

HOUSE SUBSTITUTE AMENDMENT NO. _____

for

HOUSE _____ AMENDMENT NO. _____

Offered By

1 AMEND House Bill No. 1832, Page 4, Section 407.436, Line 12, by inserting immediately after all
2 of said section and line the following:

3
4 "407.1500. 1. As used in this section, the following terms mean:

5 (1) "Breach of security" or "breach", unauthorized access to and unauthorized acquisition of
6 personal information maintained in computerized form by a person that compromises the security,
7 confidentiality, or integrity of the personal information. Good faith acquisition of personal
8 information by a person or that person's employee or agent for a legitimate purpose of that person is
9 not a breach of security, provided that the personal information is not used in violation of applicable
10 law or in a manner that harms or poses an actual threat to the security, confidentiality, or integrity of
11 the personal information;

12 (2) "Consumer", an individual who is a resident of this state;

13 (3) "Consumer reporting agency", the same as defined by the federal Fair Credit Reporting
14 Act, 15 U.S.C. Section 1681a;

15 (4) "Encryption", the use of an algorithmic process to transform data into a form in which
16 the data is rendered unreadable or unusable without the use of a confidential process or key;

17 (5) "Health insurance information", an individual's health insurance policy number or
18 subscriber identification number, any unique identifier used by a health insurer to identify the
19 individual;

20 (6) "Medical information", any information regarding an individual's medical history,
21 mental or physical condition, or medical treatment or diagnosis by a health care professional;

22 (7) "Owns or licenses" includes, but is not limited to, personal information that a business
23 retains as part of the internal customer account of the business or for the purpose of using the
24 information in transactions with the person to whom the information relates;

25 (8) "Person", any individual, corporation, business trust, estate, trust, partnership, limited
26 liability company, association, joint venture, government, governmental subdivision, governmental
27 agency, governmental instrumentality, public corporation, or any other legal or commercial entity;

28 (9) "Personal information", an individual's first name or first initial and last name in
29 combination with any one or more of the following data elements that relate to the individual if any
30 of the data elements are not encrypted, redacted, or otherwise altered by any method or technology
31 in such a manner that the name or data elements are unreadable or unusable:

32 (a) Social Security number;

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1 (b) Driver's license number or other unique identification number created or collected by a
2 government body;

3 (c) Financial account number, credit card number, or debit card number in combination with
4 any required security code, access code, or password that would permit access to an individual's
5 financial account;

6 (d) Unique electronic identifier or routing code, in combination with any required security
7 code, access code, or password that would permit access to an individual's financial account;

8 (e) Medical information; or

9 (f) Health insurance information.

10
11 "Personal information" does not include information that is lawfully obtained from publicly
12 available sources, or from federal, state, or local government records lawfully made available to the
13 general public;

14 (10) "Redacted", altered or truncated such that no more than five digits of a Social Security
15 number or the last four digits of a driver's license number, state identification card number, or
16 account number is accessible as part of the personal information.

17 2. (1) Any person that owns or licenses personal information of residents of Missouri or
18 any person that conducts business in Missouri that owns or licenses personal information in any
19 form of a resident of Missouri shall provide notice to the affected consumer that there has been a
20 breach of security following discovery or notification of the breach. The disclosure notification
21 shall be:

22 (a) Made ~~without unreasonable delay~~ within fourteen business days of the discovery or
23 notification of the breach;

24 (b) Consistent with the legitimate needs of law enforcement, as provided in this section; and

25 (c) Consistent with any measures necessary to determine sufficient contact information and
26 to determine the scope of the breach and restore the reasonable integrity, security, and
27 confidentiality of the data system.

28 (2) Any person that maintains or possesses records or data containing personal information
29 of residents of Missouri that the person does not own or license, or any person that conducts
30 business in Missouri that maintains or possesses records or data containing personal information of a
31 resident of Missouri that the person does not own or license, shall notify the owner or licensee of the
32 information of any breach of security immediately following discovery of the breach, consistent
33 with the legitimate needs of law enforcement as provided in this section.

34 (3) The notice required by this section may be delayed if a law enforcement agency informs
35 the person that notification may impede a criminal investigation or jeopardize national or homeland
36 security, provided that such request by law enforcement is made in writing or the person documents
37 such request contemporaneously in writing, including the name of the law enforcement officer
38 making the request and the officer's law enforcement agency engaged in the investigation. The
39 notice required by this section shall be provided ~~without unreasonable delay~~ within thirty days
40 after the law enforcement agency communicates to the person its determination that notice will no
41 longer impede the investigation or jeopardize national or homeland security.

