

Oregon Revised Statutes

Title 50 – Trade Regulations and Practices

Chapter 646A – Trade Regulation

646A.602 Definitions for ORS 646A.600 to 646A.628.

As used in *ORS 646A.600 to 646A.628*:

(1)(a) Breach of security" means unauthorized acquisition of computerized data that materially compromises the security, confidentiality or integrity of personal information maintained by the person.

(b) Breach of security" does not include good-faith acquisition of personal information by a person or that person's employee or agent for a legitimate purpose of that person if the personal information is not used in violation of applicable law or in a manner that harms or poses an actual threat to the security, confidentiality or integrity of the personal information.

(2) Consumer" means an individual who is also a resident of this state.

(3) Consumer report" means a consumer report as described in section 603(d) of the federal Fair Credit Reporting Act (*15 U.S.C. 1681a(d)*), as that Act existed on October 1, 2007, that is compiled and maintained by a consumer reporting agency.

(4) Consumer reporting agency" means a consumer reporting agency as described in section 603(p) of the federal Fair Credit Reporting Act (*15 U.S.C. 1681a(p)*) as that Act existed on October 1, 2007.

(5) Debt" means any obligation or alleged obligation arising out of a consumer transaction, as defined in *ORS 646.639*.

(6) Encryption" means the use of an algorithmic process to transform data into a form in which the data is rendered unreadable or unusable without the use of a confidential process or key.

(7) Extension of credit" means the right to defer payment of debt or to incur debt and defer its payment offered or granted primarily for personal, family or household purposes.

(8) Identity theft" has the meaning set forth in *ORS 165.800*.

(9) Identity theft declaration" means a completed and signed statement documenting alleged identity theft, using the form available from the Federal Trade Commission, or another substantially similar form.

(10) Person" means any individual, private or public corporation, partnership, cooperative, association, estate, limited liability company, organization or other entity, whether or not organized to operate at a profit, or a public body as defined in *ORS 174.109*.

(11) Personal information":

(a) Means a consumer's first name or first initial and last name in combination with any one or more of the following data elements, when the data elements are not rendered unusable through encryption, redaction or other methods, or when the data elements are encrypted and the encryption key has also been acquired:

(A) Social Security number;

(B) Driver license number or state identification card number issued by the Department of Transportation;

(C) Passport number or other United States issued identification number; or

(D) Financial account number, credit or debit card number, in combination with any required security code, access code or password that would permit access to a consumer's financial account.

(b) Means any of the data elements or any combination of the data elements described in paragraph (a) of this subsection when not combined with the consumer's first name or first initial and last name and when the data elements are not rendered unusable through encryption, redaction or other methods, if the information obtained would be sufficient to permit a person to commit identity theft against the consumer whose information was compromised.

(c) Does not include information, other than a Social Security number, in a federal, state or local government record that is lawfully made available to the public.

(12) Redacted" means altered or truncated so that no more than the last four digits of a Social Security number, driver license number, state identification card number, account number or credit or debit card number is accessible as part of the data.

(13) Security freeze" means a notice placed in a consumer report, at the request of a consumer and subject to certain exemptions, that prohibits the consumer reporting agency from releasing the consumer report for the extension of credit unless the consumer has temporarily lifted or removed the freeze.

646A.604 Notice of breach of security; delay; methods of notification; contents of notice; application of notice requirement.

(1) Any person that owns, maintains or otherwise possesses data that includes a consumer's personal information that is used in the course of the person's business, vocation, occupation or volunteer activities and was subject to a breach of security shall give notice of the breach of security following discovery of such breach of security, or receipt of notification under subsection (2) of this section, to any consumer whose personal information was included in the information that was breached. The disclosure notification shall be made in the most expeditious time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement as provided in subsection (3) of this section, and consistent with any measures necessary to determine sufficient contact information for the consumers, determine the scope of the breach and restore the reasonable integrity, security and confidentiality of the data.

(2) Any person that maintains or otherwise possesses personal information on behalf of another person shall notify the owner or licensor of the information of any breach of security immediately following discovery of such breach of security if a consumer's personal information was included in the information that was breached.

(3) The notification to the consumer required by this section may be delayed if a law enforcement agency determines that the notification will impede a criminal investigation and that agency has made a written request that the notification be delayed. The notification required by this section shall be made after that law enforcement agency determines that its disclosure will not compromise the investigation and notifies the person in writing.

(4) For purposes of this section, notification to the consumer may be provided by one of the following methods:

(a) Written notice.

