

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 15

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

AN ACT

RELATING TO CONSUMER PROTECTION; CREATING THE DATA BREACH
NOTIFICATION ACT; REQUIRING NOTIFICATION TO PERSONS AFFECTED BY
A SECURITY BREACH INVOLVING PERSONAL IDENTIFYING INFORMATION;
REQUIRING SECURE STORAGE AND DISPOSAL OF DATA CONTAINING
PERSONAL IDENTIFYING INFORMATION; REQUIRING NOTIFICATION TO
CONSUMER REPORTING AGENCIES AND THE OFFICE OF THE ATTORNEY
GENERAL; PROVIDING CIVIL PENALTIES; EXEMPTING NEW MEXICO AND
ITS POLITICAL SUBDIVISIONS FROM COMPLIANCE WITH THE DATA BREACH
NOTIFICATION ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be
cited as the "Data Breach Notification Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
Data Breach Notification Act:

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1 A. "biometric data" means a record generated by
2 automatic measurements of an identified individual's
3 fingerprints, voice print, iris or retina patterns, facial
4 characteristics or hand geometry that is used to uniquely and
5 durably authenticate an individual's identity when the
6 individual accesses a physical location, device, system or
7 account;

8 B. "encrypted" means rendered unusable, unreadable
9 or indecipherable to an unauthorized person through a security
10 technology or methodology generally accepted in the field of
11 information security;

12 C. "personal identifying information":

13 (1) means an individual's first name or first
14 initial and last name in combination with one or more of the
15 following data elements that relate to the individual, when the
16 data elements are not protected through encryption or redaction
17 or otherwise rendered unreadable or unusable:

- 18 (a) social security number;
19 (b) driver's license number;
20 (c) government-issued identification
21 number;
22 (d) account number, credit card number
23 or debit card number in combination with any required security
24 code, access code or password that would permit access to a
25 person's financial account; or

1 (e) biometric data; and

2 (2) does not mean information that is lawfully
3 obtained from publicly available sources or from federal, state
4 or local government records lawfully made available to the
5 general public;

6 D. "security breach" means the unauthorized
7 acquisition of unencrypted computerized data, or of encrypted
8 computerized data and the confidential process or key used to
9 decrypt the encrypted computerized data, that compromises the
10 security, confidentiality or integrity of personal identifying
11 information maintained by a person. "Security breach" does not
12 include the good-faith acquisition of personal identifying
13 information by an employee or agent of a person for a
14 legitimate business purpose of the person; provided that the
15 personal identifying information is not subject to further
16 unauthorized disclosure; and

17 E. "service provider" means any person that
18 receives, stores, maintains, licenses, processes or otherwise
19 is permitted access to personal identifying information through
20 its provision of services directly to a person that is subject
21 to regulation.

22 SECTION 3. [NEW MATERIAL] DISPOSAL OF PERSONAL
23 IDENTIFYING INFORMATION.--A person that owns or licenses
24 records containing personal identifying information of a New
25 Mexico resident shall arrange for proper disposal of the

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1 records when they are no longer reasonably needed for business
2 purposes. As used in this section, "proper disposal" means
3 shredding, erasing or otherwise modifying the personal
4 identifying information contained in the records to make the
5 personal identifying information unreadable or undecipherable.

6 SECTION 4. [NEW MATERIAL] SECURITY MEASURES FOR STORAGE
7 OF PERSONAL IDENTIFYING INFORMATION.--A person that owns or
8 licenses personal identifying information of a New Mexico
9 resident shall implement and maintain reasonable security
10 procedures and practices appropriate to the nature of the
11 information to protect the personal identifying information
12 from unauthorized access, destruction, use, modification or
13 disclosure.

14 SECTION 5. [NEW MATERIAL] SERVICE PROVIDER USE OF
15 PERSONAL IDENTIFYING INFORMATION--IMPLEMENTATION OF SECURITY
16 MEASURES.--A person that discloses personal identifying
17 information of a New Mexico resident pursuant to a contract
18 with a service provider shall require by contract that the
19 service provider implement and maintain reasonable security
20 procedures and practices appropriate to the nature of the
21 personal identifying information and to protect it from
22 unauthorized access, destruction, use, modification or
23 disclosure.

24 SECTION 6. [NEW MATERIAL] NOTIFICATION OF SECURITY
25 BREACH.--

1 A. Except as provided in Subsection C of this
2 section, a person that owns or licenses elements that include
3 personal identifying information of a New Mexico resident shall
4 provide notification to each New Mexico resident whose personal
5 identifying information is reasonably believed to have been
6 subject to a security breach. Notification shall be made in
7 the most expedient time possible, but not later than forty-five
8 calendar days following discovery of the security breach,
9 except as provided in Section 9 of the Data Breach Notification
10 Act.

11 B. Notwithstanding Subsection A of this section,
12 notification to affected New Mexico residents is not required
13 if, after an appropriate investigation, the person determines
14 that the security breach does not give rise to a significant
15 risk of identity theft or fraud.

16 C. Any person that is licensed to maintain or
17 possess computerized data containing personal identifying
18 information of a New Mexico resident that the person does not
19 own or license shall notify the owner or licensee of the
20 information of any security breach in the most expedient time
21 possible, but not later than forty-five calendar days,
22 following discovery of the breach, except as provided in
23 Section 9 of the Data Breach Notification Act; provided that
24 notification to the owner or licensee of the information is not
25 required if, after an appropriate investigation, the person

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1 determines that the security breach does not give rise to a
2 significant risk of identity theft or fraud.

