

SECOND REGULAR SESSION

# HOUSE BILL NO. 2162

## 94TH GENERAL ASSEMBLY

---

INTRODUCED BY REPRESENTATIVES GRILL (Sponsors), TALBOY, DARROUGH, SCHNEIDER,  
SCHIEFFER AND MEINERS (Co-sponsors).

Read 1st time February 14, 2008 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

4849L.01I

---

### AN ACT

To amend chapter 407, RSMo, by adding thereto one new section relating to consumer notification of security breaches.

---

*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Chapter 407, RSMo, is amended by adding thereto one new section, to be  
2 known as section 407.2040, to read as follows:

**407.2040. 1. As used in this section, the following terms mean:**

2       **(1) "Breach of the security of the data", unauthorized acquisition of computerized**  
3 **or noncomputerized data that compromises the security, confidentiality, or integrity of**  
4 **personal information maintained by the entity. Good faith acquisition of personal**  
5 **information by an employee or agent of the entity for a legitimate purpose of the entity is**  
6 **not a breach of the security of the data, provided that the personal information is not used**  
7 **for a purpose unrelated to the entity or subject to further unauthorized disclosure. Breach**  
8 **of the security of noncomputerized data includes but is not limited to unauthorized**  
9 **photocopying, facsimiles, or other paper-based transmittal of documents;**

10       **(2) "Credit card", any card, plate, coupon book, or other credit device existing for**  
11 **the purpose of obtaining money, property, labor, or services on credit;**

12       **(3) "Debit card", any card or device issued by a financial institution to a consumer**  
13 **for use in initiating an electronic fund transfer from the account holding assets of the**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

14 consumer at such financial institution, for the purpose of transferring money between  
15 accounts or obtaining money, property, labor, or services;

16 (4) "Entity", a sole proprietorship, partnership, corporation, association, or other  
17 group, however organized and whether or not organized to operate at a profit, including  
18 a financial institution organized, chartered, or holding a license or authorization certificate  
19 under the laws of this state, any other state, the United States, or of any other country, or  
20 the parent or the subsidiary of a financial institution;

21 (5) "Payment device", a card, code, or other means to access or place a charge on  
22 a consumer's account or bill;

23 (6) "Person", any individual, firm, partnership, association, corporation, limited  
24 liability company, organization or other entity, but shall not include the state or any  
25 political subdivision of the state, or any agency thereof;

26 (7) "Personal information":

27 (a) An individual's last name, address, or phone number in combination with any  
28 one or more of the following data elements, when either the name or the data elements are  
29 not encrypted or redacted, or encrypted with an encryption key that was also acquired:

30 a. Social Security number;

31 b. Driver's license number or state identification card number;

32 c. Account number, credit, debit, or other number identifying a payment device,  
33 if circumstances exist in which such a number could be used without additional identifying  
34 information, access codes, or passwords;

35 d. Account passwords or personal identification numbers (PINs) or other access  
36 codes;

37 e. Biometric data, other than a photograph;

38 f. Any of the items in subparagraphs a. to e. in this paragraph when not in  
39 connection with the individual's last name, address, or phone number if the information  
40 compromised would be sufficient to perform or attempt to perform identity theft or other  
41 illegal conduct against the person whose information was compromised;

42 (b) "Personal information" shall not include information that is lawfully obtained  
43 from a single public record of federal, state, or local government record, provided that  
44 such information has not been aggregated or consolidated into an electronic database or  
45 similar system by the entity;

46 (8) "Social Security number", any portion of three or more consecutive digits of a  
47 Social Security number.

48 2. (1) Except as provided in subdivision (2) of this subsection, any person or entity  
49 that owns or uses personal information in any form, whether computerized, paper, or

50 otherwise, that includes personal information concerning a Missouri resident shall notify  
51 the resident that there has been a breach of the security of the data following discovery or  
52 notification of the breach. The disclosure notification shall be made in the most expedient  
53 time possible and without unreasonable delay, consistent with the legitimate needs of law  
54 enforcement, as provided in subdivision (2) of this subsection, or with any measures  
55 necessary to determine the scope of the breach and restore the reasonable integrity,  
56 security and confidentiality of the data system.

57 (2) The notification required by this subsection may be delayed if a law  
58 enforcement agency determines in writing that the notification may materially impede a  
59 criminal investigation.

60 (3) For purposes of this section, notice to consumers may be provided by one of the  
61 following methods:

62 (a) Written notice;

63 (b) Electronic notice, if the notice provided is consistent with the provisions  
64 regarding electronic records and signatures, for notices legally required to be in writing,  
65 set forth in Section 7001 of Title 15 of the United States Code;

66 (c) Substitute notice, if the agency demonstrates that the cost of providing notice  
67 to persons in this state would exceed two hundred fifty thousand dollars or that the  
68 affected class of subject persons to be notified in this state exceeds five hundred thousand  
69 dollars or the agency does not have sufficient contact information. Substitute notice shall  
70 consist of all of the following:

71 a. Conspicuous posting of the notice on the Internet site of the agency or person,  
72 if the agency or person maintains a public Internet site; and

73 b. Notification to major statewide media. The notice to media shall include a  
74 toll-free phone number where an individual can learn whether or not that individual's  
75 personal data is included in the security breach.

76 (4) Such notice shall include:

77 (a) To the extent possible, a description of the categories of information that were,  
78 or are reasonably believed to have been, accessed or acquired by an unauthorized person,  
79 including Social Security numbers, driver's license or state identification numbers and  
80 financial data;

81 (b) A toll-free number:

82 a. That the individual may use to contact the agency or person, or the agent of the  
83 agency or person; and

84 b. From which the individual may learn:

85 (i) What types of information the agency or person maintained about that  
86 individual or about individuals in general; and

87 (ii) Whether or not the agency or person maintained information about that  
88 individual; and

89 (iii) The toll-free contact telephone numbers and addresses for the major credit  
90 reporting agencies.

91 (5) The notification required by this subsection may be delayed if a law  
92 enforcement agency determines, in writing, that the notification may seriously impede a  
93 criminal investigation. This notification shall state the duration of the delay requested,  
94 or shall be renewed after ninety days.

95 (6) A person required to provide notification shall provide or arrange for the  
96 provision of, to each individual to whom notification is provided under this subsection and  
97 on request and at no cost to such individual to either provide at the choice of the consumer  
98 credit reports from at least one of the major credit reporting agencies beginning not later  
99 than two months following a breach of security and continuing on a quarterly basis for a  
100 period of two years thereafter or pay for freeze fees, which include placement with each  
101 of the major nationwide credit reporting agencies and temporary lift twice per credit  
102 reporting agency during a twelve-month period.

103 3. (1) All remedies, penalties, and authority granted to the attorney general shall  
104 be available to the attorney general for enforcement of this section.

105 (2) The remedies and penalties provided by this section are cumulative to each  
106 other and the remedies or penalties available under all other laws of this state.

107 4. Any waiver of the provisions of this section is contrary to public policy, and is  
108 void and unenforceable.

✓