

BY: Finance Committee

AMENDMENTS TO SENATE BILL NO. 134
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in the sponsor line, after “Kelley,” insert “Teitelbaum,”; strike beginning with “to” in line 3 down through the first “of” in line 4 and substitute “, when destroying”; in line 5, strike “in a certain manner” and substitute “, to take certain steps to protect against unauthorized access to or use of the personal information under certain circumstances”; in line 7, after “practices” insert “under certain circumstances”; in line 8, strike “certain records that include” and substitute “computerized data that includes”; in line 9, after “to” insert “conduct a certain investigation and”; in line 16, strike “, State, or local”; in the same line, after “law;” insert “providing that the provisions of this Act are exclusive and shall preempt any provision of local law; requiring a business to report to certain consumer reporting agencies on the breach of the security of a system under certain circumstances; providing that certain businesses and affiliates shall be deemed to be in compliance with the requirements of this Act under certain circumstances;”; strike beginning with “establishing” in line 19 down through “Act;” in line 20; in line 20, after “terms;” insert “providing for a delayed effective date;”; in line 21, after “information” insert “contained in the records of businesses;”; in the same line, strike “leased” and substitute “licensed”; in the same line, after “businesses” insert a comma; in line 22, strike “records” and substitute “computerized data”; and in line 25, strike “14-3505” and substitute “14-3508”.

AMENDMENT NO. 2

On page 2, after line 12, insert:

“(3) “BUSINESS” DOES NOT INCLUDE AN ENTITY THAT HAS AN ANNUAL GROSS INCOME OF LESS THAN \$1,000,000.”;

strike in their entirety lines 13 through 16, inclusive; in lines 17 and 32, strike “(D)” and “(E)”, respectively, and substitute “(C)” and “(D)”, respectively; strike beginning with “THE” in line 17 down through “ENCRYPTED” in line 19 and substitute “AN INDIVIDUAL’S FIRST NAME OR”

(Over)

FIRST INITIAL AND LAST NAME IN COMBINATION WITH ANY ONE OR MORE OF THE FOLLOWING DATA ELEMENTS, WHEN THE NAME OR THE DATA ELEMENTS ARE NOT ENCRYPTED, REDACTED, OR OTHERWISE PROTECTED BY ANOTHER METHOD THAT RENDERS THE INFORMATION UNREADABLE OR UNUSABLE"; strike line 20 in its entirety; in lines 21, 22, 23, and 27, strike "(II)", "(III)", "(IV)", and "(VI)", respectively, and substitute "(I)", "(II)", "(III)", and "(IV)", respectively; in line 24, strike the semicolon and substitute ", THAT IN COMBINATION WITH ANY REQUIRED SECURITY CODE, ACCESS CODE, OR PASSWORD, WOULD PERMIT ACCESS TO AN INDIVIDUAL'S FINANCIAL ACCOUNT; OR"; strike in their entirety lines 25 and 26; in line 27, strike the semicolon and substitute a period; strike in their entirety lines 28 and 29; and strike beginning with the second "INFORMATION" in line 30 down through "LISTED" in line 31 and substitute ";

(I) PUBLICLY AVAILABLE INFORMATION THAT IS LAWFULLY MADE AVAILABLE TO THE GENERAL PUBLIC FROM FEDERAL, STATE, OR LOCAL GOVERNMENT RECORDS;

(II) INFORMATION THAT AN INDIVIDUAL HAS CONSENTED TO HAVE PUBLICLY DISSEMINATED OR LISTED; OR

(III) INFORMATION THAT IS DISSEMINATED OR LISTED IN ACCORDANCE WITH THE FEDERAL HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT".

