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SENATE BILL NO. 764

Senate Amendments in [] - February 7, 2022

A BILL to amend and reenact §§ 2.2-603, 2.2-2009, and 2.2-5514 of the Code of Virginia, relating to public bodies; security of government databases and data communications.

Patrons Prior to Engrossment—Senators Barker and Suetterlein

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-603, 2.2-2009, and 2.2-5514 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-603. Authority of agency directors.

A. Notwithstanding any provision of law to the contrary, the agency director of each agency in the executive branch of state government shall have the power and duty to (i) supervise and manage the department or agency and (ii) prepare, approve, and submit to the Governor all requests for appropriations and to be responsible for all expenditures pursuant to appropriations.

B. The director of each agency in the executive branch of state government, except those that by law are appointed by their respective boards, shall not proscribe any agency employee from discussing the functions and policies of the agency, without prior approval from his supervisor or superior, with any person unless the information to be discussed is protected from disclosure by the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) or any other provision of state or federal law.

C. Subsection A shall not be construed to restrict any other specific or general powers and duties of executive branch boards granted by law.

D. This section shall not apply to those agency directors that are appointed by their respective boards or by the Board of Education. Directors appointed in this manner shall have the powers and duties assigned by law or by the board.

E. In addition to the requirements of subsection C of § 2.2-619, the director of each agency in any branch of state government shall, at the end of each fiscal year, report to (i) the Secretary of Finance and the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance and Appropriations a listing and general description of any federal contract, grant, or money in excess of \$1 million for which the agency was eligible, whether or not the agency applied for, accepted, and received such contract, grant, or money, and, if not, the reasons therefore and the dollar amount and corresponding percentage of the agency's total annual budget that was supplied by funds from the federal government and (ii) the Chairmen of the House Committees on Appropriations and Finance, and the Senate Committee on Finance and Appropriations any amounts owed to the agency from any source that are more than six months delinquent, the length of such delinquencies, and the total of all such delinquent amounts in each six-month interval. Clause (i) shall not be required of public institutions of higher education.

F. Notwithstanding subsection D, the director of every agency and department in the executive branch of state government, including those appointed by their respective boards or the Board of Education, shall be responsible for securing the electronic data held by his agency or department and shall comply with the requirements of the Commonwealth's information technology security and risk-management program as set forth in § 2.2-2009.

G. The director of every department in the executive branch of state government shall report to the Chief Information Officer as described in § 2.2-2005, all known incidents that threaten the security of the Commonwealth's databases and data communications resulting in exposure of data protected by federal or state laws, or other incidents compromising the security of the Commonwealth's information technology systems with the potential to cause major disruption to normal agency activities. Such reports shall be made to the Chief Information Officer within 24 hours from when the department discovered or should have discovered their occurrence.

H. The director of every department in the executive branch of state government shall have the power and duty to comply with the provisions of § 2.2-1209.

§ 2.2-2009. Additional duties of the CIO relating to security of government information.

A. To provide for the security of state government electronic information from unauthorized uses, intrusions or other security threats, the CIO shall direct the development of policies, standards, and guidelines for assessing security risks, determining the appropriate security measures and performing security audits of government electronic information. Such policies, standards, and guidelines shall apply to the Commonwealth's executive, legislative, and judicial branches and independent agencies. The CIO

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59 shall work with representatives of the Chief Justice of the Supreme Court and Joint Rules Committee of
60 the General Assembly to identify their needs. Such policies, standards, and guidelines shall, at a
61 minimum:

62 1. Address the scope and frequency of security audits. In developing and updating such policies,
63 standards, and guidelines, the CIO shall designate a government entity to oversee, plan, and coordinate
64 the conduct of periodic security audits of all executive branch agencies and independent agencies. The
65 CIO shall coordinate these audits with the Auditor of Public Accounts and the Joint Legislative Audit
66 and Review Commission. The Chief Justice of the Supreme Court and the Joint Rules Committee of the
67 General Assembly shall determine the most appropriate methods to review the protection of electronic
68 information within their branches;

69 2. Control unauthorized uses, intrusions, or other security threats;

