

# Senate Bill 601

Sponsored by COMMITTEE ON JUDICIARY

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Expands definition of "personal information" for purposes of Oregon Consumer Identity Theft Protection Act. Requires person that owns, maintains or otherwise possesses personal information, or person that maintains or possesses personal information on another person's behalf, to report breach of security to Attorney General in addition to reporting breach of security to affected consumer.

Makes violation of notification requirement unlawful practice that is subject to enforcement or action under Unlawful Trade Practices Act.

## A BILL FOR AN ACT

1  
2 Relating to enforcement of notification requirements for breaches of security involving personal in-  
3 formation; creating new provisions; and amending ORS 646.607, 646A.602 and 646A.604.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 646A.602 is amended to read:

6 646A.602. As used in ORS 646A.600 to 646A.628:

7 (1)(a) "Breach of security" means an unauthorized acquisition of computerized data that mate-  
8 rially compromises the security, confidentiality or integrity of personal information that a person  
9 maintains.

10 (b) "Breach of security" does not include an inadvertent acquisition of personal information by  
11 a person or the person's employee or agent if the personal information is not used in violation of  
12 applicable law or in a manner that harms or poses an actual threat to the security, confidentiality  
13 or integrity of the personal information.

14 (2) "Consumer" means an individual resident of this state.

15 (3) "Consumer report" means a consumer report as described in section 603(d) of the federal Fair  
16 Credit Reporting Act (15 U.S.C. 1681a(d)), as that Act existed on [*October 1, 2007*] **the effective date**  
17 **of this 2015 Act**, that a consumer reporting agency compiles and maintains.

18 (4) "Consumer reporting agency" means a consumer reporting agency as described in section  
19 603(p) of the federal Fair Credit Reporting Act (15 U.S.C. 1681a(p)) as that Act existed on [*October*  
20 *1, 2007*] **the effective date of this 2015 Act**.

21 (5) "Debt" means any obligation or alleged obligation arising out of a consumer transaction[,  
22 *as defined in ORS 646.639*].

23 (6) "Encryption" means [*the use of*] an algorithmic process [*to transform*] **that renders** data [*into*  
24 *a form in which the data is rendered*] unreadable or unusable without the use of a confidential pro-  
25 cess or key.

26 (7) "Extension of credit" means a right to defer paying debt or a right to incur debt and defer  
27 paying the debt, that is offered or granted primarily for personal, family or household purposes.

28 (8) "Identity theft" has the meaning set forth in ORS 165.800.

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 (9) “Identity theft declaration” means a completed and signed statement that documents alleged  
 2 identity theft, using the form available from the Federal Trade Commission, or another substantially  
 3 similar form.

4 (10) “Person” means *[any]* **an** individual, private or public corporation, partnership, cooperative,  
 5 association, estate, limited liability company, organization or other entity, whether or not organized  
 6 to operate at a profit, or a public body as defined in ORS 174.109.

7 (11) “Personal information” **means:**

8 (a) *[Means]* A consumer’s first name or first initial and last name *[in combination with]* **and** any  
 9 one or more of the following data elements, **if encryption, redaction or other methods have not**  
 10 **rendered the data elements unusable** *[when the data elements are not rendered unusable through*  
 11 *encryption, redaction or other methods, or when]* **or if** the data elements are encrypted and the en-  
 12 cryption key has *[also]* been acquired:

13 (A) **A consumer’s** Social Security number;

14 (B) **A consumer’s** driver license number or state identification card number issued by the De-  
 15 partment of Transportation;

16 (C) **A consumer’s** passport number or other *[United States issued]* identification number **issued**  
 17 **by the United States;** *[or]*

18 (D) **A consumer’s** financial account number, credit **card number** or debit card number, in  
 19 combination with any required security code, access code or password that would permit access to  
 20 a consumer’s financial account[.];

21 (E) **A consumer’s unique biometric data, such as the consumer’s fingerprint, retina or**  
 22 **iris image or another unique physical or digital representation of biometric data;**

