

SUMMARY ANALYSIS OF AMENDED BILL

Author: Simitian Analyst: Deborah Barrett Bill Number: SB 364
 Related Bills: See Prior Analysis Telephone: 845-4301 Amended Date: August 4, 2008
 Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Breach Of Security Notice Requirements By State Agencies To Owners Of Information

- DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.
- AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.
- AMENDMENTS DID NOT RESOLVE THE DEPARTMENTS CONCERNS stated in the previous analysis of bill as introduced/amended _____.
- FURTHER AMENDMENTS NECESSARY.
- DEPARTMENT POSITION CHANGED TO _____.
- REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED July 1, 2008, STILL APPLIES.
- OTHER – See comments below.

SUMMARY

This bill would require that specific information be included in the notice when a state agency subject to specific payment-data requirements notifies California residents or owners of personal information of a breach of security of a system containing personal information.

SUMMARY OF AMENDMENTS

The August 4, 2008, amendments would remove requirements to notify the Attorney General when a breach of security occurs on systems containing personal information. The August 4, 2008, amendments would also require state agencies to provide certain information to owners or licensees of the personal information believed to have been obtained by an unauthorized person. The August 4, 2008, amendments result in a new "Implementation Consideration" which is discussed below. The "This Bill" discussion is revised. The remainder of the department's analysis of the bill as amended July 1, 2008, still applies.

POSITION

Pending.

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|---|----------------------|---------|
| Board Position: | Legislative Director | Date |
| <input type="checkbox"/> S | Brian Putler | 8/21/08 |
| <input type="checkbox"/> SA | | |
| <input type="checkbox"/> N | | |
| <input type="checkbox"/> NA | | |
| <input type="checkbox"/> O | | |
| <input type="checkbox"/> OUA | | |
| <input type="checkbox"/> NP | | |
| <input type="checkbox"/> NAR | | |
| <input checked="" type="checkbox"/> PENDING | | |

THIS BILL

This bill would require any person, business, or agency subject to Civil Code Section 1724.4, which would be enacted with AB 1779 (Jones 2008), that is required to give notice of a breach of security of a system containing personal information (notice) to an owner or licensee of the information, to include the following information, if available, at the time the notice is provided:

- The date of the notice.
- The name of the agency, person, or business that maintained the computerized data at the time of the breach.
- The date, estimated date, or date range within which the breach occurred, if that information is possible to determine at the time the notice is provided.
- A description of the categories of personal information that were or were reasonably believed to have been acquired by an unauthorized person.
- A toll-free telephone number for the agency, person, or business subject to the breach. If the primary method used by that agency, person, or business to communicate with the individual whose information is subject to the breach is by electronic means, an electronic mail address that the individual may use to contact the agency, person, or business. If the agency, person, or business that experienced the breach does not have a toll free number, a local telephone number may be provided to the owner or licensee of the information.
- The toll free telephone number and addresses for the major credit reporting agencies.

The required notice may be delayed if a law enforcement agency determines that the notification will impede a criminal investigation. In those cases, the notification could be made after the law enforcement agency determines that it will not compromise the investigation.

If the owner or licensee of the information is the issuer of a credit or debit card or the payment device or maintains the account from which the payment device orders payment, the owner or licensee is required to disclose to the California resident the information required to be provided by the agency, person or business. An exception is provided when the primary means of communicating with the customer of the agency, person or business is by email, an email address can be provided in lieu of a toll-free or local telephone number.

This bill would be operative only if AB 1779 of the 2007-08 Regular Session is enacted and takes effect on or before January 1, 2009.

IMPLEMENTATION CONSIDERATIONS

Because the majority of FTB's transactions with California residents are conducted as payments for obligations and not sales of goods or services, FTB would interpret the provisions of this bill as not applying to the department. If the author seeks a different result, the author may want to add payment of obligations as to the types of transactions that would be subject to the additional notice requirements established under the provisions of this bill.

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