

**EHB 2245**

**THE STATE SENATE**  
**Thursday, April 3, 2008**

**ENGROSSED**

**House Bill No. 2245**

ENGROSSED HOUSE BILL NO. 2245 - By: Ingmire, Kern, Terrill, Peterson (Pam) and Tibbs of the House and Bass of the Senate.

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

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

SECTION 1. NEW LAW A new section of law to be codified 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:

As used in the Security Breach Notification Act:

1. "Breach of the security of a system" means the unauthorized access and acquisition of unencrypted and unredacted computerized data that compromises the security or confidentiality of personal

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

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

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

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

4           5. "Individual" means a natural person;

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

9           a. social security number,

10           b. driver license number or state identification card  
11           number issued in lieu of a driver license, or

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

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

19           7. "Notice" means:

20           a. written notice to the postal address in the records  
21           of the individual or entity,

22           b. telephone notice,

23           c. electronic notice, or

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

11                 (1) e-mail notice if the individual or the entity has  
12                    e-mail addresses for the members of the affected  
13                    class of residents,

14                 (2) conspicuous posting of the notice on the Internet  
15                    web site of the individual or the entity if the  
16                    individual or the entity maintains a public  
17                    Internet web site, or

18                 (3) notice to major statewide media; and

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

22           a.    five digits of a social security number, or

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

1 entity reasonably believes that such breach has caused or will cause  
2 identity theft or other fraud to any resident of this state.

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

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

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

20 A. An entity that maintains its own notification procedures as  
21 part of an information privacy or security policy for the treatment  
22 of personal information and that are consistent with the timing  
23 requirements of this act shall be deemed to be in compliance with

1 the notification requirements of this act if it notifies residents  
2 of this state in accordance with its procedures in the event of a  
3 breach of security of the system.

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

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

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

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

21 B. Except as provided in subsection C of this section, the  
22 Attorney General or a district attorney shall have exclusive  
23 authority to bring action and may obtain either actual damages for a

1 violation of this act or a civil penalty not to exceed One Hundred  
2 Fifty Thousand Dollars (\$150,000.00) per breach of the security of  
3 the system or series of breaches of a similar nature that are  
4 discovered in a single investigation.

5 C. A violation of this act by a state-chartered or state-  
6 licensed financial institution shall be enforceable exclusively by  
7 the primary state regulator of the financial institution.

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

11 This act shall apply to the discovery or notification of a  
12 breach of the security of the system that occurs on or after  
13 November 1, 2008.

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

15 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 4-1-08 - DO PASS.