23 (F) **A consumer’s insurance policy number; or**

24 (G) **A consumer’s medical or health insurance information.**

25 (b) *[Means]* Any of the data elements or any combination of the data elements described in  
 26 paragraph (a) of this subsection *[when not combined with]* **without** the consumer’s first name or first  
 27 initial and last name *[and when the data elements are not rendered unusable through encryption,*  
 28 *redaction or other methods, if the information obtained would be sufficient to permit a person to commit*  
 29 *identity theft against the consumer whose information was compromised.] if:*

30 (i) **Encryption, redaction or other methods have not rendered the data element or com-**  
 31 **ination of data elements unusable; and**

32 (ii) **The data element or combination of data elements would enable a person to commit**  
 33 **identity theft against a consumer.**

34 (c) **“Personal information”** does not include information[, *other than a Social Security*  
 35 *number,*] in a federal, state or local government record, **other than a Social Security number,** that  
 36 is lawfully made available to the public.

37 (12) “Proper identification” means written information or documentation that a consumer or  
 38 representative can present to another person as evidence of the consumer’s or representative’s  
 39 identity, examples of which include:

40 (a) A valid Social Security number or a copy of a valid Social Security card;

41 (b) A certified or otherwise official copy of a birth certificate that a governmental body issued;  
 42 and

43 (c) A copy of a driver license or other government-issued identification.

44 (13) “Protected consumer” means an individual who is:

45 (a) Not older than 16 years old at the time a representative requests a security freeze on the

1 individual's behalf; or

2 (b) Incapacitated or for whom a court or other authority has appointed a guardian or  
3 conservator.

4 (14) "Protective record" means information that a consumer reporting agency compiles to iden-  
5 tify a protected consumer for whom the consumer reporting agency has not prepared a consumer  
6 report.

7 (15) "Redacted" means altered or truncated so that no more than the last four digits of a Social  
8 Security number, driver license number, state identification card number, **passport number or**  
9 **other number issued by the United States, financial** account number, [or] credit **card number**  
10 or debit card number is **visible or** accessible [*as part of the data*].

11 (16) "Representative" means a consumer who provides a consumer reporting agency with suffi-  
12 cient proof of the consumer's authority to act on a protected consumer's behalf.

13 (17) "Security freeze" means a notice placed in a consumer report at a consumer's request or  
14 a representative's request or in a protective record at a representative's request that, subject to  
15 certain exemptions, prohibits a consumer reporting agency from releasing information in the con-  
16 sumer report or the protective record for an extension of credit, unless the consumer temporarily  
17 lifts the security freeze on the consumer's consumer report or a protected consumer or represen-  
18 tative removes the security freeze on or deletes the protective record.

19 **SECTION 2.** ORS 646A.604 is amended to read:

20 646A.604. (1) [Any] **A** person that owns, maintains or otherwise possesses [*data that includes a*  
21 *consumer's personal information that is used in the course of the person's business, vocation, occupa-*  
22 *tion or volunteer activities and*] **personal information that the person uses in the course of the**  
23 **person's business, vocation, occupation or volunteer activities and that** was subject to a  
24 breach of security shall give notice of the breach of security [*following discovery of such breach of*  
25 *security, or receipt of notification under subsection (2) of this section, to any consumer whose personal*  
26 *information was included in the information that was breached. The disclosure notification shall be*  
27 *made in*] **to:**

28 (a) **The consumer to whom the personal information pertains after the person discovers**  
29 **the breach of security or after the person receives notice of a breach of security under**  
30 **subsection (2) of this section. The person shall notify the consumer in the most expeditious**  
31 [*time*] **manner** possible, [*and*] without unreasonable delay, consistent with the legitimate needs of  
32 law enforcement [*as provided*] **described** in subsection (3) of this section[,] and consistent with any  
33 measures **that are** necessary to determine sufficient contact information for the [*consumers*] **af-**  
34 **ected consumer**, determine the scope of the breach **of security** and restore the reasonable integ-  
35 rity, security and confidentiality of the [*data*] **personal information.**

