

MAINE STATE LEGISLATURE

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L.D. 1671

DATE: 6/7/05

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INSURANCE AND FINANCIAL SERVICES

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STATE OF MAINE HOUSE OF REPRESENTATIVES 122ND LEGISLATURE FIRST SPECIAL SESSION

COMMITTEE AMENDMENT "A" to H.P. 1180, L.D. 1671, Bill, "An Act To Protect Maine Citizens from Identity Theft"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

'Sec. 1. 10 MRSA c. 210-B is enacted to read:

CHAPTER 210-B

NOTICE OF RISK TO PERSONAL DATA

§1346. Short title

This chapter may be known and cited as "the Notice of Risk to Personal Data Act."

§1347. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Breach of the security of the system. "Breach of the security of the system" or "security breach" means unauthorized acquisition of an individual's computerized data that compromises the security, confidentiality or integrity of personal information of the individual maintained by an information broker. Good faith acquisition of personal information by an employee or agent of an information broker for the purposes of the information broker is not a breach of the security of the

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2 system if the personal information is not used for or subject to
3 further unauthorized disclosure.

4 2. Encryption. "Encryption" means the disguising of data
5 using generally accepted practices.

6 3. Information broker. "Information broker" means a person
7 who, for monetary fees or dues, engages in whole or in part in
8 the business of collecting, assembling, evaluating, compiling,
9 reporting, transmitting, transferring or communicating
10 information concerning individuals for the primary purpose of
11 furnishing personal information to nonaffiliated 3rd parties.
12 "Information broker" does not include a governmental agency whose
13 records are maintained primarily for traffic safety, law
14 enforcement or licensing purposes.

15 4. Notice. "Notice" means:

16 A. Written notice:

17 B. Electronic notice, if the notice provided is consistent
18 with the provisions regarding electronic records and
19 signatures set forth in 15 United States Code, Section 7001;
20 or

21 C. Substitute notice, if the information broker demonstrates
22 that the cost of providing notice would exceed \$5,000, that
23 the affected class of individuals to be notified exceeds
24 1,000 or that the information broker does not have
25 sufficient contact information to provide written or
26 electronic notice to those individuals. Substitute notice
27 must consist of all of the following:

28 (1) E-mail notice, if the information broker has
29 e-mail addresses for the individuals to be notified;

30 (2) Conspicuous posting of the notice on the
31 information broker's publicly accessible website, if
32 the information broker maintains one; and

33 (3) Notification to major statewide media.

34 5. Person. "Person" means an individual, partnership,
35 corporation, limited liability company, trust, estate,
36 cooperative, association or other entity. "Person" as used in
37 this chapter may not be construed to require duplicative notice
38 by more than one individual, corporation, trust, estate,
39 cooperative, association or other entity involved in the same
40 transaction.

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2 6. Personal information. "Personal information" means an
3 individual's first name, or first initial, and last name in
4 combination with any one or more of the following data elements,
5 when either the name or the data elements are not encrypted or
6 redacted:

7 A. Social security number;

8 B. Driver's license number or state identification card
9 number;

10 C. Account number, credit card number or debit card number,
11 if circumstances exist wherein such a number could be used
12 without additional identifying information, access codes or
13 passwords;

14 D. Account passwords or personal identification numbers or
15 other access codes; or

16 E. Any of the data elements contained in paragraphs A to D
17 when not in connection with the individual's first name, or
18 first initial, and last name, if the information if
19 compromised would be sufficient to permit a person to
20 fraudulently assume or attempt to assume the identity of the
21 person whose information was compromised.

22 "Personal information" does not include publicly available
23 information that is lawfully made available to the general public
24 from federal, state or local government records or widely
25 distributed media.

26 7. System. "System" means a computerized data storage
27 system containing personal information.

28 8. Unauthorized person. "Unauthorized person" means a
29 person who does not have authority or permission of an
30 information broker to access personal information maintained by
31 the information broker or who obtains access to such information
32 by fraud, misrepresentation, subterfuge or similar deceptive
33 practices.

34 **§1348. Security breach notice requirements**

35 1. Notification to residents. An information broker that
36 maintains computerized data that includes personal information
37 shall give notice of a breach of the security of the system
38 following discovery or notification of the security breach to a
39 resident of this State whose personal information was, or is
40 reasonably believed to have been, acquired by an unauthorized
41 person. The notice must be made as expediently
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2 as possible and without unreasonable delay, consistent with the
3 legitimate needs of law enforcement pursuant to subsection 3 or
4 with measures necessary to determine the scope of the security
5 breach and restore the reasonable integrity, security and
6 confidentiality of the data in the system.

7 2. Notification to information broker. A person that
8 maintains, on behalf of an information broker, computerized data
9 that includes personal information that the person does not own
10 shall notify the information broker of a breach of the security
11 of the system immediately following discovery if the personal
12 information was, or is reasonably believed to have been, acquired
13 by an unauthorized person.

