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DIGEST

Crowe

SB 506

Present law provides relative to identity theft.

Proposed law makes certain technical changes to both present and proposed law.

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, 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.

Proposed law provides that the provisions of both proposed and present law are not made applicable to certain provisions and entities governed by federal law.

Present law provides that 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 provides that damages may also be awarded where a person is harmed by a vendor's 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 present law (R.S. 51:3074).

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, or agency of the state, provided that the security breach was not caused by the department, office, or agency of the state.

Proposed law requires the Division of Administration to establish policy and guidelines regarding insurance requirements for 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 and may require a vendor to provide a policy of insurance to cover any claims that may arise from the unauthorized distribution of personal identifying information.

Proposed law requires 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, in which the scope of the supplies or services provided by the vendor requires the vendor to maintain personal identifying information to contain a clause tailored to the nature and scope of the contract setting forth the obligations of the vendor to protect personal identifying information.

Proposed law provides an example of the clause entitled "Confidentiality".

Proposed law provides that the provisions of proposed law are not made applicable to certain provisions and entities governed by federal law.

Nothing in present or proposed law shall be construed or deemed to deny the legislative auditor access to any data or information required pursuant to present law.

Effective August 1, 2014.

(Amends R.S. 9:3568(C)(1) and (D); Adds R.S. 9:3568(E) and (F) and 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.

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Commerce to the reengrossed bill.

1. Made technical changes to both present and proposed law.
2. Added that the provisions of both present and proposed law are not made applicable to certain provisions and entities governed by federal law.
3. Changed proposed law to require any vendor who fails to secure a person's personal identifying information to provide certain notification requirements pursuant to present law (R.S. 51:3074).
4. Added that the vendor agrees to hold harmless, protect, defend, and indemnify the state of Louisiana and the contracting department, office, or agency of the state, provided that the security breach was not caused by the department, office, or agency the state.
5. Added a requirement for the Division of Administration to establish policy and guidelines regarding insurance requirements for any contract or contract renewal between the state and a vendor entered into on or after January 1, 2015, and further added that a vendor may be required to provide a policy of insurance to cover any claims arising from the vendor's unauthorized distribution of personal identifying information.

6. Added a requirement for any contract or contract renewal entered into on or after January 1, 2015, between the state and a vendor, to contain a clause tailored to the nature and scope of the contract setting forth the obligations of the vendor to protect personal identifying information.
7. Added that no provision of present or proposed law shall be construed or deemed to deny the legislative auditor access to any data or information required pursuant to present law (R.S. 24:513, et seq).