

Senate File 2308 - Enrolled

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1 1 SENATE FILE 2308
1 2
1 3 AN ACT
1 4 RELATING TO IDENTITY THEFT BY PROVIDING FOR THE NOTIFICATION
1 5 OF A BREACH IN THE SECURITY OF PERSONAL INFORMATION,
1 6 REQUESTING THE ESTABLISHMENT OF AN INTERIM STUDY COMMITTEE
1 7 RELATING TO DISCLOSURE OF PERSONAL INFORMATION BY PUBLIC
1 8 OFFICIALS, ENTITIES, AND AFFILIATED ORGANIZATIONS, AND
1 9 PROVIDING PENALTIES.
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1 11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
1 12
1 13 Section 1. NEW SECTION. 715C.1 DEFINITIONS.
1 14 As used in this chapter, unless the context otherwise
1 15 requires:
1 16 1. "Breach of security" means unauthorized acquisition of
1 17 personal information maintained in computerized form by a
1 18 person that compromises the security, confidentiality, or
1 19 integrity of the personal information. Good faith acquisition
1 20 of personal information by a person or that person's employee
1 21 or agent for a legitimate purpose of that person is not a
1 22 breach of security, provided that the personal information is
1 23 not used in violation of applicable law or in a manner that
1 24 harms or poses an actual threat to the security,
1 25 confidentiality, or integrity of the personal information.
1 26 2. "Consumer" means an individual who is a resident of
1 27 this state.
1 28 3. "Consumer reporting agency" means the same as defined
1 29 by the federal Fair Credit Reporting Act, 15 U.S.C. } 1681a.
1 30 4. "Debt" means the same as provided in section 537.7102.
1 31 5. "Encryption" means the use of an algorithmic process to
1 32 transform data into a form in which the data is rendered
1 33 unreadable or unusable without the use of a confidential
1 34 process or key.
1 35 6. "Extension of credit" means the right to defer payment
2 1 of debt or to incur debt and defer its payment offered or
2 2 granted primarily for personal, family, or household purposes.
2 3 7. "Financial institution" means the same as defined in
2 4 section 536C.2, subsection 6.
2 5 8. "Identity theft" means the same as provided in section
2 6 715A.8.
2 7 9. "Payment card" means the same as defined in section
2 8 715A.10, subsection 3, paragraph "b".
2 9 10. "Person" means an individual; corporation; business
2 10 trust; estate; trust; partnership; limited liability company;
2 11 association; joint venture; government; governmental
2 12 subdivision, agency, or instrumentality; public corporation;
2 13 or any other legal or commercial entity.
2 14 11. "Personal information" means an individual's first
2 15 name or first initial and last name in combination with any
2 16 one or more of the following data elements that relate to the
2 17 individual if any of the data elements are not encrypted,
2 18 redacted, or otherwise altered by any method or technology in
2 19 such a manner that the name or data elements are unreadable:
2 20 a. Social security number.
2 21 b. Driver's license number or other unique identification
2 22 number created or collected by a government body.
2 23 c. Financial account number, credit card number, or debit
2 24 card number in combination with any required security code,
2 25 access code, or password that would permit access to an
2 26 individual's financial account.
2 27 d. Unique electronic identifier or routing code, in
2 28 combination with any required security code, access code, or
2 29 password that would permit access to an individual's financial
2 30 account.
2 31 e. Unique biometric data, such as a fingerprint, retina or
2 32 iris image, or other unique physical representation or digital
2 33 representation of biometric data.
2 34 "Personal information" does not include information that is
2 35 lawfully obtained from publicly available sources, or from
3 1 federal, state, or local government records lawfully made
3 2 available to the general public.
3 3 12. "Redacted" means altered or truncated so that no more

3 4 than five digits of a social security number or the last four
3 5 digits of other numbers designated in section 715A.8,
3 6 subsection 1, paragraph "a", is accessible as part of the
3 7 data.

3 8 Sec. 2. NEW SECTION. 715C.2 SECURITY BREACH == CONSUMER
3 9 NOTIFICATION == REMEDIES.

3 10 1. Any person who owns or licenses computerized data that
3 11 includes a consumer's personal information that is used in the
3 12 course of the person's business, vocation, occupation, or
3 13 volunteer activities and that was subject to a breach of
3 14 security shall give notice of the breach of security following
3 15 discovery of such breach of security, or receipt of
3 16 notification under subsection 2, to any consumer whose
3 17 personal information was included in the information that was
3 18 breached. The consumer notification shall be made in the most
3 19 expeditious manner possible and without unreasonable delay,
3 20 consistent with the legitimate needs of law enforcement as
3 21 provided in subsection 3, and consistent with any measures
3 22 necessary to sufficiently determine contact information for
3 23 the affected consumers, determine the scope of the breach, and
3 24 restore the reasonable integrity, security, and
3 25 confidentiality of the data.

3 26 2. Any person who maintains or otherwise possesses
3 27 personal information on behalf of another person shall notify
3 28 the owner or licensor of the information of any breach of
3 29 security immediately following discovery of such breach of
3 30 security if a consumer's personal information was included in
3 31 the information that was breached.