AMENDMENT NO. 3

On page 3, in line 8, strike "ALL"; strike beginning with "DESTROY" in line 8 down through "MEANS" in line 10 and substitute "PROTECT AGAINST UNAUTHORIZED ACCESS TO OR USE OF THE PERSONAL INFORMATION, TAKING INTO ACCOUNT:

(1) THE SENSITIVITY OF THE RECORDS;

(2) THE NATURE AND SIZE OF THE BUSINESS AND ITS OPERATIONS;

(3) THE COSTS AND BENEFITS OF DIFFERENT DESTRUCTION METHODS; AND

(4) AVAILABLE TECHNOLOGY”;
in line 12, after “(A)” insert “TO PROTECT PERSONAL INFORMATION FROM UNAUTHORIZED ACCESS, USE, MODIFICATION, OR DISCLOSURE.”; in line 14, after “PRACTICES” insert “THAT ARE”; strike beginning with “TO” in line 15 down through “DISCLOSURE” in line 17 and substitute “AND THE NATURE AND SIZE OF THE BUSINESS AND ITS OPERATIONS”; in line 18, after “(B)” insert “(1)”; in the same line, after “THAT” insert “USES A NONAFFILIATED THIRD PARTY AS A SERVICE PROVIDER TO PERFORM SERVICES FOR THE BUSINESS AND”; in line 19, after the first “A” insert “WRITTEN”; in the same line, strike “A NONAFFILIATED” and substitute “THE”; and strike beginning with “COMPLY” in line 20 down through “SECTION” in line 21 and substitute “IMPLEMENT AND MAINTAIN REASONABLE SECURITY PROCEDURES AND PRACTICES THAT:

(I) ARE APPROPRIATE TO THE NATURE OF THE PERSONAL INFORMATION DISCLOSED TO THE NONAFFILIATED THIRD PARTY; AND

(II) ARE REASONABLY DESIGNED TO HELP PROTECT THE PERSONAL INFORMATION FROM UNAUTHORIZED ACCESS, USE, MODIFICATION, DISCLOSURE, OR DESTRUCTION.

(2) THIS SUBSECTION SHALL APPLY TO A WRITTEN CONTRACT THAT IS ENTERED INTO ON OR AFTER JANUARY 1, 2008”.

AMENDMENT NO. 4

On page 3, in line 25, strike “RECORDS CONTAINING PERSONAL INFORMATION” and substitute “COMPUTERIZED DATA”; in line 27, after “BUSINESS” insert “AND WILL LIKELY RESULT IN A MATERIAL RISK OF IDENTITY THEFT”; in line 30, after “THAT” insert “:

(I)”;

in line 32, after “DISCLOSURE” insert “; AND

(II) IT IS NOT LIKELY THAT THE ACQUISITION WILL RESULT IN

(Over)

A MATERIAL RISK OF IDENTITY THEFT”;

in line 33, strike “RECORDS” and substitute “COMPUTERIZED DATA”; in the same line, strike “INCLUDE” and substitute “INCLUDES”; in line 34, after “STATE” insert “, WHEN IT DISCOVERS OR IS NOTIFIED OF A BREACH OF THE SECURITY OF A SYSTEM, SHALL CONDUCT IN GOOD FAITH A REASONABLE AND PROMPT INVESTIGATION TO DETERMINE THE LIKELIHOOD THAT THE BREACH WILL RESULT IN A MATERIAL RISK OF IDENTITY THEFT.”

(2) IF, AFTER THE INVESTIGATION IS CONCLUDED, THE BUSINESS REASONABLY BELIEVES THAT THE BREACH OF THE SECURITY OF A SYSTEM HAS RESULTED OR WILL RESULT IN A MATERIAL RISK OF IDENTITY THEFT OF PERSONAL INFORMATION OF AN INDIVIDUAL RESIDING IN THE STATE, THE BUSINESS”;

in line 35, strike the first “A” and substitute “THE”; and in the same line, strike “OF THE SECURITY OF A SYSTEM”.

On pages 3 and 4, strike beginning with “IF” in line 35 on page 3 down through “PERSON” in line 2 on page 4.

