

HB366 INTRODUCED



1 HB366
2 RZAENYN-1
3 By Representative Sells
4 RFD: Judiciary
5 First Read: 21-Mar-24



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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



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29 the purpose.

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

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A BILL

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TO BE ENTITLED

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AN ACT

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43 Relating to the Alabama Data Breach Notification Act of
44 2018; to amend Section 8-38-2, Code of Alabama 1975; to define
45 additional terms; to add Section 8-38-13 to the Code of
46 Alabama 1975; to further provide for certain types of data
47 breach; to provide criminal penalties for a violation; and in
48 connection therewith would have as its purpose or effect the
49 requirement of a new or increased expenditure of local funds
50 within the meaning of Section 111.05 of the Constitution of
51 Alabama of 2022.

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BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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Section 1. Section 8-38-2, Code of Alabama 1975, is

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amended to read as follows:

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"§8-38-2

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For the purposes of this chapter, the following terms



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57 have the following meanings:

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

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

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

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

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

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

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

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



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

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

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

101 ~~(6)~~ (8) SENSITIVE PERSONALLY IDENTIFYING INFORMATION.

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

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

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



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

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

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

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

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

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

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



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

144 ~~(7)~~ (9) THIRD-PARTY AGENT. An entity that has been
145 contracted to maintain, store, process, or is otherwise
146 permitted to access sensitive personally identifying
147 information in connection with providing services to a covered
148 entity."

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

151 §8-38-13

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

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

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

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

167 Section 4. This act shall become effective on October
168 1, 2024.