

307

2015-2016 Regular Sessions

I N   A S S E M B L Y

(PREFILED)

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Introduced by M. of A. DINOWITZ, GOTTFRIED, GALEF, TITONE, COOK, ABINANTI, ENGLEBRIGHT, OTIS, FAHY, COLTON -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to the protection of personal information by businesses

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. Section 899-aa of the general business law, as added by  
2 chapter 442 of the laws of 2005, paragraph (c) of subdivision 1, para-  
3 graph (a) of subdivision 6 and subdivision 8 as amended by chapter 491  
4 of the laws of 2005 and paragraph (a) of subdivision 8 as amended by  
5 section 6 of part N of chapter 55 of the laws of 2013, is amended to  
6 read as follows:  
7     S 899-aa. SAFEGUARDING PERSONAL INFORMATION; [Notification;] NOTIFICA-  
8 TION, person without valid authorization has acquired private informa-  
9 tion. 1. As used in this section, the following terms shall have the  
10 following meanings:  
11     (a) "Personal information" shall mean any information concerning a  
12 natural person which, because of name, number, personal mark, or other  
13 identifier, can be used to identify such natural person;  
14     (b) "Private information" shall mean personal information consisting  
15 of any information in combination with any one or more of the following  
16 data elements, when either the personal information or the data element  
17 is not encrypted, or encrypted with an encryption key that has also been  
18 acquired:  
19     (1) social security number;  
20     (2) driver's license number or non-driver identification card number;  
21 or

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [ ] is old law to be omitted.

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(3) account number, credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account;

"Private information" does not include publicly available information which is lawfully made available to the general public from federal, state, or local government records.

(c) "Breach of the security of the system" shall mean unauthorized acquisition or acquisition without valid authorization of computerized data that compromises the security, confidentiality, or integrity of personal information maintained by a business. Good faith acquisition of personal information by an employee or agent of the business for the purposes of the business is not a breach of the security of the system, provided that the private information is not used or subject to unauthorized disclosure.

In determining whether information has been acquired, or is reasonably believed to have been acquired, by an unauthorized person or a person without valid authorization, such business may consider the following factors, among others:

(1) indications that the information is in the physical possession and control of an unauthorized person, such as a lost or stolen computer or other device containing information; or

(2) indications that the information has been downloaded or copied; or

(3) indications that the information was used by an unauthorized person, such as fraudulent accounts opened or instances of identity theft reported.

(d) "Consumer reporting agency" shall mean any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports. A list of consumer reporting agencies shall be compiled by the state attorney general and furnished upon request to any person or business required to make a notification under subdivision two of this section.

2. Any person or business which conducts business in New York state, and which owns or licenses computerized data which includes private information shall:

(A) DEVELOP, IMPLEMENT, AND MAINTAIN A COMPREHENSIVE INFORMATION SECURITY PROGRAM WHICH MUST BE CONSISTENT WITH THE SAFEGUARDS FOR PROTECTION OF PERSONAL INFORMATION AND INFORMATION OF A SIMILAR CHARACTER SET FORTH IN ANY STATE OR FEDERAL LAWS OR REGULATIONS BY WHICH THE PERSON WHO OWNS OR LICENSES SUCH INFORMATION MAY BE REGULATED, AND THAT IS WRITTEN IN ONE OR MORE READILY ACCESSIBLE PARTS AND CONTAINS ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS THAT ARE APPROPRIATE TO:

(1) THE SIZE, SCOPE, AND TYPE OF BUSINESS OF THE PERSON OBLIGATED TO SAFEGUARD THE PERSONAL INFORMATION UNDER SUCH COMPREHENSIVE INFORMATION SECURITY PROGRAM;

(2) THE AMOUNT OF RESOURCES AVAILABLE TO SUCH PERSON OR BUSINESS;

(3) THE AMOUNT OF STORED DATA; AND

(4) THE NEED FOR SECURITY AND CONFIDENTIALITY OF INFORMATION OF CUSTOMERS AND EMPLOYEES OF THE BUSINESS.

(B) disclose any breach of the security of the system following discovery or notification of the breach in the security of the system to any resident of New York state whose private information was, or is reasonably believed to have been, acquired by a person without valid

1 authorization. The disclosure shall be made in the most expedient time  
2 possible and without unreasonable delay, consistent with the legitimate  
3 needs of law enforcement, as provided in subdivision [four] FIVE of this  
4 section, or any measures necessary to determine the scope of the breach  
5 and restore the reasonable integrity of the system.

