

**As Introduced**

**129th General Assembly  
Regular Session  
2011-2012**

**H. B. No. 565**

**Representatives Carney, Winburn**

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**A B I L L**

To amend sections 1347.12 and 1349.19 and to enact 1  
section 1349.193 of the Revised Code to require 2  
governmental agencies and persons that own or 3  
license computerized data containing personal 4  
information to report security breaches to the 5  
Attorney General and to require the Attorney 6  
General to establish a searchable database of the 7  
reports that is accessible by the public. 8

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 1347.12 and 1349.19 be amended and 9  
section 1349.193 of the Revised Code be enacted to read as 10  
follows: 11

**Sec. 1347.12.** (A) As used in this section: 12

(1) "Agency of a political subdivision" means each organized 13  
body, office, or agency established by a political subdivision for 14  
the exercise of any function of the political subdivision, except 15  
that "agency of a political subdivision" does not include an 16  
agency that is a covered entity as defined in 45 C.F.R. 160.103, 17  
as amended. 18

(2)(a) "Breach of the security of the system" means 19  
unauthorized access to and acquisition of computerized data that 20

compromises the security or confidentiality of personal 21  
information owned or licensed by a state agency or an agency of a 22  
political subdivision and that causes, reasonably is believed to 23  
have caused, or reasonably is believed will cause a material risk 24  
of identity theft or other fraud to the person or property of a 25  
resident of this state. 26

(b) For purposes of division (A)(2)(a) of this section: 27

(i) Good faith acquisition of personal information by an 28  
employee or agent of the state agency or agency of the political 29  
subdivision for the purposes of the agency is not a breach of the 30  
security of the system, provided that the personal information is 31  
not used for an unlawful purpose or subject to further 32  
unauthorized disclosure. 33

(ii) Acquisition of personal information pursuant to a search 34  
warrant, subpoena, or other court order, or pursuant to a 35  
subpoena, order, or duty of a regulatory state agency, is not a 36  
breach of the security of the system. 37

(3) "Consumer reporting agency that compiles and maintains 38  
files on consumers on a nationwide basis" means a consumer 39  
reporting agency that regularly engages in the practice of 40  
assembling or evaluating, and maintaining, for the purpose of 41  
furnishing consumer reports to third parties bearing on a 42  
consumer's creditworthiness, credit standing, or credit capacity, 43  
each of the following regarding consumers residing nationwide: 44

(a) Public record information; 45

(b) Credit account information from persons who furnish that 46  
information regularly and in the ordinary course of business. 47

(4) "Encryption" means the use of an algorithmic process to 48  
transform data into a form in which there is a low probability of 49  
assigning meaning without use of a confidential process or key. 50

(5) "Individual" means a natural person.	51
(6)(a) "Personal information" means, notwithstanding section 1347.01 of the Revised Code, an individual's name, consisting of the individual's first name or first initial and last name, in combination with and linked to any one or more of the following data elements, when the data elements are not encrypted, redacted, or altered by any method or technology in such a manner that the data elements are unreadable:	52 53 54 55 56 57 58
(i) Social security number;	59
(ii) Driver's license number or state identification card number;	60 61
(iii) Account number or credit or debit card number, in combination with and linked to any required security code, access code, or password that would permit access to an individual's financial account.	62 63 64 65
(b) "Personal information" does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records or any of the following media that are widely distributed:	66 67 68 69
(i) Any news, editorial, or advertising statement published in any bona fide newspaper, journal, or magazine, or broadcast over radio or television;	70 71 72
(ii) Any gathering or furnishing of information or news by any bona fide reporter, correspondent, or news bureau to news media described in division (A)(6)(b)(i) of this section;	73 74 75
(iii) Any publication designed for and distributed to members of any bona fide association or charitable or fraternal nonprofit corporation;	76 77 78
(iv) Any type of media similar in nature to any item, entity, or activity identified in division (A)(6)(b)(i), (ii), or (iii) of	79 80

this section. 81

(7) "Political subdivision" has the same meaning as in 82  
section 2744.01 of the Revised Code. 83

(8) "Record" means any information that is stored in an 84  
electronic medium and is retrievable in perceivable form. "Record" 85  
does not include any publicly available directory containing 86  
information an individual voluntarily has consented to have 87  
publicly disseminated or listed, such as name, address, or 88  
telephone number. 89

(9) "Redacted" means altered or truncated so that no more 90  
than the last four digits of a social security number, driver's 91  
license number, state identification card number, account number, 92  
or credit or debit card number is accessible as part of the data. 93

