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# HOUSE BILL No. 1396

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 24-4.9.

**Synopsis:** Data privacy. Provides that a data base owner may not make a material misrepresentation to an Indiana resident regarding the data base owner's collection, use, storage, sharing, or destruction of the resident's personal information. Provides that a data base owner may not require a contractor or vendor of the data base owner to make a material misrepresentation to an Indiana resident regarding the data base owner's collection, use, storage, sharing, or destruction of the resident's personal information. Adds the definition of "data" for purposes of security breach disclosure laws to include information maintained: (1) in a computerized format; (2) on paper; (3) on microfilm; or (4) in or on a similar medium.

**Effective:** July 1, 2013.

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January 22, 2013, read first time and referred to Committee on Judiciary.

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First Regular Session 118th General Assembly (2013)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2012 Regular Session of the General Assembly.

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## HOUSE BILL No. 1396



A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 24-4.9-2-2, AS AMENDED BY P.L.137-2009,
- 2 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 3 JULY 1, 2013]: Sec. 2. (a) "Breach of the security of data" means
- 4 unauthorized acquisition of ~~computerized~~ data that compromises the
- 5 security, confidentiality, or integrity of personal information
- 6 maintained by a person. ~~The term includes the unauthorized acquisition~~
- 7 ~~of computerized data that have been transferred to another medium,~~
- 8 ~~including paper, microfilm, or a similar medium, even if the transferred~~
- 9 ~~data are no longer in a computerized format.~~
- 10 (b) The term does not include the following:
- 11 (1) Good faith acquisition of personal information by an employee
- 12 or agent of the person for lawful purposes of the person, if the
- 13 personal information is not used or subject to further unauthorized
- 14 disclosure.
- 15 (2) Unauthorized acquisition of a portable electronic device on
- 16 which personal information is stored, if all personal information
- 17 on the device is protected by encryption and the encryption key:



- 1 (A) has not been compromised or disclosed; and
- 2 (B) is not in the possession of or known to the person who,
- 3 without authorization, acquired or has access to the portable
- 4 electronic device.

5 SECTION 2. IC 24-4.9-2-2.5 IS ADDED TO THE INDIANA  
 6 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 7 [EFFECTIVE JULY 1, 2013]: **Sec. 2.5. "Data" includes information**  
 8 **maintained:**

- 9 (1) in a computerized format;
- 10 (2) on paper;
- 11 (3) on microfilm; or
- 12 (4) in or on a similar medium.

13 SECTION 3. IC 24-4.9-2-3, AS ADDED BY P.L.125-2006,  
 14 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 15 JULY 1, 2013]: Sec. 3. "Data base owner" means a person that owns or  
 16 licenses ~~computerized~~ data that includes personal information.

17 SECTION 4. IC 24-4.9-3-2, AS ADDED BY P.L.125-2006,  
 18 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 19 JULY 1, 2013]: Sec. 2. A person that maintains ~~computerized~~ data but  
 20 that is not a data base owner shall notify the data base owner if the  
 21 person discovers that personal information was or may have been  
 22 acquired by an unauthorized person.

23 SECTION 5. IC 24-4.9-3-3.5, AS ADDED BY P.L.137-2009,  
 24 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 25 JULY 1, 2013]: Sec. 3.5. (a) This section does not apply to a data base  
 26 owner that maintains its own data security procedures as part of an  
 27 information privacy, security policy, or compliance plan under:

- 28 (1) the federal USA PATRIOT Act (P.L. 107-56);
- 29 (2) Executive Order 13224;
- 30 (3) the federal Driver's Privacy Protection Act (18 U.S.C. 2721 et
- 31 seq.);
- 32 (4) the federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.);
- 33 (5) the federal Financial Modernization Act of 1999 (15 U.S.C.
- 34 6801 et seq.); or
- 35 (6) the federal Health Insurance Portability and Accountability
- 36 Act (HIPAA) (P.L. 104-191);

37 if the data base owner's information privacy, security policy, or  
 38 compliance plan requires the data base owner to maintain reasonable  
 39 procedures to protect and safeguard from unlawful use or disclosure  
 40 personal information of Indiana residents that is collected or  
 41 maintained by the data base owner and the data base owner complies  
 42 with the data base owner's information privacy, security policy, or

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- 1 compliance plan.
- 2 (b) A data base owner shall implement and maintain reasonable  
3 procedures, including taking any appropriate corrective action, to  
4 protect and safeguard from unlawful use or disclosure any personal  
5 information of Indiana residents collected or maintained by the data  
6 base owner.
- 7 (c) A data base owner shall not dispose of records or documents  
8 containing unencrypted and unredacted personal information of Indiana  
9 residents without shredding, incinerating, mutilating, erasing, or  
10 otherwise rendering the personal information illegible or unusable.
- 11 **(d) A data base owner may not make a material**  
12 **misrepresentation to an Indiana resident regarding the data base**  
13 **owner's collection, use, storage, sharing, or destruction of the**  
14 **resident's personal information.**
- 15 (e) A data base owner may not require:  
16 (1) a contractor; or  
17 (2) a vendor;  
18 **of the data base owner to make a material misrepresentation to an**  
19 **Indiana resident regarding the data base owner's collection, use,**  
20 **storage, sharing, or destruction of the resident's personal**  
21 **information.**
- 22 ~~(f)~~ (f) A person that knowingly or intentionally fails to comply with  
23 any provision of this section commits a deceptive act that is actionable  
24 only by the attorney general under this section.
- 25 ~~(g)~~ (g) The attorney general may bring an action under this section  
26 to obtain any or all of the following:  
27 (1) An injunction to enjoin further violations of this section.  
28 (2) A civil penalty of not more than five thousand dollars (\$5,000)  
29 per deceptive act.  
30 (3) The attorney general's reasonable costs in:  
31 (A) the investigation of the deceptive act; and  
32 (B) maintaining the action.
- 33 ~~(h)~~ (h) A failure to comply with subsection (b) or (c) in connection  
34 with related acts or omissions constitutes one (1) deceptive act.

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