

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



122nd MAINE LEGISLATURE

SECOND REGULAR SESSION-2006

Legislative Document

No. 2017

H.P. 1417

House of Representatives, February 16, 2006

An Act To Amend the Notice of Risk to Personal Data Act

Reported by Representative PERRY of Calais for the Joint Standing Committee on Insurance and Financial Services pursuant to Public Law 2005, chapter 379, section 2.

Reference to the Committee on Insurance and Financial Services suggested and ordered printed under Joint Rule 218.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 5 MRSA §1973, sub-§7** is enacted to read:

3 **7. Security standards for computerized data including personal information.**
4 The Chief Information Officer shall establish written standards for the security of
5 computerized data, including personal information, maintained by state agencies and
6 departments, including standards for notification to a resident of this State when an
7 agency or department becomes aware of a breach of security with regard to personal
8 information and if a reasonable investigation reveals that personal information has been
9 misused or a reasonable possibility exists that personal information will be misused.

10 **Sec. 2. 10 MRSA §1347, sub-§1**, as enacted by PL 2005, c. 379, §1 and affected
11 by §4, is amended to read:

12 **1. Breach of the security of the system.** "Breach of the security of the system" or
13 "security breach" means unauthorized acquisition of an individual's computerized data
14 that compromises the security, confidentiality or integrity of personal information of the
15 individual maintained by ~~an information broker~~ a person. Good faith acquisition of
16 personal information by an employee or agent of ~~an information broker for the purposes~~
17 ~~of the information broker~~ a person on behalf of the person is not a breach of the security
18 of the system if the personal information is not used for or subject to further unauthorized
19 disclosure.

20 **Sec. 3. 10 MRSA §1347, sub-§4, ¶C**, as enacted by PL 2005, c. 379, §1 and
21 affected by §4, is amended to read:

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

- 28 (1) E-mail notice, if the ~~information broker~~ person has e-mail addresses for the
29 individuals to be notified;
- 30 (2) Conspicuous posting of the notice on the ~~information broker's~~ person's
31 publicly accessible website, if the ~~information broker~~ person maintains one; and
- 32 (3) Notification to major statewide media.

33 **Sec. 4. 10 MRSA §1347, sub-§5**, as enacted by PL 2005, c. 379, §1 and affected
34 by §4, is amended to read:

35 **5. Person.** "Person" means an individual, partnership, corporation, limited liability
36 company, trust, estate, cooperative, association or other entity, including the University of
37 Maine System, the Maine Community College System and private colleges and
38 universities. "Person" as used in this chapter may not be construed to require duplicative
39 notice by more than one individual, corporation, trust, estate, cooperative, association or
40 other entity involved in the same transaction. For purposes of this chapter, "person" does
41 not include an agency of State Government.

1 **Sec. 5. 10 MRSA §1347, sub-§8**, as enacted by PL 2005, c. 379, §1 and affected
2 by §4, is amended to read:

3 **8. Unauthorized person.** "Unauthorized person" means a person who does not
4 have authority or permission of ~~an a person maintaining personal~~ information broker to
5 access personal information maintained by the ~~information-broker~~ person or who obtains
6 access to such information by fraud, misrepresentation, subterfuge or similar deceptive
7 practices.

8 **Sec. 6. 10 MRSA §1348, sub-§1**, as enacted by PL 2005, c. 379, §1 and affected
9 by §4, is repealed and the following enacted in its place:

10 **1. Notification to residents.** The following provisions apply to notification to
11 residents by information brokers and other persons.

12 A. If an information broker that maintains computerized data that includes personal
13 information becomes aware of a breach of the security of the system, the information
14 broker shall conduct in good faith a reasonable and prompt investigation to determine
15 the likelihood that personal information has been or will be misused and shall give
16 notice of a breach of the security of the system following discovery or notification of
17 the security breach to a resident of this State whose personal information has been, or
18 is reasonably believed to have been, acquired by an unauthorized person.

19 B. If any other person who maintains computerized data that includes personal
20 information becomes aware of a breach of the security of the system, the person shall
21 conduct in good faith a reasonable and prompt investigation to determine the
22 likelihood that personal information has been or will be misused and shall give notice
23 of a breach of the security of the system following discovery or notification of the
24 security breach to a resident of this State if misuse of the personal information has
25 occurred or if it is reasonably possible that misuse will occur.

