

By: Representatives Jones (111th), Flaggs

To: Judiciary B

HOUSE BILL NO. 583
(As Sent to Governor)

1 AN ACT TO REQUIRE NOTICE OF A BREACH OF SECURITY; TO DEFINE
2 CERTAIN TERMS; TO PROVIDE THAT NOTICE MAY BE DELAYED FOR A
3 REASONABLE PERIOD OF TIME IF NOTICE WILL IMPEDE A CRIMINAL
4 INVESTIGATION OR IMPAIR NATIONAL SECURITY; TO PROVIDE METHODS OF
5 NOTICE; AND FOR RELATED PURPOSES.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

7 **SECTION 1.** (1) This section applies to any person who
8 conducts business in this state and who, in the ordinary course of
9 the person's business functions, owns, licenses or maintains
10 personal information of any resident of this state.

11 (2) For purposes of this section, the following terms shall
12 have the meanings ascribed unless the context clearly requires
13 otherwise:

14 (a) "Breach of security" means unauthorized acquisition
15 of electronic files, media, databases or computerized data
16 containing personal information of any resident of this state when
17 access to the personal information has not been secured by
18 encryption or by any other method or technology that renders the
19 personal information unreadable or unusable;

20 (b) "Personal information" means an individual's first
21 name or first initial and last name in combination with any one or
22 more of the following data elements:

23 (i) Social security number;

24 (ii) Driver's license number or state
25 identification card number; or

26 (iii) An account number or credit or debit card
27 number in combination with any required security code, access code
28 or password that would permit access to an individual's financial



29 account; "personal information" does not include publicly
30 available information that is lawfully made available to the
31 general public from federal, state or local government records or
32 widely distributed media;

33 (iv) "Affected individual" means any individual
34 who is a resident of this state whose personal information was, or
35 is reasonably believed to have been, intentionally acquired by an
36 unauthorized person through a breach of security.

37 (3) A person who conducts business in this state shall
38 disclose any breach of security to all affected individuals. The
39 disclosure shall be made without unreasonable delay, subject to
40 the provisions of subsections (4) and (5) of this section and the
41 completion of an investigation by the person to determine the
42 nature and scope of the incident, to identify the affected
43 individuals, or to restore the reasonable integrity of the data
44 system. Notification shall not be required if, after an
45 appropriate investigation, the person reasonably determines that
46 the breach will not likely result in harm to the affected
47 individuals.

48 (4) Any person who conducts business in this state that
49 maintains computerized data which includes personal information
50 that the person does not own or license shall notify the owner or
51 licensee of the information of any breach of the security of the
52 data as soon as practicable following its discovery, if the
53 personal information was, or is reasonably believed to have been,
54 acquired by an unauthorized person for fraudulent purposes.

55 (5) Any notification required by this section shall be
56 delayed for a reasonable period of time if a law enforcement
57 agency determines that the notification will impede a criminal
58 investigation or national security and the law enforcement agency
59 has made a request that the notification be delayed. Any such
60 delayed notification shall be made after the law enforcement
61 agency determines that notification will not compromise the



62 criminal investigation or national security and so notifies the
63 person of that determination.

64 (6) Any notice required by the provisions of this section
65 may be provided by one (1) of the following methods: (a) written
66 notice; (b) telephone notice; (c) electronic notice, if the
67 person's primary means of communication with the affected
68 individuals is by electronic means or if the notice is consistent
69 with the provisions regarding electronic records and signatures
70 set forth in 15 USCS 7001; or (d) substitute notice, provided the
71 person demonstrates that the cost of providing notice in
72 accordance with paragraph (a), (b) or (c) of this subsection would
73 exceed Five Thousand Dollars (\$5,000.00), that the affected class
74 of subject persons to be notified exceeds five thousand (5,000)
75 individuals or the person does not have sufficient contact
76 information. Substitute notice shall consist of the following:
77 electronic mail notice when the person has an electronic mail
78 address for the affected individuals; conspicuous posting of the
79 notice on the Web site of the person if the person maintains one;
80 and notification to major statewide media, including newspapers,
81 radio and television.

82 (7) Any person who conducts business in this state that
83 maintains its own security breach procedures as part of an
84 information security policy for the treatment of personal
85 information, and otherwise complies with the timing requirements
86 of this section, shall be deemed to be in compliance with the
87 security breach notification requirements of this section if the
88 person notifies affected individuals in accordance with the
89 person's policies in the event of a breach of security. Any
90 person that maintains such a security breach procedure pursuant to
91 the rules, regulations, procedures or guidelines established by
92 the primary or federal functional regulator, as defined in 15 USCS
93 6809(2), shall be deemed to be in compliance with the security
94 breach notification requirements of this section, provided the



95 person notifies affected individuals in accordance with the
96 policies or the rules, regulations, procedures or guidelines
97 established by the primary or federal functional regulator in the
98 event of a breach of security of the system.

99 (8) Failure to comply with the requirements of this section
100 shall constitute an unfair trade practice and shall be enforced by
101 the Attorney General; however, nothing in this section may be
102 construed to create a private right of action.

103 **SECTION 2.** This act shall take effect and be in force from
104 and after July 1, 2011.

