

2018 Regular Session

HOUSE BILL NO. 888

BY REPRESENTATIVE JAY MORRIS

COMMERCIAL REGULATIONS: Creates the Internet and Social Media Data Protection Act

1 AN ACT

2 To enact Chapter 14 of Title 45 of the Louisiana Revised Statutes of 1950, to be comprised
3 of R.S. 45:1621 through 1626; relative to creating the Internet and Social Media Data
4 Protection Act; to provide for definitions; to require operators and social media
5 companies which collect certain information from residents of this state to provide
6 notice of certain provisions relating to the privacy of the information collected by the
7 operator or social media company; to provide for enforcement; to provide for
8 prohibitions and penalties; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Chapter 14 of Title 45 of the Louisiana Revised Statutes of 1950,
11 comprised of R.S. 45:1621 through 1626, is hereby enacted to read as follows:

12 CHAPTER 14. INTERNET AND SOCIAL MEDIA DATA PROTECTION ACT

13 §1621. Short title

14 This Chapter shall be known and may be cited as the "Internet and Social
15 Media Data Protection Act".

16 §1622. Legislative intent

17 It is the intent of the legislature to require a data collector identified and
18 described in this Chapter that maintains records containing covered personal
19 information of a resident of this state to implement and maintain reasonable security
20 measures and notice to protect such records.

1 §1623. Definitions

2 As used in this Chapter, the following terms and phrases have the meanings
3 herein ascribed to them, unless the context clearly otherwise indicates:

4 (1) "Consumer" means a person who seeks or acquires, by purchase or lease,
5 any good, service, money, or credit for personal, family, or household purposes from
6 an internet website or online service of an operator.

7 (2) "Covered personal information" means any one or more of the following
8 items of personally identifiable information about a consumer or user collected by
9 an operator or social media company through an internet website, online service,
10 social media website, or social networking website and maintained by the operator
11 or social media company in an accessible form:

12 (a) A first and last name.

13 (b) A home or other physical address which includes the name of a street and
14 the name of a city or town.

15 (c) An electronic mail address.

16 (d) A telephone number.

17 (e) A social security number.

18 (f) An identifier that allows the consumer or user to be contacted either
19 physically or online.

20 (g) Any other information concerning a consumer or user collected from the
21 person through the internet website, online service, social media website, or social
22 networking website of the operator or social media company and maintained by the
23 operator or social media company in combination with an identifier in a form that
24 makes the information personally identifiable.

25 (3) "Online service" means any of the following:

26 (a) An entity that provides an information service over the internet. The
27 term includes but is not limited to search engines, cloud storage services, and
28 application service providers.

1 **(b) An entity that provides unlimited access to information through the**
2 **internet.**

3 **(4)(a) "Operator" means a person or entity doing any of the following:**

4 **(i) Owning or operating an internet website or online service for commercial**
5 **purposes.**

6 **(ii) Collecting and maintaining covered personal information from**
7 **consumers who reside in this state and use or visit the internet website or online**
8 **service.**

9 **(iii) Purposefully directing its activities toward this state, consummating**
10 **some transaction with this state, or a resident thereof, or purposefully availing itself**
11 **of the privilege of conducting activities in this state.**

12 **(b) For the purposes of this Chapter, operator also means a person or entity**
13 **using social media marketing.**

14 **(5) "Social media company" means a company that provides a user access**
15 **to a social media website or social networking website.**

16 **(6) "Social media marketing" means the use of social media websites or**
17 **social networking websites to market a company's products and services, providing**
18 **companies with ways to reach new consumers, engage with existing consumers, and**
19 **promote its desired culture, mission, or tone. The term includes "digital marketing"**
20 **and "e-marketing" utilizes purpose-built data analytics tools to allow marketers to**
21 **track the success of their efforts.**

22 **(7) "Social media website" and "social networking website" mean internet**
23 **websites and applications that enable users to create and share content, participate**
24 **in social networking, or that serve the primary purpose of facilitating social**
25 **interaction with other users of the website and has all of the following capabilities:**

26 **(a) Allows users to create web pages or profiles about themselves that are**
27 **available to the general public or to any other users.**

28 **(b) Offers a mechanism for communication among users.**

1 (8) "Use" means to create a profile on a social media website or social
2 networking website, or a user's contact or attempt to contact other users of the social
3 media website or social networking website.

4 (9) "User" means a person who creates a profile for use as described in
5 Paragraph (8) of this Section.

6 §1624. Required notice to consumers or users

7 A. Except as otherwise provided in Subsection C of this Section, an operator
8 or social media company shall make available, in a manner reasonably calculated to
9 be accessible by consumers or users whose covered personal information the
10 operator or social media company collects through its internet website, online
11 service, social media website, or social networking website (hereinafter referred to
12 in this Chapter as "internet or social media service"), a notice to the consumer or user
13 that does each of the following:

14 (1) Identifies the categories of covered personal information the operator or
15 social media company collects through its internet or social media service about
16 consumers or users who use or visit the internet or social media service, and the
17 categories of third parties with whom the operator or social media company may
18 share such covered personal information.

