

# STATE OF NEW YORK

5601--A

2017-2018 Regular Sessions

## IN SENATE

April 19, 2017

Introduced by Sens. CARLUCCI, AKSHAR, ALCANTARA, GOLDEN, HAMILTON, HELMING, KAMINSKY, PERALTA, SAVINO -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- recommitted to the Committee on Consumer Protection in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law and the state technology law, in relation to notification of a security breach

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivisions 1, 2, 5, 6, 7, 8 and 9 of section 899-aa of  
2 the general business law, subdivisions 1, 2, 5, 6, 7 and 9 as added by  
3 chapter 442 of the laws of 2005, paragraph (c) of subdivision 1, para-  
4 graph (a) of subdivision 6 and subdivision 8 as amended by chapter 491  
5 of the laws of 2005 and paragraph (a) of subdivision 8 as amended by  
6 section 6 of part N of chapter 55 of the laws of 2013, are amended and a  
7 new subdivision 5-a is added to read as follows:

8 1. As used in this section, the following terms shall have the follow-  
9 ing meanings:

10 (a) "Personal information" shall mean any information concerning a  
11 natural person which, because of name, number, personal mark, or other  
12 identifier, can be used to identify such natural person;

13 (b) "Private information" shall mean either: (i) personal information  
14 consisting of any information in combination with any one or more of the  
15 following data elements, when either the personal information or the  
16 data element is not encrypted, or encrypted with an encryption key that  
17 has also been acquired:

18 (1) social security number;

19 (2) driver's license number or non-driver identification card number;

20 [~~ex~~]

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

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

4 (4) biometric information, meaning data generated by automatic meas-  
5 urements of an individual's physical characteristics, which are used by  
6 the owner or licensee to authenticate the individual's identity;

7 (ii) a user name or e-mail address in combination with a password or  
8 security question and answer that would permit access to an online  
9 account; or

10 (iii) any unsecured protected health information held by a "covered  
11 entity" as defined in the health insurance portability and accountabil-  
12 ity act of 1996 (45 C.F.R. pts. 160, 162, 164), as amended from time to  
13 time.

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

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

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

29 (1) indications that the information is in the physical possession and  
30 control of a person without valid authorization or by an unauthorized  
31 person, such as a lost or stolen computer or other device containing  
32 information; or

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

34 (3) indications that the information was used by a person without  
35 valid authorization or an unauthorized person, such as fraudulent  
36 accounts opened or instances of identity theft reported.

37 (d) "Consumer reporting agency" shall mean any person which, for mone-  
38 tary fees, dues, or on a cooperative nonprofit basis, regularly engages  
39 in whole or in part in the practice of assembling or evaluating consumer  
40 credit information or other information on consumers for the purpose of  
41 furnishing consumer reports to third parties, and which uses any means  
42 or facility of interstate commerce for the purpose of preparing or  
43 furnishing consumer reports. A list of consumer reporting agencies shall  
44 be compiled by the state attorney general and [~~furnished upon request to~~  
45 ~~any person or business required to make a notification under subdivision~~  
46 ~~two of this section~~] publicly posted on its website.

47 (e) "Credit card" shall mean any card or other credit device issued by  
48 a financial institution to a consumer for the purpose of providing  
49 money, property, labor or services on credit.

50 (f) "Debit card" shall mean any card or other device issued by a  
51 financial institution to a consumer for use in initiating an electronic  
52 fund transfer from the account of the consumer at such financial insti-  
53 tution, for the purpose of transferring money between accounts or  
54 obtaining money, property, labor, or services.

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

1 information shall disclose any breach of the security of the system  
2 following discovery or notification of the breach in the security of the  
3 system to any resident of New York state whose private information was,  
4 or is reasonably believed to have been, acquired by a person without  
5 valid authorization or by an unauthorized person. The disclosure shall  
6 be made in the most expedient time possible and without unreasonable  
7 delay, consistent with the legitimate needs of law enforcement, as  
8 provided in subdivision four of this section, or any measures necessary  
9 to determine the scope of the breach and restore the [~~reasonable~~] integ-  
10 rity of the system.

