

# ***State Data Breach Notification Statutes: Annual Review From The Bryan Cave Survey of Breach Notification Laws***

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*A Broader Perspective<sup>SM</sup>*

# Overview

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- Section 1: Tracking State Data Breach Statutes
- Section 2: State Statute Analysis
- Section 3: Changes to State Statutes in 2012
- Section 4: Real Word Application

# Section 1: Tracking State Data Breach Statutes

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- Evolution of state data breach statutes since 2003
- Bryan Cave's surveys of breaches
- Survey tracks differences in various state statutes
- Information concerning when notification is required, who to notify, timing of notification, government reporting requirements, and civil liability exposure, among others

## Section 2: State Statute Analysis – What Is Protected?

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- Alabama, Kentucky, New Mexico, and South Dakota are the only states without a data breach statute
- Of the states that do have statutes, all of them provide protections for name in combination with social security number, account number and access code, and/or driver's license
- A few progressive states protect name in combination with biometric data (IA, NE, NC, WI) or health records (TX, PR, MO, CA, AR)
- Only North Dakota protects name in combination with date of birth and/or mother's maiden name
- 42 states/territories require a materiality threshold, typically where breach "compromises confidentiality, integrity, or security"

# Access vs. Acquired

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- 32 states/territories require that data be “acquired” only
- 14 require data to be “accessed and acquired”
- New Jersey requires only “accessed,” Vermont requires “accessed or acquired,” and Massachusetts requires “access or used”

# Consumer Notification

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- Notification typically “most expeditious” but FL, OH, and WI require it within 45 days
- All except HI, NH, NC, TX, and WI require notification to affected state residents only
- Only 16 states/territories provide guidance concerning the content of the consumer notification
- Notification typically written or electronic, but most states provide for substitute notification where high cost of notification, large number of affected persons, or insufficient contact information
- Substitute notification typically by email, conspicuous posting on website, and notification of statewide media
- 26 states have express exception where entity consults with law enforcement and determines there is low risk of identity theft
- 33 states permit companies to rely on corporate notification policy

# Who else must be notified?

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- 29 states/territories require credit reporting agency notification
- Threshold number of consumers affected for required CRA notification typically 1,000, although MN requires it for 500, NY requires it for 5,000, and GA and TX require it for 10,000 consumers
- 18 states/territories require government notification in certain circumstances
- 9 states expressly provide for a private cause of action

## Section 3: Changes to State Statutes in 2012

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- Only 2 states amended their statutes: Connecticut and Vermont
- Connecticut: (1) Now obligated to notify the state AG; (2) Clarifies that notification requirements only apply to personal information of CT resident
- Vermont: (1) Identifies factors to determine whether PI has been acquired by an unauthorized person; (2) Notification required only when “unauthorized acquisition”; (3) Notification within 45 days; (4) Notification to AG; (5) Notice letter includes date of incident



## Section 4: Real World Example

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- Example: Company A's server is hacked, and the hacker obtains 400,000 records containing names and dates of birth of customers in all 50 states
- What are Company A's obligations?

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