

State of Arizona  
House of Representatives  
Fifty-second Legislature  
Second Regular Session  
2016

**CHAPTER 102**  
**HOUSE BILL 2363**

AN ACT

AMENDING SECTIONS 44-7501 AND 44-7601, ARIZONA REVISED STATUTES; RELATING TO  
SECURITY OF PERSONAL INFORMATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 44-7501, Arizona Revised Statutes, is amended to  
3 read:

4 44-7501. Notification of breach of security system:  
5 enforcement; civil penalty; preemption; exceptions;  
6 definitions

7 A. When a person that conducts business in this state and that owns or  
8 licenses unencrypted computerized data that includes personal information  
9 becomes aware of an incident of unauthorized acquisition and access to  
10 unencrypted or unredacted computerized data that includes an individual's  
11 personal information, the person shall conduct a reasonable investigation to  
12 promptly determine if there has been a breach of the security system. If the  
13 investigation results in a determination that there has been a breach in the  
14 security system, the person shall notify the individuals affected. The  
15 notice shall be made in the most expedient manner possible and without  
16 unreasonable delay subject to the needs of law enforcement as provided in  
17 subsection C of this section and any measures necessary to determine the  
18 nature and scope of the breach, to identify the individuals affected or to  
19 restore the reasonable integrity of the data system.

20 B. A person that maintains unencrypted computerized data that includes  
21 personal information that the person does not own shall notify and cooperate  
22 with the owner or the licensee of the information of any breach of the  
23 security of the system following discovery of the breach without unreasonable  
24 delay. Cooperation shall include sharing information relevant to the breach  
25 of the security of the system with the owner or licensee. The person that  
26 owns or licenses the computerized data shall provide notice to the individual  
27 pursuant to this section. The person that maintained the data under an  
28 agreement with the owner or licensee is not required to provide notice to the  
29 individual pursuant to this section unless the agreement stipulates  
30 otherwise.

31 C. The notification required by subsection A of this section may be  
32 delayed if a law enforcement agency advises the person that the notification  
33 will impede a criminal investigation. The person shall make the notification  
34 after the law enforcement agency determines that it will not compromise the  
35 investigation.

36 D. The disclosure required by subsection A of this section shall be  
37 provided by one of the following methods:

38 1. Written notice.

39 2. Electronic notice if the person's primary method of communication  
40 with the individual is by electronic means or is consistent with the  
41 provisions regarding electronic records and signatures set forth in the  
42 electronic signatures in global and national commerce act (P.L. 106-229; 114  
43 Stat. 464; 15 United States Code section 7001).

44 3. Telephonic notice.

45 4. Substitute notice if the person demonstrates that the cost of  
46 providing notice pursuant to paragraph 1, 2 or 3 of this subsection would

1 exceed fifty thousand dollars or that the affected class of subject  
2 individuals to be notified exceeds one hundred thousand persons, or the  
3 person does not have sufficient contact information. Substitute notice shall  
4 consist of all of the following:

5 (a) Electronic mail notice if the person has electronic mail addresses  
6 for the individuals subject to the notice.

7 (b) Conspicuous posting of the notice on the web site of the person if  
8 the person maintains one.

9 (c) Notification to major statewide media.

10 E. A person who maintains the person's own notification procedures as  
11 part of an information security policy for the treatment of personal  
12 information and WHO is otherwise consistent with the requirements of this  
13 section shall be deemed to be in compliance with the notification  
14 requirements of this section if the person notifies subject individuals in  
15 accordance with the person's policies if a breach of the security system  
16 occurs.

17 F. A person that complies with the notification requirements or  
18 security breach procedures pursuant to the rules, regulations, procedures,  
19 guidance or guidelines established by the person's primary or functional  
20 federal regulator is deemed to be in compliance with this section.

21 G. A person is not required to disclose a breach of the security of  
22 the system if the person or a law enforcement agency, after a reasonable  
23 investigation, determines that a breach of the security of the system has not  
24 occurred or is not reasonably likely to occur.

25 H. This section may only be enforced by the attorney general. The  
26 attorney general may bring an action to obtain actual damages for a wilful  
27 and knowing violation of this section and a civil penalty not to exceed ten  
28 thousand dollars per breach of the security of the system or series of  
29 breaches of a similar nature that are discovered in a single investigation.

30 I. The state legislature determines that security system breach  
31 notification is a matter of statewide concern. The power to regulate  
32 security breach notification is preempted by this state and this section  
33 shall supersede and preempt all municipal and county laws, charters,  
34 ordinances and rules relating to issues regulated by this chapter.

35 J. This section does not apply to either of the following:

36 1. A person subject to title V of the Gramm-Leach-Bliley act ~~of 1999~~  
37 (P.L. 106-102; 113 Stat. 1338; 15 United States Code sections 6801 through  
38 6809).

39 2. Covered entities AND BUSINESS ASSOCIATES as defined under  
40 regulations implementing the health insurance portability and accountability  
41 act, 45 Code of Federal Regulations section 160.103 ~~(1996)~~ (2003).

42 K. The department of public safety, a county sheriff's department, a  
43 municipal police department, a prosecution agency and a court shall create  
44 and maintain an information security policy that includes notification  
45 procedures for a breach of the security system of the department of public

1 safety, the county sheriff's department, the municipal police department, the  
2 prosecuting agency or the court.

