

SENATE BILL NO. 205

BY SENATOR DUPLESSIS

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

AN ACT

To enact Chapter 51 of Title 51 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 51:3071 through 3077, relative to database security; to provide for legislative findings; to provide definitions; to provide for disclosure upon breach in the security of personal information by agencies and persons; to provide for delayed notification in the event of certain criminal investigations; to provide for means of notification; to provide for the recovery of damages; to provide for financial institution compliance in certain cases; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Chapter 51 of Title 51 of the Louisiana Revised Statutes of 1950, comprised of R.S. 51:3071 through 3077, is hereby enacted to read as follows:

CHAPTER 51. DATABASE SECURITY BREACH NOTIFICATION LAW

§3071. Short title

This Chapter may be cited as the "Database Security Breach Notification Law."

§3072. Legislative findings

The legislature hereby finds and declares that:

(1) The privacy and financial security of individuals are increasingly at risk due to the ever more widespread collection of personal information.

(2) Credit card transactions, magazine subscriptions, telephone numbers, real estate records, automobile registrations, consumer surveys, warranty registrations, credit reports, and Internet web sites are all sources of personal information and form the source material of identity theft.

(3) The crime of identity theft is on the rise in the United States. Criminals who steal personal information use the information to open credit card accounts, write bad checks, buy automobiles, and commit other financial crimes using the identity of another person.

(4) Identity theft is costly to the marketplace and to consumers.

(5) Victims of identity theft must act quickly to minimize the damage; therefore, expeditious notification of possible misuse of a person's personal information is imperative.

§3073. Definitions

As used in this Chapter, the following terms shall have the following meanings:

(1) "Agency" means the state, a political subdivision of the state, and any officer, agency, board, commission, department or similar body of the state or any political subdivision of the state.

(2) "Breach of the security of the system" means the compromise of the security, confidentiality, or integrity of computerized data that results in, or there is a reasonable basis to conclude has resulted in, the unauthorized acquisition of and access to personal information maintained by an agency or person. Good faith acquisition of personal information by an employee or agent of an agency or person for the purposes of the agency or person is not a breach of the security of the system, provided that the personal information is not used for, or is subject to, unauthorized disclosure.

(3) "Person" means any individual, corporation, partnership, sole proprietorship, joint stock company, joint venture, or any other legal entity.

(4)(a) "Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when the name or the data element is not encrypted or redacted:

(i) Social security number.

(ii) Driver's license number.

(iii) Account number, credit or debit card number, in combination with

1 any required security code, access code, or password that would permit access
2 to an individual's financial account.

3 (b) "Personal information" shall not include publicly available
4 information that is lawfully made available to the general public from federal,
5 state, or local government records.

6 §3074. Disclosure upon breach in the security of personal information;
7 notification requirements; exemption

8 A. Any person that conducts business in the state or that owns or
9 licenses computerized data that includes personal information, or any agency
10 that owns or licenses computerized data that includes personal information,
11 shall, following discovery of a breach in the security of the system containing
12 such data, notify any resident of the state whose personal information was, or
13 is reasonably believed to have been, acquired by an unauthorized person.

14 B. Any agency or person that maintains computerized data that includes
15 personal information that the agency or person does not own shall notify the
16 owner or licensee of the information if the personal information was, or is
17 reasonably believed to have been, acquired by an unauthorized person through
18 a breach of security of the system containing such data, following discovery by
19 the agency or person of a breach of security of the system.

20 C. The notification required pursuant to Subsections A and B of this
21 Section shall be made in the most expedient time possible and without
22 unreasonable delay, consistent with the legitimate needs of law enforcement, as
23 provided in Subsection D of this Section, or any measures necessary to
24 determine the scope of the breach, prevent further disclosures, and restore the
25 reasonable integrity of the data system.

26 D. If a law enforcement agency determines that the notification required
27 under this Section would impede a criminal investigation, such notification may
28 be delayed until such law enforcement agency determines that the notification
29 will no longer compromise such investigation.

30 E. Notification may be provided by one of the following methods:

1 (1) Written notification.

2 (2) Electronic notification, if the notification provided is consistent with
3 the provisions regarding electronic records and signatures set forth in 15 U.S.C.
4 7001.

5 (3) Substitute notification, if an agency or person demonstrates that the
6 cost of providing notification would exceed two hundred fifty thousand dollars,
7 or that the affected class of persons to be notified exceeds five hundred
8 thousand, or the agency or person does not have sufficient contact information.

9 Substitute notification shall consist of all of the following:

10 (a) E-mail notification when the agency or person has an e-mail address
11 for the subject persons.

12 (b) Conspicuous posting of the notification on the Internet site of the
13 agency or person, if an Internet site is maintained.

14 (c) Notification to major statewide media.

15 F. Notwithstanding Subsection E of this Section, an agency or person
16 that maintains a notification procedure as part of its information security policy
17 for the treatment of personal information which is otherwise consistent with the
18 timing requirements of this Section shall be deemed to be in compliance with
19 the notification requirements of this Section if the agency or person notifies
20 subject persons in accordance with the policy and procedure in the event of a
21 breach of security of the system.

22 G. Notification under this title is not required if after a reasonable
23 investigation the person or business determines that there is no reasonable
24 likelihood of harm to customers.

25 §3075. Recovery of damages

26 A civil action may be instituted to recover actual damages resulting from
27 the failure to disclose in a timely manner to a person that there has been a
28 breach of the security system resulting in the disclosure of a person's personal
29 information.

30 §3076. Financial institution; compliance

1 A financial institution that is subject to and in compliance with the
2 Federal Interagency Guidance on Response Programs for Unauthorized Access
3 to Customer Information and Customer Notice, issued on March 7, 2005, by the
4 Board of Governors of the Federal Reserve System, the Federal Deposit
5 Insurance Corporation, the office of the comptroller of the currency and the
6 office of thrift supervision, and any revisions, additions, or substitutions relating
7 to said interagency guidance, shall be deemed to be in compliance with this
8 Chapter.

9 §3077. Rulemaking

10 The provisions of this Chapter shall not take effect until rules are
11 promulgated by the attorney general's office.

12 Section 2. This Act shall become effective on January 1, 2006; if vetoed by the
13 governor and subsequently approved by the legislature, this Act shall become effective on
14 January 1, 2006, or on the day following such approval by the legislature, whichever is later.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____