

Senate Study Bill 3040 - Introduced

SENATE/HOUSE FILE _____
BY (PROPOSED ATTORNEY GENERAL
BILL)

A BILL FOR

1 An Act modifying provisions applicable to personal information
2 security breach notification requirements, and making
3 penalties applicable.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 715C.1, subsection 1, Code 2014, is
2 amended to read as follows:

3 1. "*Breach of security*" means unauthorized acquisition
4 of personal information maintained in computerized form by
5 a person that compromises the security, confidentiality, or
6 integrity of the personal information. "Breach of security"
7 also means unauthorized acquisition of personal information
8 maintained by a person in any medium, including on paper, that
9 was transferred by the person to that medium from computerized
10 form. Good faith acquisition of personal information by a
11 person or that person's employee or agent for a legitimate
12 purpose of that person is not a breach of security, provided
13 that the personal information is not used in violation of
14 applicable law or in a manner that harms or poses an actual
15 threat to the security, confidentiality, or integrity of the
16 personal information.

17 Sec. 2. Section 715C.1, subsection 5, Code 2014, is amended
18 to read as follows:

19 5. "*Encryption*" means the use of an algorithmic process
20 to transform data into a form in which the data is rendered
21 unreadable or unusable without the use of a confidential
22 process or key. For purposes of this chapter, personal
23 information shall not be considered encrypted when a key to
24 unencrypt the information has been acquired in the breach of
25 security by which the personal information was acquired.

26 Sec. 3. Section 715C.1, subsection 11, paragraphs c and d,
27 Code 2014, are amended to read as follows:

28 *c.* Financial account number, credit card number, or debit
29 card number alone or in combination with any required security
30 code, access code, or password that would permit access to an
31 individual's financial account.

32 *d.* Unique electronic identifier or routing code, alone or in
33 combination with any required security code, access code, or
34 password that would permit access to an individual's financial
35 account.

1 Sec. 4. Section 715C.1, subsection 12, Code 2014, is amended
2 to read as follows:

3 12. *“Redacted”* means altered or truncated so that no more
4 than five digits of a social security number or the last
5 four digits of other numbers designated in section 715A.8,
6 subsection 1, paragraph *“a”*, are accessible as part of the data.
7 For purposes of this chapter, personal information shall not be
8 considered redacted when a key to unredact the information has
9 been acquired in the breach of security by which the personal
10 information was acquired.

11 Sec. 5. Section 715C.2, Code 2014, is amended to read as
12 follows:

13 **715C.2 Security breach — ~~consumer~~ notification requirements**
14 **— remedies.**

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

31 2. Any person who maintains or otherwise possesses personal
32 information on behalf of another person shall notify the owner
33 or licensor of the information of any breach of security
34 immediately following discovery of such breach of security if a
35 consumer’s personal information was included in the information

1 that was breached.

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

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

12 a. Written notice to the last available address the person
13 has in the person's records.

14 b. Electronic notice if the person's customary method of
15 communication with the consumer is by electronic means or is
16 consistent with the provisions regarding electronic records and
17 signatures set forth in chapter 554D and the federal Electronic
18 Signatures in Global and National Commerce Act, 15 U.S.C.
19 § 7001.

20 c. Substitute notice, if the person demonstrates that
21 the cost of providing notice would exceed two hundred fifty
22 thousand dollars, that the affected class of consumers to be
23 notified exceeds three hundred fifty thousand persons, or
24 if the person does not have sufficient contact information
25 to provide notice. Substitute notice shall consist of the
26 following:

27 (1) Electronic mail notice when the person has an electronic
28 mail address for the affected consumers.

29 (2) Conspicuous posting of the notice or a link to the
30 notice on the internet site of the person if the person
31 maintains an internet site.

32 (3) Notification to major statewide media.

33 5. Notice pursuant to this section shall include, at a
34 minimum, all of the following:

35 a. A description of the breach of security.

1 *b.* The approximate date of the breach of security.

2 *c.* The type of personal information obtained as a result of
3 the breach of security.

