

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

House Bill 185
Economic Matters

(Delegate Menes, *et al.*)

Computerized Records that Contain Personal Information - Unauthorized
Access - Notice

This bill requires that a custodian of a computerized public record or a person that owns, licenses, or maintains a computerized record to notify an individual whose personal information has been acquired or is reasonably believed to have been acquired by an unauthorized individual.

Fiscal Summary

State Effect: Potential significant increase in expenditures to provide the notifications required under the bill, up to \$35,000 per notification.

Local Effect: Potential significant increase in expenditures to provide the notifications required under the bill, up to \$35,000 per notification.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill requires a person that owns, licenses, or maintains for a commercial purpose a computerized record that contains an individual's personal information to notify the individual if, as a result of unauthorized access to the computerized record, the individual's personal information has been acquired or is reasonably believed to have been acquired by an unauthorized individual. Under the bill, personal information is an individual's first name or initial and last name and one of the following: (1) the individual's driver's license or other identification number; (2) the

individual's bank or other financial institution account number; (3) the individual's credit or debit card number; or (4) the individual's Social Security number.

The bill requires notification to be provided as soon as practicable but allows for delays due to a criminal investigation or to determine the scope of the access or restore the record's reasonable integrity. The bill requires the notification to be in writing or by electronic means if the electronic notification meets the requirements under the Maryland Uniform Electronic Transactions Act. If the cost of providing notification would be greater than \$35,000 or would have to be provided to more than 70,000 individuals, a person required to give notice may do so by: (1) sending notification by electronic mail; (2) conspicuously posting the notification on the person's web site; and (3) publishing the notification in a newspaper with either statewide circulation or general circulation in each county where individuals entitled to notification reside.

Violators are liable to an individual entitled to receive the notification for: (1) reasonable attorney's fees; and (2) the greater of \$500 or actual damages.

The bill requires the custodian of a computerized public record to provide notification on the same basis to an individual if, as a result of unauthorized access to the computerized public record, the individual's personal information has been acquired or is reasonably believed to have been acquired by an unauthorized individual.

Current Law: No notification is required to an individual whose personal information has been acquired by an unauthorized individual's access to a computerized record or a computerized public record.

Background: Under the State's laws governing access to public records, a custodian must deny inspection of a public record or any part of a public record if: (1) the public record is privileged or confidential by law; or (2) the inspection would be contrary to: (a) a State statute; (b) a federal statute or regulation; (c) the Maryland Rules; or (d) an order of a court of record. Denial of inspection is also mandatory for public records relating to adoption, welfare records, letters of reference, and specified information about an individual maintained by a library. Denial of inspection is required for information in a public record relating to certain medical, psychological, and sociological information; trade secrets; certain personal information about public employees; information about the security of an information system; and licensing records.

California recently adopted a provision similar to this bill.

State Expenditures: Each custodian of a public record would be required to provide notification under the bill in the event of an unauthorized access to an individual's

personal information. While the cost of a notification sent to individuals because of a particular breach of computerized public record is limited to \$35,000, the cost of several breaches of a single computer database or of breaches to several computer databases could be significant. The number of potential breaches cannot be accurately estimated.

Local Expenditures: Each custodian of a public record would be required to provide notification under the bill in the event of an unauthorized access to an individual's personal information. While the cost of a notification sent to individuals because of a particular breach of computerized public record is limited to \$35,000, the cost of several breaches of a single computer database or of breaches of several computer databases could be significant. The number of potential breaches cannot be accurately estimated.

Small Business Effect: Small businesses that own, license, or maintain computerized records could incur significant costs to provide the notifications required under the bill, up to \$35,000 per notification.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Human Resources; Judiciary (Administrative Office of the Courts); Department of State Police; Department of Health and Mental Hygiene; Maryland Department of Transportation; Department of Labor, Licensing, and Regulation; Office of the Attorney General (Consumer Protection Division); Department of Public Safety and Correctional Services; Department of Legislative Services

Fiscal Note History: First Reader - February 9, 2004
ncs/mdr

Analysis by: Ryan Wilson

Direct Inquiries to:
(410) 946-5510
(301) 970-5510