issue  
9 notification pursuant to this section shall meet all of the following  
10 requirements:

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

12 (b) The notification must include, at a minimum, the following  
13 information:

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

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

18 (iii) The toll-free telephone numbers and addresses of the major  
19 credit reporting agencies if the breach exposed personal information.

20 (15) Any person or business that is required to issue a  
21 notification pursuant to this section to more than five hundred  
22 Washington residents as a result of a single breach shall, by the  
23 time notice is provided to affected consumers, electronically submit  
24 a single sample copy of that security breach notification, excluding  
25 any personally identifiable information, to the attorney general. The  
26 person or business shall also provide to the attorney general the  
27 number of Washington consumers affected by the breach, or an estimate  
28 if the exact number is not known.

29 (16) Notification to affected consumers and to the attorney  
30 general under this section must be made in the most expedient time  
31 possible and without unreasonable delay, no more than forty-five  
32 calendar days after the breach was discovered, unless at the request  
33 of law enforcement as provided in subsection (3) of this section, or  
34 due to any measures necessary to determine the scope of the breach  
35 and restore the reasonable integrity of the data system.

36 (17) The attorney general may bring an action in the name of the  
37 state, or as parens patriae on behalf of persons residing in the  
38 state, to enforce this section. For actions brought by the attorney  
39 general to enforce this section, the legislature finds that the  
40 practices covered by this section 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 section, a violation of this section 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 section  
8 may not be brought under RCW 19.86.090.

9 **Sec. 3.** RCW 42.56.590 and 2007 c 197 s 9 are each amended to  
10 read as follows:

11 (1)(a) Any agency that owns or licenses (~~computerized~~) data  
12 that includes personal information shall disclose any breach of the  
13 security of the system following discovery or notification of the  
14 breach in the security of the data to any resident of this state  
15 whose (~~unencrypted~~) personal information was, or is reasonably  
16 believed to have been, acquired by an unauthorized person and the  
17 personal information was not secured. ((The disclosure shall be made  
18 in the most expedient time possible and without unreasonable delay,  
19 consistent with the legitimate needs of law enforcement, as provided  
20 in subsection (3) of this section, or any measures necessary to  
21 determine the scope of the breach and restore the reasonable  
22 integrity of the data system.)) Notice is not required if the breach

23 of the security of the system is not reasonably likely to subject  
24 consumers to a risk of harm. The breach of secured personal  
25 information must be disclosed if the information acquired and  
26 accessed is not secured during a security breach or if the  
27 confidential process, encryption key, or other means to decipher the  
28 secured information was acquired by an unauthorized person.

29 (b) For purposes of this section, "agency" means the same as in  
30 RCW 42.56.010.

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

37 (3) The notification required by this section may be delayed if  
38 the data owner or licensee contacts a law enforcement agency after  
39 discovery of a breach of the security of the system and a law

1 enforcement agency determines that the notification will impede a  
2 criminal investigation. The notification required by this section  
3 shall be made after the law enforcement agency determines that it  
4 will not compromise the investigation.

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

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

17 (a) Social security number;

18 (b) Driver's license number or Washington identification card  
19 number; or

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

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

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

33 (8) For purposes of this section and except under subsections  
34 ((+8)) (9) and (10) of this section, notice may be provided by one  
35 of the following methods:

36 (a) Written notice;

37 (b) Electronic notice, if the notice provided is consistent with  
38 the provisions regarding electronic records and signatures set forth  
39 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) 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))~~ (9) 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 ~~((+9))~~ (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 the effective date of this section. Covered entities  
25 shall notify the attorney general pursuant to subsection (14) of this  
26 section in compliance with the timeliness of notification  
27 requirements of section 13402 of the federal health information  
28 technology for economic and clinical health act, Public Law 111-5 as  
29 it existed on the effective date of this section, notwithstanding the  
30 notification requirement in 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 ~~((+10))~~ (12)(a) Any ~~((customer))~~ individual injured by a  
34 violation of this section may institute a civil action to recover  
35 damages.

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

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



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

4       (13) Any agency that is required to issue notification pursuant  
5 to this section shall meet all of the following requirements:

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

7       (b) The notification must include, at a minimum, the following  
8 information:

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

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

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

15       (14) Any agency that is required to issue a notification pursuant  
16 to this section to more than five hundred Washington residents as a  
17 result of a single breach shall, by the time notice is provided to  
18 affected individuals, electronically submit a single sample copy of  
19 that security breach notification, excluding any personally  
20 identifiable information, to the attorney general. The agency shall  
21 also provide to the attorney general the number of Washington  
22 residents affected by the breach, or an estimate if the exact number  
23 is not known.

24       (15) Notification to affected individuals and to the attorney  
25 general must be made in the most expedient time possible and without  
26 unreasonable delay, no more than forty-five calendar days after the  
27 breach was discovered, unless at the request of law enforcement as  
28 provided in subsection (3) of this section, or due to any measures  
29 necessary to determine the scope of the breach and restore the  
30 reasonable integrity of the data system.

--- END ---