

Regular Session, 2014

HOUSE BILL NO. 971

BY REPRESENTATIVE HENRY

PUBLIC RECORDS: Creates the Personal Information Protection Act

1 AN ACT

2 To enact Part II-A of Chapter 1 of Title 44 of the Louisiana Revised Statutes of 1950, to be
3 comprised of R.S. 44:43 through 46, relative to information collected by or in the
4 custody or control of a public body or its agents; to create and provide for the
5 Personal Information Protection Act; to provide for standards, procedures, and
6 requirements for the protection of personal information; to provide exceptions; to
7 provide for liability; to provide for penalties; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. Part II-A of Chapter 1 of Title 44 of the Louisiana Revised Statutes of
10 1950, comprised of R.S. 44:43 through 46, is hereby enacted to read as follows:

11 PART II-A. PERSONAL INFORMATION PROTECTION ACT

12 §43. Short title; purpose

13 A. This Part shall be known and may be cited as the "Personal Information
14 Protection Act".

15 B. The legislature recognizes that a public body occasionally needs to collect
16 personal information from individuals for governmental purposes and for the
17 exercise of governmental functions, but also recognizes the fundamental right to
18 privacy of every person.

19 C. The legislature further recognizes the right of individuals to protect their
20 personal information and to expect each public body and its agents to respect and

1 protect the privacy of their personal information and to only collect and use the
2 personal information necessary to fulfill the lawfully established governmental
3 functions and duties of the public body.

4 D. The legislature recognizes that the misuse of personal information can
5 result in significant harm to individuals, including but not limited to identity theft,
6 fraud, and threats to financial and physical security.

7 §44. Definitions

8 As used in this Part, the following phrases shall have the following meanings:

9 (1) "Express, informed consent" shall mean that the individual, or if a minor,
10 his parent or legal guardian, is informed of the reasons why the collection of the
11 information is necessary, how the information will be used, and how and with whom
12 the information will be shared and after receiving such information in a manner that
13 allows for consideration and deliberation, gives consent for the personal information
14 to be collected.

15 (2) "Personal information" means any representation of information or
16 descriptors that either individually or in combination permit an individual to be
17 identified, located, or contacted and includes an individual's name, address, social
18 security number or other identifying number or code, telephone number, electronic
19 mail address, gender, race or ethnicity, date of birth, birthplace, photograph or image,
20 biometric record, religious affiliation or beliefs, financial information, and relatives
21 and the identification of persons living in the same household as the individual.

22 §45. Responsibility; duty; prohibitions; restrictions

23 A. A public body, including its officials, employees, and agents, shall be
24 responsible for the personal information under its control, including information that
25 is not in the immediate custody of the public body.

26 B. Each official, employee, and agent of a public body shall safeguard the
27 personal information under the control of the public body and shall respect the
28 sensitive nature of personal information.

1 C. No official, employee, or agent of a public body shall require the
2 submission of or collect any personal information, unless the personal information
3 is required by law to be collected and is required for the official, employee, or agent
4 to perform the lawfully established governmental functions and duties of the public
5 body.

6 D. No official, employee, or agent of a public body shall collect any personal
7 information without the express, informed consent of the individual, or if the
8 individual is a minor, of his parent or legal guardian. Proof of consent shall be
9 required.

10 E. No official, employee, or agent of a public body shall engage in any
11 conduct that would permit or encourage any unauthorized viewing, use, or sharing
12 of personal information.

13 F. No official, employee, or agent of a public body shall use, authorize the
14 use of, or facilitate the collection or use of personal information for any purpose
15 other than a lawfully established governmental purpose of the public body.

16 G. No official, employee, or agent of a public body shall authorize, cause,
17 or facilitate the transmittal or transfer of any personal information to any location
18 or source outside the boundaries of the state except as specifically authorized by law
19 or to fulfill the terms of a valid interstate compact authorized by law.