36 (b) **The Attorney General, either in writing or electronically, if the number of consumers**  
37 **to whom the person must send the notice described in paragraph (a) of this subsection ex-**  
38 **ceeds 100. The person shall disclose the breach of security to the Attorney General in the**  
39 **manner described in paragraph (a) of this subsection.**

40 (2) [Any] **A** person that maintains or otherwise possesses personal information on behalf of an-  
41 other person shall notify the [*owner or licensor of the information of any breach of security imme-*  
42 *diately following discovery of such*] **other person and the Attorney General after discovering a**  
43 breach of security [*if a consumer's personal information was included in the information that was*  
44 *breached*]. **The person may notify the Attorney General in writing or electronically.**

45 (3) [*The notification to the consumer required by this section may be delayed*] **A person may delay**

1 **notifying a consumer of a breach of security only** if a law enforcement agency determines that  
 2 *[the]* a notification will impede a criminal investigation and *[that]* **if the law enforcement** agency  
 3 *[has made a written request that the notification be delayed]* **requests in writing that the person**  
 4 **delay the notification.** *[The notification required by this section shall be made after that law*  
 5 *enforcement agency determines that its disclosure will not compromise the investigation and notifies the*  
 6 *person in writing.]*

7 (4) For purposes of this section, *[notification to the consumer may be provided by one of the fol-*  
 8 *lowing methods]* **a person may notify a consumer of a breach of security:**

9 *[(a) Written notice.]*

10 **(a) In writing;**

11 (b) *[Electronic notice]* **Electronically**, if the *[person's customary method of communication]* **person**  
 12 **customarily communicates** with the consumer *[is by electronic means or]* **electronically or if the**  
 13 **notice** is consistent with the provisions regarding electronic records and signatures set forth in the  
 14 Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001) as that Act existed on  
 15 *[October 1, 2007.]* **the effective date of this 2015 Act;**

16 *[(c) Telephone notice, provided that contact is made directly with the affected consumer.]*

17 **(c) By telephone, if the person contacts the affected consumer directly; or**

18 (d) **With** substitute notice, if the person demonstrates that the cost of *[providing notice]* **notifi-**  
 19 **cation otherwise** would exceed \$250,000[,] **or** that the affected class of consumers *[to be notified]*  
 20 exceeds 350,000, or if the person does not have sufficient contact information to *[provide notice]*  
 21 **notify affected consumers. For the purposes of this paragraph, "substitute notice"** *[consists of*  
 22 *the following]* **means:**

23 (A) *[Conspicuous]* Posting *[of]* the notice or a link to the notice **conspicuously** on the *[Internet*  
 24 *home page of the person]* **person's website and social media sites** if the person maintains *[one]* **a**  
 25 **website or a presence on a social media site;** and

26 (B) *[Notification to]* **Notifying** major statewide television and newspaper media.

27 (5) Notice under this section *[shall]* **must** include, at a minimum:

28 (a) A description of the *[incident]* **breach of security** in general terms;

29 (b) The approximate date of the breach of security;

30 (c) The type of personal information *[obtained as a result of]* **that was subject to** the breach  
 31 of security;

32 (d) Contact information *[of the person subject to this section]* **for the person that owned,**  
 33 **maintained, licensed or possessed the personal information that was subject to the breach**  
 34 **of security;**

35 (e) Contact information for national consumer reporting agencies; and

36 (f) Advice to the consumer to report suspected identity theft to law enforcement, including the  
 37 **Attorney General and the Federal Trade Commission.**

38 (6) If a person discovers a breach of security *[affecting]* **that affects** more than 1,000 consumers  
 39 *[that requires disclosure under this section]*, the person shall notify, without unreasonable delay, all  
 40 consumer reporting agencies that compile and maintain reports on consumers on a nationwide basis  
 41 of the timing, distribution and content of the *[notification given by]* **notice** the person **gave** to *[the]*  
 42 **affected consumers and shall include in the notice any police report number assigned to the**  
 43 **breach of security. A person may not delay notifying affected consumers of a breach of se-**  
 44 **curity in order to notify consumer reporting agencies.** *[In no case shall a person that is required*  
 45 *to make a notification required by this section delay any notification in order to make the notification*

1 to the consumer reporting agencies. The person shall include the police report number, if available, in  
2 its notification to the consumer reporting agencies.]

