

Bill No. CS for SB 284

Barcode 080526

CHAMBER ACTION

Senate

House

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Senator Aronberg moved the following amendment:

**Senate Amendment (with title amendment)**

On page 3, line 3, through  
page 11, line 20, delete those lines

and insert:

Section 1. Section 817.5681, Florida Statutes, is  
created to read:

817.5681 Breach of security concerning confidential  
personal information in third-party possession; administrative  
penalties.--

(1)(a) Any person who conducts business in this state  
and maintains computerized data in a system that includes  
personal information shall provide notice of any breach of the  
security of the system, following a determination of the  
breach, to any resident of this state whose unencrypted  
personal information was, or is reasonably believed to have  
been, acquired by an unauthorized person. The notification  
shall be made without unreasonable delay, consistent with the  
legitimate needs of law enforcement, as provided in subsection

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1 (3) and paragraph (10)(a), or subject to any measures  
2 necessary to determine the presence, nature, and scope of the  
3 breach and restore the reasonable integrity of the system.  
4 Notification must be made no later than 45 days following the  
5 determination of the breach unless otherwise provided in this  
6 section.

7 (b) Any person required to make notification under  
8 paragraph (a) who fails to do so within 45 days following the  
9 determination of a breach or receipt of notice from law  
10 enforcement as provided in subsection (3) is liable for an  
11 administrative fine not to exceed \$500,000, as follows:

12 1. In the amount of \$1,000 for each day the breach  
13 goes undisclosed for up to 30 days and, thereafter, \$50,000  
14 for each 30-day period or portion thereof for up to 180 days.

15 2. If notification is not made within 180 days, any  
16 person required to make notification under paragraph (a) who  
17 fails to do so is subject to an administrative fine of up to  
18 \$500,000.

19 (c) The administrative sanctions for failure to notify  
20 in paragraph (b) apply per breach, and not per individual  
21 affected by the breach. Such sanctions do not apply in the  
22 case of personal information in the custody of any  
23 governmental agency or subdivision, unless that governmental  
24 agency or subdivision has entered into a contract with a  
25 contractor or third-party administrator to provide  
26 governmental services. In such case, the contractor or  
27 third-party administrator is the person to whom such sanctions  
28 apply and such contractor or third-party administrator found  
29 in violation of such notification requirements has no right to  
30 any contribution or set-off that may otherwise be available  
31 against the employing agency or subdivision.

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1       (2)(a) Any person who maintains computerized data that  
2 includes personal information on behalf of another business  
3 entity shall disclose to the business entity for which the  
4 information is maintained any breach of the security of the  
5 system as soon as practicable, but no later than 10 days  
6 following the determination, if the personal information was,  
7 or is reasonably believed to have been, acquired by an  
8 unauthorized person. The person who maintains the data on  
9 behalf of another business entity and the business entity on  
10 whose behalf the data is maintained may agree who will provide  
11 the notice, if any is required, as provided in paragraph  
12 (1)(a); however, only a single notice for each breach of the  
13 security of the system is required. If agreement regarding  
14 notification cannot be reached, the person who has the direct  
15 business relationship with the resident of this state must  
16 provide the notice required under paragraph (1)(a).

17       (b) Any person required to disclose to a business  
18 entity under paragraph (a) who fails to do so within 10 days  
19 after the determination of a breach or receipt of notification  
20 from law enforcement as provided in subsection (3) is liable  
21 for an administrative fine not to exceed \$500,000, as follows:

22           1. In the amount of \$1,000 for each day the breach  
23 goes undisclosed for up to 30 days and, thereafter, \$50,000  
24 for each 30-day period or portion thereof for up to 180 days.

25           2. If disclosure is not made within 180 days, such  
26 person is subject to an administrative fine of up to \$500,000.

27       (c) The administrative sanctions for nondisclosure  
28 provided in paragraph (b) apply per breach, and not per  
29 individual affected by the breach. Such sanctions do not  
30 apply in the case of personal information in the custody of  
31 any governmental agency or subdivision unless that

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1 governmental agency or subdivision has entered into a contract  
2 with a contractor or third-party administrator to provide  
3 governmental services. In such case, the contractor or  
4 third-party administrator is the person to whom such sanctions  
5 apply and such contractor or third-party administrator found  
6 in violation of such nondisclosure restrictions has no right  
7 to any contribution or set-off that may otherwise be available  
8 against the employing agency or subdivision.

9       (3) The notification required by this section may be  
10 delayed upon a request by law enforcement if a law enforcement  
11 agency determines that the notification will impede a criminal  
12 investigation. The notification time period required by this  
13 section shall commence after the person receives notice from  
14 the law enforcement agency that the notification will not  
15 compromise the investigation.

16       (4) For purposes of this section, the terms "breach"  
17 and "breach of the security of the system" mean unlawful and  
18 unauthorized acquisition of computerized data that materially  
19 compromises the security, confidentiality, or integrity of  
20 personal information maintained by the person. Good faith  
21 acquisition of personal information by an employee or agent of  
22 the person is not a breach or breach of the security of the  
23 system, provided the information is not used for a purpose  
24 unrelated to the business or subject to further unauthorized  
25 use.

