SLS 04-753 **ORIGINAL**

Regular Session, 2004

SENATE BILL NO. 417

BY SENATOR MICHOT

GOVERNMENTAL REGULATIONS. Requires businesses to notify customers of a breach of security of their computerized data.

AN ACT

To enact R.S. 51:1423, relative to the Unfair Trade Practices and Consumer Protection Law; to require businesses to notify consumers of a breach of security concerning certain data; to provide for methods of notification to consumers; to provide definitions; to provide for penalties; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 51:1423 is hereby enacted to read as follows:

§1423. Consumer protection; notification concerning security breach

R.S. 51:1423 is all proposed new law.

A. Any person or business that conducts business in Louisiana, and that owns or licenses computerized data that includes personal information, shall disclose any breach of the security of the system following discovery or notification of the breach in the security of the data to any resident of Louisiana whose unencrypted personal information was, or is reasonable believed to have been, acquired by an unauthorized person. The disclosure shall be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate need of law enforcement, as provided in Subsection (C), or any measures necessary to determine the scope of the

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breach and restore the reasonable integrity of the data system.

B. Any person or business that maintains computerized data that includes personal information that the person or business does not own shall notify the owner or licensee of the information of any breach of the security of the data immediately following discovery, if the personal information was, or is reasonably believed to have been, acquired by an unauthorized person.

C. The notification required by this Section may be delayed if a law enforcement agency determines that the notification will impede a criminal investigation. The notification required by this Section shall be made after the law enforcement agency determines that it will not compromise the investigation.

D. For purposes of this Section:

(1) "Breach of the security of the system" means unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of personal information maintained by the person or business. Good faith acquisition of personal information by an employee or agent of the person or business for the purposes of the person or business is not a breach of security of the system, provided that the personal information is not used or subject to further unauthorized disclosure.

(2) "Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted:

(a) Social security number.

(b) Driver's license number.

(c) Account number, credit or debit card number, which would permit access to an individual's financial account.

(3) "Personal information" does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

E. Notice may be provided by one of the following methods:

(1) Written notice.

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(2) Electronic notice, if the notice provided is consistent with the provisions regarding electronic records and signatures set forth in Section 7001 of Title 15 of the United States Code.

(3) Substitute notice, if the person or business demonstrates that the cost of providing notice would exceed two hundred fifty thousand dollars, or that the affected class of subject persons to be notified exceeds five hundred thousand, or the person or business does not have sufficient contact information. Substitute notice shall consist of all of the following:

(a) E-mail notice when the person or business has an e-mail address for the subject persons.

(b) Conspicuous posting of the notice on the Web site page of the person or business, if the person or business maintains one.

(c) Notification to major statewide media.

F. Notwithstanding Subsection (E), a person or business that maintains its own notification procedures as part of an information security policy for the treatment of personal information and is otherwise consistent with the timing requirements of this Section, shall be deemed to be in compliance with the notification requirements of this Section if the person or business notifies subject persons in accordance with its policies in the event of a breach of security of the system.

G. Any violation of this Section shall be a deceptive and unfair trade practice and shall subject the violator to any and all penalties provided for in this Chapter.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Jeffery T. Oglesbee.

DIGEST

Proposed law requires any person or business conducting business in Louisiana notify any resident of the state whose unencrypted personal information was, or is reasonably believed to have been acquired by an unauthorized person as a result of a security breach of their computerized data system.

Proposed law requires that notification be provided by either written or electronic notice to the affected consumers. If the person or business can demonstrate that the cost of providing such notice would exceed $250,000 or the affected class of persons exceeds 500,000, then the person or business may provide substitute notice by each of the following:

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1. E-mail notice to the affected consumers.

2. Conspicuous posting of the notice on the person or businesses Web site page.

3. Notification to major statewide media.

Proposed law further requires that the notice be provided to the affected consumers in the most expedient time possible, without unreasonable delay. Notification required by proposed law may be delayed if the person or business is informed by a law enforcement agency that it will compromise a criminal investigation.

(Adds R.S. 51:1423)

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