
The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Camille Sebastien Perry.

DIGEST

Donahue (SB 65)

Proposed law requires that a party specifically request production of electronically stored information and specify the form in which it is to be produced in order to obtain discovery of such information. Proposed law requires that a request for electronically stored information set forth the specific claims or defenses contained in the pleadings to which the requested discovery is relevant and that the information produced is responsive to the request and accessible to the responding party in its ordinary course of business.

Proposed law requires a responding party to state a timely objection with reasons if the party is unable through reasonable efforts to retrieve the data or information requested or produce it in the form requested. Authorizes the court to order that the requesting party pay the reasonable expenses of any extraordinary steps required to retrieve and produce the information if the court orders the responding party to comply with the request.

Proposed law exempts a party from providing discovery of electronically stored information from sources not reasonably accessible because of undue burden or cost and requires the responding party to show that the information is not reasonably accessible because of undue burden or cost by motion to compel discovery or for a protective order.

Proposed law provides that even if it is shown that a source of electronically stored information is not reasonably accessible, a requesting party may still obtain discovery by showing good cause and the court may also specify other conditions for discovery and also may require the requesting party to pay the costs associated with the retrieval of such information.

Present law provides that sanctions are generally not available against a person who fails to provide electronically stored information which was lost as a result of the routine, good-faith operation of an electronic information system.

Proposed law changes present law by prohibiting sanctions for the loss or destruction of electronically stored information unless such loss or destruction is the result of intentional concealment or reckless action by the responding party.

Proposed law directs the Louisiana State Law Institute to prepare revision comments to the provisions of proposed law.

Effective August 15, 2009.

(Amends C.C.P.Art. 1471(B); Adds C.C.P. Art. 1461.1)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary A to the original bill.

1. Changes "directly relevant" to "relevant" in providing that request for electronically stored information set forth the claims or defenses to which the discovery is relevant.
2. Changes "reasonably available" to "reasonably accessible."
3. Authorizes rather than requires the court to order a requesting party to pay the reasonable expenses or costs associated with the retrieval of requested information.
4. Deletes sentence "A responding party has no duty to preserve information that is not reasonably accessible, absent agreement of the parties or the entry of an order requiring such preservation after sufficient notice to the responding party."