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The original instrument was prepared by Carla S. Roberts. The following digest, which does not constitute a part of the legislative instrument, was prepared by Linda Nugent.

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## DIGEST

Crowe (SB 506)

Present law provides relative to identity theft.

Proposed law provides that in order to protect the public from identity theft, personally identifying information collected, received, or used by a vendor pursuant to a contract with any department, office, or agency of the state or any political subdivision shall not be disclosed by the vendor except in the course of fulfilling its duties under the contract.

Proposed law provides that any personal identifying information submitted to or obtained by any vendor from any department, office, or agency of the state shall not be shared with any other person that is not authorized by the contract or without the express written permission of the person whose information was obtained or without an order of a court of competent jurisdiction directing such sharing.

Proposed law defines contract, person, personal identifying information, political subdivision, and vendor.

Present law provides that, effective January 1, 2004, each creditor, potential creditor, credit reporting agency, or other entity which violates the provisions of present law shall be liable to the victim of an identity theft for all of the documented out-of-pocket expenses caused by such creditor, potential creditor, credit reporting agency, or other entity and suffered by the victim as a result of the identity theft, plus reasonable attorney fees.

Proposed law retains present law but also provides that damages may also be awarded where a person is harmed by the distribution of the person's personally identifiable information.

Further provides that proposed law shall not apply to personal identifying information collected, received, or used by the operator of a nationwide financial filing, licensing or registry system, including Financial Industry Regulatory Authority, Nationwide Mortgage Licensing System and Registry, Central Registration Depository nor any such information subject to the Federal Driver Privacy Protection Act that is collected, received, or used by a vendor under contract with the Dept. of Public Safety and Corrections. Further states that proposed law shall not be used to deny a citizen a cause of action otherwise established in federal or state law.

Proposed law provides that it is the intent of the legislature that whenever citizens disclose personal identifying information to the state, or any department, office, agency of the state, that the state takes reasonable measures to ensure that the information is secure and protected.

Proposed law provides that each department, office, or agency of the state shall take reasonable measures to protect the personal identifying information which is submitted to the department, office, or agency by any person, whether such information is required by the department, office, or agency, or by law, or voluntarily submitted by the person in order to avail themselves of certain services provided by the state.

Proposed law provides that no later than January 1, 2015, each department, office, or agency of the state shall formulate a written policy as to the practices and protocols employed by the department, office, or agency to protect personal identifying information and shall submit that written policy to the commissioner of administration.

Proposed law provides that no later than March 1, 2015, each department, office, or agency of the state which maintains a website shall post on the website the written policy required by proposed law.

Proposed law provides that when a vendor enters into a contract with any department, office, or agency of the state, the vendor shall maintain any personal identifying information submitted to the vendor and shall not share that information with any other person, unless authorized by the contract, without the express written permission of the person whose information was submitted or obtained, or without an order of a court of competent jurisdiction directing such sharing.

Proposed law provides that any vendor who fails to secure the personal identifying information shall be subject to the provisions of proposed law.

Proposed law provides that any contract, or renewal of a contract, entered into on or after January 1, 2015, between any department, office, or agency of the state and a vendor shall contain a provision whereby the vendor acknowledges the provisions of proposed law and contains a hold harmless provision in favor of the department, office, agency of the state.

Proposed law requires that any contract, or renewal of a contract, entered into on or after January 1, 2015, between any department, office, or agency of the state and a vendor contain a provision whereby the vendor is required to provide liability insurance to cover any claims that may arise from the unauthorized distribution of personal identifying information and name the state and the contracting department, office, or agency of the state as an additional insured.

Proposed law provides that any contract, or renewal of a contract, entered into on or after January 1, 2015, between any department, office, or agency of the state and a vendor shall contain a clause which is the same or substantially the same as the following:

CONFIDENTIALITY: Any data which is transmitted or obtained by the vendor by virtue of this contract or agreement shall be kept secure. The vendor shall not use the data for any purpose not expressly permitted in this contract or agreement without the prior written approval of the department, office, or agency of the state. The vendor shall not publish any document, whether in paper copy or electronic form or otherwise disclose to any third party, any data or information in any form which would directly or indirectly

make the person's identity easily traceable without the prior written approval of the department, office, or agency.

The vendor acknowledges that he is bound by the provisions of proposed law for any unauthorized distribution of personal identifying information and that vendor agrees to hold harmless the department, office, or agency of the state for any unauthorized distribution of personal identifying information.

Effective August 1, 2014.

(Amends R.S. 9:3568(D); adds R.S. 9:3568(E) and (F), R.S. 49:1351-1354)

### Summary of Amendments Adopted by Senate

#### Committee Amendments Proposed by Senate Committee on Commerce, Consumer Protection, and International Affairs to the original bill

1. Provides for the protection of personal identifying information.
2. Requires that each department, office, or agency of the state shall protect personal identifying information and develop a written policy with practices and protocols for the protection of such information.
3. Prohibits vendors from sharing personal identifying information without the express written consent of the person unless authorized to share pursuant to the contract or ordered by a court.
4. Subjects a vendor who shares the personal identifying information to penalties.
5. Provides that a contract executed between a vendor and the state contain a hold harmless clause in favor of the state.
6. Requires contracts to contain provisions relative to the security of any personal identifying information obtained by a vendor.

#### Senate Floor Amendments to engrossed bill

1. Provides an exception for certain nationwide financial filing, licensing, or registry systems.
2. Provides an exception for information subject to the Federal Driver Privacy Protection Act collected by a vendor contracting with the Dept. of Public Safety

and Corrections.

3. Requires vendors under contract to have liability insurance covering claims of unauthorized distribution of information with the state as an additional insured.
4. Technical amendments.