

## Comparison of Database Security Breach Legislation

	<b>Virginia (HB 2721)</b>	<b>Industry recommendation for HB 2721 (pre-ALEC)</b>	<b>Delaware (HB 116)</b>	<b>American Legislative Exchange Council (ALEC) Model Bill</b>
Who is subject to proposal	State and local government agencies and any person that conducts business in the Commonwealth, and that owns or licenses computerized data that includes personal information	Any person that conducts business in the Commonwealth, and that owns or licenses computerized data that includes personal information	Individual or commercial entity that conducts business in Delaware and owns or licenses computerized data that includes personal information about a resident of Delaware	Any individual or entity that owns or licenses computerized data that includes personal information
Definition of breach	Unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of personal information maintained by the person or agency	Unauthorized access and acquisition of computerized data that compromises the security or confidentiality of personal information maintained by the person as part of a database	Unauthorized acquisition of unencrypted computerized data that compromises the security, confidentiality, or integrity of personal information maintained by the individual or commercial entity	Unauthorized access and acquisition of unencrypted or unredacted computerized data that compromises the security or confidentiality of personal information
Definition of personal information	First name or first initial and last name, in combination with one or more of the following: -SSN -Virginia driver's license number -Account number or credit or debit card number, in combination with any required security code, access code, or password that would access the account	First name or first initial and last name, in combination with and linked to any one or more of the following: -SSN -driver's license number -Account number or credit or debit card number, in combination with any required security code, access code, or password that would access the account	First name or first initial and last name, in combination with any one or more of the following: -SSN -driver's license number -Delaware Identification Card number -Account number or credit or debit card number, in combination with any required security code, access code, or password that would access the account	First name or first initial and last name linked to any one or more of the following: -SSN -driver's license number -State identification number -Account number or credit or debit card number, in combination with any required security code, access code, or password that would access the account

Employee/agent exemption	Yes	Yes	Yes	Yes
Public records exemption	Yes	Yes	Yes	Yes
Encryption exemption -Delaware and Virginia bills do not include redacted information in the exemption -Industry bill requires notification if data was unencrypted or encryption key was stolen	Yes	Yes, exemption also applies if info is redacted (alteration or truncation) or secured by any other method or technology that renders the personal information unreadable or unusable.	Yes	Yes, exemption also applies if info is redacted
When must entity disclose	Following discovery or notification of the breach...and any unencrypted personal information of a resident of the Commonwealth was, or is reasonably believed to have been, acquired by unauthorized persons	Following discovery or notification of the breach ...and personal info was accessed and acquired or there is a reasonable belief that personal info was accessed and acquired	When individual or commercial entity that conducts business in Delaware becomes aware of a breach of the security system	Following discovery or notification of the breach ...and personal info was accessed and acquired or there is a reasonable belief...or the individual or entity reasonably believes the breach has caused or will cause identity theft or other fraud
Timeliness of disclosure/notice	Most expedient time possible and without unreasonable delay	Most expedient time possible and without unreasonable delay	If prompt investigation determines that misuse of information has occurred or is reasonably likely to occur, notice must be made in the most expedient time possible and without unreasonable delay	Without unreasonable delay...as soon as practicable following discovery, if the personal information was or is the entity reasonably believes was accessed and acquired by an unauthorized person
Law-enforcement exemption -Industry bill would require law enforcement to notify the person	Yes, if notice will impede a criminal investigation	Yes, but law enforcement must advise the person that notification will impede a criminal or civil investigation	Yes, if notice will impede a criminal investigation	Yes
How to provide notice	Written, electronic, or substitute notice (if cost of	Written, electronic (if in compliance with 15 U.S.C.	Written, telephone, electronic (if in compliance	Written (to postal address), telephone, electronic, or

	notice will exceed \$250,000, affected class is more than 500,000, or entity does not have sufficient contact information)	§ 7001), or substitute notice (if cost of notice would exceed \$50,000 or the class exceeds 100,000, or the person does not have sufficient contact information)	with 15 U.S.C. § 7001), or substitute notice (if cost of notice would exceed \$75,000 or 100,000 residents)	substitute notice (if cost of notice would exceed \$50,000 or 100,000 residents or the individual or entity does not have sufficient contact information)
What is substitute notice -ALEC model bill only requires two alternate forms of notification for substitute notice, the rest require three	All three: E-mail notification, conspicuous posting on entity's website, and notification to major statewide media	All three: E-mail, conspicuous posting on the website of the person, and notice to major statewide media	All three: E-mail, conspicuous posting on the website of the individual or commercial entity, and notice to statewide media	Any two of the following: E-mail, conspicuous posting on the website of the individual or commercial entity, or notice to major statewide media
Exemption for following other policies or laws -Industry bill and HB 2721 do not have an exemption for companies in compliance with federal guidelines	Yes, if its internal policies are in compliance with requirements of this law	Yes, if its internal policies are in compliance with requirements of this law	Yes, if its internal policies are in compliance with requirements of this law or federal law	Yes, if its internal policies are in compliance with requirements of this law or in compliance with federal guidelines
Cooperation with credit reporting agencies or consumer groups -Industry bill and HB 2721 have credit reporting requirement, Del Bianco version is more detailed	If notice indicates that individual may obtain copy of credit report, entity must consult with consumer reporting agency as to timing, content, and distribution	If more than 1,000 people are notified, entity shall notify all consumer reporting agencies as defined in 15 U.S.C. § 1681A	N/A	N/A
Damages/Enforcement -HB 2721 is only bill that gives the aggrieved person the right to sue under the database breach law, other bills give exclusive jurisdiction to AG	If aggrieved by entity doing business in Commonwealth, person may recover \$100 per violation or actual damages, whichever is greater; Plaintiff may recover attorney fees; Act may be enforced by injunction or other	Any violation that results in injury or loss to residents of the Commonwealth may be enforced by the AG as unfair trade practice. AG has exclusive authority to bring action for actual damages of a civil penalty not in excess of \$150,000	AG may bring an action in law or equity for relief that may be appropriate, or direct economic damages, or both	Any violation that results in injury or loss to residents of the Commonwealth may be enforced by the AG as unfair trade practice. AG has exclusive authority to bring action for actual damages or a civil penalty not in excess of \$15,000

	equitable remedy	per breach		per breach, except...if a state-chartered or licensed financial institution violates the act, the primary state-regulator has exclusive jurisdiction.
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