(10) "State agency" has the same meaning as in section 1.60 94  
of the Revised Code, except that "state agency" does not include 95  
an agency that is a covered entity as defined in 45 C.F.R. 96  
160.103, as amended. 97

(11) "System" means, notwithstanding section 1347.01 of the 98  
Revised Code, any collection or group of related records that are 99  
kept in an organized manner, that are maintained by a state agency 100  
or an agency of a political subdivision, and from which personal 101  
information is retrieved by the name of the individual or by some 102  
identifying number, symbol, or other identifier assigned to the 103  
individual. "System" does not include any collected archival 104  
records in the custody of or administered under the authority of 105  
the Ohio historical society, any published directory, any 106  
reference material or newsletter, or any routine information that 107  
is maintained for the purpose of internal office administration of 108  
the agency, if the use of the directory, material, newsletter, or 109  
information would not adversely affect an individual and if there 110  
has been no unauthorized external breach of the directory, 111

material, newsletter, or information. 112

(B)(1) Any state agency or agency of a political subdivision 113  
that owns or licenses computerized data that includes personal 114  
information shall disclose any breach of the security of the 115  
system, following its discovery or notification of the breach of 116  
the security of the system, to any resident of this state whose 117  
personal information was, or reasonably is believed to have been, 118  
accessed and acquired by an unauthorized person if the access and 119  
acquisition by the unauthorized person causes or reasonably is 120  
believed will cause a material risk of identity theft or other 121  
fraud to the resident. The disclosure described in this division 122  
may be made pursuant to any provision of a contract entered into 123  
by the state agency or agency of a political subdivision with any 124  
person or another state agency or agency of a political 125  
subdivision prior to the date the breach of the security of the 126  
system occurred if that contract does not conflict with any 127  
provision of this section. For purposes of this section, a 128  
resident of this state is an individual whose principal mailing 129  
address as reflected in the records of the state agency or agency 130  
of a political subdivision is in this state. 131

(2) The state agency or agency of a political subdivision 132  
shall make the disclosure described in division (B)(1) of this 133  
section in the most expedient time possible but not later than 134  
forty-five days following its discovery or notification of the 135  
breach in the security of the system, subject to the legitimate 136  
needs of law enforcement activities described in division (D) of 137  
this section and consistent with any measures necessary to 138  
determine the scope of the breach, including which residents' 139  
personal information was accessed and acquired, and to restore the 140  
reasonable integrity of the data system. 141

(3) Any state agency or agency of a political subdivision 142  
that is required to disclose a breach of the security of the 143

system under division (B) of this section shall, within the time 144  
allowed for disclosure of the breach, report the breach to the 145  
attorney general in writing or by electronic mail. The report 146  
shall include the date of the breach, the number of people 147  
affected by the breach, the method used to notify persons affected 148  
by the breach, and any other information the attorney general may 149  
require. 150

(C) Any state agency or agency of a political subdivision 151  
that, on behalf of or at the direction of another state agency or 152  
agency of a political subdivision, is the custodian of or stores 153  
computerized data that includes personal information shall notify 154  
that other state agency or agency of a political subdivision of 155  
any breach of the security of the system in an expeditious manner, 156  
if the personal information was, or reasonably is believed to have 157  
been, accessed and acquired by an unauthorized person and if the 158  
access and acquisition by the unauthorized person causes or 159  
reasonably is believed will cause a material risk of identity 160  
theft or other fraud to a resident of this state. 161

(D) The state agency or agency of a political subdivision may 162  
delay the disclosure or notification required by division (B), 163  
(C), or (F) of this section if a law enforcement agency determines 164  
that the disclosure or notification will impede a criminal 165  
investigation or jeopardize homeland or national security, in 166  
which case, the state agency or agency of a political subdivision 167  
shall make the disclosure or notification after the law 168  
enforcement agency determines that disclosure or notification will 169  
not compromise the investigation or jeopardize homeland or 170  
national security. 171

(E) For purposes of this section, a state agency or agency of 172  
a political subdivision may disclose or make a notification by any 173  
of the following methods: 174

(1) Written notice; 175

(2) Electronic notice, if the state agency's or agency of a political subdivision's primary method of communication with the resident to whom the disclosure must be made is by electronic means;

(3) Telephone notice;

(4) Substitute notice in accordance with this division, if the state agency or agency of a political subdivision required to disclose demonstrates that the agency does not have sufficient contact information to provide notice in a manner described in division (E)(1), (2), or (3) of this section, or that the cost of providing disclosure or notice to residents to whom disclosure or notification is required would exceed two hundred fifty thousand dollars, or that the affected class of subject residents to whom disclosure or notification is required exceeds five hundred thousand persons. Substitute notice under this division shall consist of all of the following:

(a) Electronic mail notice if the state agency or agency of a political subdivision has an electronic mail address for the resident to whom the disclosure must be made;

(b) Conspicuous posting of the disclosure or notice on the state agency's or agency of a political subdivision's web site, if the agency maintains one;

(c) Notification to major media outlets, to the extent that the cumulative total of the readership, viewing audience, or listening audience of all of the outlets so notified equals or exceeds seventy-five per cent of the population of this state.

