

EMERGENCY REQUEST OF SENATE MAJORITY LEADER

SENATE BILL NO. 538—SENATOR FORD

MAY 11, 2017

JOINT SPONSOR: ASSEMBLYMAN FRIERSON

Referred to Committee on Commerce, Labor and Energy

SUMMARY—Adopts provisions to protect Internet privacy.
(BDR 52-1216)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to Internet privacy; requiring certain operators of Internet websites or online services which collect certain information from residents of this State to provide notice of certain provisions relating to the privacy of the information collected by the operator; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires a data collector that maintains records which contain personal information of a resident of this State to implement and maintain reasonable security measures to protect such records. (NRS 603A.210) **Section 5** of this bill defines an “operator” as a person who: (1) owns or operates an Internet website or online service for commercial purposes; (2) collects certain information from consumers who reside in this State and use or visit the Internet website or online service; and (3) has certain minimum contacts with this State. **Section 6** of this bill requires certain operators to make available a notice containing certain information relating to the privacy of covered information about consumers which is collected by the operator through its Internet website or online service. **Section 6** excludes from this requirement an operator who: (1) is located in this State; (2) derives its revenue primarily from a source other than online sales; and (3) whose Internet website or online service has fewer than 20,000 unique visitors per year. **Section 6** also allows an operator to remedy any failure relating to making such a notice available within 30 days after being informed of the failure. **Section 7** of this bill prohibits an operator from knowingly and willfully failing to remedy such a failure within 30 days after being informed or making a knowing and material



misrepresentation or omission in such a notice that is likely to mislead a consumer to the detriment of the consumer. **Section 8** of this bill authorizes the Attorney General to seek an injunction or a civil penalty against an operator who engages in such an act.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 603A of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 8, inclusive, of this act.

Sec. 2. *As used in sections 2 to 8, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3, 4 and 5 of this act have the meanings ascribed to them in those sections.*

Sec. 3. *“Consumer” means a person who seeks or acquires, by purchase or lease, any good, service, money or credit for personal, family or household purposes from the Internet website or online service of an operator.*

Sec. 4. *“Covered information” means any one or more of the following items of personally identifiable information about a consumer collected by an operator through an Internet website or online service and maintained by the operator in an accessible form:*

- 1. A first and last name.*
- 2. A home or other physical address which includes the name of a street and the name of a city or town.*
- 3. An electronic mail address.*
- 4. A telephone number.*
- 5. A social security number.*
- 6. An identifier that allows a specific person to be contacted either physically or online.*
- 7. Any other information concerning a person collected from the person through the Internet website or online service of the operator and maintained by the operator in combination with an identifier in a form that makes the information personally identifiable.*

Sec. 5. 1. *“Operator” means a person who:*
(a) Owns or operates an Internet website or online service for commercial purposes;
(b) Collects and maintains covered information from consumers who reside in this State and use or visit the Internet website or online service; and
(c) Purposefully directs its activities toward this State, consummates some transaction with this State or a resident



1 *thereof or purposefully avails itself of the privilege of conducting*
2 *activities in this State.*

3 2. *The term does not include a third party that operates, hosts*
4 *or manages an Internet website or online service on behalf of its*
5 *owner or processes information on behalf of the owner of an*
6 *Internet website or online service.*

7 **Sec. 6.** 1. *Except as otherwise provided in subsection 3, an*
8 *operator shall make available, in a manner reasonably calculated*
9 *to be accessible by consumers whose covered information the*
10 *operator collects through its Internet website or online service, a*
11 *notice that:*

12 (a) *Identifies the categories of covered information that the*
13 *operator collects through its Internet website or online service*
14 *about consumers who use or visit the Internet website or online*
15 *service and the categories of third parties with whom the operator*
16 *may share such covered information;*

17 (b) *Provides a description of the process, if any such process*
18 *exists, for an individual consumer who uses or visits the Internet*
19 *website or online service to review and request changes to any of*
20 *his or her covered information that is collected through the*
21 *Internet website or online service;*

22 (c) *Describes the process by which the operator notifies*
23 *consumers who use or visit the Internet website or online service*
24 *of material changes to the notice required to be made available by*
25 *this subsection;*

26 (d) *Discloses whether a third party may collect covered*
27 *information about an individual consumer's online activities over*
28 *time and across different Internet websites or online services when*
29 *the consumer uses the Internet website or online service of the*
30 *operator; and*

31 (e) *States the effective date of the notice.*

32 2. *An operator may remedy any failure to comply with the*
33 *provisions of subsection 1 within 30 days after being informed of*
34 *such a failure.*

35 3. *The provisions of subsection 1 do not apply to an operator:*

36 (a) *Who is located in this State;*

37 (b) *Whose revenue is derived primarily from a source other*
38 *than the sale or lease of goods, services or credit on Internet*
39 *websites or online services; and*

40 (c) *Whose Internet website or online service has fewer than*
41 *20,000 unique visitors per year.*

42 **Sec. 7.** *An operator violates section 6 of this act if the*
43 *operator:*



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1 *1. Knowingly and willfully fails to remedy a failure to comply*
2 *with the provisions of subsection 1 of that section within 30 days*
3 *after being informed of such a failure; or*

4 *2. Makes available a notice pursuant to that section which*
5 *contains information which constitutes a knowing and material*
6 *misrepresentation or omission that is likely to mislead a consumer*
7 *acting reasonably under the circumstances, to the detriment of the*
8 *consumer.*

9 **Sec. 8.** *1. The Attorney General shall enforce the*
10 *provisions of sections 2 to 8, inclusive, of this act.*

11 *2. If the Attorney General has reason to believe that an*
12 *operator, either directly or indirectly, has violated or is violating*
13 *section 6 of this act, the Attorney General may institute an*
14 *appropriate legal proceeding against the operator. The district*
15 *court, upon a showing that the operator, either directly or*
16 *indirectly, has violated or is violating section 6 of this act, may:*

