

LFC Requester:	Charlene Cerny
-----------------------	-----------------------

**AGENCY BILL ANALYSIS
2014 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

And

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original X **Amendment** X
Correction **Substitute** X

Date February 18, 2014
Bill No: HB224-305 Feb

Sponsor: Rep. William "Bill" Rehm **Reviewing** Attorney General's Office
Short Data Breach Notification Act **Person Writing** Rebecca Branch
Title: _____ **Phone:** 505-222-9100 **Email** rbranch@nmag.gov

SECTION II: FISCAL IMPACT **FOR LFC OFFICIAL PURPOSES******
AGO STAFF SHOULD LEAVE SHADED AREAS BLANK

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY14	FY15		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: N/A

Duplicates/Relates to Appropriation in the General Appropriation Act

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY14	FY15	FY16		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

SECTION III: NARRATIVE

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Opinion Letter. This is a staff analysis in response to the agency’s, committee’s or legislator’s request.

BILL SUMMARY

Summary Synopsis:

Sec. 1 Short Title of Bill is “Data Breach Notification Act” – unchanged.

Sec. 2 Definitions - The definition of “personal identifying information” in (L) (1) was refined as to not be overly broad.

(N) was added to define service provider as any person that receives, stores, maintains, processes or otherwise is permitted access to personal information through its provision of services directly to a person that is subject to regulation.

This definition was added to clarify Section 5 “Non-Affiliated Third Party User of Personal Identifying Information – Implementation of Security Measures” because “Non-Affiliated Third Party User” was changed to “Service Provider Use of Personal Identifying Information – Implementation of Security Measures”

Sec. 3 language was refined to more clearly state what proper disposal is required of business records with personal identifying information.

Sec. 4. – “owns and maintains” was changed to “owns and licenses.”

Sec. 5 - As state above changed “Non-affiliated third party use” to “Service Provider use”

Sec. 6 – Notification of Security Breach - language was added in (A) p. 6 lines 23 – p. 7 line 2 – which clarified time limits. (B) p. 7 lines 6-7 were changed by replacing “misuse” with “the security breach does not give rise to a significant risk of identity theft or fraud and, for such breaches that affect more than one thousand New Mexico residents,” to further clarify the requirements of notification. (C) is a new section that requires a third party user of information to notify the owner or licensee of the information when there is a breach. (D) Sets forth how notification shall be provided. (F) is a new section which allows a person who already has in place a notice procedure as part of an information security policy for personal identifying information to use their own procedures if they are otherwise consistent with the timing requirements of Sec. 6.

Sec. 7 – provides what information is required in the Notification. Including but not limited to the type of information breached, date of breach, toll-free number and addresses of major consumer reporting agencies and information regarding the New Mexico Security Freeze

Law (Fair Credit Reporting and Identity Security Act.)

Sec.8. – Exempts persons subject to Gramm-Leach Bliley Act and Health Insurance Portability and Accountability Act of 1996.

Sec. 9 – Sets forth when notification may be delayed.

Sec. 10 – Sets forth when and what notification must be provide to the NM Attorney General and Credit Reporting Agencies.

Sec 11. – Additional Notification Requirements to each merchant services provider.

Sec. 12 - Set forth what enforcement action the attorney general can take and in what circumstances penalties may be awarded in the event the Data Breach Notification Act is violated.

Sec. 13 – Outlines when a Card Issuer may pursue civil remedies against a merchant services provider if a data breach occurs.

FISCAL IMPLICATIONS WITH ENACTING THIS BILL N/A

SIGNIFICANT LEGAL ISSUES: New Mexico is only one of four states that does not have a data breach law on the books. Should this law be passed it would allow for the Attorney General to pursue companies for restitution for consumers and civil penalties.

PERFORMANCE IMPLICATIONS WITH ENACTING THIS BILL:

ADMINISTRATIVE IMPLICATIONS WITH ENACTING THIS BILL

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP WITH BILLS INTRODUCED THIS SESSION: N/A

TECHNICAL ISSUES OR DRAFTING ERROR: N/A

OTHER SUBSTANTIVE LEGAL ISSUES

ALTERNATIVES TO ENACTING THIS BILL:

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL: Status quo.

AMENDMENTS NEEDED TO IMPROVE THIS BILL