

Senate Bill 236

By: Senators Rogers of the 21st, Hudgens of the 47th, Thompson of the 33rd, Goggans of the 7th, Hawkins of the 49th and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 34 of Chapter 1 of Title 10 of the Official Code of Georgia Annotated,
2 relating to identity theft, so as to provide for definitions; to provide for notification by certain
3 state agencies upon a breach of security regarding personal information; to amend Article 8
4 of Chapter 9 of Title 16 of the Official Code of Georgia Annotated, relating to the offense
5 of identity fraud, so as to change certain provisions relating to the elements of the offense of
6 identity fraud; to provide for a victim's right to file a report with a law enforcement agency;
7 to provide a short title; to provide for related matters; to provide an effective date; to repeal
8 conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

11 This Act shall be known and may be cited as the "Georgia Personal Identity Protection Act."

12 **SECTION 2.**

13 Article 34 of Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to
14 identity theft, is amended by revising Code Section 10-1-911, relating to definitions, as
15 follows:

16 "10-1-911.

17 As used in this article, the term:

18 (1) 'Breach of the security of the system' means unauthorized acquisition of an
19 individual's computerized data that compromises the security, confidentiality, or integrity
20 of personal information of such individual maintained by an information broker or public
21 institution. Good faith acquisition of personal information by an employee or agent of
22 an information broker or public institution for the purposes of such information broker
23 or public institution is not a breach of the security of the system, provided that the
24 personal information is not used or subject to further unauthorized disclosure.

1 (2) 'Information broker' means any person or entity who, for monetary fees or dues,
2 engages in whole or in part in the business of collecting, assembling, evaluating,
3 compiling, reporting, transmitting, transferring, or communicating information
4 concerning individuals for the primary purpose of furnishing personal information to
5 nonaffiliated third parties, but does not include any governmental agency whose records
6 are maintained primarily for traffic safety, law enforcement, or licensing purposes.

7 (3) 'Notice' means:

8 (A) Written notice;

9 (B) Telephone notice;

10 (C) Electronic notice, if the notice provided is consistent with the provisions regarding
11 electronic records and signatures set forth in Section 7001 of Title 15 of the United
12 States Code; or

13 ~~(C)~~(D) Substitute notice, if the information broker or public institution demonstrates
14 that the cost of providing notice would exceed ~~\$250,000.00~~ \$50,000.00, that the
15 affected class of individuals to be notified exceeds ~~500,000~~ 100,000, or that the
16 information broker or public institution does not have sufficient contact information to
17 provide written or electronic notice to such individuals. Substitute notice shall consist
18 of all of the following:

19 (i) E-mail notice, if the information broker or public institution has an e-mail address
20 for the individuals to be notified;

21 (ii) Conspicuous posting of the notice on the information broker's or public
22 institution's website page, if the information broker or public institution maintains
23 one; and

24 (iii) Notification to major state-wide media.

25 Notwithstanding any provision of this paragraph to the contrary, an information broker
26 or public institution that maintains its own notification procedures as part of an
27 information security policy for the treatment of personal information and is otherwise
28 consistent with the timing requirements of this article shall be deemed to be in
29 compliance with the notification requirements of this article if it notifies the individuals
30 who are the subjects of the notice in accordance with its policies in the event of a breach
31 of the security of the system.

32 (4) 'Person' means any individual, partnership, corporation, limited liability company,
33 trust, estate, cooperative, association, or other entity. The term 'person' as used in this
34 article shall not be construed to require duplicative reporting by any individual,
35 corporation, trust, estate, cooperative, association, or other entity involved in the same
36 transaction.

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

4 (A) Social security number;

5 (B) Driver's license number or state identification card number;

6 (C) Account number, credit card number, or debit card number, if circumstances exist
 7 wherein such a number could be used without additional identifying information, access
 8 codes, or passwords;

9 (D) Account passwords or personal identification numbers or other access codes; or

10 (E) Any of the items contained in subparagraphs (A) through (D) of this paragraph
 11 when not in connection with the individual's first name or first initial and last name, if
 12 the information compromised would be sufficient to perform or attempt to perform
 13 identity theft against the person whose information was compromised.

14 The term 'personal information' does not include publicly available information that is
 15 lawfully made available to the general public from federal, state, or local government
 16 records.

17 (6) 'Public institution' means any state or local agency or subdivision thereof including
 18 any department, bureau, authority, public university or college, academy, commission,
 19 or other government entity; provided, however, that the term 'public institution' shall not
 20 include any agency whose records are maintained primarily for traffic safety, law
 21 enforcement, or licensing purposes."

22 SECTION 3.

23 Said article is further amended by revising Code Section 10-1-912, relating to notification
 24 required upon breach of security regarding personal information, as follows:

25 "10-1-912.