26 The notices required under paragraphs A and B must be made as expediently as possible
27 and without unreasonable delay, consistent with the legitimate needs of law enforcement
28 pursuant to subsection 3 or with measures necessary to determine the scope of the
29 security breach and restore the reasonable integrity, security and confidentiality of the
30 data in the system.

31 **Sec. 7. 10 MRSA §1348, sub-§2**, as enacted by PL 2005, c. 379, §1 and affected
32 by §4, is amended to read:

33 **2. Notification to person maintaining personal information.** A ~~person~~ 3rd-party
34 entity that maintains, on behalf of ~~an information-broker~~ a person, computerized data that
35 includes personal information that the ~~person~~ 3rd-party entity does not own shall notify
36 the ~~information-broker~~ person maintaining personal information of a breach of the
37 security of the system immediately following discovery if the personal information was,
38 or is reasonably believed to have been, acquired by an unauthorized person.

39 **Sec. 8. 10 MRSA §1348, sub-§4**, as enacted by PL 2005, c. 379, §1 and affected
40 by §4, is amended to read:

41 **4. Notification to consumer reporting agencies.** If ~~an information-broker~~ a person
42 discovers a breach of the security of the system that requires notification to more than

1 1,000 persons at a single time, the ~~information broker~~ person shall also notify, without
2 unreasonable delay, consumer reporting agencies that compile and maintain files on
3 consumers on a nationwide basis, as defined in 15 United States Code, Section 1681a(p).

4 **Sec. 9. 10 MRSA §1348, sub-§5**, as enacted by PL 2005, c. 379, §1 and affected
5 by §4, is amended to read:

6 **5. Notification to state regulators.** When notice of a breach of the security of the
7 system is required under subsection 1, the ~~information broker~~ person shall notify the
8 appropriate state regulators within the Department of Professional and Financial
9 Regulation, or if the ~~information broker~~ person is not regulated by the department, the
10 Attorney General.

11 **Sec. 10. 10 MRSA §1349, sub-§1**, as enacted by PL 2005, c. 379, §1 and
12 affected by §4, is amended to read:

13 **1. Enforcement.** The appropriate state regulators within the Department of
14 Professional and Financial Regulation shall enforce this chapter for any ~~information~~
15 ~~broker~~ person that is licensed or regulated by those regulators. The Attorney General
16 shall enforce this chapter for all other ~~information brokers~~ persons.

17 **Sec. 11. 10 MRSA §1349, sub-§2**, as enacted by PL 2005, c. 379, §1 and
18 affected by §4, is amended to read:

19 **2. Civil violation.** ~~An information broker~~ A person that violates this chapter
20 commits a civil violation and is subject to one or more of the following:

- 21 A. A fine of not more than \$500 per violation, up to a maximum of \$2,500 for each
22 day the ~~information broker~~ person is in violation of this chapter;
- 23 B. Equitable relief; or
- 24 C. Enjoinment from further violations of this chapter.

25 **Sec. 12. 10 MRSA §1350** is enacted to read:

26 **§1350. Private remedy**

27 A person may bring a civil action and recover actual damages together with costs and
28 reasonable attorney's fees if the person is injured by any of the following actions taken by
29 a person subject to the provisions of this chapter:

30 **1. Failure to conduct investigation.** After becoming aware of a security breach, a
31 person subject to the provisions of this chapter fails to conduct in good faith a reasonable
32 and prompt investigation as required by this chapter; or

33 **2. Failure to notify.** After becoming aware of a security breach, a person subject to
34 the provisions of this chapter fails to provide the notification as required by this chapter.

35 **Sec. 13. 10 MRSA §1350-A** is enacted to read:

36 **§1350-A. Rulemaking**

37 The appropriate state regulators within the Department of Professional and Financial
38 Regulation may adopt rules as necessary for the administration and implementation of
39 this chapter. Rules adopted pursuant to this section are routine technical rules as defined
40 in Title 5, chapter 375, subchapter 2-A.

1 **SUMMARY**

2 This bill expands to other types of persons and businesses, including colleges and
3 universities, the current requirement that information brokers notify consumers upon a
4 security breach of the consumers' personal information. The bill also establishes a private
5 cause of action for certain violations of the obligation to notify consumers.

6 The bill also requires the State's Chief Information Officer to develop standards and
7 policies requiring notification by state agencies to Maine residents upon a security breach
8 of personal information.