

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

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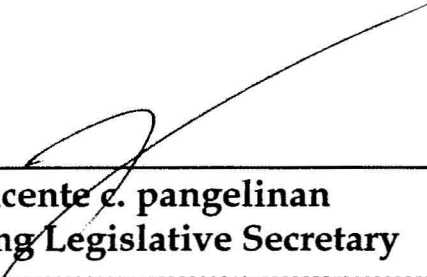
CERTIFICATION OF PASSAGE OF AN ACT TO *I MAGA'LAHEN GUÅHAN*

This is to certify that **Substitute Bill No. 9 (LS), "AN ACT TO ADD A NEW CHAPTER 48 TO TITLE 9, GUAM CODE ANNOTATED, RELATIVE TO NOTIFICATION OF BREACHES OF PERSONAL INFORMATION,"** was on the 27th day of February, 2009, duly and regularly passed.




Judith T. Won Pat, Ed. D.
Speaker

Attested:



vicente c. pangelinan
Acting Legislative Secretary

This Act was received by *I Maga'lahaen Guåhan* this 3 day of MAR, 2009, at
4:04 o'clock P.M.



Assistant Staff Officer
Maga'lahaen's Office

APPROVED:

FELIX P. CAMACHO
I Maga'lahaen Guåhan

Date: _____

Public Law No. _____

**I MINA'TRENTA NA LIHESLATURÁN GUÁHAN
2009 (FIRST) Regular Session**

Bill No. 9 (LS)

As substituted by the
Committee on Public Safety,
Law Enforcement and Senior Citizens
and amended on the Floor.

Introduced by:

Ray Tenorio
F. B. Aguon, Jr.
F. F. Blas, Jr.
E. J.B. Calvo
B. J.F. Cruz
J. V. Espaldon
Judith P. Guthertz, DPA
T. R. Muña Barnes
T. C. Ada
Adolpho B. Palacios, Sr.
v. c. pangelinan
M. J. Rector
R. J. Respicio
Telo Taitague
Judith T. Won Pat, Ed.D.

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

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1.** A new Chapter 48 is *added* to Title 9, Guam Code Annotated, to
3 read:

4 **“CHAPTER 48**
5 **NOTIFICATION OF BREACHES OF PERSONAL INFORMATION**

1 **§48.10. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds
2 that both public and private entities on Guam have a duty to safeguard personal
3 information that, *if stolen or publicized*, may result in crimes such as fraud and
4 identity theft. The anonymity of the global internet, that transcends the borders
5 of sovereign nations, makes it possible for unscrupulous individuals to profit
6 from the theft of personal information and never be brought to justice for their
7 crimes *or* made to pay restitution. Therefore, it is incumbent upon all entities
8 that are entrusted with such data to maintain strong security systems to ensure
9 that the personal information will always be protected.

10 It is the intent of *I Liheslatura* to ensure that the personal information of
11 the residents of Guam is protected, by providing procedures for notification of
12 security breaches related to personal information and thereby encouraging
13 individuals and commercial entities, as defined by public law, to provide
14 reasonable security for unencrypted personal information.

15 **§48.20. Definitions.** As used in this Chapter:

16 (a) *Breach of the security of a system* means the unauthorized
17 access and acquisition of unencrypted and unredacted computerized data
18 that compromises the security *or* confidentiality of personal information
19 maintained by an individual *or* entity as part of a database of personal
20 information regarding multiple individuals and that causes, *or* the
21 individual *or* entity reasonably believes has caused *or* will cause, identity
22 theft *or* other fraud to any resident of Guam.

23 Good faith acquisition of personal information by an employee *or*
24 agent of an individual *or* entity for the purposes of the individual *or* the
25 entity is *not* a breach of the security of the system, provided, that the
26 personal information is *not* used for a purpose other than a lawful

1 purpose of the individual *or* entity *or* subject to further unauthorized
2 disclosure.

3 (b) *Entity* includes corporations, business trusts, estates,
4 partnerships, limited partnerships, limited liability partnerships, limited
5 liability companies, associations, organizations, joint ventures,
6 governments, governmental subdivisions, agencies, *or* instrumentalities,
7 *or* any other legal entity, whether for profit *or* not-for-profit.

8 (c) *Encrypted* means transformation of data through the use of
9 an algorithmic process into a form in which there is a low probability of
10 assigning meaning without the use of a confidential process *or* key, *or*
11 securing the information by another method that renders the data
12 elements unreadable *or* unusable.

13 (d) *Financial institution* has the meaning given that term in
14 Section 6809(3) of Title 15, United States Code.

15 (e) *Individual* means a natural person.

16 (f) *Personal information* means the first name, *or* first initial,
17 and last name in combination with and linked to any one *or* more of the
18 following data elements that relate to a resident of Guam, when the data
19 elements are *neither* encrypted *nor* redacted:

20 (1) Social Security number;

21 (2) Driver's license number *or* Guam identification card
22 number issued in lieu of a driver's license; *or*

23 (3) Financial account number, *or* credit card *or* debit card
24 number, in combination with any required security
25 code, access code, *or* password that would permit
26 access to a resident's financial accounts.