(5) Substitute notice in accordance with this division, if the state agency or agency of a political subdivision required to disclose demonstrates that the agency has ten employees or fewer and that the cost of providing the disclosures or notices to residents to whom disclosure or notification is required will

exceed ten thousand dollars. Substitute notice under this division 207  
shall consist of all of the following: 208

(a) Notification by a paid advertisement in a local newspaper 209  
that is distributed in the geographic area in which the state 210  
agency or agency of a political subdivision is located, which 211  
advertisement shall be of sufficient size that it covers at least 212  
one-quarter of a page in the newspaper and shall be published in 213  
the newspaper at least once a week for three consecutive weeks; 214

(b) Conspicuous posting of the disclosure or notice on the 215  
state agency's or agency of a political subdivision's web site, if 216  
the agency maintains one; 217

(c) Notification to major media outlets in the geographic 218  
area in which the state agency or agency of a political 219  
subdivision is located. 220

(F) If a state agency or agency of a political subdivision 221  
discovers circumstances that require disclosure under this section 222  
to more than one thousand residents of this state involved in a 223  
single occurrence of a breach of the security of the system, the 224  
state agency or agency of a political subdivision shall notify, 225  
without unreasonable delay, all consumer reporting agencies that 226  
compile and maintain files on consumers on a nationwide basis of 227  
the timing, distribution, and content of the disclosure given by 228  
the state agency or agency of a political subdivision to the 229  
residents of this state. In no case shall a state agency or agency 230  
of a political subdivision that is required to make a notification 231  
required by this division delay any disclosure or notification 232  
required by division (B) or (C) of this section in order to make 233  
the notification required by this division. 234

(G) The attorney general, pursuant to sections 1349.191 and 235  
1349.192 of the Revised Code, may conduct an investigation and 236  
bring a civil action upon an alleged failure by a state agency or 237



agency of a political subdivision to comply with the requirements 238  
of this section. 239

**Sec. 1349.19.** (A) As used in this section: 240

(1)(a) "Breach of the security of the system" means 241  
unauthorized access to and acquisition of computerized data that 242  
compromises the security or confidentiality of personal 243  
information owned or licensed by a person and that causes, 244  
reasonably is believed to have caused, or reasonably is believed 245  
will cause a material risk of identity theft or other fraud to the 246  
person or property of a resident of this state. 247

(b) For purposes of division (A)(1)(a) of this section: 248

(i) Good faith acquisition of personal information by an 249  
employee or agent of the person for the purposes of the person is 250  
not a breach of the security of the system, provided that the 251  
personal information is not used for an unlawful purpose or 252  
subject to further unauthorized disclosure. 253

(ii) Acquisition of personal information pursuant to a search 254  
warrant, subpoena, or other court order, or pursuant to a 255  
subpoena, order, or duty of a regulatory state agency, is not a 256  
breach of the security of the system. 257

(2) "Business entity" means a sole proprietorship, 258  
partnership, corporation, association, or other group, however 259  
organized and whether operating for profit or not for profit, 260  
including a financial institution organized, chartered, or holding 261  
a license authorizing operation under the laws of this state, any 262  
other state, the United States, or any other country, or the 263  
parent or subsidiary of a financial institution. 264

(3) "Consumer reporting agency that compiles and maintains 265  
files on consumers on a nationwide basis" means a consumer 266  
reporting agency that regularly engages in the practice of 267

assembling or evaluating, and maintaining, for the purpose of	268
furnishing consumer reports to third parties bearing on a	269
consumer's creditworthiness, credit standing, or credit capacity,	270
each of the following regarding consumers residing nationwide:	271
(a) Public record information;	272
(b) Credit account information from persons who furnish that	273
information regularly and in the ordinary course of business.	274
(4) "Encryption" means the use of an algorithmic process to	275
transform data into a form in which there is a low probability of	276
assigning meaning without use of a confidential process or key.	277
(5) "Individual" means a natural person.	278
(6) "Person" has the same meaning as in section 1.59 of the	279
Revised Code, except that "person" includes a business entity only	280
if the business entity conducts business in this state.	281
(7)(a) "Personal information" means an individual's name,	282
consisting of the individual's first name or first initial and	283
last name, in combination with and linked to any one or more of	284
the following data elements, when the data elements are not	285
encrypted, redacted, or altered by any method or technology in	286
such a manner that the data elements are unreadable:	287
(i) Social security number;	288
(ii) Driver's license number or state identification card	289
number;	290
(iii) Account number or credit or debit card number, in	291
combination with and linked to any required security code, access	292
code, or password that would permit access to an individual's	293
financial account.	294
(b) "Personal information" does not include publicly	295
available information that is lawfully made available to the	296
general public from federal, state, or local government records or	297