3 L. For the purposes of this section:

4 1. "Breach", "breach of the security of the system", "breach of the  
5 security system" or "security breach" means an unauthorized acquisition of  
6 and access to unencrypted or unredacted computerized data that materially  
7 compromises the security or confidentiality of personal information  
8 maintained by a person as part of a database of personal information  
9 regarding multiple individuals and that causes or is reasonably likely to  
10 cause substantial economic loss to an individual. Good faith acquisition of  
11 personal information by an employee or agent of the person for the purposes  
12 of the person is not a breach of the security system if the personal  
13 information is not used for a purpose unrelated to the person or subject to  
14 further wilful unauthorized disclosure.

15 2. "Court" means the supreme court, court of appeals, superior court,  
16 courts inferior to the superior court and justice courts.

17 3. "Encrypted" means use of an algorithmic process to transform data  
18 into a form in which the data is rendered unreadable or unusable without use  
19 of a confidential process or key.

20 4. "Individual" means a person that is a resident of this state as  
21 determined by a principal mailing address in this state as reflected in the  
22 records of the person conducting business in this state at the time of the  
23 breach.

24 5. "Person" means a natural person, corporation, business trust,  
25 estate, trust, partnership, association, joint venture, government,  
26 governmental subdivision or agency or any other legal or commercial  
27 entity. Person does not include the department of public safety, a county  
28 sheriff's department, a municipal police department, a prosecution agency or  
29 a court.

30 6. "Personal information":

31 (a) Means an individual's first name or first initial and last name in  
32 combination with any one or more of the following data elements, when the  
33 data element is not encrypted, redacted or secured by any other method  
34 rendering the element unreadable or unusable:

35 (i) The individual's social security number.

36 (ii) The individual's number on a driver license issued pursuant to  
37 section 28-3166 or number on a nonoperating identification license issued  
38 pursuant to section 28-3165.

39 (iii) The individual's financial account number or credit or debit  
40 card number in combination with any required security code, access code or  
41 password that would permit access to the individual's financial account.

42 (b) Does not include publicly available information that is lawfully  
43 made available to the general public from federal, state or local government  
44 records or widely distributed media.

45 7. "Prosecution agency" means the attorney general, any county  
46 attorney or any municipal prosecutor.

1           8. "Redact" means alter or truncate data such that no more than the  
2 last four digits of a social security number, driver license number,  
3 nonoperating identification license number, financial account number or  
4 credit or debit card number is accessible as part of the personal  
5 information.

6           Sec. 2. Section 44-7601, Arizona Revised Statutes, is amended to read:  
7           44-7601. Discarding and disposing of records containing  
8                     personal identifying information; civil penalty;  
9                     enforcement; definition

10          A. An entity shall not knowingly discard or dispose of records or  
11 documents without redacting the information or destroying the records or  
12 documents if the records or documents contain an individual's first and last  
13 name or first initial and last name in combination with a corresponding  
14 complete:

- 15           1. Social security number.
- 16           2. Credit card, charge card or debit card number.
- 17           3. Retirement account number.
- 18           4. Savings, checking or securities entitlement account number.
- 19           5. Driver license number or nonoperating identification license  
20 number.

21          B. This section may be enforced by either of the following:

22           1. A county attorney in the county in which the records or documents  
23 were wrongfully discarded or disposed. If a violation occurs by the same  
24 entity in multiple counties, a county attorney in a county in which records  
25 or documents were ~~not properly~~ IMPROPERLY discarded or disposed of, after  
26 filing a notice of intent to enforce this section, may send a copy of the  
27 notice to the county attorney in each county in which records or documents  
28 were not properly discarded or disposed of and may request that the actions  
29 be consolidated.

30           2. The attorney general.

31          C. A civil penalty shall be imposed for each violation of subsection A  
32 **OF THIS SECTION** arising out of one incident. The civil penalty shall not  
33 exceed:

- 34           1. Five hundred dollars for a first violation.
- 35           2. One thousand dollars for a second violation.
- 36           3. Five thousand dollars for a third or subsequent violation.

37          D. An entity that maintains and complies with the entity's own  
38 procedures for the discarding or disposing of records or documents containing  
39 the information listed in subsection A **OF THIS SECTION** that is consistent  
40 with the requirements of this section shall be deemed to be in compliance  
41 with this section.

42          E. This section does not apply to any of the following:

43           1. An entity subject to title V of the Gramm-Leach-Bliley act ~~of 1999~~  
44 (P.L. 106-102; 113 Stat. 1338; 15 United States Code sections 6801 through  
45 6809).

1           2. Covered entities **AND BUSINESS ASSOCIATES** as defined under  
2 regulations implementing the health insurance portability and accountability  
3 act, 45 Code of Federal Regulations section 160.103 ~~(1996)~~ (2003).  
4           3. An entity subject to the federal fair credit reporting act, ~~(15~~  
5 United States Code section 1681x).  
6           F. This section only applies to paper records and paper documents.  
7           G. For the purposes of this section, "entity" includes a corporation,  
8 foreign corporation, not for profit corporation, profit and not for profit  
9 unincorporated association, nonprofit corporation, sole proprietorship, close  
10 corporation, corporation sole or limited liability company, a professional  
11 corporation, association or limited liability company, a business trust,  
12 estate, partnership, registered limited liability partnership, trust or joint  
13 venture, **A** government, governmental subdivision or agency or any other legal  
14 or commercial entity.

APPROVED BY THE GOVERNOR APRIL 5, 2016.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 6, 2016.