



DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

MEMORANDUM

DATE: May 18, 2015

TO: Honorable Jeff Barker, Chair
Senate Committee on Judiciary

FROM: Aaron Knott, Legislative Director

SB 601A - Modernizing Oregon's Data Breach Protections

This testimony is offered in support of Senate Bill 601A.

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. Nationwide data breaches in 2013 exposed over 546 million records, nearly doubling the previous record high. Four out of the top ten data breaches of all time occurred in 2013. For example, the Target retail store data breach 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 subject of data breach actions.
- The Act granted 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 coordinates multistate investigations and actions regarding nationwide data breaches.

CONCEPT

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 allows large businesses with the convenience of a primary point of contact in dealing with the innumerable variations across state law. The absence of AG jurisdiction also prevents Oregon from taking the lead in multistate enforcement actions on data breach. Under current law, Oregon is unable to lead these multistate efforts, as DCBS has exclusive original jurisdiction without the ability to join multistates. As the most significant data breaches are resolved via multistate efforts, this places Oregon largely on the sidelines of data breach enforcement.

Secondly, SB 601 recognizes that the definition of data itself is changing, and updates the definition of *personal information* to include medical, health insurance and biometric information.

Thirdly, the concept would also require that data breaches of over 250 Oregon consumers be reported to the Attorney General.

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