(b) Electronic notice if the person's customary method of communication with the consumer is by electronic means or is consistent with the provisions regarding electronic records and signatures set forth in the Electronic Signatures in Global and National Commerce Act (*15 U.S.C. 7001*) as that Act existed on October 1, 2007.

(c) Telephone notice, provided that contact is made directly with the affected consumer.

(d) Substitute notice, if the person demonstrates that the cost of providing notice would exceed \$ 250,000, that the affected class of consumers to be notified exceeds 350,000, or if the person does not have sufficient contact information to provide notice. Substitute notice consists of the following:

(A) Conspicuous posting of the notice or a link to the notice on the Internet home page of the person if the person maintains one; and

(B) Notification to major statewide television and newspaper media.

(5) Notice under this section shall include at a minimum:

(a) A description of the incident in general terms;

(b) The approximate date of the breach of security;

(c) The type of personal information obtained as a result of the breach of security;

(d) Contact information of the person subject to this section;

(e) Contact information for national consumer reporting agencies; and

(f) Advice to the consumer to report suspected identity theft to law enforcement, including the Federal Trade Commission.

(6) If a person discovers a breach of security affecting more than 1,000 consumers that requires disclosure under this section, the person shall notify, without unreasonable delay, all consumer reporting agencies that compile and maintain reports on consumers on a nationwide basis of the timing, distribution and content of the notification given by the person to the consumers. In no case shall a person that is required to make a notification required by this section delay any notification in order to make the notification to the consumer reporting agencies. The person shall include the police report number, if available, in its notification to the consumer reporting agencies.

(7) Notwithstanding subsection (1) of this section, notification is not required if, after an appropriate investigation or after consultation with relevant federal, state or local agencies responsible for law enforcement, the person determines that no reasonable likelihood of harm to the consumers whose personal information has been acquired has resulted or will result from the breach. Such a determination must be documented in writing and the documentation must be maintained for five years.

(8) This section does not apply to:

(a) A person that complies with the notification requirements or breach of security procedures that provide greater protection to personal information and at least as thorough disclosure requirements pursuant to the rules, regulations, procedures, guidance or guidelines established by the person's primary or functional federal regulator.

(b) A person that complies with a state or federal law that provides greater protection to personal information and at least as thorough disclosure requirements for breach of security of personal information than that provided by this section.

(c) A person that is subject to and complies with regulations promulgated pursuant to Title V of the Gramm-Leach-Bliley Act of 1999 (*15 U.S.C. 6801 to 6809*) as that Act existed on October 1, 2007.

646A.624 Powers of director; penalties.

(1) The Director of the Department of Consumer and Business Services may:

(a) Make such public or private investigations within or outside this state as the director deems necessary to determine whether a person has violated any provision of *ORS 646A.600 to 646A.628*, or to aid in the enforcement of *ORS 646A.600 to 646A.628*.

(b) Require or permit a person to file a statement in writing, under oath or otherwise as the director determines, as to all the facts and circumstances concerning the matter to be investigated.

(c) Administer oaths and affirmations, subpoena witnesses, compel attendance, take evidence and require the production of books, papers, correspondence, memoranda, agreements or other documents or records that the director deems relevant or material to the inquiry. Each witness who appears before the director under a subpoena shall receive the fees and mileage provided for witnesses in *ORS 44.415 (2)*.

(2) If a person fails to comply with a subpoena so issued or a party or witness refuses to testify on any matters, the judge of the circuit court or of any county, on the application of the director, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein.

(3) If the director has reason to believe that any person has engaged or is engaging in any violation of *ORS 646A.600 to 646A.628*, the director may issue an order, subject to ORS chapter 183, directed to the person to cease and desist from the violation, or require the person to pay compensation to consumers injured by the violation. The director may order compensation to consumers only upon a finding that enforcement of the rights of the consumers by private civil action would be so burdensome or expensive as to be impractical.

(4)(a) In addition to all other penalties and enforcement provisions provided by law, any person who violates or who procures, aids or abets in the violation of *ORS 646A.600 to 646A.628* shall be subject to a penalty of not more than \$ 1,000 for every violation, which shall be paid to the General Fund of the State Treasury.

(b) Every violation is a separate offense and, in the case of a continuing violation, each day's continuance is a separate violation, but the maximum penalty for any occurrence shall not exceed \$ 500,000.

(c) Civil penalties under this section shall be imposed as provided in *ORS 183.745*.