any of the following media that are widely distributed:	298
(i) Any news, editorial, or advertising statement published	299
in any bona fide newspaper, journal, or magazine, or broadcast	300
over radio or television;	301
(ii) Any gathering or furnishing of information or news by	302
any bona fide reporter, correspondent, or news bureau to news	303
media described in division (A)(7)(b)(i) of this section;	304
(iii) Any publication designed for and distributed to members	305
of any bona fide association or charitable or fraternal nonprofit	306
corporation;	307
(iv) Any type of media similar in nature to any item, entity,	308
or activity identified in division (A)(7)(b)(i), (ii), or (iii) of	309
this section.	310
(8) "Record" means any information that is stored in an	311
electronic medium and is retrievable in perceivable form. "Record"	312
does not include any publicly available directory containing	313
information an individual voluntarily has consented to have	314
publicly disseminated or listed, such as name, address, or	315
telephone number.	316
(9) "Redacted" means altered or truncated so that no more	317
than the last four digits of a social security number, driver's	318
license number, state identification card number, account number,	319
or credit or debit card number is accessible as part of the data.	320
(10) "System" means any collection or group of related	321
records that are kept in an organized manner, that are maintained	322
by a person, and from which personal information is retrieved by	323
the name of the individual or by some identifying number, symbol,	324
or other identifier assigned to the individual. "System" does not	325
include any published directory, any reference material or	326
newsletter, or any routine information that is maintained for the	327
purpose of internal office administration of the person, if the	328

use of the directory, material, newsletter, or information would 329  
not adversely affect an individual, and there has been no 330  
unauthorized external breach of the directory, material, 331  
newsletter, or information. 332

(B)(1) Any person that owns or licenses computerized data 333  
that includes personal information shall disclose any breach of 334  
the security of the system, following its discovery or 335  
notification of the breach of the security of the system, to any 336  
resident of this state whose personal information was, or 337  
reasonably is believed to have been, accessed and acquired by an 338  
unauthorized person if the access and acquisition by the 339  
unauthorized person causes or reasonably is believed will cause a 340  
material risk of identity theft or other fraud to the resident. 341  
The disclosure described in this division may be made pursuant to 342  
any provision of a contract entered into by the person with 343  
another person prior to the date the breach of the security of the 344  
system occurred if that contract does not conflict with any 345  
provision of this section and does not waive any provision of this 346  
section. For purposes of this section, a resident of this state is 347  
an individual whose principal mailing address as reflected in the 348  
records of the person is in this state. 349

(2) The person shall make the disclosure described in 350  
division (B)(1) of this section in the most expedient time 351  
possible but not later than forty-five days following its 352  
discovery or notification of the breach in the security of the 353  
system, subject to the legitimate needs of law enforcement 354  
activities described in division (D) of this section and 355  
consistent with any measures necessary to determine the scope of 356  
the breach, including which residents' personal information was 357  
accessed and acquired, and to restore the reasonable integrity of 358  
the data system. 359

(3) Any person that is required to disclose a breach of the 360

security of the system under division (B) of this section shall, 361  
within the time allowed for disclosure of the breach, report the 362  
breach to the attorney general in writing or by electronic mail. 363  
The report shall include the date of the breach, the number of 364  
people affected by the breach, the method used to notify persons 365  
affected by the breach, and any other information the attorney 366  
general may require. 367

(C) Any person that, on behalf of or at the direction of 368  
another person or on behalf of or at the direction of any 369  
governmental entity, is the custodian of or stores computerized 370  
data that includes personal information shall notify that other 371  
person or governmental entity of any breach of the security of the 372  
system in an expeditious manner, if the personal information was, 373  
or reasonably is believed to have been, accessed and acquired by 374  
an unauthorized person and if the access and acquisition by the 375  
unauthorized person causes or reasonably is believed will cause a 376  
material risk of identity theft or other fraud to a resident of 377  
this state. 378

