



DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

MEMORANDUM

DATE: March 25, 2015

TO: Honorable Floyd Prozanski, Chair
Senate Committee on Judiciary

FROM: Aaron Knott, Legislative Director

RE: **SB 601 - Modernizing Oregon's Data Breach Protections**

This testimony is offered in support of Senate Bill 601 as modified by the -2 amendments.

BACKGROUND

The sheer amount of data produced, collected, and stored is expanding rapidly. Some studies estimate that 90% of all data ever created was made in the last two years. The data collected is ever more sensitive; health trackers, online banking, cellphones, home security systems, automobile dashboard systems, and other systems present new security challenges.

Data breaches are a growing risk for Oregonians. In 2014, at least 783 major data breaches caused the loss of 85 million records. The Target retail store data breach of 2013 alone affected over 830,000 Oregonians.

- 47 states currently have data breach notification laws. Of those, 43 are enforced by the state Attorney General.
- The Oregon Identity Theft Prevention Act of 2007 requires businesses and government agencies to develop safeguards for personal information, give notice to consumers of digital data breaches, and protect certain paper records with Social Security Numbers. The Act provides no coverage for medical, health insurance or biometric information, each increasingly the target of data breach.
- The Act provides exclusive enforcement authority to the Department of Consumer and Business Services. To date, DCBS has conducted three enforcement actions, each involving only paper records. Digital breaches, which constitute the most common form of breach, are not actively investigated.
- The National Association of Attorneys General (NAAG) hosts a working group which coordinates investigations and actions regarding nationwide data breaches among the 43 states which provide some level of enforcement to their Attorney General.

SB 601 KEEPS OREGON LAW CONTEMPORARY WITH NATIONAL TRENDS

The Oregon Identity Theft Prevention Act, passed in 2007, largely emphasizes the protection of financial data such as debit cards, social security numbers and other personal identifying information used for more traditional forms of identity theft. As data breach cases become both more common and more diverse, this statutory provision is ever less adequate to protect Oregonians and must be revisited to maintain contemporaneity with national trends.

SB 601 modernizes the Oregon Identity Theft Prevention Act with three refinements.

First, jurisdiction to enforce this section is granted to the Attorney General. The National Association of Attorneys General (NAAG) sponsors a workgroup which acts as the point of contact for the quick resolution of national scale digital data breaches impacting multiple states simultaneously. This provides large businesses with the convenience of a primary point of contact in dealing with the innumerable variations across state law. Oregon is also unable to take the lead in multistate litigation of data breach issues without Attorney General jurisdiction. This leaves Oregon largely on the sidelines of discussions around national level data breach enforcement.

This concept also recognizes that the definition of data itself is changing, and would update the definition of *personal information* to include biometric data, insurance policy number, health insurance information, and medical information. This reflects the growth in medical identity theft resulting from the unlawful appropriation of medical data in order to fraudulently obtain medical services and other benefits at the victim's expense.

Finally, SB 601 requires that notice of a data breach be furnished to the Attorney General upon the occurrence of any data breach impacting the personal information of at least 250 Oregonians. This notification requires that a copy of the notice to any impacted consumers already required under this section be furnished to the Attorney General as well.

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