

1 ENGROSSED HOUSE
2 BILL NO. 2245

By: Ingmire, Kern, Terrill,
Peterson (Pam) and Tibbs
of the House

3
4 and

Bass of the Senate
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8 An Act relating to identity theft; creating short
9 title; defining terms; requiring disclosure of
10 security breach to certain persons without
11 unreasonable delay; providing guidelines for notice
12 requirements; providing enforcement authority to the
13 Attorney General or district attorney; stating
14 enforcement authority for certain financial
15 institutions; stating when discovery and notification
16 procedures of security breaches shall be applied;
17 providing for codification; and providing an
18 effective date.

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22 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

23 SECTION 1. NEW LAW A new section of law to be codified
24 in the Oklahoma Statutes as Section 161 of Title 24, unless there is
created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Security Breach
Notification Act".

SECTION 2. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 162 of Title 24, unless there is
created a duplication in numbering, reads as follows:

1 As used in the Security Breach Notification Act:

2 1. "Breach of the security of a system" means the unauthorized
3 access and acquisition of unencrypted and unredacted computerized
4 data that compromises the security or confidentiality of personal
5 information maintained by an individual or entity as part of a
6 database of personal information regarding multiple individuals and
7 that causes, or the individual or entity reasonably believes has
8 caused or will cause, identity theft or other fraud to any resident
9 of this state. Good faith acquisition of personal information by an
10 employee or agent of an individual or entity for the purposes of the
11 individual or the entity is not a breach of the security of the
12 system, provided that the personal information is not used for a
13 purpose other than a lawful purpose of the individual or entity or
14 subject to further unauthorized disclosure;

15 2. "Entity" includes corporations, business trusts, estates,
16 partnerships, limited partnerships, limited liability partnerships,
17 limited liability companies, associations, organizations, joint
18 ventures, governments, governmental subdivisions, agencies, or
19 instrumentalities, or any other legal entity, whether for profit or
20 not-for-profit;

21 3. "Encrypted" means transformation of data through the use of
22 an algorithmic process into a form in which there is a low
23 probability of assigning meaning without use of a confidential
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1 process or key, or securing the information by another method that
2 renders the data elements unreadable or unusable;

3 4. "Financial institution" means any institution the business
4 of which is engaging in financial activities as defined by 15
5 U.S.C., Section 6809;

6 5. "Individual" means a natural person;

7 6. "Personal information" means the first name or first initial
8 and last name in combination with and linked to any one or more of
9 the following data elements that relate to a resident of this state,
10 when the data elements are neither encrypted nor redacted:

11 a. social security number,

12 b. driver license number or state identification card
13 number issued in lieu of a driver license, or

14 c. financial account number, or credit card or debit card
15 number, in combination with any required security
16 code, access code, or password that would permit
17 access to the financial accounts of a resident.

18 The term does not include information that is lawfully obtained from
19 publicly available information, or from federal, state or local
20 government records lawfully made available to the general public;

21 7. "Notice" means:

22 a. written notice to the postal address in the records
23 of the individual or entity,

24 b. telephone notice,

1 c. electronic notice, or
2 d. substitute notice, if the individual or the entity
3 required to provide notice demonstrates that the cost
4 of providing notice will exceed Fifty Thousand Dollars
5 (\$50,000.00), or that the affected class of residents
6 to be notified exceeds one hundred thousand (100,000)
7 persons, or that the individual or the entity does not
8 have sufficient contact information or consent to
9 provide notice as described in subparagraph a, b or c
10 of this paragraph. Substitute notice consists of any
11 two of the following:

- 12 (1) e-mail notice if the individual or the entity has
13 e-mail addresses for the members of the affected
14 class of residents,
- 15 (2) conspicuous posting of the notice on the Internet
16 web site of the individual or the entity if the
17 individual or the entity maintains a public
18 Internet web site, or
- 19 (3) notice to major statewide media; and

20 8. "Redact" means alteration or truncation of data such that
21 no more than the following are accessible as part of the personal
22 information:

- 23 a. five digits of a social security number, or
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1 b. the last four digits of a driver license number, state
2 identification card number or account number.