20 H. No official, employee, or agent of a public body shall release or disclose
21 personal information without the express, informed consent of the individual, or if
22 the individual is a minor, of his parent or legal guardian. Proof of consent shall be
23 required.

24 I. Nothing in this Part shall be construed to require any consent for the
25 collection, release, or sharing, or to prohibit the collection, release, or sharing, of any
26 of the following:

27 (1) The name, title or position, or salary or other compensation information
28 regarding a public official or public employee or any information regarding the
29 public office of the public official or the public employment of the public employee

1 that is otherwise a public record subject by law to inspection, copying, or
2 reproduction.

3 (2) Any information contained on a report filed pursuant to the Campaign
4 Finance Disclosure Act, the Code of Governmental Ethics, or the laws relative to the
5 regulation of lobbying, or concerning any violation of law within the jurisdiction of
6 the Board of Ethics.

7 (3) Any information required to be maintained on the State Sex Offender and
8 Child Predator Registry and any information required to be contained in notifications
9 regarding sex offenders and child predators.

10 (4) The name, description, photograph, and any other information regarding
11 an individual wanted for questioning in connection with the commission of a crime,
12 suspected of the commission of a crime, or convicted of a crime.

13 §46. Penalties; remedies; liability

14 A. Any official, employee, or agent of a public body who violates any
15 provision of this Part shall be subject to a civil penalty in an amount not less than one
16 thousand dollars and not more than five thousand dollars payable to the individual
17 whose personal information was collected, released, or misused in violation of this
18 Part.

19 B.(1) In addition to the penalties in Subsection A of this Section and any
20 other applicable penalties or remedies provided by law, any individual whose
21 personal information is collected, released, or misused in violation of this Part may
22 assert that violation as a claim or defense in a judicial proceeding and obtain
23 appropriate relief, including but not limited to:

24 (a) Injunctive relief, protective order, writ of mandamus or prohibition, or
25 declaratory relief to prevent any violation of this Part.

26 (b) Actual damages, reasonable attorney fees, and costs.

27 (2) Any official, employee, or agent of a public body who intentionally
28 violates any provision of this Part shall be personally liable for the court costs and
29 any actual damages of the individual whose personal information was collected,
30 released, or misused in violation of this Part.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Henry

HB No. 971

Abstract: Creates the Personal Information Protection Act, by requiring a public body and its officials, employees, and agents to receive express, informed consent before collecting or releasing personal information and establishing certain prohibitions, including prohibiting an official, employee, or agent of a public body from using, authorizing, or facilitating the use of personal information for any purpose other than the governmental purpose of the public body. Provides for penalties and liability for damages.

Present law (Public Records Law, R.S. 44:1, et seq.) provides that all books, records, writings, accounts, letters and letter books, maps, drawings, photographs, cards, tapes, recordings, memoranda, and papers, and all copies, duplicates, photographs, including microfilm, or other reproductions thereof, or any other documentary materials, regardless of physical form or characteristics, including information contained in electronic data processing equipment, having been used, being in use, or prepared, possessed, or retained for use in the conduct, transaction, or performance of any business, transaction, work, duty, or function which was conducted, transacted, or performed by or under the authority of the constitution or laws of the state, or by or under the authority of any ordinance, regulation, mandate, or order of any public body or concerning the receipt or payment of any money received or paid by or under the authority of the constitution or the laws of the state, are "public records". Present law establishes the framework for the ready availability of public records to requesting persons, and specifically provides that it is the duty of the custodian of the public records for a public entity or agency to provide copies to persons so requesting. Present law provides for certain exceptions, exemptions, and limitations. Present law further specifies that any exception, exemption, and limitation to the laws pertaining to public records not provided for in the Public Records Law or in the constitution shall have no effect.

Present law defines "public body" as any branch, department, office, agency, board, commission, district, governing authority, political subdivision, or any committee, subcommittee, advisory board, or task force thereof, any other instrumentality of state, parish, or municipal government, including a public or quasi-public nonprofit corporation designated as an entity to perform a governmental or proprietary function, or an affiliate of a housing authority.

