

# STATE OF NEW YORK

5736--B

2023-2024 Regular Sessions

## IN ASSEMBLY

March 23, 2023

Introduced by M. of A. SOLAGES, SEAWRIGHT -- read once and referred to the Committee on Governmental Operations -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Governmental Operations in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the state technology law, in relation to establishing the "secure our data act"

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. This act shall be known and may be cited as the "secure our  
2 data act".  
3 § 2. Legislative intent. The legislature finds that ransomware and  
4 other malware attacks have affected the electronically stored personal  
5 information relating to thousands of people statewide and millions of  
6 people nationwide. The legislature also finds that state entities  
7 receive such personal information from various sources, including the  
8 data subjects themselves, other state entities, and the federal govern-  
9 ment. In addition, the legislature finds that state entities use such  
10 personal information to make determinations regarding the data subjects.  
11 The legislature further finds that New Yorkers deserve to have their  
12 personal information that is in the possession of a state entity stored  
13 in a manner that will withstand any attempt by ransomware and other  
14 malware to alter, change, or encrypt such information.  
15 Therefore, the legislature enacts the secure our data act which will  
16 guarantee that state entities will employ the proper technology to  
17 protect the personal information stored as backup information from any  
18 unauthorized alteration or change.  
19 § 3. The state technology law is amended by adding a new section 210  
20 to read as follows:

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

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1 § 210. Ransomware and other malware protection. 1. Definitions. For  
2 purposes of this section, the following terms shall have the following  
3 meanings:

4 (a) "Data subject" shall mean the person who is the subject of the  
5 personal information.

6 (b) "Immutable" means data that is stored unchanged over time or  
7 unable to be changed. For the purposes of backups, "immutable" shall  
8 mean that, once ingested, no external or internal operation can modify  
9 the data and must never be available in a read/write state to the  
10 client. "Immutable" shall specifically apply to the characteristics and  
11 attributes of a backup system's file system and may not be applied to  
12 temporary systems state, time-bound or expiring configurations, or  
13 temporary conditions created by a physical air gap as is implemented in  
14 most legacy systems. An immutable file system must demonstrate charac-  
15 teristics that do not permit the editing or changing of any data backed  
16 up to provide agencies with complete recovery capabilities.

17 (c) "Information system" shall mean any good, service or a combination  
18 thereof, used by any computer, cloud service, or interconnected system  
19 that is maintained for or used by a state entity in the acquisition,  
20 storage, manipulation, management, movement, control, display, switch-  
21 ing, interchange, transmission, or reception of data or voice including,  
22 but not limited to, hardware, software, information appliances, firm-  
23 ware, programs, systems, networks, infrastructure, media, and related  
24 material used to automatically and electronically collect, receive,  
25 access, transmit, display, store, record, retrieve, analyze, evaluate,  
26 process, classify, manipulate, manage, assimilate, control, communicate,  
27 exchange, convert, coverage, interface, switch, or disseminate data of  
28 any kind or form.

29 (d) "Maintained" shall mean personal information stored by a state  
30 entity that was provided to the state entity by the data subject, a  
31 state entity, or a federal governmental entity. Such term shall also  
32 include personal information provided by an adverse party in the course  
33 of litigation or other adversarial proceeding.

34 (e) "Malware" shall mean malicious code included in any application,  
35 digital content, document, executable, firmware, payload, or software  
36 for the purpose of performing or executing one or more unauthorized  
37 processes designed to have an adverse impact on the availability, confi-  
38 dentiality, or integrity of data stored in an information system.

39 (f) "Ransomware" shall mean any type of malware that uses encryption  
40 technology to prevent users from accessing an information system or data  
41 stored by such information system until a ransom is paid.

42 (g) "State entity" shall mean any state board, bureau, division,  
43 committee, commission, council, department, public authority, public  
44 benefit corporation, office or other governmental entity performing a  
45 governmental or proprietary function for the state of New York, except:

46 (i) the judiciary; and

47 (ii) all cities, counties, municipalities, villages, towns, and other  
48 local agencies.

