

ANALYSIS OF AMENDED BILL

Author: Bowen Analyst: Deborah Barrett Bill Number: SB 852
 Related Bills: See Legislative History Telephone: 845-4301 Amended Date: 05-10-2005
 Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: State Agencies Notify California Resident Of Any Breach Of Security Of Data

SUMMARY

This bill would expand notice requirements by state agencies to taxpayers on security breaches of personal information that is maintained by agencies and businesses.

SUMMARY OF AMENDMENTS

The May 10, 2005, amendments corrected language that identified an exception for "unencrypted" data to reflect the exception to be for "encrypted" data. The May 10, 2005, amendments also revised the notification requirements under this section to be applicable to a breach of security of computerized personal information regardless of the format of the data at the time of the unauthorized disclosure.

This is the department's first analysis of this bill.

PURPOSE OF THE BILL

According to the author's staff, the purpose of the bill is to prevent identity theft and protect computerized personal information regardless of what form it is in at the time of a security breach.

EFFECTIVE/OPERATIVE DATE

The provisions of this bill would be effective on January 1, 2006, and operative for breaches of security on or after that date.

POSITION

Pending

ANALYSISFEDERAL/STATE LAW

In October 1998, the federal government passed the Identity Theft and Assumption Deterrence Act of 1998 (Identity Theft Act). The Identity Theft Act makes it a crime for knowingly transferring or using the identity of another person with intent to commit or aid certain unlawful activities.

Board Position:

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<input type="checkbox"/> N	<input type="checkbox"/> OUA	<input checked="" type="checkbox"/> PENDING

Department Director

Date

Will Bush

5/31/05

Current state law requires a state agency to notify a resident of California in the event their personal information has been acquired by an unauthorized person due to a breach of security of that agency's computer system. A "breach of the security of the system" is the unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of personal information. An employee or agent of an agency is authorized to acquire personal information to perform his or her work duties.

Current state law defines "personal information" as a person's first name or first initial and last name, in combination with one or more of the following data elements when either the name or the data elements are not encrypted: i) social security number; ii) driver's license number or California identification card number; or iii) account number, credit card number, or debit card number along with the required security code, access code, or password. Personal information does not include information that is legally made available to the general public from federal, state, or local government records.

Current state law requires notification to be made in the most expedient time possible and without unreasonable delay. If the agency maintains computerized data, but does not own the data, the agency must notify the owner or licensee of the information of the breach immediately following discovery. State law requires notification to be made by any of the following methods: written, electronic, or substitute notice.

Current state law allows any agency that maintains its own notification procedures to be considered in compliance with the requirements if certain conditions are satisfied. Persons must be notified in accordance with those procedures, and those procedures must be consistent with the timing requirements of current law.

THIS BILL

This bill would require persons or businesses conducting business in California, and state agencies that own, license, or collect computerized data that includes personal information to notify California residents, as defined, of security breaches of personal information. The notification requirements under this section are currently applicable to only computerized data. Under this bill, the notification requirements would be applicable to any breach of computerized personal information, regardless of whether the data is in a computerized or paper format at the time of its unauthorized acquisition.

This bill would provide that:

- Personal information that is encrypted is not subject to the notification requirements unless an unauthorized person that possesses a key that could be used to decrypt the information also acquires the encrypted information, or the unencrypted information was acquired along with a person's address and telephone number,
- Notification of the security breach may be delayed to avoid impeding an investigation if:
 - 1) a law enforcement agency requests, in writing, that the agency delay the notification,
 - 2) the law enforcement agency notifies the agency in writing when it determines the investigation would no longer be impeded, and
 - 3) the agency proceeds with the notification as required as soon as possible after receiving the written notice from the law enforcement agency.
- A California resident is defined as an individual whose current postal mailing address as reflected in the records of the agency is in California,

- Notice required under this bill is required to include a description of the elements of personal information that were reasonably believed to have been acquired by unauthorized persons, and
- The agency must also notify the three consumer reporting agencies that compile and maintain files on consumers on a nationwide basis if 5,000 or more residents are to be notified at one time. Notice to the companies includes the timing, content, distribution of the notices, and approximate number of affected persons.

The provisions of this bill change the definition of personal information to mean a person's last name in combination with any of the following data elements:

- Social security number,
- Drivers license number or a California identification card number, or
- Account number, credit or debit card number. .

IMPLEMENTATION CONSIDERATIONS

Implementation of the bill would not significantly impact the department's programs or operations.

LEGISLATIVE HISTORY

AB 700 (Simitian, Stat. 2002, Ch. 1054,) requires a state agency to notify residents of California in the event their personal information has been acquired by an unauthorized person due to a breach of security of that agency's computer system.

SB 1279 (Bowen, 2003/2004) would have applied the notice requirements for computerized data that had been breached to security breaches for all types of data. This bill remained with the Assembly Business and Professions Committee.

FISCAL IMPACT

This bill would not significantly impact the department's costs.

ECONOMIC IMPACT

This bill would not significantly impact the state's income tax revenues.

LEGISLATIVE STAFF CONTACT

Deborah Barrett
Franchise Tax Board
(916) 845-4301
deborah.barrett@ftb.ca.gov

Brian Putler
Franchise Tax Board
(916) 845-6333
brian.putler@ftb.ca.gov