AMENDMENT NO. 5

On page 4, in line 3, strike “(2)” and substitute “(3)”; in line 4, strike “(1)” and substitute “(2)”; in line 5, after the second “AS” insert “REASONABLY”; strike beginning with “DISCOVERS” in line 5 down through “SYSTEM” in line 6 and substitute “CONDUCTS THE INVESTIGATION REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION”; in line 7, strike “RECORDS” and substitute “COMPUTERIZED DATA”; in the same line, strike “INCLUDE” and substitute “INCLUDES”; in line 8, after “OWN” insert “OR LICENSE”; strike beginning with “, AS” in line 10 down through “PERSON” in line 14 and substitute “IT IS LIKELY THAT THE BREACH HAS RESULTED OR WILL RESULT IN A MATERIAL RISK OF IDENTITY THEFT OF PERSONAL INFORMATION OF AN INDIVIDUAL RESIDING IN THE STATE”; in line 17, after the second “AS” insert “REASONABLY”; in line 22, after “INVESTIGATION” insert “OR JEOPARDIZE HOMELAND OR NATIONAL SECURITY”; in line 24, strike “AND” and substitute “, IDENTIFY THE INDIVIDUALS AFFECTED, OR”; and in line 28, after “INVESTIGATION” insert “AND WILL NOT JEOPARDIZE HOMELAND OR NATIONAL SECURITY”.

AMENDMENT NO. 6

On page 4, in line 31, after “NOTICE” insert “SENT TO THE MOST RECENT ADDRESS OF THE INDIVIDUAL IN THE RECORDS OF THE BUSINESS”.

On pages 4 and 5, strike beginning with “OR” in line 34 on page 4 down through “RESIDE” in line 2 on page 5 and substitute:

“(3) BY TELEPHONIC NOTICE, TO THE MOST RECENT TELEPHONE NUMBER OF THE INDIVIDUAL IN THE RECORDS OF THE BUSINESS; OR

(4) BY SUBSTITUTE NOTICE AS PROVIDED IN SUBSECTION (F) OF THIS SECTION, IF:

(I) THE BUSINESS DEMONSTRATES THAT THE COST OF PROVIDING NOTICE WOULD EXCEED \$25,000 OR THAT THE AFFECTED CLASS OF INDIVIDUALS TO BE NOTIFIED EXCEEDS 50,000; OR

(II) THE BUSINESS DOES NOT HAVE SUFFICIENT CONTACT INFORMATION TO GIVE NOTICE IN ACCORDANCE WITH ITEM (1), (2), OR (3) OF THIS SUBSECTION.

(F) SUBSTITUTE NOTICE UNDER SUBSECTION (E)(4) OF THIS SECTION SHALL CONSIST OF:

(1) ELECTRONICALLY MAILING THE NOTICE TO AN INDIVIDUAL ENTITLED TO NOTIFICATION UNDER SUBSECTION (B) OF THIS SECTION, IF THE BUSINESS HAS AN ELECTRONIC MAIL ADDRESS FOR THE INDIVIDUAL TO BE NOTIFIED;

(2) CONSPICUOUS POSTING OF THE NOTICE ON THE WEBSITE OF THE BUSINESS, IF THE BUSINESS MAINTAINS A WEBSITE; AND

(3) NOTIFICATION TO STATEWIDE MEDIA”.

(Over)

On page 5, in line 3, strike “(F)” and substitute “(G)”; in line 4, strike “24 HOURS” and substitute “5 BUSINESS DAYS”; in line 6, strike “(G)” and substitute “(H)”; in line 8, strike “(H)” and substitute “(I)”; strike beginning with “, STATE” in line 9 down through “LOCAL” in line 10; after line 11, insert:

“14-3505.

THE PROVISIONS OF THIS SUBTITLE ARE EXCLUSIVE AND SHALL PREEMPT ANY PROVISION OF LOCAL LAW.