6 3. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EVERY COMPREHEN-  
7 SIVE INFORMATION SECURITY PROGRAM PURSUANT TO PARAGRAPH (A) OF SUBDIVI-  
8 SION TWO OF THIS SECTION SHALL INCLUDE, BUT NOT BE LIMITED TO:

9 (A) DESIGNATING ONE OR MORE EMPLOYEES TO MAINTAIN THE COMPREHENSIVE  
10 INFORMATION SECURITY PROGRAM;

11 (B) IDENTIFYING AND ASSESSING REASONABLY FORESEEABLE INTERNAL AND  
12 EXTERNAL RISKS TO THE SECURITY, CONFIDENTIALITY, AND/OR INTEGRITY OF ANY  
13 ELECTRONIC, PAPER, OR OTHER RECORDS CONTAINING PERSONAL INFORMATION, AND  
14 EVALUATING AND IMPROVING, WHERE NECESSARY, THE CURRENT SAFEGUARDS FOR  
15 LIMITING SUCH RISKS, INCLUDING, BUT NOT LIMITED TO:

16 (1) PROVIDING ONGOING EMPLOYEE TRAINING;

17 (2) MONITORING EMPLOYEE COMPLIANCE WITH POLICIES AND PROCEDURES; AND

18 (3) IDENTIFYING MEANS FOR DETECTING AND PREVENTING SECURITY SYSTEM  
19 FAILURES.

20 (C) DEVELOPING SECURITY POLICIES FOR EMPLOYEES RELATING TO THE STOR-  
21 AGE, ACCESS, AND TRANSPORTATION OF RECORDS CONTAINING PERSONAL INFORMA-  
22 TION OUTSIDE OF BUSINESS PREMISES;

23 (D) IMPOSING DISCIPLINARY MEASURES FOR VIOLATIONS OF THE COMPREHENSIVE  
24 INFORMATION SECURITY PROGRAM RULES;

25 (E) PREVENTING TERMINATED OR FORMER EMPLOYEES FROM ACCESSING RECORDS  
26 CONTAINING PERSONAL INFORMATION;

27 (F) OVERSEEING THIRD-PARTY SERVICE PROVIDERS BY:

28 (1) TAKING REASONABLE STEPS TO SELECT AND RETAIN THIRD-PARTY SERVICE  
29 PROVIDERS THAT ARE CAPABLE OF MAINTAINING APPROPRIATE SECURITY MEASURES  
30 TO PROTECT SUCH PERSONAL INFORMATION CONSISTENT WITH THESE PROVISIONS  
31 AND ANY APPLICABLE FEDERAL LAWS OR REGULATIONS; AND

32 (2) REQUIRING SUCH THIRD-PARTY SERVICE PROVIDERS BY CONTRACT TO IMPLE-  
33 MENT AND MAINTAIN SUCH APPROPRIATE SECURITY MEASURES FOR PERSONAL INFOR-  
34 MATION; PROVIDED, HOWEVER, THAT UNTIL OCTOBER FIRST, TWO THOUSAND EIGH-  
35 TEEN, A CONTRACT A PERSON OR BUSINESS HAS ENTERED INTO WITH A  
36 THIRD-PARTY SERVICE PROVIDER TO PERFORM SERVICES FOR OR FUNCTIONS ON  
37 BEHALF OF SUCH PERSON OR BUSINESS SATISFIES THE PROVISIONS OF THIS  
38 SUBPARAGRAPH EVEN IF THE CONTRACT A PERSON OR BUSINESS HAS ENTERED INTO  
39 WITH A THIRD-PARTY SERVICE PROVIDER DOES NOT INCLUDE A REQUIREMENT THAT  
40 THE THIRD-PARTY SERVICE PROVIDER MAINTAINS SUCH APPROPRIATE SAFEGUARDS,  
41 AS LONG AS SAID PERSON OR BUSINESS ENTERED INTO THE CONTRACT NO LATER  
42 THAN OCTOBER FIRST, TWO THOUSAND SIXTEEN.

43 (G) PLACING REASONABLE RESTRICTIONS UPON PHYSICAL ACCESS TO RECORDS  
44 CONTAINING PERSONAL INFORMATION, AND STORAGE OF SUCH RECORDS AND DATA IN  
45 LOCKED FACILITIES, STORAGE AREAS, OR CONTAINERS;

46 (H) ENSURING THAT THE COMPREHENSIVE INFORMATION SECURITY PROGRAM IS  
47 SEPARATING IN A MANNER REASONABLY CALCULATED TO PREVENT UNAUTHORIZED  
48 ACCESS TO OR UNAUTHORIZED USE OF PERSONAL INFORMATION, AND UPGRADING  
49 INFORMATION SAFEGUARDS AS NECESSARY TO LIMIT RISKS;

50 (I) REVIEWING THE SCOPE OF THE SECURITY MEASURES AT LEAST ANNUALLY OR  
51 WHENEVER THERE IS A MATERIAL CHANGE IN BUSINESS PRACTICES THAT MAY  
52 REASONABLY JEOPARDIZE THE SECURITY OR INTEGRITY OF RECORDS CONTAINING  
53 PERSONAL INFORMATION; AND

54 (J) DOCUMENTING RESPONSIVE ACTIONS TAKEN IN CONNECTION WITH ANY INCI-  
55 DENT INVOLVING A BREACH OF SECURITY, AND MANDATORY POST-INCIDENT REVIEW

1 OF EVENTS AND ACTIONS TAKEN, IF ANY, TO MAKE CHANGES IN BUSINESS PRAC-  
2 TICES RELATING TO PROTECTION OF PERSONAL INFORMATION.

