# ASSEMBLY, No. 1718

# STATE OF NEW JERSEY

## 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

**Sponsored by:**
**Assemblyman JAMES J. KENNEDY**
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**Assemblymen Mukherji and Benson**

**SYNOPSIS**

Requires certain notifications and free credit reports for customers following breach of security of personal information within business or public entity.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.

**AN ACT** concerning breaches of security of personal information and amending P.L.2005, c.226.

**BE IT ENACTED** *by the Senate and General Assembly of the State of New Jersey:*

1. Section 12 of P.L.2005, c.226 (C.56:8-163) is amended to read as follows:

12. a. Any business that conducts business in New Jersey, or any public entity that compiles or maintains computerized records that include personal information, shall disclose any breach of security of those computerized records following discovery or notification of the breach to any customer who is a resident of New Jersey whose personal information was, or is reasonably believed to have been, accessed by an unauthorized person. The disclosure to a customer shall be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement, as provided in subsection c. of this section, or any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system. Disclosure of a breach of security to a customer shall not be required under this section if the business or public entity establishes that misuse of the information is not reasonably possible. Any determination shall be documented in writing and retained for five years.

b. **[**Any**]** Whenever a business or public entity that compiles or maintains computerized records that include personal information on behalf of another business or public entity experiences a breach of security, the business or public entity that compiles or maintains the computerized records shall:

(1) notify that business or public entity, who shall notify its New Jersey customers, as provided in subsection a. of this section, of any breach of security of the computerized records immediately following discovery, if the personal information was, or is reasonably believed to have been, accessed by an unauthorized person; and

(2) be responsible for:

(a) reimbursing the business or public entity for the cost of notifying its New Jersey customers pursuant to paragraph (1) of this subsection; and

(b) the cost incurred for providing customer access to independent credit reports pursuant to subsection h. of this section.

c. (1) Any business or public entity required under this section to disclose a breach of security of a customer's personal information shall, in advance of the disclosure to the customer, report the breach of security and any information pertaining to the

**EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.**

**Matter underlined thus is new matter.**

breach to the Division of State Police in the Department of Law and Public Safety for investigation or handling, which may include dissemination or referral to other appropriate law enforcement entities.

(2) The notification required by this section shall be delayed if a law enforcement agency determines that the notification will impede a criminal or civil investigation and that agency has made a request that the notification be delayed. The notification required by this section shall be made after the law enforcement agency determines that its disclosure will not compromise the investigation and notifies that business or public entity.

d. For purposes of this section, notice may be provided by one of the following methods:

(1) Written notice; or

(2) Electronic notice, if the notice provided is consistent with the provisions regarding electronic records and signatures set forth in section 101 of the federal "Electronic Signatures in Global and National Commerce Act" (15 U.S.C. s.7001) **[**; or

(3) Substitute notice, if the business or public entity demonstrates that the cost of providing notice would exceed $250,000, or that the affected class of subject persons to be notified exceeds 500,000, or the business or public entity does not have sufficient contact information. Substitute notice shall consist of all of the following:

(a) E-mail notice when the business or public entity has an e-mail address;

(b) Conspicuous posting of the notice on the Internet web site page of the business or public entity, if the business or public entity maintains one; and

(c) Notification to major Statewide media**]**.

e. **[**Notwithstanding subsection d. of this section, a business or public entity that maintains its own notification procedures as part of an information security policy for the treatment of personal information, and is otherwise consistent with the requirements of this section, shall be deemed to be in compliance with the notification requirements of this section if the business or public entity notifies subject customers in accordance with its policies in the event of a breach of security of the system.**]** (Deleted by amendment, P.L. , c. ) (pending before the Legislature as this bill)

f. In addition to any other disclosure or notification required under this section, in the event that a business or public entity discovers circumstances requiring notification pursuant to this section of more than 1,000 persons at one time, the business or public entity shall also notify, without unreasonable delay, all consumer reporting agencies that compile or maintain files on consumers on a nationwide basis, as defined by subsection (p) of

section 603 of the federal "Fair Credit Reporting Act" (15 U.S.C. s.1681a), of the timing, distribution and content of the notices.

g. The notice required under this section shall contain contact information, including a toll free telephone number, of a customer representative of the business or public entity who shall be available to give the customer information on:

(1) what information has been compromised and potential consequences of the breach of security;

(2) how the company or public entity is addressing the breach;

(3) what steps the customer may take to safeguard the customer's information; and

(4) notification that the customer has access to free credit reports pursuant to subsection h. of this section.

h. For a period of six months following notification of a breach of security, the business or public entity shall provide a customer with access to independent credit reports from a consumer reporting agency. The business or public entity shall supply the appropriate contact information of the consumer reporting agency and, except as provided in paragraph (2) of subsection b. of this section, pay any fees to that consumer reporting agency for supplying the customer with a credit report once per month for a period of 12 months following the customer's initial request for a credit report. The customer shall be notified of the customer's access to free credit reports when the business or public entity notifies the customer of the breach of security.

(cf: P.L.2005, c.226, s.12)

2. This act shall take effect on the first day of the third month following the date of enactment.

STATEMENT

This bill requires businesses and public entities to provide customers with certain notifications following a breach of security that compromises the personal information of customers.

Under current law, following a breach of security, a business or public entity is required to disclose the breach of security of those computerized records following discovery or notification of the breach to any customer who is a resident of New Jersey whose personal information was, or is reasonably believed to have been, accessed by an unauthorized person. The bill requires that customers receive this notification through either written or electronic notice. Under the bill, businesses and public entities may no longer provide notification through substitute notice, which is permitted under current law for certain breaches of security.

The bill requires the notice to contain contact information, including a toll free telephone number, of a customer representative

of the business or public entity who is available to give the customer information on:

(1) what information has been compromised and potential consequences of the breach of security;

(2) how the company or public entity is addressing the breach;

(3) what steps the customer may take to safeguard the customer's information; and

(4) notification that the customer has access to free credit reports.

The bill, provides that whenever a business or public entity that compiles or maintains computerized records that include personal information on behalf of another business or public entity experiences a security breach, the third party entity is responsible for reimbursing the business or public entity the cost of notifying its New Jersey customers of the security breach, as required under current law, and the cost incurred for providing customer access to independent credit reports, as required by the bill.

Additionally, for a period of six months following notification of a breach of security, the business or public entity is required to provide a customer with access to independent credit reports from a consumer reporting agency (CRA). When the business or public entity notifies a customer of a security breach, it would also provide notice of the customer's access to free credit reports. The business or public entity is to supply the appropriate contact information of the CRA. The business or public entity, or the third party entity that compiles or maintains computerized records on its behalf, would pay any fees to the CRA for supplying the customer with a credit report once per month for a period of 12 months following the customer's initial request for a credit report.