

2023 -- H 5684 SUBSTITUTE A

LC000194/SUB A/2

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2023

A N A C T

RELATING TO CRIMINAL OFFENSES -- IDENTITY THEFT PROTECTION ACT OF 2015

Introduced By: Representatives Cortvriend, Fogarty, Tanzi, Phillips, Edwards, Solomon,
and Speakman

Date Introduced: February 17, 2023

Referred To: House Innovation, Internet, & Technology

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 11-49.3-3 and 11-49.3-4 of the General Laws in Chapter 11-49.3
2 entitled "Identity Theft Protection Act of 2015" are hereby amended to read as follows:

3 **11-49.3-3. Definitions.**

4 (a) The following definitions apply to this section:

5 (1) "Breach of the security of the system" means unauthorized access or acquisition of
6 unencrypted, computerized data information that compromises the security, confidentiality, or
7 integrity of personal information maintained by the municipal agency, state agency, or person.
8 Good-faith acquisition of personal information by an employee or agent of the agency for the
9 purposes of the agency is not a breach of the security of the system; provided, that the personal
10 information is not used or subject to further unauthorized disclosure.

11 (2) "Classified data" means any data that is not public (private, sensitive, confidential).

12 Classified data requires additional security controls, such as access restrictions and encryption.

13 Classified data includes personally identifiable information (PII), personally identifiable health
14 information (PHI) or federal tax information (FTI).

15 (3) "Cybersecurity incident" means unauthorized access that could jeopardize the
16 confidentiality, integrity or availability of critical information systems and critical infrastructure
17 systems (i.e., first responder networks, water, energy).

18 ~~(2)~~(4) "Encrypted" means the transformation of data through the use of a one hundred
19 twenty-eight (128) bit or higher algorithmic process into a form in which there is a low probability

1 of assigning meaning without use of a confidential process or key. Data shall not be considered to
2 be encrypted if it is acquired in combination with any key, security code, or password that would
3 permit access to the encrypted data.

4 ~~(3)~~(5) “Health insurance information” means an individual’s health insurance policy
5 number, subscriber identification number, or any unique identifier used by a health insurer to
6 identify the individual.

7 ~~(4)~~(6) “Medical information” means any information regarding an individual’s medical
8 history, mental or physical condition, or medical treatment or diagnosis by a healthcare professional
9 or provider.

10 ~~(5)~~(7) “Municipal agency” means any department, division, agency, commission, board,
11 office, bureau, authority, quasi-public authority, or school, fire, or water district within Rhode
12 Island, other than a state agency, and any other agency that is in any branch of municipal
13 government and exercises governmental functions other than in an advisory nature.

14 ~~(6)~~(8) “Owner” means the original collector of the information.

15 ~~(7)~~(9) “Person” shall include any individual, sole proprietorship, partnership, association,
16 corporation, joint venture, business, legal entity, trust, estate, cooperative, or other commercial
17 entity.

18 ~~(8)~~(10) “Personal information” means an individual’s first name or first initial and last
19 name in combination with any one or more of the following data elements, when the name and the
20 data elements are not encrypted or are in hard copy, paper format:

21 (i) Social security number;

22 (ii) Driver’s license number, Rhode Island identification card number, or tribal
23 identification number;

24 (iii) Account number, credit, or debit card number, in combination with any required
25 security code, access code, password, or personal identification number, that would permit access
26 to an individual’s financial account;

27 (iv) Medical or health insurance information; or

28 (v) E-mail address with any required security code, access code, or password that would
29 permit access to an individual’s personal, medical, insurance, or financial account.

30 ~~(9)~~(11) “Remediation service provider” means any person who or that, in the usual course
31 of business, provides services pertaining to a consumer credit report including, but not limited to,
32 credit report monitoring and alerts, that are intended to mitigate the potential for identity theft.

33 ~~(10)~~(12) “State agency” means any department, division, agency, commission, board,
34 office, bureau, authority, or quasi-public authority within Rhode Island; either branch of the Rhode

1 Island general assembly or an agency or committee thereof; the judiciary; or any other agency that
2 is in any branch of Rhode Island state government and that exercises governmental functions other
3 than in an advisory nature.

4 (b) For purposes of this section, personal information does not include publicly available
5 information that is lawfully made available to the general public from federal, state, or local
6 government records.

7 (c) For purposes of this section, “notice” may be provided by one of the following methods:

8 (i) Written notice;

9 (ii) Electronic notice, if the notice provided is consistent with the provisions regarding
10 electronic records and signatures set forth in 15 U.S.C. § 7001; or

11 (iii) Substitute notice, if the municipal agency, state agency, or person demonstrates that
12 the cost of providing notice would exceed twenty-five thousand dollars (\$25,000), or that the
13 affected class of subject persons to be notified exceeds fifty thousand (50,000), or the municipal
14 agency, state agency, or person does not have sufficient contact information. Substitute notice shall
15 consist of all of the following:

16 (A) E-mail notice when the municipal agency, state agency, or person has an e-mail address
17 for the subject persons;

18 (B) Conspicuous posting of the notice on the municipal agency’s, state agency’s or
19 person’s website page, if the municipal agency, state agency, or person maintains one; and

20 (C) Notification to major statewide media.