14-3506.

(A) IF A BUSINESS IS REQUIRED UNDER § 15-3504 OF THIS SUBTITLE TO GIVE NOTICE OF A BREACH OF THE SECURITY OF A SYSTEM TO 1,000 OR MORE INDIVIDUALS, THE BUSINESS ALSO SHALL NOTIFY, WITHOUT UNREASONABLE DELAY, EACH CONSUMER REPORTING AGENCY THAT COMPILES AND MAINTAINS FILES ON CONSUMERS ON A NATIONWIDE BASIS, AS DEFINED BY 15 U.S.C. § 1681A(P), OF THE TIMING, DISTRIBUTION, AND CONTENT OF THE NOTICES.

(B) THIS SECTION DOES NOT REQUIRE THE INCLUSION OF THE NAMES OR OTHER PERSONAL IDENTIFYING INFORMATION OF RECIPIENTS OF NOTICES OF THE BREACH OF THE SECURITY OF A SYSTEM.

14-3507.

(A) IN THIS SECTION, “AFFILIATE” MEANS A COMPANY THAT CONTROLS, IS CONTROLLED BY, OR IS UNDER COMMON CONTROL WITH A BUSINESS DESCRIBED IN SUBSECTION (C)(1) OF THIS SECTION.

(B) A BUSINESS THAT COMPLIES WITH THE REQUIREMENTS FOR NOTIFICATION PROCEDURES, THE PROTECTION OR SECURITY OF PERSONAL INFORMATION, OR THE DESTRUCTION OF PERSONAL INFORMATION UNDER THE RULES, REGULATIONS, PROCEDURES, OR GUIDELINES ESTABLISHED BY THE PRIMARY OR FUNCTIONAL FEDERAL OR STATE REGULATOR OF THE BUSINESS

SHALL BE DEEMED TO BE IN COMPLIANCE WITH THIS SUBTITLE.

(C) (1) A BUSINESS THAT IS SUBJECT TO AND IN COMPLIANCE WITH § 501(B) OF THE FEDERAL GRAMM-LEACH-BLILEY ACT, 15 U.S.C. § 6801, § 216 OF THE FEDERAL FAIR AND ACCURATE TRANSACTIONS ACT, 15 U.S.C. § 1681W, THE FEDERAL INTERAGENCY GUIDELINES ESTABLISHING INFORMATION SECURITY STANDARDS, AND THE FEDERAL INTERAGENCY GUIDANCE ON RESPONSE PROGRAMS FOR UNAUTHORIZED ACCESS TO CUSTOMER INFORMATION AND CUSTOMER NOTICE, AND ANY REVISIONS, ADDITIONS, OR SUBSTITUTIONS, SHALL BE DEEMED TO BE IN COMPLIANCE WITH THIS SUBTITLE.

(2) AN AFFILIATE THAT COMPLIES WITH § 501(B) OF THE FEDERAL GRAMM-LEACH-BLILEY ACT, 15 U.S.C. § 6801, § 216 OF THE FEDERAL FAIR AND ACCURATE TRANSACTIONS ACT, 15 U.S.C. § 1681W, THE FEDERAL INTERAGENCY GUIDELINES ESTABLISHING INFORMATION SECURITY STANDARDS, AND THE FEDERAL INTERAGENCY GUIDANCE ON RESPONSE PROGRAMS FOR UNAUTHORIZED ACCESS TO CUSTOMER INFORMATION AND CUSTOMER NOTICE, AND ANY REVISIONS, ADDITIONS, OR SUBSTITUTIONS, SHALL BE DEEMED TO BE IN COMPLIANCE WITH THIS SUBTITLE.”;

in line 12, strike “14-3505.” and substitute “14-3508.”; in line 13, strike “(A)”; strike in their entirety lines 18 through 27, inclusive; and in line 29, strike “October 1, 2006” and substitute “January 1, 2007”.