3 SECTION 3. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 163 of Title 24, unless there is
5 created a duplication in numbering, reads as follows:

6 A. An individual or entity that owns or licenses computerized
7 data that includes personal information shall disclose any breach of
8 the security of the system following discovery or notification of
9 the breach of the security of the system to any resident of this
10 state whose unencrypted and unredacted personal information was or
11 is reasonably believed to have been accessed and acquired by an
12 unauthorized person and that causes, or the individual or entity
13 reasonably believes has caused or will cause, identity theft or
14 other fraud to any resident of this state. Except as provided in
15 subsection D of this section or in order to take any measures
16 necessary to determine the scope of the breach and to restore the
17 reasonable integrity of the system, the disclosure shall be made
18 without unreasonable delay.

19 B. An individual or entity must disclose the breach of the
20 security of the system if encrypted information is accessed and
21 acquired in an unencrypted form or if the security breach involves a
22 person with access to the encryption key and the individual or
23 entity reasonably believes that such breach has caused or will cause
24 identity theft or other fraud to any resident of this state.

1 C. An individual or entity that maintains computerized data
2 that includes personal information that the individual or entity
3 does not own or license shall notify the owner or licensee of the
4 information of any breach of the security of the system as soon as
5 practicable following discovery, if the personal information was or
6 if the entity reasonably believes was accessed and acquired by an
7 unauthorized person.

8 D. Notice required by this section may be delayed if a law
9 enforcement agency determines and advises the individual or entity
10 that the notice will impede a criminal or civil investigation or
11 homeland or national security. Notice required by this section must
12 be made without unreasonable delay after the law enforcement agency
13 determines that notification will no longer impede the investigation
14 or jeopardize national or homeland security.

15 SECTION 4. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 164 of Title 24, unless there is
17 created a duplication in numbering, reads as follows:

18 A. An entity that maintains its own notification procedures as
19 part of an information privacy or security policy for the treatment
20 of personal information and that are consistent with the timing
21 requirements of this act shall be deemed to be in compliance with
22 the notification requirements of this act if it notifies residents
23 of this state in accordance with its procedures in the event of a
24 breach of security of the system.

1 B. 1. A financial institution that complies with the
2 notification requirements prescribed by the Federal Interagency
3 Guidance on Response Programs for Unauthorized Access to Customer
4 Information and Customer Notice is deemed to be in compliance with
5 the provisions of this act.

6 2. An entity that complies with the notification requirements
7 or procedures pursuant to the rules, regulation, procedures, or
8 guidelines established by the primary or functional federal
9 regulator of the entity shall be deemed to be in compliance with the
10 provisions of this act.

11 SECTION 5. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 165 of Title 24, unless there is
13 created a duplication in numbering, reads as follows:

14 A. A violation of this act that results in injury or loss to
15 residents of this state may be enforced by the Attorney General or a
16 district attorney in the same manner as an unlawful practice under
17 the Oklahoma Consumer Protection Act.

18 B. Except as provided in subsection C of this section, the
19 Attorney General or a district attorney shall have exclusive
20 authority to bring action and may obtain either actual damages for a
21 violation of this act or a civil penalty not to exceed One Hundred
22 Fifty Thousand Dollars (\$150,000.00) per breach of the security of
23 the system or series of breaches of a similar nature that are
24 discovered in a single investigation.

1 C. A violation of this act by a state-chartered or state-
2 licensed financial institution shall be enforceable exclusively by
3 the primary state regulator of the financial institution.

4 SECTION 6. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 166 of Title 24, unless there is
6 created a duplication in numbering, reads as follows:

7 This act shall apply to the discovery or notification of a
8 breach of the security of the system that occurs on or after
9 November 1, 2008.

10 SECTION 2. This act shall become effective November 1, 2008.

11 Passed the House of Representatives the 11th day of March, 2008.

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Presiding Officer of the House of
Representatives

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Passed the Senate the ____ day of _____, 2008.

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Presiding Officer of the Senate

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