

As Introduced

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Representatives Crossman, Sobecki

Cosponsors: Representatives Galonski, Miller, J., Miranda, Boggs, Miller, A.,  
Boyd, Troy, West, Russo, Sheehy

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A BILL

To amend section 1347.12 and to enact section 1  
125.184 of the Revised Code regarding data 2  
breaches on state agency computer systems. 3

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That section 1347.12 be amended and section 4  
125.184 of the Revised Code be enacted to read as follows: 5

Sec. 125.184. (A) As used in this section, "breach of the 6  
security of the system" and "state agency" have the same 7  
meanings as in section 1347.12 of the Revised Code. 8

(B) Every two years, the state chief information officer 9  
shall conduct an examination of each state agency to assess the 10  
risk of a breach of the security of the system of that state 11  
agency. 12

(C) The state chief information officer shall draft a 13  
report following each examination and deliver the report to the 14  
state agency that was examined. If the state chief information 15  
officer finds an unacceptable risk of a breach of the security 16  
of the system of a state agency, the state chief information 17

officer shall identify all such risks and make recommendations 18  
on how to mitigate the risks to an acceptable level. 19

(D) A state agency receiving a report described in 20  
division (C) of this section shall mitigate all unacceptable 21  
risks identified in the report to an acceptable level. 22

(E) A report described in division (C) of this section is 23  
not a public record under section 149.43 of the Revised Code and 24  
shall not be released. 25

**Sec. 1347.12.** (A) As used in this section: 26

(1) "Affected resident" means a resident of this state 27  
whose personal information was, or reasonably is believed to 28  
have been, accessed and acquired by an unauthorized person if 29  
the access and acquisition by the unauthorized person causes or 30  
reasonably is believed will cause a material risk of identity 31  
theft or other fraud to the resident. 32

(2) "Agency of a political subdivision" means each 33  
organized body, office, or agency established by a political 34  
subdivision for the exercise of any function of the political 35  
subdivision, except that "agency of a political subdivision" 36  
does not include an agency that is a covered entity as defined 37  
in 45 C.F.R. 160.103, as amended. 38

~~(2)(a)~~ (3)(a) "Breach of the security of the system" means 39  
unauthorized access to and acquisition of computerized data that 40  
compromises the security or confidentiality of personal 41  
information owned or licensed by a state agency or an agency of 42  
a political subdivision and that causes, reasonably is believed 43  
to have caused, or reasonably is believed will cause a material 44  
risk of identity theft or other fraud to the person or property 45  
of a resident of this state. 46

(b) For purposes of division ~~(A) (2) (a)~~ (A) (3) (a) of this section: 47  
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(i) Good faith acquisition of personal information by an employee or agent of the state agency or agency of the political subdivision for the purposes of the agency is not a breach of the security of the system, provided that the personal information is not used for an unlawful purpose or subject to further unauthorized disclosure. 49  
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(ii) Acquisition of personal information pursuant to a search warrant, subpoena, or other court order, or pursuant to a subpoena, order, or duty of a regulatory state agency, is not a breach of the security of the system. 55  
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~~(3)~~ (4) "Consumer reporting agency that compiles and maintains files on consumers on a nationwide basis" means a consumer reporting agency that regularly engages in the practice of assembling or evaluating, and maintaining, for the purpose of furnishing consumer reports to third parties bearing on a consumer's creditworthiness, credit standing, or credit capacity, each of the following regarding consumers residing nationwide: 59  
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(a) Public record information; 67

(b) Credit account information from persons who furnish that information regularly and in the ordinary course of business. 68  
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~~(4)~~ (5) "Credit monitoring" means a service through which a consumer may obtain, at a minimum, both of the following: 71  
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(a) Electronic notification of material additions or modifications to the consumer's file that is maintained by a consumer reporting agency that compiles and maintains files on 73  
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<u>consumers on a nationwide basis;</u>	76
<u>(b) Following a notification, access to the consumer's credit report.</u>	77 78
<u>(5) "Credit report" has the same meaning as in section 1349.52 of the Revised Code.</u>	79 80
<u>(6) "Encryption" means the use of an algorithmic process to transform data into a form in which there is a low probability of assigning meaning without use of a confidential process or key.</u>	81 82 83 84
<del>(5)-(7)</del> <u>"Individual" means a natural person.</u>	85
<del>(6)(a)-(8)(a)</del> <u>"Personal information" means,</u> notwithstanding section 1347.01 of the Revised Code, an individual's name, consisting of the individual's first name or first initial and last name, in combination with and linked to any one or more of the following data elements, when the data elements are not encrypted, redacted, or altered by any method or technology in such a manner that the data elements are unreadable:	86 87 88 89 90 91 92 93
(i) Social security number;	94
(ii) Driver's license number or state identification card number;	95 96
(iii) Account number or credit or debit card number, in combination with and linked to any required security code, access code, or password that would permit access to an individual's financial account.	97 98 99 100
(b) "Personal information" does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records	101 102 103