1 (4) The term *does not* include information that is lawfully
2 obtained from publicly available information, *or* from
3 Federal, State, *or* local government records lawfully
4 made available to the general public.

5 (g) *Notice* means:

6 (1) Written notice to the postal address in the records of the
7 individual *or* entity;

8 (2) Telephone notice;

9 (3) Electronic notice; *or*

10 (4) Substitute notice, *if* the individual *or* the entity required
11 to provide notice demonstrates that the cost of
12 providing notice will *exceed* Ten Thousand Dollars
13 (\$10,000), *or* that the affected class of residents to be
14 notified *exceeds* five thousand (5,000) persons, or that
15 the individual or the entity does *not* have sufficient
16 contact information *or* consent to provide notice as
17 described in paragraphs 1, 2, *or* 3. Substitute notice
18 consists of any two (2) of the following:

19 (A) E-mail notice *if* the individual *or* the entity has
20 e-mail addresses for the members of the affected class of
21 residents;

22 (B) Conspicuous posting of the notice on the
23 Website of the individual *or* the entity, *if* the individual *or*
24 the commercial entity maintains a Website; and

25 (C) Notice to major Guam media.

1 (h) *Redact* means alteration *or* truncation of data such that *no*
2 *more than* the following are accessible as part of the personal
3 information:

4 (1) five (5) digits of a Social Security Number, *or*

5 (2) The last four (4) digits of a driver's license number,
6 Guam identification card number *or* financial account number.

7 **§48.30. Disclosure of Breach of Security of Computerized Personal**
8 **Information by an Individual *or* Entity.**

9 (a) **General Rule.** An individual *or* entity that owns *or* licenses
10 computerized data that includes personal information *shall* disclose any breach
11 of the security of the system following discovery *or* notification of the breach of
12 the security of the system to any resident of Guam whose unencrypted and
13 unredacted personal information was *or* is reasonably believed to have been
14 accessed and acquired by an unauthorized person and that causes, *or* the
15 individual *or* entity reasonably believes has caused *or* will cause, identity theft
16 *or* other fraud to any resident of Guam. *Except* as provided in subsection (d) of
17 this Section, *or* in order to take any measures necessary to determine the scope
18 of the breach and to restore the reasonable integrity of the system, the
19 disclosure *shall* be made without unreasonable delay.

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

1 (c) An individual *or* entity that maintains computerized data that
2 includes personal information that the individual *or* entity *does not* own or
3 license *shall* notify the owner *or* licensee of the information of any breach of
4 the security of the system as soon as practicable following discovery, *if* the
5 personal information was, *or* if the entity reasonably believes was, accessed and
6 acquired by an unauthorized person.

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

13 **§48.40. Procedures Deemed in Compliance with Security Breach**
14 **Requirements.**

15 (a) **Information Privacy *or* Security Policy.** An entity that maintains
16 its own notification procedures as part of an information privacy *or* security
17 policy for the treatment of personal information and that are consistent with the
18 timing requirements of this Chapter *shall* be deemed to be in compliance with
19 the notification requirements of this Chapter *if* it notifies residents of Guam in
20 accordance with its procedures in the event of a breach of security of the
21 system.

22 (b) **Compliance with Federal requirements.**

23 (1) A financial institution that complies with the notification
24 requirements prescribed by the Federal Interagency Guidance on
25 Response Programs for Unauthorized Access to Customer Information
26 and Customer Notice is deemed to be in compliance with this Chapter.

1 (2) An entity that complies with the notification requirements *or*
2 procedures pursuant to the rules, regulations, procedures, *or* guidelines
3 established by the entity’s primary *or* functional Federal regulator *shall*
4 be in compliance with this Chapter.

5 **§48.50. Violations.**

6 (a) A violation of this Chapter that results in injury *or* loss to residents
7 of Guam may be enforced by the Office of the Attorney General.

8 (b) *Except* as provided by §48.40 of this Chapter, the Office of the
9 Attorney General *shall* have exclusive authority to bring action and may obtain
10 either actual damages for a violation of this Chapter *or* a civil penalty *not to*
11 *exceed* One Hundred Fifty Thousand Dollars (\$150,000) per breach of the
12 security of the system *or* series of breaches of a similar nature that are
13 discovered in a single investigation.

14 **§48.60. Applicability.** This Chapter *shall* apply to the discovery *or*
15 notification of a breach of the security of the system that occurs on *or* after the
16 effective date of this Chapter.

17 **§48.70. Effective Date.** This Chapter *shall* take effect one hundred
18 twenty (120) days after the date of enactment.

19 **§48.80. Preemption.** This Chapter deals with subject matter that is of
20 island-wide concern, and it is the intent of *I Liheslatura* that this Chapter *shall*
21 supersede and preempt all rules and regulations regarding the matters expressly
22 set forth in this Chapter.”