Regular Session, 2014

SENATE BILL NO. 506

BY SENATOR CROWE

IDENTITY DATA. Provides relative to nondisclosure of personal identifying information. (8/1/14)

1   AN ACT

2   To amend and reenact R.S. 9:3568(D) and to enact R.S. 9:3568(E) and (F) and Chapter 21

3   of Title 49 of the Louisiana Revised Statutes of 1950, to be comprised of R.S.

4   49:1351 through 1354, relative to identity theft; to provide for personal identifying

5   information; to prohibit the unauthorized disclosure of certain personal identifying

6   information by certain vendors; to require state entities to develop a policy related

7   to the protection of personal identifying information; to provide for definitions; to

8   require certain provisions in certain contracts; and provide for related matters.

9   Be it enacted by the Legislature of Louisiana:

10   Section 1. R.S. 9:3568(D) is hereby amended and reenacted and R.S. 9:3568(E) and

11   (F) are hereby enacted to read as follows:

12   §3568. Identity theft**; creditors; security alerts; unauthorized distribution of**

13   **personal identifying information by vendors**

14   *   *   *

15   **D.(1)(a) In order to protect the public from identity theft, any personally**

16   **identifying information collected, received, or used by a vendor pursuant to a**

17   **contract with any department, office, or agency of the state or any political**

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1   **subdivision shall not be disclosed by the vendor except in the course of fulfilling**

2   **its duties under the contract.**

3   **(b) Any personal identifying information submitted to or obtained by**

4   **any vendor from any department, office, or agency of the state shall not be**

5   **shared with any other person that is not authorized by the contract or without**

6   **the express written permission of the person whose information was submitted**

7   **or obtained, or without an order of a court of competent jurisdiction directing**

8   **such sharing.**

9   **(2) As used in this Subsection:**

10   **(a)   "Contract" means an obligation of contract, agreement,**

11   **memorandum of understanding, memorandum of agreement, or any such**

12   **device, whether written or oral.**

13   **(b) "Person" means any individual, partnership, association, joint stock**

14   **association, trust, corporation, or other business entity whether incorporated**

15   **or not.**

16   **(c)   "Personal identifying information" means that information as**

17   **provided for in R.S. 14:67.16(3).**

18   **(d) "Political subdivision" means any political subdivision as provided**

19   **for in Article VI of the Constitution of Louisiana and as defined in Article VI,**

20   **Section 44 of the Constitution of Louisiana.**

21   **(e) "Vendor" means any person, individual, partnership, association,**

22   **joint stock association, trust, corporation, or other business entity, whether**

23   **incorporated or not, who meets all of the following criteria:**

24   **(i)   Contracts with any department, office, agency of the state or any**

25   **political subdivision.**

26   **(ii) Is not a department, office, or agency of the state, or any political**

27   **subdivision of the state, or a department, office, or agency of the federal**

28   **government.**

29   **(iii) Agrees to provide any service to or on behalf of any department,**

1   **office, agency of the state or any political subdivision.**

2   **(iv) Collects, receives, or uses any personal identifying information**

3   **regarding any other person as a result of the contract with the department,**

4   **office, agency of the state or any political subdivision.**

5   **E.(1) The provisions of Subsection D of this Section shall not apply to**

6   **any personal identifying information collected, received or used by the operator**

7   **of a nationwide financial filing, licensing or registry system including any of the**

8   **following:**

9   **(a) Financial Industry Regulatory Authority.**

10   **(b) Nationwide Mortgage Licensing System and Registry.**

11   **(c) Central Registration Depository.**

12   **(2) The provisions of Subsection D of this Section shall not apply to any**

13   **personal identifying information which is subject to the Federal Driver Privacy**

14   **Protection Act, 18 U.S.C. 2721, et seq., that is collected, received, or used by a**

15   **vendor pursuant to a contract with the Department of Public Safety and**

16   **Corrections.**

17   **(3) Nothing in this Paragraph shall be deemed to deny any citizen a**

18   **cause of action otherwise established in federal law or state statute.**

19   ~~D~~**F**. Damages. Effective January 1, 2004, each creditor, potential creditor,

20   credit reporting agency, or other entity**, including those vendors provided for in**

21   **Subsection D of this Section,** which violates the provisions of this Part shall be

22   liable to the victim of an identity theft for all of the documented out-of-pocket

23   expenses caused by such creditor, potential creditor, credit reporting agency, or other

24   entity and suffered by the victim as a result of the identity theft, plus reasonable

25   attorney fees.