3 [3.]4. Any person or business which maintains computerized data which  
4 includes private information which such person or business does not own  
5 shall:

6 (A) INCLUDE IN ITS WRITTEN, COMPREHENSIVE INFORMATION SECURITY PROGRAM  
7 THE ESTABLISHMENT AND MAINTENANCE OF A SECURITY SYSTEM COVERING ITS  
8 COMPUTERS, INCLUDING ANY WIRELESS SYSTEM, THAT, AT A MINIMUM, AND TO THE  
9 EXTENT TECHNICALLY FEASIBLE, INCLUDE THE FOLLOWING ELEMENTS:

10 (1) SECURE USER AUTHENTICATION PROTOCOLS INCLUDING:

11 (I) CONTROL OF USER IDENTIFICATIONS AND OTHER IDENTIFIERS;

12 (II) A REASONABLY SECURE METHOD OF ASSIGNING AND SELECTING PASSWORDS,  
13 OR USE OF UNIQUE IDENTIFIER TECHNOLOGIES, SUCH AS BIOMETRICS OR TOKEN  
14 DEVICES;

15 (III) CONTROL OF DATA SECURITY PASSWORDS TO ENSURE THAT SUCH PASSWORDS  
16 ARE KEPT IN A LOCATION AND/OR FORMAT THAT DOES NOT COMPROMISE THE SECU-  
17 RITY OF THE DATA THEY PROTECT;

18 (IV) RESTRICTING ACCESS TO ACTIVE USERS AND ACTIVE USER ACCOUNTS ONLY;  
19 AND

20 (V) BLOCKING ACCESS TO USER IDENTIFICATION AFTER MULTIPLE UNSUCCESSFUL  
21 ATTEMPTS TO GAIN ACCESS OR THE LIMITATION PLACED ON ACCESS FOR THE  
22 PARTICULAR SYSTEM;

23 (2) SECURE ACCESS CONTROL MEASURES THAT:

24 (I) RESTRICT ACCESS TO RECORDS AND FILES CONTAINING PERSONAL INFORMA-  
25 TION TO THOSE WHO NEED SUCH INFORMATION TO PERFORM THEIR JOB DUTIES; AND

26 (II) ASSIGN UNIQUE IDENTIFICATIONS PLUS PASSWORDS, WHICH ARE NOT  
27 VENDOR-SUPPLIED DEFAULT PASSWORDS, TO EACH PERSON WITH COMPUTER ACCESS  
28 THAT ARE REASONABLY DESIGNED TO MAINTAIN THE INTEGRITY OF THE SECURITY  
29 OF THE ACCESS CONTROLS;

30 (3) ENCRYPTION OF ALL TRANSMITTED RECORDS AND FILES CONTAINING  
31 PERSONAL INFORMATION THAT WILL TRAVEL ACROSS PUBLIC NETWORKS, AND  
32 ENCRYPTION OF ALL DATA CONTAINING PERSONAL INFORMATION TO BE TRANSMITTED  
33 WIRELESSLY;

34 (4) REASONABLE MONITORING OF SYSTEMS FOR UNAUTHORIZED USE OF OR ACCESS  
35 TO PERSONAL INFORMATION;

36 (5) ENCRYPTION OF ALL PERSONAL INFORMATION STORED ON LAPTOPS OR OTHER  
37 PORTABLE DEVICES;

38 (6) FOR FILES CONTAINING PERSONAL INFORMATION ON A SYSTEM THAT IS  
39 CONNECTED TO THE INTERNET, FIREWALL PROTECTION AND OPERATING SYSTEM  
40 SECURITY PATCHES REASONABLY DESIGNED TO MAINTAIN THE INTEGRITY OF THE  
41 PERSONAL INFORMATION;

42 (7) SYSTEM SECURITY AGENT SOFTWARE WHICH MUST INCLUDE MALWARE  
43 PROTECTION AND VIRUS DEFINITIONS, OR A VERSION OF SUCH SOFTWARE THAT CAN  
44 STILL BE SUPPORTED WITH UP-TO-DATE PATCHES AND VIRUS DEFINITIONS, AND IS  
45 SET TO RECEIVE THE MOST CURRENT SECURITY UPDATES ON A REGULAR BASIS; AND

46 (8) EDUCATION AND TRAINING OF EMPLOYEES ON THE PROPER USE OF THE  
47 COMPUTER SECURITY SYSTEM AND THE IMPORTANCE OF PERSONAL INFORMATION  
48 SECURITY.