3 D. A person required to provide notification of a
4 security breach pursuant to Subsection A of this section shall
5 provide that notification by:

6 (1) United States mail;

7 (2) electronic notification, if the person
8 required to make the notification primarily communicates with
9 the New Mexico resident by electronic means or if the notice
10 provided is consistent with the requirements of 15 U.S.C.

11 Section 7001; or

12 (3) a substitute notification, if the person
13 demonstrates that:

14 (a) the cost of providing notification
15 would exceed one hundred thousand dollars (\$100,000);

16 (b) the number of residents to be
17 notified exceeds fifty thousand; or

18 (c) the person does not have on record a
19 physical address or sufficient contact information for the
20 residents that the person or business is required to notify.

21 E. Substitute notification pursuant to Paragraph
22 (3) of Subsection D of this section shall consist of:

23 (1) sending electronic notification to the
24 email address of those residents for whom the person has a
25 valid email address;

1 (2) posting notification of the security
2 breach in a conspicuous location on the website of the person
3 required to provide notification if the person maintains a
4 website; and

5 (3) sending written notification to the office
6 of the attorney general and major media outlets in New Mexico.

7 F. A person that maintains its own notice
8 procedures as part of an information security policy for the
9 treatment of personal identifying information, and whose
10 procedures are otherwise consistent with the timing
11 requirements of this section, is deemed to be in compliance
12 with the notice requirements of this section if the person
13 notifies affected consumers in accordance with its policies in
14 the event of a security breach.

15 SECTION 7. [NEW MATERIAL] NOTIFICATION--REQUIRED
16 CONTENT.--Notification required pursuant to Subsection A of
17 Section 6 of the Data Breach Notification Act shall contain:

18 A. the name and contact information of the
19 notifying person;

20 B. a list of the types of personal identifying
21 information that are reasonably believed to have been the
22 subject of a security breach, if known;

23 C. the date of the security breach, the estimated
24 date of the breach or the range of dates within which the
25 security breach occurred, if known;

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1 D. a general description of the security breach
2 incident;

3 E. the toll-free telephone numbers and addresses of
4 the major consumer reporting agencies;

5 F. advice that directs the recipient to review
6 personal account statements and credit reports, as applicable,
7 to detect errors resulting from the security breach; and

8 G. advice that informs the recipient of the
9 notification of the recipient's rights pursuant to the Fair
10 Credit Reporting and Identity Security Act.

11 SECTION 8. [NEW MATERIAL] EXEMPTIONS.--The provisions of
12 the Data Breach Notification Act shall not apply to a person
13 subject to the federal Gramm-Leach-Bliley Act or the federal
14 Health Insurance Portability and Accountability Act of 1996.

15 SECTION 9. [NEW MATERIAL] DELAYED NOTIFICATION.--The
16 notification required by the Data Breach Notification Act may
17 be delayed:

18 A. if a law enforcement agency determines that the
19 notification will impede a criminal investigation; or

20 B. as necessary to determine the scope of the
21 security breach and restore the integrity, security and
22 confidentiality of the data system.

23 SECTION 10. [NEW MATERIAL] NOTIFICATION TO ATTORNEY
24 GENERAL AND CREDIT REPORTING AGENCIES.--A person that is
25 required to issue notification of a security breach pursuant to

1 the Data Breach Notification Act to more than one thousand New
 2 Mexico residents as a result of a single security breach shall
 3 notify the office of the attorney general and major consumer
 4 reporting agencies that compile and maintain files on consumers
 5 on a nationwide basis, as defined in 15 U.S.C. Section
 6 1681a(p), of the security breach in the most expedient time
 7 possible, and no later than forty-five calendar days, except as
 8 provided in Section 9 of the Data Breach Notification Act. A
 9 person required to notify the attorney general and consumer
 10 reporting agencies pursuant to this section shall notify the
 11 attorney general of the number of New Mexico residents that
 12 received notification pursuant to Section 6 of that act and
 13 shall provide a copy of the notification that was sent to
 14 affected residents within forty-five calendar days following
 15 discovery of the security breach, except as provided in Section
 16 9 of the Data Breach Notification Act.

17 SECTION 11. [NEW MATERIAL] ATTORNEY GENERAL ENFORCEMENT--
 18 CIVIL PENALTY.--

19 A. When the attorney general has a reasonable
 20 belief that a violation of the Data Breach Notification Act has
 21 occurred, the attorney general may bring an action on the
 22 behalf of individuals and in the name of the state alleging a
 23 violation of that act.

24 B. In any action filed by the attorney general
 25 pursuant to the Data Breach Notification Act, the court may:

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- 1 (1) issue an injunction; and
- 2 (2) award damages for actual costs or losses,
- 3 including consequential financial losses.

4 C. If the court determines that a person violated
5 the Data Breach Notification Act knowingly or recklessly, the
6 court may impose a civil penalty of the greater of twenty-five
7 thousand dollars (\$25,000) or, in the case of failed
8 notification, ten dollars (\$10.00) per instance of failed
9 notification up to a maximum of one hundred fifty thousand
10 dollars (\$150,000).

11 SECTION 12. [NEW MATERIAL] STATE OF NEW MEXICO AND
12 POLITICAL SUBDIVISIONS EXEMPTED.--Nothing in the Data Breach
13 Notification Act shall be interpreted to apply to the state of
14 New Mexico or any of its political subdivisions.

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