3 32 3. The consumer notification requirements of this section
3 33 may be delayed if a law enforcement agency determines that the
3 34 notification will impede a criminal investigation and the
3 35 agency has made a written request that the notification be
4 1 delayed. The notification required by this section shall be
4 2 made after the law enforcement agency determines that the
4 3 notification will not compromise the investigation and
4 4 notifies the person required to give notice in writing.

4 5 4. For purposes of this section, notification to the
4 6 consumer may be provided by one of the following methods:

4 7 a. Written notice to the last available address the person
4 8 has in the person's records.

4 9 b. Electronic notice if the person's customary method of
4 10 communication with the consumer is by electronic means or is
4 11 consistent with the provisions regarding electronic records
4 12 and signatures set forth in chapter 554D and the federal
4 13 Electronic Signatures in Global and National Commerce Act, 15
4 14 U.S.C. } 7001.

4 15 c. Substitute notice, if the person demonstrates that the
4 16 cost of providing notice would exceed two hundred fifty
4 17 thousand dollars, that the affected class of consumers to be
4 18 notified exceeds three hundred fifty thousand persons, or if
4 19 the person does not have sufficient contact information to
4 20 provide notice. Substitute notice shall consist of the
4 21 following:

4 22 (1) Electronic mail notice when the person has an
4 23 electronic mail address for the affected consumers.

4 24 (2) Conspicuous posting of the notice or a link to the
4 25 notice on the internet web site of the person if the person
4 26 maintains an internet web site.

4 27 (3) Notification to major statewide media.

4 28 5. Notice pursuant to this section shall include, at a
4 29 minimum, all of the following:

4 30 a. A description of the breach of security.

4 31 b. The approximate date of the breach of security.

4 32 c. The type of personal information obtained as a result
4 33 of the breach of security.

4 34 d. Contact information for consumer reporting agencies.

4 35 e. Advice to the consumer to report suspected incidents of
5 1 identity theft to local law enforcement or the attorney
5 2 general.

5 3 6. Notwithstanding subsection 1, notification is not
5 4 required if, after an appropriate investigation or after
5 5 consultation with the relevant federal, state, or local
5 6 agencies responsible for law enforcement, the person
5 7 determined that no reasonable likelihood of financial harm to
5 8 the consumers whose personal information has been acquired has
5 9 resulted or will result from the breach. Such a determination
5 10 must be documented in writing and the documentation must be
5 11 maintained for five years.

5 12 7. This section does not apply to any of the following:

5 13 a. A person who complies with notification requirements or
5 14 breach of security procedures that provide greater protection

5 15 to personal information and at least as thorough disclosure
5 16 requirements than that provided by this section pursuant to
5 17 the rules, regulations, procedures, guidance, or guidelines
5 18 established by the person's primary or functional federal
5 19 regulator.

5 20 b. A person who complies with a state or federal law that
5 21 provides greater protection to personal information and at
5 22 least as thorough disclosure requirements for breach of
5 23 security or personal information than that provided by this
5 24 section.

5 25 c. A person who is subject to and complies with
5 26 regulations promulgated pursuant to Title V of the
5 27 Gramm=Leach=Bliley Act of 1999, 15 U.S.C. } 6801=6809.

5 28 8. a. A violation of this chapter is an unlawful practice
5 29 pursuant to section 714.16 and, in addition to the remedies
5 30 provided to the attorney general pursuant to section 714.16,
5 31 subsection 7, the attorney general may seek and obtain an
5 32 order that a party held to violate this section pay damages to
5 33 the attorney general on behalf of a person injured by the
5 34 violation.

5 35 b. The rights and remedies available under this section
6 1 are cumulative to each other and to any other rights and
6 2 remedies available under the law.

6 3 Sec. 3. DISCLOSURE OF PERSONAL INFORMATION BY PUBLIC
6 4 OFFICIALS, ENTITIES, OR AFFILIATED ORGANIZATIONS == INTERIM
6 5 STUDY COMMITTEE REQUESTED. The legislative council is
6 6 requested to establish an interim study committee to assess
6 7 and review the extent to which public officials, entities, and
6 8 affiliated organizations in possession of or with access to
6 9 personal identifying information of a resident of this state
6 10 which could, if disclosed, render the resident vulnerable to
6 11 identity theft, are disclosing or selling such information for
6 12 compensation. Based upon this assessment and review, the
6 13 committee shall develop recommendations relating to these
6 14 practices. The committee shall be composed of ten members
6 15 representing both political parties and both houses of the
6 16 general assembly. Five members shall be members of the
6 17 senate, three of whom shall be appointed by the majority
6 18 leader of the senate and two of whom shall be appointed by the
6 19 minority leader of the senate. The other five members shall
6 20 be members of the house of representatives, three of whom
6 21 shall be appointed by the speaker of the house of
6 22 representatives and two of whom shall be appointed by the
6 23 minority leader of the house of representatives. The
6 24 committee shall issue a report of its recommendations to the
6 25 general assembly by January 15, 2009.

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JOHN P. KIBBIE
President of the Senate

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PATRICK J. MURPHY
Speaker of the House

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7 2 I hereby certify that this bill originated in the Senate and
7 3 is known as Senate File 2308, Eighty=second General Assembly.

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MICHAEL E. MARSHALL
Secretary of the Senate

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7 9 Approved _____, 2008

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7 13 _____
CHESTER J. CULVER

7 14 Governor