



NYS SECURITY BREACH LAW

'WHAT CONSUMERS SHOULD KNOW'

INTRODUCTION:

Any entity, public or private, can experience a security breach. Online businesses can experience security breaches with respect to information you provide over the Internet in the course of making a transaction or inquiry. A security breach can result in criminals using our financial information to make fraudulent purchases or transactions. Identity theft occurs when your lost or stolen personal information is used to make purchases, transactions or create new accounts under your name.

STATUTORY PROTECTIONS:

Persons and companies conducting business in New York State are required to notify residents of the unauthorized access to private computerized information, so that affected individuals are in a better position to protect themselves from consequences resulting from a breach. Here is a summary of what every New York State consumer should know about his or her rights under the law in the event a security breach occurs:

- A security breach happens when there is unauthorized access to your "private information" held in electronic format by a business or government agency.
- The law defines "private information" as personal information, such as your name, in combination with a Social Security, driver's license or an account number or a credit or debit card number with any required access code or password when either your name or account number is not encrypted (the conversion of data into a form that cannot be easily read by an unauthorized user) or if the information is encrypted, when the encryption key has also been acquired.
 - * Note: Private information does not include publicly available information that is lawfully disclosed to the general public from federal, state, or local government records.
- State agencies and those persons conducting business in New York State that own or license computerized data are required to file a breach notice with the Consumer Protection Board (CPB), Office of the Attorney General and the Office of Cyber Security and Critical Infrastructure. State agencies or persons who do not own, but maintain, private information are required to notify the owner or licensee of such information in the event of a breach.
- Disclosure must be made "in the most expedient time possible and without reasonable delay," but subject and consistent with "the legitimate needs of law enforcement."



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- * For example, if notice disclosing a breach at a particular time would impede or hinder a criminal investigation, the breaching company must wait until the law enforcement agency determines that such notification would not compromise the investigation.
- Notification is generally required to be made by written notice and mailed. The notice shall contain (1) contact information for the reporting entity, (2) a description of the categories of information that was acquired by an unauthorized individual and (3) the specific elements of personal information that were acquired in the breach.
 - * Notification may also occur by e-mail (if the affected person consented to notification in this format and the breaching entity keeps a log of each such notification) or phone (provided the breaching entity keeps a log of each such notification).
- The law permits “substitute notice” if a breaching entity can demonstrate to the State Attorney General that the cost of providing notice will exceed \$250,000, or that over 500,000 consumers have been affected, or that the breaching entity does not have sufficient consumer contact information.
 - * Substitute notice may take the form of e-mail, conspicuous posting on the entity’s website and notification to major statewide media.
- In the event that more than 5,000 consumers are affected by a security breach, the breaching entity must file notice with the three major credit reporting agencies; TransUnion, Equifax, and Experian.
- The State Attorney General has enforcement powers under the Security Breach law, and may bring an action to enjoin a violation of the statute. A court may award the Attorney General damages for actual costs or losses incurred by persons entitled to notice, if notice was not provided as the law requires.
 - * For willful violation of the statute, civil penalties amounting to the greater of five thousand dollars, or ten dollars per instance of failed notification, may be assessed up to \$150,000.

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**New York State
Consumer Protection Board**

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