

The General Laws of Massachusetts

PART I. ADMINISTRATION OF THE GOVERNMENT

TITLE XV. REGULATION OF TRADE

CHAPTER 93H. SECURITY BREACHES

[Chapter 93H added by 2007, 82, Sec. 16 effective October 31, 2007.]

Chapter 93H: Section 1. Definitions

[Text of section added by 2007, 82, Sec. 16 effective October 31, 2007.]

Section 1. (a) As used in this chapter, the following words shall, unless the context clearly requires otherwise, have the following meanings:--

"Agency", any agency, executive office, department, board, commission, bureau, division or authority of the commonwealth, or any of its branches, or of any political subdivision thereof.

"Breach of security", the unauthorized acquisition or unauthorized use of unencrypted data or, encrypted electronic data and the confidential process or key that is capable of compromising the security, confidentiality, or integrity of personal information, maintained by a person or agency that creates a substantial risk of identity theft or fraud against a resident of the commonwealth. A good faith but unauthorized acquisition of personal information by a person or agency, or employee or agent thereof, for the lawful purposes of such person or agency, is not a breach of security unless the personal information is used in an unauthorized manner or subject to further unauthorized disclosure.

"Data" any material upon which written, drawn, spoken, visual, or electromagnetic information or images are recorded or preserved, regardless of physical form or characteristics.

"Electronic", relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

"Encrypted" transformation of data through the use of a 128-bit or higher algorithmic process into a form in which there is a low probability of assigning meaning without use of a confidential process or key, unless further defined by regulation of the department of consumer affairs and business regulation.

"Notice" shall include:--

(i) written notice;

(ii) electronic notice, if notice provided is consistent with the provisions regarding electronic records and signatures set forth in § 7001 (c) of Title 15 of the United States Code; and chapter 110G; or

(iii) substitute notice, if the person or agency required to provide notice demonstrates that the cost of providing written notice will exceed \$250,000, or that the affected class of Massachusetts residents to

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be notified exceeds 500,000 residents, or that the person or agency does not have sufficient contact information to provide notice.

"Person", a natural person, corporation, association, partnership or other legal entity.

"Personal information" a resident's first name and last name or first initial and last name in combination with any 1 or more of the following data elements that relate to such resident:

(a) Social Security number;

(b) driver's license number or state-issued identification card number; or

(c) financial account number, or credit or debit card number, with or without any required security code, access code, personal identification number or password, that would permit access to a resident's financial account; provided, however, that "Personal information" shall not include information that is lawfully obtained from publicly available information, or from federal, state or local government records lawfully made available to the general public.

"Substitute notice", shall consist of all of the following:--

(i) electronic mail notice, if the person or agency has electronic mail addresses for the members of the affected class of Massachusetts residents;

(ii) clear and conspicuous posting of the notice on the home page of the person or agency if the person or agency maintains a website; and

(iii) publication in or broadcast through media or medium that provides notice throughout the commonwealth.

(b) The department of consumer affairs and business regulation may adopt regulations, from time to time, to revise the definition of "encrypted", as used in this chapter, to reflect applicable technological advancements.