

By: McCall

H.B. No. 2004

A BILL TO BE ENTITLED

AN ACT

relating to a breach of computer security involving sensitive personal information maintained by a state agency or local government.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle B, Title 10, Government Code, is amended by adding Chapter 2061 to read as follows:

CHAPTER 2061. SECURITY BREACH NOTIFICATION BY STATE AGENCY OR LOCAL GOVERNMENT

Sec. 2061.001. DEFINITIONS. (a) In this chapter:

(1) "Breach of system security" means unauthorized acquisition of computerized data that compromises the security or confidentiality of sensitive personal information maintained by a state agency or local government. Good faith acquisition of sensitive personal information by an employee, contractor, or agent of the state agency or local government for the purposes of the state agency or local government is not a breach of system security unless the employee, contractor, or agent uses or discloses the sensitive personal information in an unauthorized manner.

(2) "Local government" has the meaning assigned by Section 2054.003.

(3) "Sensitive personal information" means, subject to Subsection (b), an individual's first name or first initial and last name in combination with one or more of the following items, if

1 the name and the items are not encrypted or the name and the items
2 are encrypted and the person accessing the information has access
3 to the key required to decrypt the information:

4 (A) social security number;

5 (B) driver's license number or government-issued
6 identification number; or

7 (C) account number or credit or debit card number
8 in combination with any required security code, access code, or
9 password that would permit access to an individual's financial
10 account.

11 (4) "State agency" has the meaning assigned by Section
12 2054.003.

13 (b) For purposes of this chapter, "sensitive personal
14 information" does not include publicly available information that
15 is lawfully made available to the public by the federal government
16 or a state or local government.

17 Sec. 2061.002. NOTIFICATION REQUIRED FOLLOWING BREACH OF
18 SYSTEM SECURITY. (a) A state agency or local government that owns or
19 licenses computerized data that includes sensitive personal
20 information shall disclose any breach of system security, after
21 discovering or receiving notification of the breach, to any
22 individual whose sensitive personal information was, or is
23 reasonably believed to have been, acquired as a result of the breach
24 by an unauthorized person who commits, or who the state agency or
25 local government reasonably believes has committed or will commit,
26 identity theft or other fraud against any individual. The
27 disclosure shall be made as quickly as possible, except as provided

1 by Subsection (c) or as necessary to determine the scope of the
2 breach and reasonably restore the integrity of the data system.

3 (b) A state agency or local government that maintains
4 computerized data that includes sensitive personal information not
5 owned or licensed by the state agency or local government shall
6 notify the owner of the information of any breach of system security
7 as soon as practicable after discovering the breach.

8 (c) A state agency or local government may delay providing
9 notice as required by Subsection (a) or (b) at the request of a law
10 enforcement agency that determines that the notification will
11 impede a civil or criminal investigation or jeopardize homeland
12 security. The notification shall be made without unreasonable delay
13 after the law enforcement agency determines that notification will
14 not compromise the investigation or jeopardize homeland security.

15 (d) A state agency or local government may give notice as
16 required by Subsection (a) or (b) by providing:

17 (1) written notice sent by mail;

18 (2) telephone notice;

19 (3) electronic notice, if the notice is provided in
20 accordance with 15 U.S.C. Section 7001; or

21 (4) notice as provided by Subsection (e).

22 (e) If the state agency or local government required to give
23 notice under Subsection (a) or (b) demonstrates that the cost of
24 providing notice would exceed \$50,000, the number of affected
25 persons exceeds 100,000, or the state agency or local government
26 does not have sufficient contact information, the notice may be
27 given by:

1 (1) electronic mail, if the state agency or local
2 government has electronic mail addresses for the affected persons;

3 (2) conspicuous posting of the notice on the Internet
4 website of the state agency or local government; or

5 (3) notice published in or broadcast on major national
6 media.

7 (f) Notwithstanding any other provision of this chapter, a
8 state agency or local government is not required to comply with this
9 chapter if the state agency or local government complies with the
10 notification requirements under Chapter 521, Business & Commerce
11 Code, or a federal or state law that has notice requirements at
12 least as stringent as the requirements under this chapter.

13 SECTION 2. The changes in law made by this Act apply only to
14 a breach of system security that occurs on or after the effective
15 date of this Act. A breach of system security that occurs before the
16 effective date of this Act is governed by the law in effect on the
17 date the breach occurred, and the former law is continued in effect
18 for that purpose.

19 SECTION 3. This Act takes effect September 1, 2009.