49 2. Data protection standards. (a) No later than one year after the  
50 effective date of this section, the director, in consultation with  
51 stakeholders and other interested parties, which shall include at least  
52 one public hearing, shall promulgate regulations that design and develop  
53 standards for:

54 (i) malware and ransomware protection for mission critical information  
55 systems and for personal information used by such information systems;

1 (ii) data backup that includes the creation of immutable backups of  
2 personal information maintained by the state entity and storage of such  
3 backups in a segmented environment, including a segmented device;

4 (iii) information system recovery that includes creating an identical  
5 copy of an immutable personal information backup maintained by or for  
6 the state entity that was stored in a segmented environment or on a  
7 segmented device for use when an information system has been adversely  
8 affected by rent somewhere or other malware and requires restoration  
9 from one or more backups; and

10 (iv) annual workforce training regarding protection from ransomware  
11 and other malware, as well as processes and procedures that should be  
12 followed in the event of a data incident involving ransomware or other  
13 malware.

14 (b) Such regulations may be adopted on an emergency basis. If such  
15 regulations are adopted on an emergency basis, the office shall engage  
16 in the formal rulemaking procedure no later than the day immediately  
17 following the date that the office promulgated such regulations on an  
18 emergency basis. Provided that the office has commenced the formal rule-  
19 making process, the regulations adopted on an emergency basis may be  
20 renewed no more than two times.

21 3. Vulnerability assessments. Notwithstanding any provision of law to  
22 the contrary, each state entity shall engage in vulnerability testing of  
23 its information systems as follows:

24 (a) Beginning January first, two thousand twenty-five and on a monthly  
25 basis thereafter, each state entity shall perform, or cause to be  
26 performed, a vulnerability assessment of at least one mission critical  
27 information system ensuring that each mission critical system has under-  
28 gone a vulnerability assessment during the past year. A report detailing  
29 the vulnerability assessment methodology and findings shall be made  
30 available to the office for review no later than forty-five days after  
31 the testing has been completed.

32 (b) Beginning December first, two thousand twenty-five, each state  
33 entity's entire information system shall undergo vulnerability testing.  
34 A report detailing the vulnerability assessment methodology and findings  
35 shall be made available to the office for review no later than forty-  
36 five days after such testing has been completed.

37 (c) The office shall assist state entities in complying with the  
38 provisions of this section.

39 4. Data and information system inventory. (a) No later than one year  
40 after the effective date of this section, each state entity shall create  
41 an inventory of the data maintained by the state entity and the purpose  
42 or purposes for which such data is maintained and used. The inventory  
43 shall include a listing of all personal information maintained by the  
44 state entity, along with the source and age of such information.

45 (b) No later than one year after the effective date of this section,  
46 each state entity shall create an inventory of the information systems  
47 maintained by or on behalf of the state entity and the purpose or  
48 purposes for which each such information system is maintained and used.  
49 The inventory shall denote those information systems that are mission  
50 critical and those that use personal information, and whether the infor-  
51 mation system is protected by immutable backups.

52 (c) Notwithstanding paragraphs (a) and (b) of this subdivision, if a  
53 state entity has already completed a data inventory or information  
54 systems inventory, such state entity shall update the previously  
55 completed data inventory or information system inventory no later than  
56 one year after the effective date of this section.

1 (d) Upon written request from the office, a state entity shall provide  
2 the office with either or both of the inventories required to be created  
3 or updated pursuant to this subdivision.

4 5. Incident management and recovery. (a) No later than eighteen months  
5 after the effective date of this section, each state entity shall have  
6 created an incident response plan for incidents involving ransomware or  
7 other malware that renders an information system or its data unavail-  
8 able, and incidents involving ransomware or other malware that result in  
9 the alteration or deletion of or unauthorized access to, personal infor-  
10 mation.

11 (b) Such incident response plan shall include a procedure for situ-  
12 ations where production and non-segmented information systems have been  
13 adversely affected by a data incident, as well as a procedure for the  
14 storage of personal information and mission critical backups on a  
15 segmented device or segmented portion of the state entity's information  
16 system to ensure that such personal information and mission critical  
17 systems are protected by immutable backups.

18 (c) Beginning January first, two thousand twenty-seven and on an annu-  
19 al basis thereafter, each state entity shall complete at least one exer-  
20 cise of its incident response plan that includes copying the immutable  
21 personal information and mission critical applications from the  
22 segmented portion of the state entity's information system and using  
23 such copies in the state entity's restoration and recovery process. Upon  
24 completion of such exercise, the state entity shall document the inci-  
25 dent response plan's successes and shortcomings.

26 6. No private right of action. Nothing set forth in this section shall  
27 be construed as creating or establishing a private cause of action.

28 § 4. Severability. The provisions of this act shall be severable and  
29 if any portion thereof or the applicability thereof to any person or  
30 circumstances shall be held to be invalid, the remainder of this act and  
31 the application thereof shall not be affected thereby.

32 § 5. This act shall take effect immediately.