


I MINA' TRENTA NA LIHESLATURAN GUÅHAN
2009 (FIRST) Regular Session

Bill No. 9 (LS)

Introduced by:

Ray Tenorio 

**AN ACT TO ADD A NEW CHAPTER 48 TO TITLE 9,
GUAM CODE ANNOTATED RELATIVE TO
NOTIFICATION OF BREACHES OF PERSONAL
INFORMATION”.**

2009 JAN - 5 AM 10: 52

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. A new Chapter 48 is *added* to 9GCA to read:

§48100. Legislative Intent. *I Liheslaturan Guåhan* finds that both public and private entities on Guam have a duty to safeguard personal information that, if stolen or publicized, may result in crimes such as fraud and identity theft. The anonymity of the global internet, that transcends the borders of sovereign nations, makes it possible for unscrupulous individual to profit from the theft of personal information and never be brought to justice for their crimes or made to pay restitution. Therefore it is incumbent upon ~~every~~ all entities that are entrusted with such data to maintain strong security systems to ensure the personal information will always be protected.

It is the intent of *I Liheslatura* to ~~help~~ ensure that the personal information of residents of Guam is protected by providing procedures for notification of security breaches related to personal information and thereby encouraging individuals and

commercial entities, as defined ~~in the bill~~ by Public Law, to provide reasonable security for unencrypted personal information.

§48101. Definitions as used in this Chapter:

1. **“Breach of the security of a system”** means the unauthorized access and acquisition of unencrypted and unredacted computerized data that compromises the security or confidentiality of personal information maintained by an individual or entity as part of a database of personal information regarding multiple individuals and that causes or the individual or entity reasonably believes has caused or will cause identity theft or other fraud to any resident of Guam.

a. Good faith acquisition of personal information by an employee or agent of an individual or entity for the purposes of the individual or the entity is not a breach of the security of the system, provided that the personal information is not used for a purpose other than a lawful purpose of the individual or entity or subject to further unauthorized disclosure.

2. **“Entity”** includes corporations, business trusts, estates, partnerships, limited partnerships, limited liability partnerships, limited liability companies, associations, organizations, joint ventures, governments, governmental subdivisions, agencies, or instrumentalities, or any other legal entity, whether for profit or not-for-profit.

3. **“Encrypted”** means transformation of data through the use of an algorithmic process to into a form in which there is a low probability of assigning meaning

1 without use of a confidential process or key, or securing the information by
2 another method that renders the data elements unreadable or unusable.

3
4 4. “**Financial institution**” has the meaning given that term in section 6809(3) of
5 title 15, United States Code.

6
7 5. “**Individual**” means a natural person.

8
9 6. “**Personal information**” means the first name or first initial and last name in
10 combination with and linked to any one or more of the following data elements
11 that relate to a resident of Guam, when the data elements are neither encrypted
12 nor redacted:

13
14 a. Social Security number;

15
16 b. Driver’s license number or Guam identification card number issued in
17 lieu of a driver’s license; or

18
19 c. Financial account number, or credit card or debit card number, in
20 combination with any required security code, access code, or password that
21 would permit access to a resident’s financial accounts.

22
23 d. The term does not include information that is lawfully obtained from
24 publicly available information, or from Federal, State, or local government
25 records lawfully made available to the general public.

26
27 7. “**Notice**” means:

1
2 a. Written notice to the postal address in the records of the individual or
3 entity;

4
5 b. Telephone notice;

6
7 c. Electronic notice; or

8
9 d. Substitute notice, if the individual or the entity required to provide
10 notice demonstrates that the cost of providing notice will exceed Ten
11 Thousand Dollars \$10,000, or that the affected class of residents to be
12 notified exceeds Five Thousand (5,000) persons, or that the individual or
13 the entity does not have sufficient contact information or consent to
14 provide notice as described in paragraphs a., b. or c. Substitute notice
15 consists of any two of the following:

16
17 i. E-mail notice if the individual or the entity has e-mail addresses
18 for the members of the affected class of residents; and

19
20 ii. Conspicuous posting of the notice on the Web site of the
21 individual or the entity if the individual or the commercial entity
22 maintains a Web site; and

23
24 iii. Notice to major Guam media.