4 *d.* Contact information for consumer reporting agencies.

5 *e.* Advice to the consumer to report suspected incidents
6 of identity theft to local law enforcement or the attorney
7 general.

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

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

18 *a.* A person who complies with notification requirements or
19 breach of security procedures that provide greater protection
20 to personal information and at least as thorough disclosure
21 requirements than that provided by this section pursuant to
22 the rules, regulations, procedures, guidance, or guidelines
23 established by the person's primary or functional federal
24 regulator.

25 *b.* A person who complies with a state or federal law
26 that provides greater protection to personal information and
27 at least as thorough disclosure requirements for breach of
28 security or personal information than that provided by this
29 section.

30 *c.* A person who is subject to and complies with regulations
31 promulgated pursuant to Title V of the Gramm-Leach-Bliley Act
32 of 1999, 15 U.S.C. § 6801 - 6809.

33 8. Any person who owns or licenses computerized data that
34 includes a consumer's personal information that is used in
35 the course of the person's business, vocation, occupation,

1 or volunteer activities and that was subject to a breach of
2 security shall give written notice of the breach of security
3 following discovery of such breach of security, or receipt
4 of notification under subsection 2, to the director of the
5 consumer protection division of the office of the attorney
6 general prior to giving notice of the breach of security to
7 any consumer. The requirement to provide notice pursuant to
8 this subsection shall not be subject to a request to delay as
9 provided in subsection 3, and shall apply regardless of whether
10 the person is otherwise excused from giving notice to consumers
11 pursuant to subsection 6 or 7.

12 ~~8.~~ 9. *a.* A violation of this chapter is an unlawful
13 practice pursuant to section 714.16 and, in addition to the
14 remedies provided to the attorney general pursuant to section
15 714.16, subsection 7, the attorney general may seek and obtain
16 an order that a party held to violate this section pay damages
17 to the attorney general on behalf of a person injured by the
18 violation.

19 *b.* The rights and remedies available under this section are
20 cumulative to each other and to any other rights and remedies
21 available under the law.

22 EXPLANATION

23 The inclusion of this explanation does not constitute agreement with
24 the explanation's substance by the members of the general assembly.

25 This bill relates to notification requirements applicable
26 to security breaches involving consumer personal information
27 contained in Code chapter 715C.

28 The bill modifies several definitions contained in the
29 Code chapter. The bill includes within the definition of a
30 "breach of security" the unauthorized acquisition of personal
31 information maintained by a person in any medium, including on
32 paper, that was transferred by the person to that medium from
33 computerized form.

34 The definitions of "encryption" and "redacted" are amended
35 to add that personal information shall not be considered

1 encrypted or redacted when a key to unencrypt or unredact the
2 information has been acquired in the breach of security by
3 which the personal information was acquired.

4 Currently, personal information is defined in the Code
5 chapter to include an individual's first name or first initial
6 and last name together with a financial account number, credit
7 card number, debit card number, or unique electronic identifier
8 or routing code, in combination with any required security
9 code, access code, or password that would permit access to
10 an individual's financial account. The bill provides that
11 a financial account number, credit card number, debit card
12 number, or unique electronic identifier or routing code alone,
13 or in addition to any required security code, access code, or
14 password that would permit access to an individual's financial
15 account, may be considered personal information when combined
16 with an individual's first name or first initial and last name.

17 The bill also requires a person subject to the chapter's
18 consumer notification requirements to notify the director of
19 the consumer protection division of the office of the attorney
20 general prior to giving the required notice of the breach
21 of security to any consumer. The bill provides that this
22 requirement shall not be subject to delay upon the request of
23 law enforcement personnel otherwise applicable to consumer
24 notification, and further shall apply regardless of whether a
25 person is otherwise excused from giving notice pursuant to the
26 chapter's provisions. Existing penalty provisions regarding
27 unlawful practice and damages for violations of the consumer
28 notification requirements would be applicable to the failure
29 to provide notice of a breach of security to the director of
30 the consumer protection division of the office of the attorney
31 general.