

Individual State Agency Fiscal Note

Bill Number: 1078 E S HB	Title: Consumer financial info	Agency: 100-Office of Attorney General
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Part I: Estimates

☐ No Fiscal Impact

Estimated Cash Receipts to:

NONE

Estimated Expenditures from:

	FY 2016	FY 2017	2015-17	2017-19	2019-21
FTE Staff Years	0.5	0.5	0.5	0.5	0.5
Account					
General Fund-State 001-1	50,011	50,011	100,022	100,022	100,022
Total \$	50,011	50,011	100,022	100,022	100,022

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- ☒ If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- ☐ If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- ☐ Capital budget impact, complete Part IV.
- ☐ Requires new rule making, complete Part V.

Legislative Contact:	Phone:	Date: 04/15/2015
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Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Briefly describe by section number, the significant provisions of the bill, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.

Section 1, a new section, is a statement of the legislature's intent to strengthen data breach notification requirements and require that the Attorney General's Office (AGO) receives notification of data breaches so that it can take appropriate action to protect consumers.

Section 2 (1) amends RCW 19.255.010 to provide that this bill applies to any person or business that owns or licenses a database of personal information on multiple individuals and that they must disclose any breach in security of the system if personal information was, or is reasonably believed to have been acquired by an unauthorized person and the personal information was not secured. It strikes language that limited the notice requirement to breaches of only "computerized" "unencrypted" data, and adds language providing that notice of a breach is not required if it is not reasonably likely to subject consumers to a risk of harm. The breach of secured personal information must be disclosed if the information acquired and accessed is not secured during a security breach or if the confidential process, encryption key, or other means to decipher the secured information was acquired by an unauthorized person.

Section 2(3) authorizes the notification required by this section to be delayed if the data owner or licensee contacts a law enforcement agency after discovery of a breach of the security system and law enforcement determines that the notification will impede a criminal investigation.

Section 2(7) defines "secured" to mean encrypted in a manner that meets identified standards or is otherwise rendered unreadable, unusable, or undecipherable by an unauthorized person.

Section 2(10), a new section, provides that a covered entity under the federal Health Insurance Portability and Accountability Act (HIPAA) of 1996 is deemed to have complied with the notice requirements of subsection (1) of this section with respect to protected health information if it has complied completely with subsection (1) of the Federal Health Information Technology for Economic and Clinical Health Act ("HITECH"). Covered entities shall notify the AGO pursuant to subsection (15) of this section in compliance with the timeliness of notification requirements of section 13402 of HITECH, notwithstanding the notification requirements in subsection (16) of this section.

Section 2(11), a new section, provides that identified financial institutions are deemed to have complied with the requirements of this section with respect to "sensitive customer information" as defined in the interagency guidelines establishing information security standards listed in the identified parts of 12. C.F.R. if the financial institution provides notice to affected consumers pursuant to the interagency guidelines and the notice complies with the customer notice provisions of the interagency. The entity shall notify the AGO pursuant of subsection (15) of this section in addition to providing notice to its primary federal regulator.

Section 2(13) authorizes a civil lawsuit by any consumer injured by violation of this section.

Section 2 (14) adds explicit requirements for the content and form of the notice that must be provided.

Section 2 (15) requires a copy of the notice to be provided to the AGO if the breach affected more than 500 Washington residents, and requires this notice to be provided by the time notice is provided to affected

consumers.

Section 2 (16) requires notice to be given expediently and no later than 45 calendar days after the breach was discovered, unless, at the request of law enforcement as provided in subsection 3 of this section, or due to any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system.

Section 2(17), a new section, authorizes the AGO to bring an action in the name of the state, or as *parens patriae* on behalf of persons residing in the state, to enforce this section. For actions brought by the AGO to enforce this section, the legislature finds violations of this section to be matters vitally affecting the public interest for the purpose of applying the Consumer Protection Act, Chapter 19.86 RCW. For actions brought by the AGO to enforce this section, a violation of this section is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act in trade or commerce and an unfair method of competition for purposes of applying the Consumer Protection Act, Chapter 19.86 RCW. An action to enforce this section may not be brought under RCW 19.86.090.

Section 3 amends RCW 42.56.590, which governs an agency's duty to provide notice of data breach.

Section 3(1) makes changes that parallel those applied to persons and businesses in section 1. Thus, this section strikes language that limited the notice requirement to breaches of only "computerized" and "unencrypted" data, and adds language limiting the section's application to situations where the personal information released was not secured, and adds language providing that notice of a breach is not required if it is not reasonably likely to subject consumers to a risk of harm. The breach of secured personal information must be disclosed if the information acquired and accessed is not secured during a security breach or if the confidential process, encryption key, or other means to decipher the secured information was acquired by an unauthorized person.

Section 3(3) authorizes the notification required by this section to be delayed if the data owner or licensee contacts a law enforcement agency after discovery of a breach of the security system and law enforcement determines that the notification will impede a criminal investigation.