21 **11-49.3-4. Notification of breach.**

22 (a)(1) Any municipal agency, state agency, or person that stores, owns, collects, processes,
23 maintains, acquires, uses, or licenses data that includes personal information shall provide
24 notification as set forth in this section of any disclosure of personal information, or any breach of
25 the security of the system, that poses a significant risk of identity theft to any resident of Rhode
26 Island whose personal information was, or is reasonably believed to have been, acquired by an
27 unauthorized person or entity.

28 (2) The notification shall be made in the most expedient time possible, ~~but~~ subject to the
29 following:

30 (i) For state and municipal agencies, no later than ~~forty five (45)~~ thirty (30) calendar days
31 after confirmation of the breach and the ability to ascertain the information required to fulfill the
32 notice requirements contained in subsection (d) of this section, and shall be consistent with the
33 legitimate needs of law enforcement as provided in subsection (c) of this section. In the event that
34 more than five hundred (500) Rhode Island residents are to be notified, the municipal agency, or

1 state agency, ~~or person~~ shall notify the attorney general and the major credit reporting agencies as
2 to the timing, content, and distribution of the notices and the approximate number of affected
3 individuals. Notification to the attorney general and the major credit reporting agencies shall be
4 made without delaying notice to affected Rhode Island residents. Where affected employees are
5 represented by a labor union through a collective bargaining agreement, the employer shall also
6 notify the collective bargaining agent, or designee, of such breaches.

7 (ii) For persons subject to subsection (a)(1) of this section, which is not a state or municipal
8 agency, no later than forty-five (45) calendar days after confirmation of the breach and the ability
9 to ascertain the information required to fulfill the notice requirements contained in subsection (d)
10 of this section, and shall be consistent with the legitimate needs of law enforcement as provided in
11 subsection (c) of this section. In the event that more than five hundred (500) Rhode Island residents
12 are to be notified, the person shall notify the attorney general and the major credit reporting
13 agencies as to the timing, content, and distribution of the notices and the approximate number of
14 affected individuals. Notification to the attorney general and the major credit reporting agencies
15 shall be made without delaying notice to affected Rhode Island residents.

16 (b) The notification required by this section may be delayed if a federal, state, or local law
17 enforcement agency determines that the notification will impede a criminal investigation. The
18 federal, state, or local law enforcement agency must notify the municipal agency, state agency, or
19 person of the request to delay notification without unreasonable delay. If notice is delayed due to
20 such determination, then, as soon as the federal, state, or municipal law enforcement agency
21 determines and informs the municipal agency, state agency, or person that notification no longer
22 poses a risk of impeding an investigation, notice shall be provided as soon as practicable pursuant
23 to subsection (a)(2). The municipal agency, state agency, or person shall cooperate with federal,
24 state, or municipal law enforcement in its investigation of any breach of security or unauthorized
25 acquisition or use, which shall include the sharing of information relevant to the incident; provided
26 however, that such disclosure shall not require the disclosure of confidential business information
27 or trade secrets.

28 (c) Any municipal agency, state agency, or person required to make notification under this
29 section and fails to do so is liable for a violation as set forth in § 11-49.3-5.

30 (d) The notification to individuals must include the following information to the extent
31 known:

32 (1) A general and brief description of the incident, including how the security breach
33 occurred and the number of affected individuals;

34 (2) The type of information that was subject to the breach;

1 (3) Date of breach, estimated date of breach, or the date range within which the breach
2 occurred;

3 (4) Date that the breach was discovered;

4 (5) A clear and concise description of any remediation services offered to affected
5 individuals including toll free numbers and websites to contact:

6 (i) The credit reporting agencies;

7 (ii) Remediation service providers;

8 (iii) The attorney general; and

9 (6) A clear and concise description of the consumer's ability to file or obtain a police report;
10 how a consumer requests a security freeze and the necessary information to be provided when
11 requesting the security freeze; and that fees may be required to be paid to the consumer reporting
12 agencies.

13 (e) Remediation services to be provided and to be described pursuant to the provisions of
14 subsection (d)(5) of this section shall include, but not be limited to:

15 (1) Individuals eighteen (18) years of age and older, a minimum of five (5) years of
16 coverage; and

17 (2) Individuals under eighteen (18) years of age, coverage until age eighteen (18), and no
18 less than two (2) years of coverage beyond age eighteen (18).

19 SECTION 2. Chapter 11-49.3 of the General Laws entitled "Identity Theft Protection Act
20 of 2015" is hereby amended by adding thereto the following section:

21 **11-49.3-7. Notification of cybersecurity incident.**

22 (a) Any municipal agency, state agency, or person that detects a cybersecurity incident
23 shall provide notification to the Rhode Island state police upon detection of the cybersecurity
24 incident within twenty-four (24) hours.

25 (b) Any municipal agency, state agency, or person required to make notification under this
26 section and fails to do so may be liable for a violation as set forth in § 11-49.3-5.

27 (c) The notification shall include, at a minimum, the following information to the extent
28 known:

29 (1) A general and brief description of the incident, including how the cybersecurity incident
30 occurred; and

31 (2) The date of cybersecurity incident, estimated date of cybersecurity incident, or the date
32 range within which the cybersecurity incident occurred.

1 SECTION 3. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO CRIMINAL OFFENSES -- IDENTITY THEFT PROTECTION ACT OF 2015

1 This act would provide identity theft protections by requiring reporting of breaches by
2 certain municipal and state agencies, and would require notice to collective bargaining agents
3 where required and requires an explanation of remediation services. Cybersecurity incidents would
4 be reported to the Rhode Island state police.

5 This act would take effect upon passage.

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