19 (2) Provides a description of the process, if any such process exists, for an
20 individual consumer or user who uses or visits the internet or social media service
21 to review and request changes to any of the individual's covered personal
22 information that is collected through the internet or social media service.

23 (3) Describes the process by which the operator or social media company
24 notifies consumers or users who use or visit the internet or social media service of
25 material changes to the notice required to be made available pursuant to the
26 provisions of this Subsection.

27 (4) Discloses whether a third party may collect covered personal information
28 about an individual consumer's or user's online activities over time and across

1 different internet or social media services when the consumer or user uses the
2 internet or social media service of the operator or social media company.

3 (5) States the effective date of the notice.

4 B. An operator or social media company may remedy any failure to comply
5 with the provisions of Subsection A of this Section within thirty days of the date of
6 being informed of such failure.

7 §1625. Violations; prohibitions

8 An operator or social media company as defined in this Chapter is in
9 violation of the provisions of R.S. 45:1624 when such operator or social media
10 company does either of the following:

11 (1) Knowingly and willfully fails to remedy a failure to comply with the
12 provisions of R.S. 45:1624 within thirty days from the date of being informed of
13 such failure.

14 (2) Makes available a notice pursuant to R.S. 45:1624 containing
15 information which constitutes a knowing and material misrepresentation or omission
16 that is likely to mislead a consumer or user acting reasonably under the
17 circumstances, to the detriment of the consumer or user.

18 §1626. Enforcement; prohibitions; civil penalties

19 A. The attorney general shall enforce the provisions of this Chapter.

20 (1) If the attorney general has reason to believe that an operator or social
21 media company, either directly or indirectly, has violated the provisions of R.S.
22 45:1624 or 1625, he may institute an appropriate legal proceeding against such
23 operator or social media company. The district court for the parish in which the
24 violation occurs, upon a showing that the operator or social media company either
25 directly or indirectly has violated or is violating R.S. 45:1624 or 1625, may do either
26 of the following:

27 (a) Issue a temporary or permanent injunction.

28 (b) Impose a civil penalty not to exceed five thousand dollars for each
29 violation.

1 B.(1) The provisions of this Chapter do not establish a private right of action
2 for a consumer or user against an operator or social media company.

3 (2) Notwithstanding the provisions of this Section, the provisions of this
4 Section are not exclusive and are in addition to any other remedies provided by law.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 888 Original

2018 Regular Session

Jay Morris

Abstract: Creates the Internet and Social Media Data Protection Act.

Proposed law provides that the intent of the legislature is to require a data collector identified and described in proposed law, that maintains records containing covered personal information of a resident of this state, to implement and maintain reasonable security measures, and to provide certain notice regarding such records.

Proposed law defines "consumer", "covered personal information", "online service", "operator", "social media website" and "social networking website", "social media company", "social media marketing", "use", and "user".

Proposed law requires an operator or social media company to make available, in a manner reasonably calculated to be accessible by consumers or users whose covered personal information the operator or social media company collects through its internet website, online service, social media website, or social networking website (hereinafter referenced as "internet or social media service"), a notice to the consumer or user that does each of the following:

(1) Identifies the categories of covered personal information the operator or social media company collects through its internet or social media service about consumers or users who use or visit the internet or social media service, and the categories of third parties with whom the operator or social media company may share such covered personal information.

(2) Provides a description of the process, if any such process exists, for an individual consumer or user who uses or visits the internet or social media service to review and request changes to any of the individual's covered personal information that is collected through the internet or social media service.

(3) Describes the process by which the operator or social media company notifies consumers or users who use or visit the internet or social media service of material changes to the notice required to be made available.

(4) Discloses whether a third party may collect covered personal information about an individual consumer's or user's online activities over time and across different internet or social media services when the consumer or user uses the internet or social media service of the operator or social media company.

(5) States the effective date of the notice.

Proposed law authorizes an operator or social media company to remedy any failure to provide notice within 30 days of the date of being informed of such failure.

Proposed law provides that an operator or social media company is in violation of proposed law when such operator or social media company does either of the following:

- (1) Knowingly and willfully fails to remedy a failure to comply with the provisions of proposed law within 30 days from the date of being informed of such failure.
- (2) Makes available a notice containing information which constitutes a knowing and material misrepresentation or omission that is likely to mislead a consumer or user acting reasonably under the circumstances, to the detriment of the consumer or user.

Proposed law provides for the attorney general to enforce the provisions of proposed law. Provides if the attorney general has reason to believe that an operator or social media company, either directly or indirectly, has violated the provisions of proposed law, he may institute an appropriate legal proceeding against such operator or social media company to do any of the following:

- (1) Issue a temporary or permanent injunction.
- (2) Impose a civil penalty not to exceed \$5,000 for each violation.

Proposed law provides for the action to be filed in the district court of the parish in which the violation occurs, upon a showing that the operator or social media company either directly or indirectly violated or is violating proposed law.

The provisions of proposed law do not establish a private right of action for a consumer or user against an operator or social media company.

Proposed law provides that the remedies in proposed law are not exclusive and are in addition to any other remedies provided by law

(Adds R.S. 45:1621-1626)