26 (a) Any information broker or public institution that maintains computerized data that
 27 includes personal information of individuals shall give notice of any breach of the security
 28 of the system following discovery or notification of the breach in the security of the data
 29 to any resident of this state whose unencrypted personal information was, or is reasonably
 30 believed to have been, acquired by an unauthorized person. The notice shall be made in
 31 the most expedient time possible and without unreasonable delay, consistent with the
 32 legitimate needs of law enforcement, as provided in subsection (c) of this Code section, or
 33 with any measures necessary to determine the scope of the breach and restore the
 34 reasonable integrity, security, and confidentiality of the data system.

35 (b) Any person or business that maintains computerized data on behalf of an information
 36 broker or public institution that includes personal information of individuals that the person

1 or business does not own shall notify the information broker or public institution of any
 2 breach of the security of the data immediately following discovery, if the personal
 3 information was, or is reasonably believed to have been, acquired by an unauthorized
 4 person.

5 (c) The notification required by this Code section may be delayed if a law enforcement
 6 agency determines that the notification will compromise a criminal investigation. The
 7 notification required by this Code section shall be made after the law enforcement agency
 8 determines that it will not compromise the investigation.

9 (d) In the event that an information broker or public institution discovers circumstances
 10 requiring notification pursuant to this Code section of more than 10,000 residents of this
 11 state at one time, the information broker or public institution shall also notify, without
 12 unreasonable delay, all consumer reporting agencies that compile and maintain files on
 13 consumers on a nation-wide basis, as defined by 15 U.S.C. Section 1681a, of the timing,
 14 distribution, and content of the notices."

15 SECTION 4.

16 Article 8 of Chapter 9 of Title 16 of the Official Code of Georgia Annotated, relating to the
 17 offense of identity fraud, is amended by revising Code Section 16-9-121, relating to the
 18 elements of the offense, as follows:

19 "16-9-121.

20 (a) A person commits the offense of identity fraud when ~~without the authorization or~~
 21 ~~permission of a person with the intent unlawfully to appropriate resources of or cause~~
 22 ~~physical harm to that person, or of any other person, to his or her own use or to the use of~~
 23 ~~a third party~~ he or she willfully and fraudulently:

24 (1) ~~Obtains or records identifying information of a person which would assist in~~
 25 ~~accessing the resources of that person or any other person; or~~

26 (2) ~~Accesses or attempts to access the resources of a person through the use of~~
 27 ~~identifying information:~~

28 (1) Without authorization or consent, uses or possesses with intent to fraudulently use,
 29 identifying information concerning an individual;

30 (2) Uses identifying information of an individual under 18 years old over whom he or
 31 she exercises custodial authority;

32 (3) Uses or possesses with intent to fraudulently use, identifying information concerning
 33 a deceased individual;

34 (4) Creates, uses, or possesses with intent to fraudulently use, any counterfeit or fictitious
 35 identifying information concerning a fictitious individual with intent to use such

1 counterfeit or fictitious identification information for the purpose of committing or
 2 facilitating the commission of a crime or fraud on another person; or

3 (5) Without authorization or consent, creates, uses, or possesses with intent to
 4 fraudulently use, any counterfeit or fictitious identifying information concerning a real
 5 individual with intent to use such counterfeit or fictitious identification information for
 6 the purpose of committing or facilitating the commission of a crime or fraud on another
 7 person.

8 (b) A person commits the offense of identity fraud by receipt of fraudulent identification
 9 information when he or she willingly and knowingly receives and accepts for identification
 10 purposes fraudulent, stolen, counterfeit, or fictitious identifying information. In any
 11 prosecution under this subsection it shall not be necessary to show a conviction of the
 12 principal thief or counterfeiter.

13 (c) The offenses created by this Code section shall not merge with any other offense."

14 **SECTION 5.**

15 Said article is further amended by adding a new Code section as follows:

16 "16-9-125.1.

17 (a) A person who has learned or reasonably believes that he or she has been the victim of
 18 identity fraud may contact the local law enforcement agency with jurisdiction over his or
 19 her actual residence for the purpose of making an incident report. The law enforcement
 20 agency having jurisdiction over the complainant's residence shall make a report of the
 21 complaint and provide the complainant with a copy of the report. Where jurisdiction for
 22 the investigation and prosecution of the complaint lies with another agency, the law
 23 enforcement agency making the report shall forward a copy to the agency having such
 24 jurisdiction and shall advise the complainant that the report has been so forwarded.

25 (b) Nothing in this Code section shall be construed so as to interfere with the discretion
 26 of a law enforcement agency to allocate resources for the investigation of crimes. A report
 27 created pursuant to this Code section is not be required to be counted as an open case file."

28 **SECTION 6.**

29 This Act shall become effective upon its approval by the Governor or upon its becoming law
 30 without such approval and shall apply to all offenses occurring on or after such date.

31 **SECTION 7.**

32 All laws and parts of laws in conflict with this Act are repealed.