14 3. Delay of notification for law enforcement purposes. The
15 notification required by this section may be delayed if a law
16 enforcement agency determines that the notification will
17 compromise a criminal investigation; the notification required by
18 this section must be made after the law enforcement agency
19 determines that it will not compromise the investigation.

20 4. Notification to consumer reporting agencies. If an
21 information broker discovers a breach of the security of the
22 system that requires notification to more than 1,000 persons at a
23 single time, the information broker shall also notify, without
24 unreasonable delay, consumer reporting agencies that compile and
25 maintain files on consumers on a nationwide basis, as defined in
26 15 United States Code, Section 1681a(p).

27 5. Notification to state regulators. When notice of a
28 breach of the security of the system is required under subsection
29 1, the information broker shall notify the appropriate state
30 regulators within the Department of Professional and Financial
31 Regulation, or if the information broker is not regulated by the
32 department, the Attorney General.

33 **§1349. Enforcement; penalties**

34 1. Enforcement. The appropriate state regulators within
35 the Department of Professional and Financial Regulation shall
36 enforce this chapter for any information broker that is licensed
37 or regulated by those regulators. The Attorney General shall
38 enforce this chapter for all other information brokers.

39 2. Civil violation. An information broker that violates
40 this chapter commits a civil violation and is subject to one of
41 more of the following:

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- 2 A. A fine of not more than \$500 per violation, up to a
3 maximum of \$2,500 for each day the information broker is in
4 violation of this chapter;
- 6 B. Equitable relief; or
- 8 C. Enjoinment from further violations of this chapter.
- 10 3. Cumulative effect. The rights and remedies available
11 under this section are cumulative and do not affect or prevent
12 rights and remedies available under federal or state law.

14 **Sec. 2. Data security and security breach study; report.** The
15 Department of Professional and Financial Regulation, in
16 conjunction with the Attorney General, other financial regulatory
17 agencies, business representatives, other interested parties that
18 store electronic consumer data and consumer representatives,
19 shall conduct a study regarding data security and security breach
20 requirements. The study must include, but is not limited to,
21 current electronic data security plans used by businesses; the
22 value, practicality and costs of imposing additional
23 requirements, including notification requirements, on businesses;
24 California law governing security breach and notification
25 requirements; and the right to private cause of action for a
26 person injured by a violation of security breach notification
27 law. The Department of Professional and Financial Regulation
28 shall report its findings, including any proposed legislation, to
29 the Joint Standing Committee on Insurance and Financial Services,
30 by February 1, 2006. Following receipt and review of the report
31 required under this section and the report required under section
32 3, the Joint Standing Committee on Insurance and Financial
33 Services may report out a bill related to the reports to the
34 Second Regular Session of the 122nd Legislature.

36 **Sec. 3. Security of information maintained by State Government;**
37 **report.** No later than February 1, 2006, the Chief Information
38 Officer within the Department of Administrative and Financial
39 Services shall report to the Joint Standing Committee on
40 Insurance and Financial Services regarding the State's current
41 and planned for policies, strategies and systems to protect the
42 privacy and security of electronic personal information
43 maintained by State Government.

44 **Sec. 4. Effective date.** That section of this Act that enacts
45 the Maine Revised Statutes, Title 10, chapter 210-B takes effect
46 January 31, 2006.'

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SUMMARY

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This amendment replaces the bill. The amendment establishes notification requirements for information brokers, defined as persons or entities engaged in the business of collecting personal information for the purpose of providing such information to 3rd parties, in the event of a security breach, which is defined as unauthorized acquisition of computerized data that compromises the security, confidentiality or integrity of personal information. It requires information brokers to provide notice to residents of the State whose personal information has been affected by a security breach, to state regulatory agencies and, in the event that at least 1,000 persons are affected, to consumer reporting agencies. The bill establishes similar notification requirements for all entities engaged in business in Maine. The amendment clarifies the enforcement provisions and lowers the penalties relative to those in the bill. The amendment delays the effective date for the security breach notification requirements to January 31, 2006. The amendment adds a provision to require the Department of Professional and Financial Regulation to conduct a study with interested persons to examine additional issues related to data security and security breach requirements and to report to the Joint Standing Committee on Insurance and Financial Services. It also requires the Chief Information Officer to report to the committee regarding the State's policies to protect the privacy and security of personal information maintained by State Government.

FISCAL NOTE REQUIRED
(See attached)

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122nd MAINE LEGISLATURE

LD 1671

LR 2362(02)

An Act to Protect Maine Citizens from Identity Theft

Fiscal Note for Bill as Amended by Committee Amendment "A"

Committee: Insurance and Financial Services

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund
Minor cost increase - Other Special Revenue Funds
Minor revenue increase - General Fund

Correctional and Judicial Impact Statements:

Establishes new civil violations.

This bill may increase the number of civil suits filed in the court system.

The collection of additional fines and filing fees may increase General Fund revenue by minor amounts.

Fiscal Detail and Notes

Any additional costs to the Department of Professional and Financial Regulation, the Department of the Attorney General and the Department of Administrative and Financial Services can be absorbed by the departments utilizing existing resources.