HB366

RZAENYN-1

By Representative Sells

RFD: Judiciary

First Read: 21-Mar-24

SYNOPSIS:

Under existing law, covered entities are required to implement and maintain reasonable security measures to protect sensitive personally identifying information against breaches of security. A covered entity that fails to notify an individual whose sensitive personally identifying information has been exposed in a breach of security commits an unlawful trade practice.

This bill would provide that a covered entity commits an unlawful trade practice if the covered entity suffers a data breach that includes sensitive personally identifying information, precise location data, and proprietary network information, and the covered entity did not have reasonable security measures in place at the time of the breach.

Section 111.05 of the Constitution of Alabama of 2022, prohibits a general law whose purpose or effect would be to require a new or increased expenditure of local funds from becoming effective with regard to a local governmental entity without enactment by a 2/3 vote unless: it comes within one of a number of specified exceptions; it is approved by the affected entity; or the Legislature appropriates funds, or provides a local source of revenue, to the entity for

the purpose.

The purpose or effect of this bill would be to require a new or increased expenditure of local funds within the meaning of the section. However, the bill does not require approval of a local governmental entity or enactment by a 2/3 vote to become effective because it comes within one of the specified exceptions contained in the section.

A BILL

TO BE ENTITLED

AN ACT

Relating to the Alabama Data Brach Notification Act of 2018; to amend Section 8-38-2, Code of Alabama 1975; to define additional terms; to add Section 8-38-13 to the Code of Alabama 1975; to further provide for certain types of data breach; to provide criminal penalties for a violation; and in connection therewith would have as its purpose or effect the requirement of a new or increased expenditure of local funds within the meaning of Section 111.05 of the Constitution of Alabama of 2022.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 8-38-2, Code of Alabama 1975, is amended to read as follows:

"§8-38-2

For the purposes of this chapter, the following terms

have the following meanings:

(1) BREACH OF SECURITY or BREACH. The unauthorized acquisition of data in electronic form containing sensitive personally identifying information. Acquisition occurring over a period of time committed by the same entity constitutes one breach. The term does not include any of the following:

a. Good faith acquisition of sensitive personally identifying information by an employee or agent of a covered entity, unless the information is used for a purpose unrelated to the business or subject to further unauthorized use.

b. The release of a public record not otherwise subject to confidentiality or nondisclosure requirements.

c. Any lawful investigative, protective, or intelligence activity of a law enforcement or intelligence agency of the state, or a political subdivision of the state.

(2) COVERED ENTITY. A person, sole proprietorship, partnership, government entity, corporation, nonprofit, trust, estate, cooperative association, or other business entity that acquires or uses sensitive personally identifying information.

(3) DATA IN ELECTRONIC FORM. Any data stored electronically or digitally on any computer system or other database, including, but not limited to, recordable tapes and other mass storage devices.

(4) GOVERNMENT ENTITY. The state, a county, or a municipality or any instrumentality of the state, a county, or a municipality.

(5) INDIVIDUAL. Any Alabama resident whose sensitive personally identifying information was, or the covered entity

reasonably believes to have been, accessed as a result of the breach.

(6) PRECISE LOCATION DATA. Information that describes the precise geographic location of a device derived through any technology that is capable of determining with reasonable specificity the actual physical location of the device, including, but not limited to, GPS level latitude-longitude coordinates or location-based radio frequency signal triangulation.

(7) PROPRIETARY NETWORK INFORMATION. Information that relates to the quantity, technical configuration, type, destination, location, or amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship.

~~(6)~~ (8) SENSITIVE PERSONALLY IDENTIFYING INFORMATION.

a. Except as provided in paragraph b., an Alabama resident's first name or first initial and last name in combination with one or more of the following with respect to the same Alabama resident:

1. A non-truncated Social Security number or tax identification number.

2. A non-truncated ~~driver's~~ driver license number, state-issued identification card number, passport number, military identification number, or other unique identification number issued on a government document used to verify the identity of a specific individual.

3. A financial account number, including a bank account number, credit card number, or debit card number, in combination with any security code, access code, password, expiration date, or PIN, that is necessary to access the financial account or to conduct a transaction that will credit or debit the financial account.

4. Any information regarding an individual's medical history, mental or physical condition, or medical treatment or diagnosis by a health care professional.

5. An individual's health insurance policy number or subscriber identification number and any unique identifier used by a health insurer to identify the individual.

6. A user name or email address, in combination with a password or security question and answer that would permit access to an online account affiliated with the covered entity that is reasonably likely to contain or is used to obtain sensitive personally identifying information.

b. The term does not include either of the following:

1. Information about an individual which has been lawfully made public by a federal, state, or local government record or a widely distributed media.

2. Information that is truncated, encrypted, secured, or modified by any other method or technology that removes elements that personally identify an individual or that otherwise renders the information unusable, including encryption of the data, document, or device containing the sensitive personally identifying information, unless the covered entity knows or has reason to know that the encryption

key or security credential that could render the personally identifying information readable or useable has been breached together with the information.

~~(7)~~ (9) THIRD-PARTY AGENT. An entity that has been contracted to maintain, store, process, or is otherwise permitted to access sensitive personally identifying information in connection with providing services to a covered entity."

Section 2. Section 8-38-13 is added to the Code of Alabama 1975, to read as follows:

§8-38-13

A covered entity commits an unlawful trade practice under Chapter 19, the Alabama Deceptive Trade Practices Act, if both of the following occur:

(1) The covered entity suffers a breach of security that includes sensitive personally identifying information, precise location data, and proprietary network information.

(2) At the time of the breach of security, the covered entity did not have reasonable security measures in place, as described in Section 8-38-3.

Section 3. Although this bill would have as its purpose or effect the requirement of a new or increased expenditure of local funds, the bill is excluded from further requirements and application under Section 111.05 of the Constitution of Alabama of 2022, because the bill defines a new crime or amends the definition of an existing crime.

Section 4. This act shall become effective on October 1, 2024.