26       (5) For purposes of this section, the term "personal  
27 information" means an individual's first name, first initial  
28 and last name, or any middle name and last name, in  
29 combination with any one or more of the following data  
30 elements when the data elements are not encrypted:

31       (a) Social security number.

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1       (b) Driver's license number or Florida Identification  
2 Card number.

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

7  
8 The term does not include publicly available information that  
9 is lawfully made available to the general public from federal,  
10 state, or local government records or widely distributed  
11 media.

12       (6) For purposes of this section, notice may be  
13 provided by one of the following methods:

14       (a) Written notice;

15       (b) Electronic notice, if the notice provided is  
16 consistent with the provisions regarding electronic records  
17 and signatures in 15 U.S.C. s. 7001 or if the person or  
18 business providing the notice has a valid e-mail address for  
19 the subject person and the subject person has agreed to accept  
20 communications electronically; or

21       (c) Substitute notice, if the person demonstrates that  
22 the cost of providing notice would exceed \$250,000, the  
23 affected class of subject persons to be notified exceeds  
24 500,000, or the person does not have sufficient contact  
25 information. Substitute notice shall consist of all of the  
26 following:

27       1. Electronic mail or e-mail notice when the person  
28 has an electronic mail or e-mail address for the subject  
29 persons.

30       2. Conspicuous posting of the notice on the web page  
31 of the person, if the person maintains a web page.

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3. Notification to major statewide media.

(7) For purposes of this section, the term "unauthorized person" means any person who does not have permission from, or a password issued by, the person who stores the computerized data to acquire such data, but does not include any individual to whom the personal information pertains.

(8) For purposes of this section, the term "person" means a person as defined in s. 1.01. For purposes of this section, the State of Florida, as well as any of its agencies or political subdivisions, and any of the agencies of its political subdivisions, is a person.

(9) Notwithstanding subsection (6), a person who maintains:

(a) The person's own notification procedures as part of an information security or privacy policy for the treatment of personal information, which procedures are otherwise consistent with the timing requirements of this part; or

(b) A notification procedure pursuant to the rules, regulations, procedures, or guidelines established by the person's primary or functional federal regulator, shall be deemed to be in compliance with the notification requirements of this section if the person notifies subject persons in accordance with the person's policies or the rules, regulations, procedures, or guidelines established by the primary or functional federal regulator in the event of a breach of security of the system.

(10)(a) Notwithstanding subsection (2), disclosure is not required if, after an appropriate investigation or after consultation with relevant federal, state, and local agencies

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1 responsible for law enforcement, the person reasonably  
 2 determines that the breach has not and will not likely result  
 3 in harm to the individuals whose personal information has been  
 4 acquired and accessed. Such a determination must be documented  
 5 in writing and the documentation must be maintained for 5  
 6 years.

7 (b) Any person required to document a failure to  
 8 notify affected persons who fails to document the failure as  
 9 required in paragraph (a) or who, if documentation was  
 10 created, fails to maintain the documentation as required in  
 11 paragraph (a) is liable for an administrative fine of up to  
 12 \$50,000 for such failure.

13 (c) The administrative sanctions in paragraph (b) do  
 14 not apply in the case of personal information in the custody  
 15 of any governmental agency or subdivision, unless that  
 16 governmental agency or subdivision has entered into a contract  
 17 with a contractor or third-party administrator to provide  
 18 governmental services. In such case the contractor or  
 19 third-party administrator is the person to whom such sanctions  
 20 apply and such contractor or third-party administrator found  
 21 in violation of the documentation and maintenance of  
 22 documentation requirements has no right to any contribution or  
 23 set-off that may otherwise be available against the employing  
 24 agency or subdivision.

25 (11) The Department of Legal Affairs may institute  
 26 proceedings to assess and collect the fines authorized in this  
 27 section.

28 (12) If a person discovers circumstances requiring  
 29 notification pursuant to this section of more than 1,000  
 30 persons at a single time, the person shall also notify,  
 31 without unreasonable delay, all consumer reporting agencies

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1 that compile and maintain files on consumers on a nationwide  
2 basis, as defined in 15 U.S.C. s. 1681a(p), of the timing,  
3 distribution, and content of the notices.

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5 (Redesignate subsequent sections.)

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8 ===== T I T L E    A M E N D M E N T =====

9 And the title is amended as follows:

10            On page 1, line 2, through  
11            page 2, line 7, delete those lines

12  
13 and insert:

14            creating s. 817.5681, F.S.; requiring business  
15            persons maintaining computerized data that  
16            includes personal information to provide notice  
17            of breaches of system security under certain  
18            circumstances; providing requirements;  
19            providing for administrative fines; providing  
20            exceptions and limitations; authorizing delays  
21            of such disclosures under certain  
22            circumstances; providing definitions; providing  
23            for alternative notice methods; specifying  
24            conditions of compliance for persons  
25            maintaining certain alternative notification  
26            procedures; specifying conditions under which  
27            notification is not required; providing  
28            requirements for documentation and maintenance  
29            of documentation; providing an administrative  
30            fine for failing to document certain failures  
31            to comply; providing for application of



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1 administrative sanctions to certain persons  
2 under certain circumstances; authorizing the  
3 Department of Legal Affairs to institute  
4 proceedings to assess and collect fines;  
5 requiring notification of consumer reporting  
6 agencies of breaches of system security under  
7 certain circumstances; amending s.

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