49 (B) notify the owner or licensee of the information of any breach of  
50 the security of the system immediately following discovery, if the  
51 private information was, or is reasonably believed to have been,  
52 acquired by a person without valid authorization.

53 [4.] 5. The notification required by this section may be delayed if a  
54 law enforcement agency determines that such notification impedes a crim-  
55 inal investigation. The notification required by this section shall be

1 made after such law enforcement agency determines that such notification  
2 does not compromise such investigation.

3 [5.] 6. The notice required by this section shall be directly provided  
4 to the affected persons by one of the following methods:

5 (a) written notice;

6 (b) electronic notice, provided that the person to whom notice is  
7 required has expressly consented to receiving said notice in electronic  
8 form and a log of each such notification is kept by the person or busi-  
9 ness who notifies affected persons in such form; provided further,  
10 however, that in no case shall any person or business require a person  
11 to consent to accepting said notice in said form as a condition of  
12 establishing any business relationship or engaging in any transaction.

13 (c) telephone notification provided that a log of each such notifica-  
14 tion is kept by the person or business who notifies affected persons; or

15 (d) Substitute notice, if a business demonstrates to the state attor-  
16 ney general that the cost of providing notice would exceed two hundred  
17 fifty thousand dollars, or that the affected class of subject persons to  
18 be notified exceeds five hundred thousand, or such business does not  
19 have sufficient contact information. Substitute notice shall consist of  
20 all of the following:

21 (1) e-mail notice when such business has an e-mail address for the  
22 subject persons;

23 (2) conspicuous posting of the notice on such business's web site  
24 page, if such business maintains one; and

25 (3) notification to major statewide media.

26 [6.] 7. (a) whenever the attorney general shall believe from evidence  
27 satisfactory to him that there is a violation of this article he may  
28 bring an action in the name and on behalf of the people of the state of  
29 New York, in a court of justice having jurisdiction to issue an injunc-  
30 tion, to enjoin and restrain the continuation of such violation. In  
31 such action, preliminary relief may be granted under article sixty-three  
32 of the civil practice law and rules. In such action the court may award  
33 damages for actual costs or losses incurred by a person entitled to  
34 notice pursuant to this article, if notification was not provided to  
35 such person pursuant to this article, including consequential financial  
36 losses. Whenever the court shall determine in such action that a person  
37 or business violated this article knowingly or recklessly, the court may  
38 impose a civil penalty of the greater of five thousand dollars or up to  
39 ten dollars per instance of failed notification, provided that the  
40 latter amount shall not exceed one hundred fifty thousand dollars.

41 (b) the remedies provided by this section shall be in addition to any  
42 other lawful remedy available.

43 (c) no action may be brought under the provisions of this section  
44 unless such action is commenced within two years immediately after the  
45 date of the act complained of or the date of discovery of such act.

46 [7.] 8. Regardless of the method by which notice is provided, such  
47 notice shall include contact information for the person or business  
48 making the notification and a description of the categories of informa-  
49 tion that were, or are reasonably believed to have been, acquired by a  
50 person without valid authorization, including specification of which of  
51 the elements of personal information and private information were, or  
52 are reasonably believed to have been, so acquired.

53 [8.] 9. (a) In the event that any New York residents are to be noti-  
54 fied, the person or business shall notify the state attorney general,  
55 the department of state and the division of state police as to the  
56 timing, content and distribution of the notices and approximate number

1 of affected persons. Such notice shall be made without delaying notice  
2 to affected New York residents.

3 (b) In the event that more than five thousand New York residents are  
4 to be notified at one time, the person or business shall also notify  
5 consumer reporting agencies as to the timing, content and distribution  
6 of the notices and approximate number of affected persons. Such notice  
7 shall be made without delaying notice to affected New York residents.

8 [9.] 10. The provisions of this section shall be exclusive and shall  
9 preempt any provisions of local law, ordinance or code, and no locality  
10 shall impose requirements that are inconsistent with or more restrictive  
11 than those set forth in this section.

12 S 2. This act shall take effect immediately; provided, however, that  
13 the provisions of this act shall apply to any person or business who  
14 owns or licenses personal information about a resident of New York with-  
15 in eighteen months after such effective date, provided, further, that  
16 any person or business may come into compliance before such effective  
17 date.