(D) The person may delay the disclosure or notification 379  
required by division (B), (C), or (G) of this section if a law 380  
enforcement agency determines that the disclosure or notification 381  
will impede a criminal investigation or jeopardize homeland or 382  
national security, in which case, the person shall make the 383  
disclosure or notification after the law enforcement agency 384  
determines that disclosure or notification will not compromise the 385  
investigation or jeopardize homeland or national security. 386

(E) For purposes of this section, a person may disclose or 387  
make a notification by any of the following methods: 388

(1) Written notice; 389

(2) Electronic notice, if the person's primary method of 390  
communication with the resident to whom the disclosure must be 391

made is by electronic means;	392
(3) Telephone notice;	393
(4) Substitute notice in accordance with this division, if	394
the person required to disclose demonstrates that the person does	395
not have sufficient contact information to provide notice in a	396
manner described in division (E)(1), (2), or (3) of this section,	397
or that the cost of providing disclosure or notice to residents to	398
whom disclosure or notification is required would exceed two	399
hundred fifty thousand dollars, or that the affected class of	400
subject residents to whom disclosure or notification is required	401
exceeds five hundred thousand persons. Substitute notice under	402
this division shall consist of all of the following:	403
(a) Electronic mail notice if the person has an electronic	404
mail address for the resident to whom the disclosure must be made;	405
(b) Conspicuous posting of the disclosure or notice on the	406
person's web site, if the person maintains one;	407
(c) Notification to major media outlets, to the extent that	408
the cumulative total of the readership, viewing audience, or	409
listening audience of all of the outlets so notified equals or	410
exceeds seventy-five per cent of the population of this state.	411
(5) Substitute notice in accordance with this division, if	412
the person required to disclose demonstrates that the person is a	413
business entity with ten employees or fewer and that the cost of	414
providing the disclosures or notices to residents to whom	415
disclosure or notification is required will exceed ten thousand	416
dollars. Substitute notice under this division shall consist of	417
all of the following:	418
(a) Notification by a paid advertisement in a local newspaper	419
that is distributed in the geographic area in which the business	420
entity is located, which advertisement shall be of sufficient size	421
that it covers at least one-quarter of a page in the newspaper and	422

shall be published in the newspaper at least once a week for three 423  
consecutive weeks; 424

(b) Conspicuous posting of the disclosure or notice on the 425  
business entity's web site, if the entity maintains one; 426

(c) Notification to major media outlets in the geographic 427  
area in which the business entity is located. 428

(F)(1) A financial institution, trust company, or credit 429  
union or any affiliate of a financial institution, trust company, 430  
or credit union that is required by federal law, including, but 431  
not limited to, any federal statute, regulation, regulatory 432  
guidance, or other regulatory action, to notify its customers of 433  
an information security breach with respect to information about 434  
those customers and that is subject to examination by its 435  
functional government regulatory agency for compliance with the 436  
applicable federal law, is exempt from the requirements of this 437  
section. 438

(2) This section does not apply to any person or entity that 439  
is a covered entity as defined in 45 C.F.R. 160.103, as amended. 440

(G) If a person discovers circumstances that require 441  
disclosure under this section to more than one thousand residents 442  
of this state involved in a single occurrence of a breach of the 443  
security of the system, the person shall notify, without 444  
unreasonable delay, all consumer reporting agencies that compile 445  
and maintain files on consumers on a nationwide basis of the 446  
timing, distribution, and content of the disclosure given by the 447  
person to the residents of this state. In no case shall a person 448  
that is required to make a notification required by this division 449  
delay any disclosure or notification required by division (B) or 450  
(C) of this section in order to make the notification required by 451  
this division. 452

(H) Any waiver of this section is contrary to public policy 453

and is void and unenforceable. 454

(I) The attorney general may conduct pursuant to sections 455  
1349.191 and 1349.192 of the Revised Code an investigation and 456  
bring a civil action upon an alleged failure by a person to comply 457  
with the requirements of this section. 458

Sec. 1349.193. The attorney general shall establish and 459  
maintain a searchable database, accessible to the public, of all 460  
breaches of the security of their systems reported to the attorney 461  
general by state agencies or agencies of political subdivisions 462  
pursuant to section 1347.12 of the Revised Code or by persons 463  
pursuant to section 1349.19 of the Revised Code. The database 464  
shall include for each breach the date of the breach, the number 465  
of people affected by the breach, the method used to notify 466  
persons affected by the breach, and any other information the 467  
attorney general considers necessary for the protection of the 468  
public. 469

**Section 2.** That existing sections 1347.12 and 1349.19 of the 470  
Revised Code are hereby repealed. 471