or any of the following media that are widely distributed:	104
(i) Any news, editorial, or advertising statement	105
published in any bona fide newspaper, journal, or magazine, or	106
broadcast over radio or television;	107
(ii) Any gathering or furnishing of information or news by	108
any bona fide reporter, correspondent, or news bureau to news	109
media described in division <del>(A) (6) (b) (i)</del> <u>(A) (8) (b) (i)</u> of this	110
section;	111
(iii) Any publication designed for and distributed to	112
members of any bona fide association or charitable or fraternal	113
nonprofit corporation;	114
(iv) Any type of media similar in nature to any item,	115
entity, or activity identified in division <del>(A) (6) (b) (i)</del> <u>(A) (8) (b)</u>	116
<u>(i)</u> , (ii), or (iii) of this section.	117
<del>(7)</del> <u>(9)</u> "Political subdivision" has the same meaning as in	118
section 2744.01 of the Revised Code.	119
<del>(8)</del> <u>(10)</u> "Record" means any information that is stored in	120
an electronic medium and is retrievable in perceivable form.	121
"Record" does not include any publicly available directory	122
containing information an individual voluntarily has consented	123
to have publicly disseminated or listed, such as name, address,	124
or telephone number.	125
<del>(9)</del> <u>(11)</u> "Redacted" means altered or truncated so that no	126
more than the last four digits of a social security number,	127
driver's license number, state identification card number,	128
account number, or credit or debit card number is accessible as	129
part of the data.	130
<del>(10)</del> <u>(12)</u> "State agency" has the same meaning as in	131

section 1.60 of the Revised Code, except that "state agency" 132  
does not include an agency that is a covered entity as defined 133  
in 45 C.F.R. 160.103, as amended. 134

~~(11)~~ (13) "System" means, notwithstanding section 1347.01 135  
of the Revised Code, any collection or group of related records 136  
that are kept in an organized manner, that are maintained by a 137  
state agency or an agency of a political subdivision, and from 138  
which personal information is retrieved by the name of the 139  
individual or by some identifying number, symbol, or other 140  
identifier assigned to the individual. "System" does not include 141  
any collected archival records in the custody of or administered 142  
under the authority of the Ohio history connection, any 143  
published directory, any reference material or newsletter, or 144  
any routine information that is maintained for the purpose of 145  
internal office administration of the agency, if the use of the 146  
directory, material, newsletter, or information would not 147  
adversely affect an individual and if there has been no 148  
unauthorized external breach of the directory, material, 149  
newsletter, or information. 150

(B) (1) Any state agency or agency of a political 151  
subdivision that owns or licenses computerized data that 152  
includes personal information shall disclose any breach of the 153  
security of the system, following its discovery or notification 154  
of the breach of the security of the system, to any affected 155  
~~resident of this state whose personal information was, or~~ 156  
~~reasonably is believed to have been, accessed and acquired by an~~ 157  
~~unauthorized person if the access and acquisition by the~~ 158  
~~unauthorized person causes or reasonably is believed will cause~~ 159  
~~a material risk of identity theft or other fraud to the~~ 160  
resident. A state agency that experienced such a breach shall 161  
include in the disclosure information on how to obtain the 162

credit monitoring described in division (G) of this section. The 163  
disclosure described in this division may be made pursuant to 164  
any provision of a contract entered into by the state agency or 165  
agency of a political subdivision with any person or another 166  
state agency or agency of a political subdivision prior to the 167  
date the breach of the security of the system occurred if that 168  
contract does not conflict with any provision of this section. 169  
For purposes of this section, a resident of this state is an 170  
individual whose principal mailing address as reflected in the 171  
records of the state agency or agency of a political subdivision 172  
is in this state. 173

(2) The state agency or agency of a political subdivision 174  
shall make the disclosure described in division (B) (1) of this 175  
section in the most expedient time possible but not later than 176  
forty-five days following its discovery or notification of the 177  
breach in the security of the system, subject to the legitimate 178  
needs of law enforcement activities described in division (D) of 179  
this section and consistent with any measures necessary to 180  
determine the scope of the breach, including which residents' 181  
personal information was accessed and acquired, and to restore 182  
the reasonable integrity of the data system. 183