26   Section 2. Chapter 21 of Title 49 of the Louisiana Revised Statutes of 1950,

27   to be comprised of R.S. 49:1351 through 1354 is hereby enacted to read as follows:

28   **CHAPTER 21. PROTECTION OF PERSONAL**

29   **IDENTIFYING INFORMATION**

1   **§1351. Legislative Intent**

2   **It is the intent of the legislature that whenever citizens disclose personal**

3   **identifying information to the state, or any department, office, agency of the**

4   **state, that the state takes reasonable measures to ensure that the information**

5   **is secure and protected.**

6   **§1352. Definitions**

7   **The terms used in this Section shall have the same meaning as the**

8   **definitions used in R.S. 9:3568(D)(2).**

9   **§1353. Personal identifying information; security; policy; definitions**

10   **A. Each department, office, or agency of the state shall take reasonable**

11   **measures to protect the personal identifying information which is submitted to**

12   **the department, office, or agency by any person, whether such information is**

13   **required by the department, office, or agency, or by law, or voluntarily**

14   **submitted by the person in order to avail themselves of certain services**

15   **provided by the state.**

16   **B. No later than January 1, 2015, each department, office, or agency of**

17   **the state shall formulate a written policy as to the practices and protocols**

18   **employed by the department, office, or agency to protect personal identifying**

19   **information and shall submit that written policy to the commissioner of**

20   **administration.**

21   **C. No later than March 1, 2015, each department, office, or agency of**

22   **the state which maintains a website shall post on the website the written policy**

23   **required by Subsection B of this Section.**

24   **§1354. Requirement of vendors**

25   **A. When a vendor enters into a contract with any department, office, or**

26   **agency of the state, the vendor shall maintain any personal identifying**

27   **information submitted to the vendor and shall not share that information with**

28   **any other person, unless authorized by the contract, without the express written**

29   **permission of the person whose information was submitted or obtained, or**

1   **without an order of a court of competent jurisdiction directing such sharing.**

2   **B. Any vendor who fails to secure the personal identifying information**

3   **as provided for in Subsection A of this Section shall be subject to the provisions**

4   **of R.S. 9:3568(E).**

5   **C.(1) Any contract, or renewal of a contract, entered into on or after**

6   **January 1, 2015, between any department, office, or agency of the state and a**

7   **vendor shall contain a provision whereby the vendor acknowledges the**

8   **provisions of R.S. 9:3568(D) and contains a provision whereby the vendor**

9   **agrees to hold harmless, protect, defend, and indemnify the state of Louisiana**

10   **and the contracting department, office, agency of the state.**

11   **(2) Any contract, or renewal of a contract, entered into on or after**

12   **January 1, 2015, between any department, office, or agency of the state and a**

13   **vendor shall contain a provision whereby the vendor is required to provide a**

14   **liability policy of insurance to cover any claims that may arise from the**

15   **unauthorized distribution of personal identifying information and shall name**

16   **the state of Louisiana and the contracting department, office, or agency of the**

17   **state as an additional insured.**

18   **(3) Any contract, or renewal of a contract, entered into on or after**

19   **January 1, 2015, between any department, office, or agency of the state and a**

20   **vendor shall contain a clause which is the same or substantially the same as the**

21   **following:**

22   **CONFIDENTIALITY**

23   **Any data which is transmitted or obtained by the vendor by virtue of this**

24   **contract or agreement shall be kept secure. The vendor shall not use the data**

25   **for any purpose not expressly permitted in this contract or agreement without**

26   **the prior written approval of the department, office, or agency of the state. The**

27   **vendor shall not publish any document, whether in paper copy or electronic**

28   **form or otherwise disclose to any third party, any data or information in any**

29   **form which would directly or indirectly make the person's identity easily**

1   **traceable without the prior written approval of the department, office, or**

2   **agency.**

3   **The vendor acknowledges that he is bound by the provisions of R.S.**

4   **9:3568(D) for any unauthorized distribution of personal identifying information**

5   **and that vendor agrees to hold harmless the department, office, or agency of the**

6   **state for any unauthorized distribution of personal identifying information.**

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.

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)

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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.