

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005
4

A Bill

SENATE BILL 1167

5 By: Senator Capps
6 By: Representative Schulte
7

For An Act To Be Entitled

8
9
10 AN ACT TO PROVIDE NOTICE TO CONSUMERS OF THE
11 DISCLOSURE OF THEIR PERSONAL INFORMATION; AND FOR
12 OTHER PURPOSES.
13

Subtitle

14
15 AN ACT TO PROVIDE NOTICE TO CONSUMERS OF
16 THE DISCLOSURE OF THEIR PERSONAL
17 INFORMATION.
18

19
20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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22 SECTION 1. Arkansas Code Title 4 is amended to add an additional
23 chapter and subchapter to read as follows:
24

25 Chapter 110 – INFORMATION TECHNOLOGY

26 Subchapter 1 – Personal Information Protection

27 4-110-101. Short title.

28 This subchapter shall be known and cited as the "Personal Information
29 Protection Act".
30

31 4-110-102. Findings and purpose.

32 It is the intent of the General Assembly to ensure that personal
33 information about Arkansas residents is protected. To that end, the purpose
34 of this section is to encourage businesses that own or license personal
35 information about the citizens of the State of Arkansas to provide reasonable
36 security for the information.



1
2 4-110-103. Definitions.

3 As used in this subchapter:

4 (1)(A) "Business" means a sole proprietorship, partnership,
5 corporation, association, or other group, however organized and whether or
6 not organized to operate at a profit, including a financial institution
7 organized, chartered, or holding a license or authorization certificate under
8 the law of this state, any other state, the United States, or of any other
9 country, or the parent or the subsidiary of a financial institution.

10 (B) "Business" includes an entity that destroys records;

11 (2) "Customer" means an individual who provides personal
12 information to a business for the purpose of purchasing or leasing a product
13 or obtaining a service from the business;

14 (3) "Individual" means a natural person;

15 (4) "Owns or licenses" includes, but is not limited to, personal
16 information that a business retains as part of the business' internal
17 customer account or for the purpose of using the information in transactions
18 with the person to whom the information relates;

19 (5)(A) "Personal information" means any information that
20 identifies, relates to, describes, or is capable of being associated with, a
21 particular individual, including, but not limited to, his or her name,
22 signature, social security number, physical characteristics or description,
23 address, telephone number, passport number, driver's license or state
24 identification card number, insurance policy number, education, employment,
25 employment history, bank account number, credit card number, debit card
26 number, or any other financial information.

27 (B) "Personal information" does not include publicly
28 available information that is lawfully made available to the general public
29 from federal, state, or local government records; and (6)

30 "Records" means any material, regardless of the physical form, on which
31 information is recorded or preserved by any means, including in written or
32 spoken words, graphically depicted, printed, or electromagnetically
33 transmitted. "Records" does not include publicly available directories
34 containing information an individual has voluntarily consented to have
35 publicly disseminated or listed, such as name, address, or telephone number.

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1 4-110-104. Protection of personal information.

2 (a) A business shall take all reasonable steps to destroy or arrange
3 for the destruction of a customer's records within its custody or control
4 containing personal information which is no longer to be retained by the
5 business by shredding, erasing, or otherwise modifying the personal
6 information in the records to make it unreadable or undecipherable through
7 any means.

8 (b) A business that owns or licenses personal information about an
9 Arkansas resident shall implement and maintain reasonable security procedures
10 and practices appropriate to the nature of the information to protect the
11 personal information from unauthorized access, destruction, use,
12 modification, or disclosure.

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14 4-110-105. Disclosure of security breaches.

15 (a)(1) Any person or business that conducts business in Arkansas and
16 that owns or licenses computerized data that includes personal information
17 shall disclose any breach of the security of the system following discovery
18 or notification of the breach in the security of the data to any resident of
19 Arkansas whose unencrypted personal information was, or is reasonably
20 believed to have been, acquired by an unauthorized person.

21 (2) The disclosure shall be made in the most expedient time and
22 manner possible and without unreasonable delay, consistent with the
23 legitimate needs of law enforcement, as provided in subsection (c) of this
24 section, or any measures necessary to determine the scope of the breach and
25 restore the reasonable integrity of the data system.

26 (b) Any person or business that maintains computerized data that
27 includes personal information that the person or business does not own shall
28 notify the owner or licensee of the information of any breach of the security
29 of the data immediately following discovery if the personal information was,
30 or is reasonably believed to have been, acquired by an unauthorized person.

31 (c)(1) The notification required by this section may be delayed if a
32 law enforcement agency determines that the notification will impede a
33 criminal investigation.

34 (2) The notification required by this section shall be made
35 after the law enforcement agency determines that it will not compromise the
36 investigation.

1 (d)(1) For purposes of this section, "breach of the security of the
2 system" means unauthorized acquisition of computerized data that compromises
3 the security, confidentiality, or integrity of personal information
4 maintained by the person or business.

5 (2) Good faith acquisition of personal information by an
6 employee or agent of the person or business for the purposes of the person or
7 business is not a breach of the security of the system, provided that the
8 personal information is not used or subject to further unauthorized
9 disclosure.

10 (f) For purposes of this section, notice may be provided by one (1) of
11 the following methods:

12 (1) Written notice;

13 (2) Electronic mail notice, if the notice provided is consistent
14 with the provisions regarding electronic records and signatures set forth in
15 Section 7001 of Title 15 of the United States Code; or

16 (3)(A) Substitute notice, if the person or business demonstrates
17 that the cost of providing notice would exceed two hundred fifty thousand
18 dollars
19 (\$250,000), or that the affected class of subject persons to be notified
20 exceeds five hundred thousand (500,000), or the person or business does not
21 have sufficient contact information.

22 (B) Substitute notice shall consist of all of the
23 following:

24 (i) Electronic mail notice when the person or
25 business has an electronic mail address for the subject persons;

26 (ii) Conspicuous posting of the notice on the website
27 of the person or business, if the person or business maintains a website; and

28 (iii) Notification by statewide media.

29 (g) Notwithstanding subsection (f) of this section, a person or
30 business that maintains its own notification procedures as part of an
31 information security policy for the treatment of personal information and is
32 otherwise consistent with the timing requirements of this part, shall be
33 deemed to be in compliance with the notification requirements of this section
34 if the person or business notifies affected persons in accordance with its
35 policies in the event of a breach of security of the system.

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1 4-110-106. Exemptions.

2 (a)(1) The provisions of this subchapter do not apply to a business
3 that is regulated by a state or federal law that provides greater protection
4 to personal information and at least as thorough disclosure requirements for
5 breaches of the security of personal information than that provided by this
6 section.

7 (2) Compliance with the state or federal law shall be deemed
8 compliance with this subchapter with regard to the subjects covered by this
9 subchapter.

10 (b) This section does not relieve a business from a duty to comply
11 with any other requirements of other state and federal law regarding the
12 protection and privacy of personal information.

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14 4-110-107. Waiver.

15 Any waiver of a provision of this subchapter is contrary to public
16 policy, void, and unenforceable.

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18 4-109-108. Penalties.

19 Any violation of this act is punishable by action of the Attorney
20 General under the §§ 4-88-101 through 4-88-115.

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