Proposed law provides for the "Personal Information Protection Act" as follows:

- (1) Recognizes the need to collect personal information for governmental purposes and for the exercise of governmental functions, but also recognizes the fundamental right to privacy of every person and the right of individuals to protect their personal information and to expect each public body and its agents to respect and protect the privacy of their personal information and to only collect and use the personal information necessary to fulfill the lawfully established governmental functions and duties of the public body. Recognizes that the misuse of personal information can result in significant harm to individuals, including but not limited to identity theft, fraud, and threats to financial and physical security.

- (2) Defines "express, informed consent" as meaning that the individual, or if a minor, his parent or legal guardian, is informed of the reasons why the information is necessary, how the information will be used, and how and with whom the information will be shared and after receiving such information in a manner that allows for consideration and deliberation, gave consent for the personal information to be collected. Defines "personal information" as any representation of information or descriptors that either individually or in combination permit an individual to be identified, located, or contacted and includes an individual's name, address, social security number or other identifying number or code, telephone number, electronic mail address, gender, race or ethnicity, date of birth, birthplace, photograph or image, biometric record, religious affiliation or beliefs, financial information, and relatives and the identification of persons living in the same household as the individual.
- (3) Provides that a public body, including its officials, employees, and agents, shall be responsible for the personal information under the public body's control, including information that is not in the immediate custody of the public body and requires that the personal information under its control be safeguarded and the sensitive nature of the personal information be respected.
- (4) Prohibits an official, employee, or agent of a public body from requiring the submission of or collection of any personal information, unless it is required by law to be collected and is required for the official, employee, or agent to perform the lawfully established governmental functions and duties of the public body. Prohibits the collection, release, or disclosure of personal information without the express, informed consent of the individual, or if the individual is a minor, of his parent or legal guardian. Proof of consent shall be required.
- (5) Prohibits an official, employee, or agent of a public body from engaging in any conduct that would permit or encourage any unauthorized viewing, use, or sharing of personal information and prohibits such persons from using, authorizing the use of, or facilitating the collection or use of personal information for any purpose other than the lawfully established governmental purpose of the public body.
- (6) Prohibits any official, employee, or agent of a public body from authorizing, causing, or facilitating the transmittal or transfer of any personal information to any location or source outside the boundaries of the state except as specifically authorized by law or to fulfill the terms of a valid interstate compact authorized by law.
- (7) Specifically provides that proposed law does not require the consent for or prohibit the collection, release, or sharing of (a) the name, title or position, or salary or other compensation information regarding a public official or public employee or any information regarding the public office of the public official or the public employment of the public employee that is otherwise a public record subject to inspection, copying, or reproduction; (b) information contained on a report filed pursuant to the Campaign Finance Disclosure Act, the Code of Governmental Ethics, or the laws relative to the regulation of lobbying, or concerning any violations of laws within the jurisdiction of the Board of Ethics; (c) any information required to be maintained on the State Sex Offender and Child Predator Registry and any information required to be contained in required notifications regarding sex offenders and child predators; and (d) the name, description, photograph, and any other information regarding an individual wanted for questioning in connection with the commission or a crime, suspected of the commission of a crime, or convicted of a crime.
- (8) Provides that any official, employee, or agent of a public body who violates any provision proposed law shall be subject to a civil penalty in an amount not less than \$1,000 and not more than \$5,000 payable to the individual whose personal information was collected, released, or misused in violation of proposed law. Further provides that any individual whose personal information is collected,

released, or misused in violation of proposed law may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief, including but not limited to (a) injunctive relief, protective order, writ of mandamus or prohibition, or declaratory relief to prevent any violation of proposed law and (b) actual damages, reasonable attorney fees, and costs. Provides that any official, employee, or agent who intentionally violates any provision of proposed law shall be personally liable for the court costs and any actual damages of the individual whose personal information was collected, released, or misused in violation of proposed law.

(Adds R.S. 44:43-46)