11 5. The notice required by this section shall be directly provided to  
12 the affected persons by one of the following methods:

13 (a) written notice;

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

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

23 (d) substitute notice, if a business demonstrates to the state attor-  
24 ney general that the cost of providing notice would exceed two hundred  
25 fifty thousand dollars, or that the affected class of subject persons to  
26 be notified exceeds five hundred thousand, or such business does not  
27 have sufficient contact information. Substitute notice shall consist of  
28 all of the following:

29 (1) e-mail notice when such business has an e-mail address for the  
30 subject persons, provided the breached information does not include an  
31 e-mail address in combination with a password or security question and  
32 answer that would permit access to the online account, in which case,  
33 the person or business shall not comply with this section by providing  
34 notice to that e-mail account, but shall instead comply with this  
35 section by clear and conspicuous notice delivered to the consumer online  
36 when the consumer is connected to the online account from an internet  
37 protocol address or from an online location which the person or business  
38 knows the consumer customarily accesses the online account;

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

41 (3) notification to major statewide media.

42 5-a. Any credit or debit card issuer that issues a new credit or debit  
43 card as a result of a breach of the security of the system pursuant to  
44 paragraph (c) of subdivision one of this section, shall provide the  
45 consumer notice that the issuance of the replacement credit or debit  
46 card is due to a potential compromise of the prior card absent any  
47 evidence of actual or potential unauthorized use of such credit or debit  
48 card or other circumstances precipitating the issuance of a replacement  
49 card.

50 6. (a) whenever the attorney general shall believe from evidence  
51 satisfactory to him that there is a violation of this article he may  
52 bring an action in the name and on behalf of the people of the state of  
53 New York, in a court of justice having jurisdiction to issue an injunc-  
54 tion, to enjoin and restrain the continuation of such violation. In  
55 such action, preliminary relief may be granted under article sixty-three  
56 of the civil practice law and rules. In such action the court may award

1 damages for actual costs or losses incurred by a person entitled to  
2 notice pursuant to this article, if notification was not provided to  
3 such person pursuant to this article, including consequential financial  
4 losses. Whenever the court shall determine in such action that a person  
5 or business violated this article knowingly or recklessly, the court may  
6 impose a civil penalty of the greater of five thousand dollars or up to  
7 [~~ten~~] twenty dollars per instance of failed notification, provided that  
8 the latter amount shall not exceed [~~one~~] two hundred fifty thousand  
9 dollars.

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

12 (c) no action may be brought under the provisions of this section  
13 unless such action is commenced within two years [~~immediately~~] after  
14 either the date [~~of the act complained of or the date of discovery of~~  
15 ~~such act~~] on which the attorney general became aware of the violation,  
16 or the date of notice sent pursuant to paragraph (a) of subdivision  
17 eight of this section, whichever occurs first.

18 7. Regardless of the method by which notice is provided, such notice  
19 shall include contact information for the person or business making the  
20 notification, the telephone numbers and websites of the relevant state  
21 and federal agencies that provide information regarding security breach  
22 response and identity theft prevention and protection information, and a  
23 description of the categories of information that were, or are reason-  
24 ably believed to have been, acquired by a person without valid authori-  
25 zation or by an unauthorized person, including specification of which of  
26 the elements of personal information and private information were, or  
27 are reasonably believed to have been, so acquired.

28 8. (a) In the event that any New York residents are to be notified,  
29 the person or business shall notify the state attorney general, the  
30 department of state and the [~~division of state police~~] office of infor-  
31 mation technology services as to the timing, content and distribution of  
32 the notices [~~and~~], approximate number of affected persons and provide a  
33 copy of the template of the notice sent to affected persons. Such  
34 notice shall be made without delaying notice to affected New York resi-  
35 dents.

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

41 9. The department of state shall receive complaints pursuant to  
42 section ninety-four-a of the executive law relating to any breach of the  
43 security of the system, make referrals as appropriate and in cooperation  
44 with the state attorney general and the office of information technology  
45 services develop, regularly update and make publicly available informa-  
46 tion relating to how to respond to a breach of the security of the  
47 system and best practices for how to prevent a breach of the security of  
48 the system.

49 10. The provisions of this section shall be exclusive and shall  
50 preempt any provisions of local law, ordinance or code, and no locality  
51 shall impose requirements that are inconsistent with or more restrictive  
52 than those set forth in this section.