42 (4) The notice shall at minimum include a description of the following:

43 (a) The incident in general terms;

44 (b) The type of personal information that was obtained as a result of the breach of security;

45 (c) A telephone number that the affected consumer may call for further information and
46 assistance, if one exists;

47 (d) Contact information for consumer reporting agencies;

48 (e) Advice that directs the affected consumer to remain vigilant by reviewing account

1 statements and monitoring free credit reports.

2 (5) Notwithstanding subdivisions (1) and (2) of this subsection, notification is not required
3 if, after an appropriate investigation by the person or after consultation with the relevant federal,
4 state, or local agencies responsible for law enforcement, the person determines that a risk of identity
5 theft or other fraud to any consumer is not reasonably likely to occur as a result of the breach. Such
6 a determination shall be documented in writing and the documentation shall be maintained for five
7 years.

8 (6) For purposes of this section, notice to affected consumers shall be provided by one of
9 the following methods:

10 (a) Written notice;

11 (b) Electronic notice for those consumers for whom the person has a valid email address
12 and who have agreed to receive communications electronically, if the notice provided is consistent
13 with the provisions of 15 U.S.C. Section 7001 regarding electronic records and signatures for
14 notices legally required to be in writing;

15 (c) Telephonic notice, if such contact is made directly with the affected consumers; or

16 (d) Substitute notice, if:

17 a. The person demonstrates that the cost of providing notice would exceed one hundred
18 thousand dollars; or

19 b. The class of affected consumers to be notified exceeds one hundred fifty thousand; or

20 c. The person does not have sufficient contact information or consent to satisfy paragraphs
21 (a), (b), or (c) of this subdivision, for only those affected consumers without sufficient contact
22 information or consent; or

23 d. The person is unable to identify particular affected consumers, for only those
24 unidentifiable consumers.

25 (7) Substitute notice under paragraph (d) of subdivision (6) of this subsection shall consist
26 of all the following:

27 (a) Email notice when the person has an electronic mail address for the affected consumer;

28 (b) Conspicuous posting of the notice or a link to the notice on the internet website of the
29 person if the person maintains an internet website; and

30 (c) Notification to major statewide media.

31 (8) In the event a person provides notice to more than one thousand consumers at one time
32 pursuant to this section, the person shall notify, without unreasonable delay, the attorney general's
33 office and all consumer reporting agencies that compile and maintain files on consumers on a
34 nationwide basis, as defined in 15 U.S.C. Section 1681a(p), of the timing, distribution, and content
35 of the notice.

36 3. (1) A person that maintains its own notice procedures as part of an information security
37 policy for the treatment of personal information, and whose procedures are otherwise consistent
38 with the timing requirements of this section, is deemed to be in compliance with the notice
39 requirements of this section if the person notifies affected consumers in accordance with its policies
40 in the event of a breach of security of the system.

41 (2) A person that is regulated by state or federal law and that maintains procedures for a
42 breach of the security of the system pursuant to the laws, rules, regulations, guidances, or guidelines
43 established by its primary or functional state or federal regulator is deemed to be in compliance with
44 this section if the person notifies affected consumers in accordance with the maintained procedures
45 when a breach occurs.

46 (3) A financial institution that is:

47 (a) Subject to and in compliance with the Federal Interagency Guidance Response Programs
48 for Unauthorized Access to Customer Information and Customer Notice, issued on March 29, 2005,

1 by the board of governors of the Federal Reserve System, the Federal Deposit Insurance
2 Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision,
3 and any revisions, additions, or substitutions relating to said interagency guidance; or

4 (b) Subject to and in compliance with the National Credit Union Administration regulations
5 in 12 CFR Part 748; or

6 (c) Subject to and in compliance with the provisions of Title V of the Gramm-Leach-Bliley
7 Financial Modernization Act of 1999, 15 U.S.C. Sections 6801 to 6809;

8
9 shall be deemed to be in compliance with this section.

10 4. The attorney general shall have ~~[exclusive]~~ authority to bring an action and any other
11 person may bring an action to obtain actual damages for a willful and knowing violation of this
12 section ~~[and may seek]~~ . A civil penalty for a violation shall not ~~[to]~~ exceed one hundred fifty
13 thousand dollars per breach of the security of the system or series of breaches of a similar nature
14 that are discovered in a single investigation."; and

15
16 Further amend said bill by amending the title, enacting clause, and intersectional references
17 accordingly.