

SENATE BILL NO. 435—COMMITTEE ON COMMERCE AND LABOR

(ON BEHALF OF THE ATTORNEY GENERAL)

MARCH 29, 2005

Referred to Committee on Commerce and Labor

SUMMARY—Enacts provisions relating to security of personal information. (BDR 52-571)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to personal information; requiring a business to implement reasonable measures to ensure security of records containing personal information; requiring a business to take reasonable measures to destroy certain records containing personal information; requiring data collectors to provide notification of any breach of the security of the system data to persons affected by the breach; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Title 52 of NRS is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 2 to 11, inclusive, of this act.

Sec. 2. *As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 3 to 6, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 3. *“Breach of the security of the system data” means unauthorized acquisition of computerized data that compromises the security, confidentiality or integrity of personal information maintained by the data collector. The term does not include the good faith acquisition of personal information by an employee or*



1 *agent of the data collector for a legitimate purpose of the data*
2 *collector, so long as the personal information is not used for a*
3 *purpose unrelated to the data collector or subject to further*
4 *unauthorized disclosure.*

5 **Sec. 4.** *“Business” means a proprietorship, corporation,*
6 *partnership, association, trust, unincorporated organization or*
7 *other enterprise doing business in this State.*

8 **Sec. 5.** *“Data collector” means any governmental agency,*
9 *institution of higher education, corporation, financial institution*
10 *or retail operator or any other type of business entity or*
11 *association that, for any purpose, whether by automated collection*
12 *or otherwise, handles, collects, disseminates or otherwise deals*
13 *with nonpublic personal information.*

14 **Sec. 6.** *“Personal information” means a natural person’s*
15 *first name or first initial and last name in combination with any*
16 *one or more of the following data elements, when either the name*
17 *or the data elements are not encrypted:*

18 1. *Social security number.*

19 2. *Driver’s license number or identification card number.*

20 3. *Account number, credit card number or debit card*
21 *number, in combination with any required security code, access*
22 *code or password that would permit access to the person’s*
23 *financial account.*

24 *↪ The term does not include publicly available information that is*
25 *lawfully made available to the general public from federal, state or*
26 *local governmental records.*

27 **Sec. 7. 1.** *A business that maintains records which contain*
28 *personal information of a resident of this State shall implement*
29 *and maintain reasonable security measures to protect those*
30 *records from unauthorized access, acquisition, destruction, use,*
31 *modification or disclosure.*

32 2. *A contract for the disclosure of the personal information of*
33 *a resident of this State which is maintained by a business must*
34 *include a provision requiring the person to whom the information*
35 *is disclosed to implement and maintain reasonable security*
36 *measures to protect those records from unauthorized access,*
37 *acquisition, destruction, use, modification or disclosure.*

38 3. *If a state or federal law requires a business to provide*
39 *greater protection to records that contain personal information of*
40 *a resident of this State which are maintained by the business and*
41 *the business is in compliance with the provisions of that state or*
42 *federal law, the business shall be deemed to be in compliance with*
43 *the provisions of this section.*

44 **Sec. 8. 1.** *A business that maintains records which contain*
45 *personal information concerning the customers of the business*



1 *shall take reasonable measures to ensure the destruction of those*
2 *records when the business decides that it will no longer maintain*
3 *the records.*

4 2. As used in this section, "reasonable measures to ensure the
5 destruction" means any method that modifies the records
6 containing the personal information in such a way as to render
7 the personal information contained in the records unreadable or
8 undecipherable, including, without limitation:

9 (a) Shredding of the record containing the personal
10 information; or

11 (b) Erasing of the personal information from the records.

12 **Sec. 9.** 1. A data collector that owns or licenses
13 computerized data which includes personal information shall
14 disclose any breach of the security of the system data following
15 discovery or notification of the breach to any resident of this State
16 whose unencrypted personal information was, or is reasonably
17 believed to have been, acquired by an unauthorized person. The
18 disclosure must be made in the most expedient time possible and
19 without unreasonable delay, consistent with the legitimate needs
20 of law enforcement, as provided in subsection 3, or any measures
21 necessary to determine the scope of the breach and restore the
22 reasonable integrity of the system data.

23 2. A data collector that maintains computerized data which
24 includes personal information that the data collector does not own
25 shall notify the owner or licensee of the information of any breach
26 of the security of the system data immediately following discovery
27 if the personal information was, or is reasonably believed to have
28 been, acquired by an unauthorized person.

29 3. The notification required by this section may be delayed if
30 a law enforcement agency determines that the notification will
31 impede a criminal investigation. The notification required by this
32 section must be made after the law enforcement agency
33 determines that the notification will not compromise the
34 investigation.

35 4. For purposes of this section, except as otherwise provided
36 in subsection 5, the notification required by this section may be
37 provided by one of the following methods:

38 (a) Written notification.

39 (b) Electronic notification, if the notification provided is
40 consistent with the provisions of the Electronic Signatures in
41 Global and National Commerce Act, 15 U.S.C. §§ 7001 et seq.

42 (c) Substitute notification, if the data collector demonstrates
43 that the cost of providing notification would exceed \$250,000, the
44 affected class of subject persons to be notified exceeds 500,000 or



1 *the data collector does not have sufficient contact information.*
2 *Substitute notification must consist of all the following:*

3 *(1) Notification by electronic mail when the data collector*
4 *has electronic mail addresses for the subject persons.*

5 *(2) Conspicuous posting of the notification on the Internet*
6 *website of the data collector, if the data collector maintains an*
7 *Internet website.*

8 *(3) Notification to major statewide media.*

9 *5. A data collector that maintains its own notification policies*
10 *and procedures as part of an information security policy for the*
11 *treatment of personal information that is otherwise consistent with*
12 *the timing requirements of this section shall be deemed to be in*
13 *compliance with the notification requirements of this section if the*
14 *data collector notifies subject persons in accordance with its*
15 *policies and procedures in the event of a breach of the security of*
16 *the system data.*

17 **Sec. 10.** *Any waiver of the provisions of this chapter is*
18 *contrary to public policy, void and unenforceable.*

19 **Sec. 11.** *1. Any person who is injured by a violation of this*
20 *chapter may bring a civil action to recover actual damages and*
21 *reasonable attorney's fees.*

22 *2. If the Attorney General or a district attorney of any county*
23 *has reason to believe that any person is violating, proposes to*
24 *violate or has violated the provisions of this chapter, he may bring*
25 *an action against that person to obtain a temporary or permanent*
26 *injunction against the violation.*

27 *3. The rights and remedies available under this section are*
28 *cumulative to each other and to any other rights and remedies*
29 *available under law.*

