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HOUSE BILL 1078

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State of Washington

64th Legislature

2015 Regular Session

By Representatives Hudgins, Morris, Robinson, Kirby, Gregerson, Stanford, Ryu, Magendanz, and Pollet; by request of Attorney General

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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. (~~The disclosure~~  
5 ~~shall be made in the most expedient time possible and without~~  
6 ~~unreasonable delay, consistent with the legitimate needs of law~~  
7 ~~enforcement, as provided in subsection (3) of this section, or any~~  
8 ~~measures necessary to determine the scope of the breach and restore~~  
9 ~~the reasonable integrity of the data system.~~) Notice is not required  
10 if the breach of the security of the system is not reasonably likely  
11 to subject consumers to a risk of criminal activity.

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

18 (3) The notification required by this section may be delayed if a  
19 law enforcement agency determines that the notification will impede a  
20 criminal investigation. The notification required by this section  
21 shall be made after the law enforcement agency determines that it  
22 will not compromise the investigation.

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

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

35 (a) Social security number;

36 (b) Driver's license number or Washington identification card  
37 number; or

38 (c) Full account number (~~or~~), credit or debit card number, (~~in~~  
39 ~~combination with~~) or any required security code, access code, or

1 password that would permit access to an individual's financial  
2 account.

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

7 (7) For purposes of this section and except under subsections (8)  
8 and (9) of this section, "notice" may be provided by one of the  
9 following methods:

10 (a) Written notice;

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

14 (c) Substitute notice, if the person or business demonstrates  
15 that the cost of providing notice would exceed two hundred fifty  
16 thousand dollars, or that the affected class of subject persons to be  
17 notified exceeds five hundred thousand, or the person or business  
18 does not have sufficient contact information. Substitute notice shall  
19 consist of all of the following:

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

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

24 (iii) Notification to major statewide media.

25 (8) A person or business that maintains its own notification  
26 procedures as part of an information security policy for the  
27 treatment of personal information and is otherwise consistent with  
28 the timing requirements of this section is in compliance with the  
29 notification requirements of this section if the person or business  
30 notifies subject persons in accordance with its policies in the event  
31 of a breach of security of the system.

32 (9) A covered entity under the federal health insurance  
33 portability and accountability act of 1996, 42 U.S.C. Sec. 1320d et  
34 seq., is deemed to have complied with the notice requirements in  
35 subsection (1) of this section if it has complied completely with  
36 section 13402(f) of the federal health information technology for  
37 economic and clinical health act, Public Law 111-5. This subsection  
38 may not be construed to exempt a covered entity from any other  
39 provision of this section.

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

3       ~~((10))~~ (11)(a) Any ~~((customer))~~ consumer injured by a violation  
4 of this section may institute a civil action to recover damages.

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

7       (c) The rights and remedies available under this section are  
8 cumulative to each other and to any other rights and remedies  
9 available under law.

10       ~~((d) A person or business under this section shall not be  
11 required to disclose a technical breach of the security system that  
12 does not seem reasonably likely to subject customers to a risk of  
13 criminal activity.))~~

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

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

18       (b) The notification must include, at a minimum, the following  
19 information:

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

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

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

26       (13) Any person or business that is required to issue a  
27 notification pursuant to this section to more than five hundred  
28 Washington residents as a result of a single breach shall  
29 electronically submit a single sample copy of that security breach  
30 notification, excluding any personally identifiable information, to  
31 the attorney general. The person or business shall also provide to  
32 the attorney general the number of Washington consumers affected by  
33 the breach, or an estimate if the exact number is not known.

34       (14) Notification to affected consumers and to the attorney  
35 general under this section must be made in the most expedient time  
36 possible and without unreasonable delay, no more than thirty calendar  
37 days after the breach was discovered, consistent with the legitimate  
38 needs of law enforcement as provided in subsection (3) of this  
39 section, or any measures necessary to determine the scope of the  
40 breach and restore the reasonable integrity of the data system.

