

Amendment to S. 92

proposed

Insert the following language in an appropriately numbered section:

SECTION (). The General Assembly finds that it must be the public policy of this State to refuse to provide material support for, assist, or in any way participate in the collection of a person's electronic data or metadata by a federal agency or pursuant to any federal law, rule, regulation, or order.

SECTION (). Title 3 of the 1976 Code is amended by adding:

"CHAPTER 12

Protection of South Carolina Citizens from Federal Collection of Electronic Data and Metadata

"Section 3-12-10. (A) Notwithstanding another provision of law, an agency or political subdivision of this State, an employee of an agency or political subdivision of this State acting in his official capacity, or a person providing services on behalf of this State or a political subdivision of this State may not:

(1) provide material support for, assist, or in any way participate in the collection of a person's electronic data or metadata by a federal agency or pursuant to any federal law, rule, regulation, or order;

(2) use state funds or funds received from the State to engage in any activity that aids a federal agency, federal agent, or person or corporation providing services to the federal government in the collection of a person's electronic data or metadata by a federal agency or pursuant to any federal law, rule, regulation, or order; or

(3) use any information in a criminal investigation or prosecution which was obtained through the collection of a person's electronic data or metadata by a federal agency or pursuant to any federal law, rule, regulation, or order.

(B)(1) An agency or political subdivision of this State may not receive any state grant funds during the fiscal year following a judicial determination that the agency or political subdivision knowingly and intentionally violated the provisions of this section.

(2) A person providing services to or on behalf of this State who violates the provisions of this section is permanently prohibited from acting on behalf of or providing services to this State or any of its political subdivisions.

(C) A person whose electronic data or metadata is collected in violation of this section has a cause of action against the person who collected the data to recover compensatory damages, punitive damages, and reasonable attorney's fees. The liability of the State pursuant to this subsection may not exceed the amounts specified in Chapter 78, Title 15.

(D) For purposes of this section, the term:

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(1) 'Electronic data' means original and nonidentical copies, whether nonidentical because of notes made on copies or attached comments, annotations, marks, transmission notations, or highlighting of any kind, of mechanical, facsimile, electronic, magnetic, digital or other programs, whether private, commercial, or work-in-progress, programming notes or instructions, activity listings of electronic mail receipts or transmittals, output resulting from the use of any software program, including word processing documents, spreadsheets, database files, charts, graphs and outlines, electronic mail or email, personal digital assistant (PDA) messages, instant messenger messages, operating systems, source code of all types, programming languages, linkers and compilers, peripheral drives, PDF files, PRF files, batch files, ASCII files, crosswalks, code keys, pull down tables, logs, file layouts and any and all miscellaneous files or file fragments, regardless of the media on which they reside and regardless of whether said electronic data consists of an active file, deleted file or file fragment and also includes any and all items stored on computer memory or memories, hard disks, floppy disks, zip drives, CD-ROM discs, Bernoulli Boxes and their equivalents, magnetic tapes of all types and kinds, microfiche, punched cards, punched tape, computer chips including, but not limited to, EPROM, PROM, ROM and RAM of any kind on or in any other vehicle for digital data storage or transmittal, files, folder tabs, or containers and labels appended to or associated with any physical storage device associated with each original and each copy.

(2) 'Metadata' means data that serves to provide context or additional information about other data including, but not limited to, information about the title, subject, author, typeface, enhancements, and size of the data file of a document constitute metadata about that document. It also may describe the conditions under which the data stored in a database was acquired, its accuracy, date, time, method of compilation and processing."

SECTION (). If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.