53 § 2. Paragraphs (a) and (d) of subdivision 1 and subdivisions 2, 6, 7  
54 and 8 of section 208 of the state technology law, paragraphs (a) and (d)  
55 of subdivision 1 and subdivision 8 as added by chapter 442 of the laws  
56 of 2005, subdivision 2 and paragraph (a) of subdivision 7 as amended by

1 section 5 of part N of chapter 55 of the laws of 2013 and subdivisions 6  
2 and 7 as amended by chapter 491 of the laws of 2005, are amended to read  
3 as follows:

4 (a) "Private information" shall mean: (i) personal information in  
5 combination with any one or more of the following data elements, when  
6 either the personal information or the data element is not encrypted or  
7 encrypted with an encryption key that has also been acquired:

8 (1) social security number;

9 (2) driver's license number or non-driver identification card number;  
10 [~~or~~]

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

14 (4) biometric information, meaning data generated by automatic meas-  
15 urements of an individual's physical characteristics, which are used by  
16 the owner or licensee to authenticate the individual's identity;

17 (ii) a user name or e-mail address in combination with a password or  
18 security question and answer that would permit access to an online  
19 account; or

20 (iii) any unsecured protected health information held by a covered  
21 entity as defined in the health insurance portability and accountability  
22 act of 1996 (45 C.F.R. pts. 160, 162, 164), as amended from time to  
23 time.

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

27 (d) "Consumer reporting agency" shall mean any person which, for mone-  
28 tary fees, dues, or on a cooperative nonprofit basis, regularly engages  
29 in whole or in part in the practice of assembling or evaluating consumer  
30 credit information or other information on consumers for the purpose of  
31 furnishing consumer reports to third parties, and which uses any means  
32 or facility of interstate commerce for the purpose of preparing or  
33 furnishing consumer reports. A list of consumer reporting agencies shall  
34 be compiled by the state attorney general and [~~furnished upon request to~~  
35 ~~state entities required to make a notification under subdivision two of~~  
36 ~~this section~~] publicly posted on its website.

37 2. Any state entity that owns or licenses computerized data that  
38 includes private information shall disclose any breach of the security  
39 of the system following discovery or notification of the breach in the  
40 security of the system to any resident of New York state whose private  
41 information was, or is reasonably believed to have been, acquired by a  
42 person without valid authorization or an unauthorized person. The  
43 disclosure shall be made in the most expedient time possible and without  
44 unreasonable delay, consistent with the legitimate needs of law enforce-  
45 ment, as provided in subdivision four of this section, or any measures  
46 necessary to determine the scope of the breach and restore the [~~reason-~~  
47 ~~able~~] integrity of the data system. The state entity shall consult with  
48 the state office of information technology services to determine the  
49 scope of the breach and restoration measures. Within ninety days of the  
50 notice of the breach, the office of information technology services  
51 shall deliver a report on the scope of the breach and recommendations to  
52 restore and improve the security of the system to the state entity.

53 6. Regardless of the method by which notice is provided, such notice  
54 shall include contact information for the state entity making the  
55 notification, the telephone numbers and the websites for the relevant  
56 state and federal agencies that provide information regarding security

1 breach response and identity theft prevention and protection information  
2 and a description of the categories of information that were, or are  
3 reasonably believed to have been, acquired by a person without valid  
4 authorization or an unauthorized person, including specification of  
5 which of the elements of personal information and private information  
6 were, or are reasonably believed to have been, so acquired.

7 7. (a) In the event that any New York residents are to be notified,  
8 the state entity shall notify the state attorney general, the department  
9 of state and the state office of information technology services as to  
10 the timing, content and distribution of the notices and approximate  
11 number of affected persons and provide a copy of the template of the  
12 notice sent to affected persons. Such notice shall be made without  
13 delaying notice to affected New York residents.

14 (b) In the event that more than five thousand New York residents are  
15 to be notified at one time, the state entity shall also notify consumer  
16 reporting agencies as to the timing, content and distribution of the  
17 notices and approximate number of affected persons. Such notice shall be  
18 made without delaying notice to affected New York residents.

19 8. The state office of information technology services shall develop,  
20 update and provide regular training to all state entities relating to  
21 best practices for the prevention of a breach of the security of the  
22 system.

23 9. Any entity listed in subparagraph two of paragraph (c) of subdivi-  
24 sion one of this section shall adopt a notification policy no more than  
25 one hundred twenty days after the effective date of this section. Such  
26 entity may develop a notification policy which is consistent with this  
27 section or alternatively shall adopt a local law which is consistent  
28 with this section.

29 § 3. This act shall take effect on the first of January next succeed-  
30 ing the date on which it shall have become a law.