

# Changes in State Breach Notification and Security Procedures Laws

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State breach notification laws continue to be amended to (1) provide for notification of a state attorney general or regulator about a breach in addition to notifying affected individuals and (2) cover breaches involving personal information in both electronic and paper formats.

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 [Melissa J. Krasnow](#)

 Cyber and Privacy Risk and Insurance

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In addition, the number of state laws addressing security procedures is increasing.

## Attorney General or Regulator Breach Notification

Forty-seven states, plus the District of Columbia, Guam, Puerto Rico, and the Virgin Islands, have breach notification laws. (Alabama, New Mexico, and South Dakota do not have these laws.)

The breach notification laws require notification of affected individuals of a breach. The Illinois and Nebraska breach notification laws were amended to require a company also to notify state attorney generals about a breach in addition to affected individuals. Under the Illinois breach notification law, any covered entity or business associate under the Health Insurance Portability and Accountability Act (HIPAA) that is required to provide notification of a breach to the US Department of Health and Human Services (HHS) under the HIPAA/Health Information Technology for Economic and Clinical Health (HITECH) Act also must provide notification to the Illinois Attorney General within 5 business days of notifying the HHS.

Twenty-five state breach notification laws—California, Connecticut, Florida, Hawaii, Illinois, Indiana, Iowa, Louisiana, Maine, Maryland, Massachusetts, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Oregon, Rhode Island, South Carolina, Vermont, Virginia, and Washington—plus the Puerto Rico breach notification law require notification of a breach to a state attorney general or regulator in addition to notifying the affected individuals.<sup>1</sup>

The following states' breach notification laws require notification to a state attorney general or regulator in addition to notifying the affected individuals where there are

- in North Dakota, more than 250 individuals;
- in Oregon, more than 250 residents;
- In Florida, 500 or more individuals;
- in California, Iowa, Rhode Island, or Washington, more than 500 residents;
- in Hawaii, more than 1,000 individuals;
- in Missouri, more than 1,000 consumers; and
- in South Carolina, more than 1,000 residents.

The Connecticut, Illinois, Indiana, Louisiana, Maine, Maryland, Massachusetts, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Vermont, and Virginia breach notification laws, plus the Puerto Rico breach notification law, require notification of a breach to a state attorney general or regulator regardless of the number of affected individuals.

## Notification for Electronic and Paper Breaches

State breach notification laws cover breaches involving personal information in electronic format. The Nebraska and Rhode Island breach notification laws were amended to cover breaches involving personal information in both electronic and paper formats. Ten state breach notification laws—Alaska, Hawaii, Indiana, Iowa, Massachusetts, Nebraska, North Carolina, Rhode Island, Washington, and Wisconsin—cover breaches involving personal information in both electronic and paper formats. Interestingly, these state breach notification laws (other than the Alaska and Wisconsin breach notification laws) also require notification to a state attorney general or regulator in addition to notifying the affected individuals.<sup>2</sup>

## State Security Procedures Laws

With a new Illinois law, 12 states have laws addressing security procedures—Arkansas, California, Connecticut, Florida, Illinois, Maryland, Massachusetts, Nevada, Oregon, Rhode Island, Texas, and Utah.<sup>3</sup>

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<sup>1</sup>Cal. Civ. Code § 1798.82; Conn. Gen. Stat. § 36a-701b; Fla. Stat. § 501.171; Haw. Rev. Stat. § 487N-2; Ind. Code § 24-4.9-3-1; Illinois 815 ILCS 530/50 (Illinois H.B. 1260, effective date January 1, 2017); Iowa Code § 715C.2; La. Rev. Stat. § 51:3074 and La. Admin. Code tit. 16, pt. III, § 701; Me. Rev. Stat. Ann. tit. 10, § 1348; MD Code, Com. Law § 14-3504; Mass. Gen. Laws ch. 93H; Missouri Rev. Stat. § 407.1500; MCA § 30-14-1704; Neb. Rev. Stat. §§ 87-801 et seq. (L.B. 835, effective July 20, 2016); N.H. Rev. Stat. § 359-C:20; N.J. Stat. Ann. § 56:8-163; N.Y. Gen. Bus. Law § 899-aa; N.C. Gen. Stat. § 75-65; North Dakota; Or. Rev. Stat. § 646A.604; R.I. Gen. Laws § 11-49.3-4; S.C. Code § 39-1-90; Vt. Stat. Ann. tit. 9, § 2435; Va. Code Ann. § 18.2-186.6; RCW § 19.255.010 and 10 L.P.R.A. § 4052.

<sup>2</sup>Alaska Stat. §§ 45.48.010 and 45.48.090, Haw. Rev. Stat. §§ 487N-1 and 487N-2, Ind. Code § 24-4.9-2, Iowa Code § 715C.1, Mass. Gen. Laws ch. 93H, Neb. Rev. Stat. §§ 87-801 et seq. (L.B. 835, effective July 20, 2016), N.C. Gen. Stat. § 75-61, R.I. Stat. § 11-49.3-3, RCW § 19.255.010, and Wis. Stat. § 134.98.

<sup>3</sup>Ark. Code § 4-110-104, Cal. Civ. Code § 1798.81.5, Conn. Gen. Stat. § 42-471, Fla. Stat. § 501.171, 815 ILCS 530/45 et seq. (Illinois H.B. 1260, effective date January 1, 2017), MD Comm. Law Code § 14-3503, 201 CMR §§ 17.00 et seq., Nev. Rev. Stat. § 603A.210, Or. Rev. Stat. § 646A.622, R.I. Stat. § 11-49.3-2, Tex. Bus. & Comm. Code § 521.052, and Utah Code Ann. § 13-44-201.

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