(C) Any state agency or agency of a political subdivision 184  
that, on behalf of or at the direction of another state agency 185  
or agency of a political subdivision, is the custodian of or 186  
stores computerized data that includes personal information 187  
shall notify that other state agency or agency of a political 188  
subdivision of any breach of the security of the system in an 189  
expeditious manner, if the personal information was, or 190  
reasonably is believed to have been, accessed and acquired by an 191  
unauthorized person and if the access and acquisition by the 192  
unauthorized person causes or reasonably is believed will cause 193

a material risk of identity theft or other fraud to a resident 194  
of this state. 195

(D) The state agency or agency of a political subdivision 196  
may delay the disclosure or notification required by division 197  
(B), (C), or (F) of this section if a law enforcement agency 198  
determines that the disclosure or notification will impede a 199  
criminal investigation or jeopardize homeland or national 200  
security, in which case, the state agency or agency of a 201  
political subdivision shall make the disclosure or notification 202  
after the law enforcement agency determines that disclosure or 203  
notification will not compromise the investigation or jeopardize 204  
homeland or national security. 205

(E) For purposes of this section, a state agency or agency 206  
of a political subdivision may disclose or make a notification 207  
by any of the following methods: 208

(1) Written notice; 209

(2) Electronic notice, if the state agency's or agency of 210  
a political subdivision's primary method of communication with 211  
the resident to whom the disclosure must be made is by 212  
electronic means; 213

(3) Telephone notice; 214

(4) Substitute notice in accordance with this division, if 215  
the state agency or agency of a political subdivision required 216  
to disclose demonstrates that the agency does not have 217  
sufficient contact information to provide notice in a manner 218  
described in division (E) (1), (2), or (3) of this section, or 219  
that the cost of providing disclosure or notice to residents to 220  
whom disclosure or notification is required would exceed two 221  
hundred fifty thousand dollars, or that the affected class of 222



subject residents to whom disclosure or notification is required 223  
exceeds five hundred thousand persons. Substitute notice under 224  
this division shall consist of all of the following: 225

(a) Electronic mail notice if the state agency or agency 226  
of a political subdivision has an electronic mail address for 227  
the resident to whom the disclosure must be made; 228

(b) Conspicuous posting of the disclosure or notice on the 229  
state agency's or agency of a political subdivision's web site, 230  
if the agency maintains one; 231

(c) Notification to major media outlets, to the extent 232  
that the cumulative total of the readership, viewing audience, 233  
or listening audience of all of the outlets so notified equals 234  
or exceeds seventy-five per cent of the population of this 235  
state. 236

(5) Substitute notice in accordance with this division, if 237  
the state agency or agency of a political subdivision required 238  
to disclose demonstrates that the agency has ten employees or 239  
fewer and that the cost of providing the disclosures or notices 240  
to residents to whom disclosure or notification is required will 241  
exceed ten thousand dollars. Substitute notice under this 242  
division shall consist of all of the following: 243

(a) Notification by a paid advertisement in a local 244  
newspaper that is distributed in the geographic area in which 245  
the state agency or agency of a political subdivision is 246  
located, which advertisement shall be of sufficient size that it 247  
covers at least one-quarter of a page in the newspaper and shall 248  
be published in the newspaper at least once a week for three 249  
consecutive weeks; 250

(b) Conspicuous posting of the disclosure or notice on the 251

state agency's or agency of a political subdivision's web site, 252  
if the agency maintains one; 253

(c) Notification to major media outlets in the geographic 254  
area in which the state agency or agency of a political 255  
subdivision is located. 256

(F) If a state agency or agency of a political subdivision 257  
discovers circumstances that require disclosure under this 258  
section to more than one thousand residents of this state 259  
involved in a single occurrence of a breach of the security of 260  
the system, the state agency or agency of a political 261  
subdivision shall notify, without unreasonable delay, all 262  
consumer reporting agencies that compile and maintain files on 263  
consumers on a nationwide basis of the timing, distribution, and 264  
content of the disclosure given by the state agency or agency of 265  
a political subdivision to the residents of this state. In no 266  
case shall a state agency or agency of a political subdivision 267  
that is required to make a notification required by this 268  
division delay any disclosure or notification required by 269  
division (B) or (C) of this section in order to make the 270  
notification required by this division. 271

(G) In the event of a breach of the security of the system 272  
of any state agency that owns or licenses computerized data that 273  
includes personal information, the state agency shall ensure 274  
that each affected resident can obtain, at no cost to the 275  
affected resident, credit monitoring for a period of three years 276  
following the date of the disclosure made under division (B) of 277  
this section. 278

(H) The attorney general, pursuant to sections 1349.191 279  
and 1349.192 of the Revised Code, may conduct an investigation 280  
and bring a civil action upon an alleged failure by a state 281

agency or agency of a political subdivision to comply with the	282
requirements of this section.	283
<b>Section 2.</b> That existing section 1347.12 of the Revised	284
Code is hereby repealed.	285