

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 8, & August 13, 2008
 Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: State Agencies Disclose Any Breach Of Security Of Data Systems to Owners or Licensees of the Personal 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 X August 4, 2008, STILL APPLIES.

____ OTHER – See comments below.

SUMMARY

This bill would require that when a state agency subject to certain payment data related restrictions has to notify the owners or licensees of the personal information subject to the breach, specific information must be included in the notice.

SUMMARY OF AMENDMENTS

The August 8, 2008, amendments would substitute AB 1656 for AB 1779 in the contingent enactment provisions of this bill. The August 13, 2008, amendments would clarify that if an owner or licensee of data is notified of a breach, or if that owner is also an agency required to provide notice, the information provided to the owner must be provided to the California resident whose data was subject to the breach. The August 8, 2008, and August 13, 2008, amendments did not resolve the "Implementation Consideration" identified in the department's analysis of the bill as amended August 4, 2008, which is restated here for convenience. The "Effective/Operative Date" and "This Bill" discussions are revised. The remainder of the department's analysis of the bill as amended August 4, 2008, still applies.

Board Position:	Legislative Director	Date
_____ S _____ NA _____ NP _____ SA _____ O _____ NAR _____ N _____ OUA <u> X </u> PENDING	Brian Putler	8/21/08

EFFECTIVE/OPERATIVE DATE

This bill would be effective on January 1, 2009, and would, by its own terms, be operative only if AB 1656 of the 2007-08 Regular Session is enacted and takes effect on or before January 1, 2009.

POSITION

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 1656 (Jones 2008), that is required to give notice of a breach of security of a system containing personal information to the owner or the licensee of that information that was breached must include specific information in that notice.. The notification must 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 was or is 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 e-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. The notification can 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, or is an agency required to provide notice to a California resident in the event of a breach, the owner or licensee is required to disclose to the California resident the information provided by the agency, person or business that is available at the time that notification is made. If the primary method that the agency, person, or business uses to communicate with the California resident is through electronic mail, the owner or licensee of the data may use an e-mail address in lieu of a toll-free or local telephone number.

This bill would be operative only if AB 1656 of the 2007-08 Regular Session is enacted and takes effect on or before January 1, 2009.

IMPLEMENTATION CONSIDERATION

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

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