1       (15) The legislature finds that the practices covered by this  
2 section are matters vitally affecting the public interest for the  
3 purpose of applying the consumer protection act, chapter 19.86 RCW. A  
4 violation of this chapter is not reasonable in relation to the  
5 development and preservation of business and is an unfair or  
6 deceptive act in trade or commerce and an unfair method of  
7 competition for purposes of applying the consumer protection act,  
8 chapter 19.86 RCW.

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. (~~The~~  
17 ~~disclosure shall be made in the most expedient time possible and~~  
18 ~~without unreasonable delay, consistent with the legitimate needs of~~  
19 ~~law enforcement, as provided in subsection (3) of this section, or~~  
20 ~~any measures necessary to determine the scope of the breach and~~  
21 ~~restore the reasonable integrity of the data system.)) Notice is not  
22 required if the breach of the security of the system is not  
23 reasonably likely to subject consumers to a risk of criminal  
24 activity.~~

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

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

33       (3) The notification required by this section may be delayed if a  
34 law enforcement agency determines that the notification will impede a  
35 criminal investigation. The notification required by this section  
36 shall be made after the law enforcement agency determines that it  
37 will not compromise the investigation.

38       (4) For purposes of this section, "breach of the security of the  
39 system" means unauthorized acquisition of (~~computerized~~) data that

1 compromises the security, confidentiality, or integrity of personal  
2 information maintained by the agency. Good faith acquisition of  
3 personal information by an employee or agent of the agency for the  
4 purposes of the agency is not a breach of the security of the system  
5 when the personal information is not used or subject to further  
6 unauthorized disclosure.

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

11 (a) Social security number;

12 (b) Driver's license number or Washington identification card  
13 number; or

14 (c) Full account number (~~(or)~~), credit or debit card number, (~~in~~  
15 ~~combination with~~) or any required security code, access code, or  
16 password that would permit access to an individual's financial  
17 account.

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

22 (7) For purposes of this section and except under subsections (8)  
23 and (9) of this section, notice may be provided by one of the  
24 following methods:

25 (a) Written notice;

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

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

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

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

38 (iii) Notification to major statewide media.

39 (8) An agency that maintains its own notification procedures as  
40 part of an information security policy for the treatment of personal

1 information and is otherwise consistent with the timing requirements  
2 of this section is in compliance with the notification requirements  
3 of this section if it notifies subject persons in accordance with its  
4 policies in the event of a breach of security of the system.

5 (9) A covered entity under the federal health insurance  
6 portability and accountability act of 1996, 42 U.S.C. Sec. 1320d et  
7 seq., is deemed to have complied with the notice requirements in  
8 subsection (1) of this section if it has complied completely with  
9 section 13402(f) of the federal health information technology for  
10 economic and clinical health act, Public Law 111-5. This subsection  
11 may not be construed to exempt a covered entity from any other  
12 provision of this section.

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

15 ~~((+10+))~~ (11)(a) Any ((customer)) individual injured by a  
16 violation of this section may institute a civil action to recover  
17 damages.

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

20 (c) The rights and remedies available under this section are  
21 cumulative to each other and to any other rights and remedies  
22 available under law.

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

26 (12) Any agency that is required to issue notification pursuant  
27 to this section shall meet all of the following requirements:

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

29 (b) The notification must include, at a minimum, the following  
30 information:

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

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

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

37 (13) Any agency that is required to issue a notification pursuant  
38 to this section to more than five hundred Washington residents as a  
39 result of a single breach shall electronically submit a single sample  
40 copy of that security breach notification, excluding any personally

1 identifiable information, to the attorney general. The agency shall  
2 also provide to the attorney general the number of Washington  
3 residents affected by the breach, or an estimate if the exact number  
4 is not known.

5 (14) Notification to affected individuals and to the attorney  
6 general must be made in the most expedient time possible and without  
7 unreasonable delay, no more than thirty calendar days after the  
8 breach was discovered, consistent with the legitimate needs of law  
9 enforcement as provided in subsection (3) of this section, or any  
10 measures necessary to determine the scope of the breach and restore  
11 the reasonable integrity of the data system.

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