

A.G. Schneiderman Announces SHIELD Act to Protect New Yorkers

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The [Stop Hacks and Improve Electronic Data Security Act](#) (SHIELD Act) was introduced in the New York legislature in early November and would amend New York's state breach notification law. The bill was announced after the release of a [New York Office of the Attorney General report](#) found a nearly 60% hike in data breaches affecting state residents in 2016 and following the Equifax breach in September, which A.G. Schneiderman is investigating.

Among other things, the SHIELD Act would:

- Require reasonable security for private information, using standards tailored to the size of the business, while avoiding duplicate regulations and providing incentive to businesses that certify security compliance and provides clear examples of safeguards (e.g., technical, administrative, and physical measures).
- Carve out "compliant regulated entities," which are defined as those already regulated by, and compliant with, existing or future regulations of any federal or NYS government entity (including NYS DFS cybersecurity regulations; regulations under Gramm-Leach-Bliley; HIPAA regulations) by deeming them compliant with this law's reasonable security requirement.
- Provide safe harbor from AG enforcement actions under this law for "certified compliant entities," (those with independent certification of compliance with aforementioned government data security regulations, or with ISO/NIST standards).
- Provide a more flexible standard for small business (less than 50 employees and under \$3 million in gross revenue; or less than \$5 million in assets): requiring reasonable safeguards "appropriate to the [small business's] size and complexity."

The proposed legislation broadens the current breach notification law in several ways. For example, it would apply to anyone holding private information of New Yorkers, rather than just those who "conduct business" in New York. In addition, it broadens the requirements for reporting a breach to

the Attorney General to those who “access” private information in addition to those who “acquire” private information. Finally, the proposed legislation would require notification for breaches of additional data types, including username-and-password combination, biometric data, and HIPAA-covered health data.

This legislation follows a trend at the state level as states refine their data security and breach notification statutes as the cyber landscape evolves. For example, the California Attorney General in 2016 refined California’s information security statute requiring the implementation of “reasonable security procedures and practices appropriate to the nature of the information” (see Cal. Civ. Code §1798.81.5(b)) by issuing guidance in its 2016 Data Breach Report recommending that this standard would be met with the implementation of the Center for Internet Security’s 20-item list of Security Controls. See <https://www.cisecurity.org/controls/>.

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