25
26 8. **“Redact”** means alteration or truncation of data such that no more than the
27 following are accessible as part of the personal information:

- a. Five digits of a Social Security Number, or
- b. The last four digits of a driver's license number, Guam identification card number or account number.

§48102. Disclosure of Breach of Security of Computerized Personal Information by an Individual or Entity.

1. **General rule.**--An individual or entity that owns or licenses computerized data that includes personal information shall disclose any breach of the security of the system following discovery or notification of the breach of the security of the system to any resident of Guam whose unencrypted and unredacted personal information was or is reasonably believed to have been accessed and acquired by an unauthorized person and that causes, or the individual or entity reasonably believes has caused or will cause, identity theft or other fraud to any resident of Guam. Except as provided in paragraph 4 or in order to take any measures necessary to determine the scope of the breach and to restore the reasonable integrity of the system, the disclosure shall be made without unreasonable delay.

2. **Encrypted information.**--An individual or entity must disclose the breach of the security of the system if encrypted information is accessed and acquired in an unencrypted form, or if the security breach involves a person with access to the encryption key and the individual or entity reasonably believes that such breach has caused or will cause identity theft or other fraud to any resident of Guam.

3. An individual or entity that maintains computerized data that includes personal information that the individual or entity does not own or license shall notify the owner or licensee of the information of any breach of the security of the system as soon as

1 practicable following discovery, if the personal information was or is the entity
2 reasonably believes was accessed and acquired by an unauthorized person.

3
4 4. Notice required by this Section may be delayed if a law enforcement agency
5 determines and advises the individual or entity that the notice will impede a criminal or
6 civil investigation, or homeland or national security. Notice required by this Section
7 must be made without unreasonable delay after the law enforcement agency determines
8 that notification will no longer impede the investigation or jeopardize national or
9 homeland security.

10
11 **§48103. Procedures Deemed in Compliance with Security Breach Requirements.**

12 1. Information privacy or security policy.--An entity that maintains its own
13 notification procedures as part of an information privacy or security policy for
14 the treatment of personal information and that are consistent with the timing
15 requirements of this Chapter shall be deemed to be in compliance with the
16 notification requirements of this Chapter if it notifies residents of Guam in
17 accordance with its procedures in the event of a breach of security of the system.

18
19 2. Compliance with Federal requirements.

20
21 a. A financial institution that complies with the notification requirements
22 prescribed by the Federal Interagency Guidance on Response Programs for
23 Unauthorized Access to Customer Information and Customer Notice is
24 deemed to be in compliance with this Chapter.

25
26 b. An entity that complies with the notification requirements or procedures
27 pursuant to the rules, regulation, procedures, or guidelines established by

1 the entity's primary or functional Federal regulator shall be in compliance
2 with this Chapter.

3
4 **§48104. Violations**

5 1. A violation of this Chapter that results in injury or loss to residents of Guam
6 may be enforced by the Office of the Attorney General as an unfair trade practice
7 pursuant to 5GCA: Chapter 32.

8
9 2. Except as provided by §48103 of this Chapter, the Office of the Attorney
10 General shall have exclusive authority to bring action and may obtain either
11 actual damages for a violation of this Chapter or a civil penalty not to exceed
12 One Hundred Fifty Thousand Dollars (\$150,000) per breach of the security of the
13 system or series of breaches of a similar nature that are discovered in a single
14 investigation.

15
16 3. A violation of this Chapter by a Guam-chartered or licensed financial
17 institution shall be enforceable exclusively by the financial institution's primary
18 regulatory entity within the Department of Revenue and Taxation (such as the
19 Insurance and Banking Commissioner).

20
21 **§48105. Applicability**

22 This Chapter shall apply to the discovery or notification of a breach of the security of
23 the system that occurs on or after the effective date of this section.

24
25 **§48106. Effective Date** This Chapter shall take effect in One Hundred Twenty (120)
26 days after the date of enactment.

1 **§48107. Preemption.** This Chapter deals with subject matter that is of Islandwide
2 concern, and it is the intent of the Legislature that this Article shall supersede and
3 preempt all rules and regulations regarding the matters expressly set forth in this
4 Chapter.