17 *(a) Issue a temporary or permanent injunction; or*

18 *(b) Impose a civil penalty not to exceed \$5,000 for each*
19 *violation.*

20 *3. The provisions of sections 2 to 8, inclusive, of this act do*
21 *not establish a private right of action against an operator.*

22 *4. The provisions of sections 2 to 8, inclusive, of this act are*
23 *not exclusive and are in addition to any other remedies provided*
24 *by law.*

25 **Sec. 9.** NRS 603A.010 is hereby amended to read as follows:

26 603A.010 As used in ~~this chapter,~~ **NRS 603A.010 to**
27 **603A.920, inclusive,** unless the context otherwise requires, the
28 words and terms defined in NRS 603A.020, 603A.030 and
29 603A.040 have the meanings ascribed to them in those sections.

30 **Sec. 10.** NRS 603A.100 is hereby amended to read as follows:

31 603A.100 1. The provisions of ~~this chapter,~~ **NRS 603A.010**
32 **to 603A.920, inclusive,** do not apply to the maintenance or
33 transmittal of information in accordance with NRS 439.581 to
34 439.595, inclusive, and the regulations adopted pursuant thereto.

35 *2. A data collector who is also an operator, as defined in*
36 *section 5 of this act, shall comply with the provisions of sections 2*
37 *to 8, inclusive, of this act.*

38 *3. Any waiver of the provisions of ~~this chapter,~~ NRS*
39 **603A.010 to 603A.920, inclusive,** is contrary to public policy, void
40 and unenforceable.

41 **Sec. 11.** NRS 603A.920 is hereby amended to read as follows:

42 603A.920 If the Attorney General or a district attorney of any
43 county has reason to believe that any person is violating, proposes to
44 violate or has violated the provisions of ~~this chapter,~~ **NRS**
45 **603A.010 to 603A.920, inclusive,** the Attorney General or district



1 attorney may bring an action against that person to obtain a
2 temporary or permanent injunction against the violation.

3 **Sec. 12.** NRS 122.0615 is hereby amended to read as follows:

4 122.0615 1. In each county whose population is 100,000 or
5 more but less than 700,000, in which a commercial wedding chapel
6 has been in business for 5 years or more, the board of county
7 commissioners shall:

8 (a) Ensure that an office where marriage licenses may be issued
9 is open to the public for the purpose of issuing such licenses from
10 8 a.m. to 12 a.m. every day, including holidays; or

11 (b) Provide for the establishment of a program whereby a
12 commercial wedding chapel that has been in business in the county
13 for 5 years or more is authorized to issue marriage licenses to
14 qualified applicants during the hours when an office where marriage
15 licenses may be issued pursuant to paragraph (a) is not open to the
16 public.

17 2. In each county whose population is less than 100,000, in
18 which a commercial wedding chapel has been in business in the
19 county for 5 years or more, the board of county commissioners may
20 provide for the establishment of a program whereby a commercial
21 wedding chapel that has been in business in the county for 5 years or
22 more is authorized to issue marriage licenses to qualified applicants
23 during the hours when an office where marriage licenses may be
24 issued is not open to the public.

25 3. Except as otherwise provided in subsection 4, a program
26 established pursuant to subsection 1 or 2 must authorize each
27 commercial wedding chapel that has been in business in the county
28 for 5 years or more to begin issuing marriage licenses upon filing
29 with the county clerk a completed registration form prescribed by
30 the board of county commissioners, along with a performance bond
31 in the amount of \$50,000. The performance bond must be
32 conditioned upon the faithful performance of all statutory duties
33 related to the issuance of marriage licenses and compliance with the
34 provisions of ~~chapter 603A of~~ NRS **603A.010 to 603A.920,**
35 **inclusive,** that ensure the security of personal information submitted
36 by applicants for a marriage license.

37 4. A commercial wedding chapel shall refer any application for
38 a marriage license that includes the signature of a guardian for a
39 minor applicant to the county clerk for review and issuance of the
40 marriage license pursuant to NRS 122.040.

41 5. The county clerk of the county in which a commercial
42 wedding chapel that issues marriage licenses pursuant to this section
43 is located shall provide to the commercial wedding chapel, without
44 charge, any materials necessary for the commercial wedding chapel



1 to issue marriage licenses. The number of marriage licenses that the
2 commercial wedding chapel may issue must not be limited.

3 6. A commercial wedding chapel that issues marriage licenses
4 pursuant to this section shall comply with all statutory provisions
5 governing the issuance of marriage licenses in the same manner as
6 the county clerk is required to comply, and shall:

7 (a) File the original application for a marriage license with the
8 county clerk on the first available business day after completion of
9 the application;

10 (b) Collect from an applicant for a marriage license all fees
11 required by law to be collected; and

12 (c) Remit all fees collected to the county clerk, in the manner
13 required by the standard of practice adopted by the county clerk.

14 7. The records of a commercial wedding chapel that issues
15 marriage licenses pursuant to this section which pertain to the
16 issuance of a marriage license are public records and must be made
17 available for public inspection at reasonable times. Such a
18 commercial wedding chapel shall comply with the provisions of
19 ~~chapter 603A of~~ NRS *603A.010 to 603A.920, inclusive*, in the
20 same manner as all other data collectors to ensure the security of all
21 personal information submitted by applicants for a marriage license.

22 8. The persons to whom a commercial wedding chapel issues a
23 marriage license may not be joined in marriage in any county other
24 than the county in which the marriage license is issued.

25 9. A commercial wedding chapel that violates any provision of
26 this section is guilty of a misdemeanor.

27 **Sec. 13.** (Deleted by amendment.)