3 (7) Notwithstanding subsection (1) of this section, *[notification is not required]* **a person does**  
4 **not need to notify consumers of a breach of security** if, after an appropriate investigation or  
5 after consultation with relevant federal, state or local **law enforcement** agencies *[responsible for*  
6 *law enforcement]*, the person **reasonably** determines that *[no reasonable likelihood of harm to]* the  
7 consumers whose personal information *[has been acquired has resulted or will result from the breach.*  
8 *Such a determination must be documented in writing and the documentation must be maintained for*  
9 *five years]* **was subject to the breach of security are unlikely to suffer harm. The person must**  
10 **document the determination in writing and maintain the documentation for at least five**  
11 **years.**

12 (8) This section does not apply to:

13 (a) A person that complies with *[the]* notification requirements or breach of security procedures  
14 that **are specified under rules, regulations, procedures, guidelines or guidance adopted,**  
15 **promulgated or issued by the person's primary or functional federal regulator, if the rules,**  
16 **regulations, procedures, guidelines or guidance provides** *[provide]* greater protection to personal  
17 information and **disclosure requirements** at least as thorough as **the protections and disclosure**  
18 **requirements provided under this section** *[disclosure requirements pursuant to the rules, regu-*  
19 *lations, procedures, guidance or guidelines established by the person's primary or functional federal*  
20 *regulator].*

21 (b) A person that complies with a state or federal law that provides greater protection to per-  
22 sonal information and *[at least as thorough disclosure requirements for breach of security of personal*  
23 *information than that provided by]* **more stringent disclosure requirements than the protections**  
24 **and disclosure requirements provided under** this section.

25 (c) A person that is subject to and complies with regulations promulgated pursuant to Title V  
26 of the Gramm-Leach-Bliley Act of 1999 (15 U.S.C. 6801 to 6809) as that Act existed on *[October 1,*  
27 *2007.]* **the effective date of this 2015 Act.**

28 **(9)(a) A person's violation of a provision of ORS 646A.600 to 646A.628 is an unlawful**  
29 **practice under ORS 646.607 that is subject to enforcement under ORS 646.632.**

30 **(b) The rights and remedies available under this section are cumulative and are in addi-**  
31 **tion to any other rights or remedies that are available under law.**

32 **SECTION 3.** ORS 646.607 is amended to read:

33 646.607. A person engages in an unlawful practice if in the course of the person's business, vo-  
34 cation or occupation the person:

35 (1) Employs any unconscionable tactic in connection with selling, renting or disposing of real  
36 estate, goods or services, or collecting or enforcing an obligation;

37 (2) Fails to deliver all or any portion of real estate, goods or services as promised, and at a  
38 customer's request, fails to refund money that the customer gave to the person to purchase the  
39 undelivered real estate, goods or services and that the person does not retain pursuant to any right,  
40 claim or defense the person may assert in good faith. This subsection does not create a warranty  
41 obligation and does not apply to a dispute over the quality of real estate, goods or services delivered  
42 to a customer;

43 (3) Violates ORS 401.965 (2);

44 (4) Violates a provision of ORS 646A.725 to 646A.750;

45 (5) Violates ORS 646A.530;

- 1 (6) Employs a collection practice that is unlawful under ORS 646.639;
- 2 (7) Is a beneficiary that violates ORS 86.726 (1)(a) or (2), 86.729 (4) or 86.732 (1) or (2); [*or*]
- 3 (8) Violates ORS 646A.093[.]; **or**
- 4 **(9) Violates a provision of ORS 646A.600 to 646A.628.**

5 **SECTION 4. The amendments to ORS 646.607, 646A.602 and 646A.604 by sections 1 to 3**  
6 **of this 2015 Act apply to breaches of security that occur on or after the effective date of this**  
7 **2015 Act.**

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