Section 3(7) defines "secured" to mean encrypted in a manner that meets identified standards or is otherwise rendered unreadable, unusable, or undecipherable by an unauthorized person.

Section 3(10), a new section, provides that a covered entity under the federal Health Insurance Portability and Accountability Act (HIPAA) of 1996 is deemed to have complied with the notice requirements of subsection (1) of this section with respect to protected health information if it has complied completely with subsection (1) of the Federal Health Information Technology for Economic and Clinical Health Act ("HITECH"). Covered entities shall notify the AGO pursuant to subsection (15) of this section in compliance with the timeliness of notification requirements of section 13402 of HITECH, notwithstanding the notification requirements in subsection (15) of this section.

Section 3 (13) adds explicit requirements for the content and form of the notice that must be provided.

Section 3 (14) requires a copy of the notice to be provided to the AGO if the breach affected more than 500 Washington residents, and requires this notice to be provided by the time notice is provided to affected consumers.

Section 3 (15) requires notice to be given expediently and no later than 45 calendar days after the breach was

discovered, unless at the request of law enforcement as provided in subsection 3 of this section, or due to any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system.

The AGO estimates a workload impact of 0.2 Assistant Attorney General (AAG) and 0.3 Office Assistant (OA) at a cost of \$50,011 in Fiscal Year (FY) 2016 and in each FY thereafter.

This bill is assumed effective on July 1, 2015.

II. B - Cash receipts Impact

Briefly describe and quantify the cash receipts impact of the legislation on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.

None.

AGO Consumer Protection activities are funded with General Fund-State dollars. There is no client agency to bill for legal services.

II. C - Expenditures

Briefly describe the agency expenditures necessary to implement this legislation (or savings resulting from this legislation), identifying by section number the provisions of the legislation that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing functions.

The AGO estimates a workload impact of 0.2 AAG and 0.3 OA at a cost of \$50,011 in FY2016 and in each FY thereafter.

Assumptions:

1. Legal services associated with the enactment of this bill are assumed to begin on July 1, 2015.
2. We assume responsibilities to review breach notices and determine whether any legal action should be taken.
3. We assume OA staffing for statutes requiring that agencies and businesses notify the AGO when there is a security breach reaching a certain threshold. OA staff will perform intake and tracking functions for those notices as they come into the AGO. This is new administrative work for our agency. It is not cost effective for an AAG to perform these functions.
4. We assume responsibilities to determine if enforcement action should be taken against an entity that does not comply with notice requirement.
5. We assume three investigations a year for failure to provide notice as required by this statute. Given the increase in data breaches reported in the media and the statute's amendment to remove the safe harbor, it does not require any consumer notice if the data is encrypted. The investigations likely will involve two types of issues:
 - (1) Whether notice was required because of the encryption that was used;
 - (2) Whether the notice was provided in the manner outlined in the statute.

FTE and costs with these investigations are included in this projection.

6. There is potential for an investigation to escalate to litigation based on the enactment of this bill. Determining how many cases, or how often litigation is necessary is not possible to assume. Litigation costs are not included in our projected costs.

Part III: Expenditure Detail

III. A - Expenditures by Object Or Purpose

	FY 2016	FY 2017	2015-17	2017-19	2019-21
FTE Staff Years	0.5	0.5	0.5	0.5	0.5
A-Salaries and Wages	28,235	28,235	56,470	56,470	56,470
B-Employee Benefits	8,941	8,941	17,882	17,882	17,882
C-Professional Service Contracts					
E-Goods and Other Services	11,935	11,935	23,870	23,870	23,870
G-Travel	300	300	600	600	600
J-Capital Outlays	600	600	1,200	1,200	1,200
M-Inter Agency/Fund Transfers					
N-Grants, Benefits & Client Services					
P-Debt Service					
S-Interagency Reimbursements					
T-Intra-Agency Reimbursements					
9-					
Total:	\$50,011	\$50,011	\$100,022	\$100,022	\$100,022

III. B - Detail: List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part I and Part IIIA

Job Classification	Salary	FY 2016	FY 2017	2015-17	2017-19	2019-21
Assistant Attorney General	90,972	0.2	0.2	0.2	0.2	0.2
Legal Assistant II	42,588	0.3	0.3	0.3	0.3	0.3
Total FTE's	133,560	0.5	0.5	0.5	0.5	0.5

III. C - Expenditures By Program (optional)

Program	FY 2016	FY 2017	2015-17	2017-19	2019-21
Consumer Protection Division (CPR)	50,011	50,011	100,022	100,022	100,022
Total \$	50,011	50,011	100,022	100,022	100,022

Part IV: Capital Budget Impact

NONE

Part V: New Rule Making Required

Identify provisions of the measure that require the agency to adopt new administrative rules or repeal/revise existing rules.

None.