70 3. Provide for the protection of confidential data maintained by state agencies against unauthorized
71 access and use in order to ensure the security and privacy of citizens of the Commonwealth in their
72 interaction with state government. Such policies, standards, and guidelines shall include requirements
73 that (i) any state employee or other authorized user of a state technology asset provide passwords or
74 other means of authentication to use a technology asset and access a state-owned or state-operated
75 computer network or database and (ii) a digital rights management system or other means of
76 authenticating and controlling an individual's ability to access electronic records be utilized to limit
77 access to and use of electronic records that contain confidential information to authorized individuals;

78 4. Address the creation and operation of a risk management program designed to identify information
79 technology security gaps and develop plans to mitigate the gaps. All agencies in the Commonwealth
80 shall cooperate with the CIO, including (i) providing the CIO with information required to create and
81 implement a Commonwealth risk management program, (ii) creating an agency risk management
82 program, and (iii) complying with all other risk management activities; and

83 5. Require that any contract for information technology entered into by the Commonwealth's
84 executive, legislative, and judicial branches and independent agencies require compliance with applicable
85 federal laws and regulations pertaining to information security and privacy.

86 B. 1. The CIO shall annually report to the Governor, the Secretary, and General Assembly on the
87 results of security audits, the extent to which security policy, standards, and guidelines have been
88 adopted by executive branch and independent agencies, and a list of those executive branch agencies and
89 independent agencies that have not implemented acceptable security and risk management regulations,
90 policies, standards, and guidelines to control unauthorized uses, intrusions, or other security threats. For
91 any executive branch agency or independent agency whose security audit results and plans for corrective
92 action are unacceptable, the CIO shall report such results to (i) the Secretary, (ii) any other affected
93 cabinet secretary, (iii) the Governor, and (iv) the Auditor of Public Accounts. Upon review of the
94 security audit results in question, the CIO may take action to suspend the executive branch agency's or
95 independent agency's information technology projects pursuant to subsection B of § 2.2-2016.1, limit
96 additional information technology investments pending acceptable corrective actions, and recommend to
97 the Governor and Secretary any other appropriate actions.

98 2. Executive branch agencies and independent agencies subject to such audits as required by this
99 section shall fully cooperate with the entity designated to perform such audits and bear any associated
100 costs. Public bodies that are not required to but elect to use the entity designated to perform such audits
101 shall also bear any associated costs.

102 C. In addition to coordinating security audits as provided in subdivision B 1, the CIO shall conduct
103 an annual comprehensive review of cybersecurity policies of every executive branch agency, with a
104 particular focus on any breaches in information technology that occurred in the reviewable year and any
105 steps taken by agencies to strengthen cybersecurity measures. Upon completion of the annual review, the
106 CIO shall issue a report of his findings to the Chairmen of the House Committee on Appropriations and
107 the Senate Committee on Finance and Appropriations. Such report shall not contain technical
108 information deemed by the CIO to be security sensitive or information that would expose security
109 vulnerabilities.

110 D. The provisions of this section shall not infringe upon responsibilities assigned to the Comptroller,
111 the Auditor of Public Accounts, or the Joint Legislative Audit and Review Commission by other
112 provisions of the Code of Virginia.

113 E. The CIO shall promptly receive reports from ~~directors of departments in the executive branch of~~
114 ~~state government~~ *public bodies in the Commonwealth* made in accordance with § ~~2.2-603~~ 2.2-5514 and
115 shall take such actions as are necessary, convenient, or desirable to ensure the security of the
116 Commonwealth's electronic information and confidential data.

117 F. The CIO shall provide technical guidance to the Department of General Services in the
118 development of policies, standards, and guidelines for the recycling and disposal of computers and other
119 technology assets. Such policies, standards, and guidelines shall include the expunging, in a manner as
120 determined by the CIO, of all confidential data and personal identifying information of citizens of the

Commonwealth prior to such sale, disposal, or other transfer of computers or other technology assets.

G. The CIO shall provide all directors of agencies and departments with all such information, guidance, and assistance required to ensure that agencies and departments understand and adhere to the policies, standards, and guidelines developed pursuant to this section.

H. The CIO shall promptly notify all public bodies as defined in § 2.2-5514 of hardware, software, or services that have been prohibited pursuant to Chapter 55.3 (§ 2.2-5514).

I. 1. This subsection applies to the Commonwealth's executive, legislative, and judicial branches and independent agencies.

2. In collaboration with the heads of executive branch and independent agencies and representatives of the Chief Justice of the Supreme Court and the Joint Rules Committee of the General Assembly, the CIO shall develop and annually update a curriculum and materials for training all state employees in information security awareness and in proper procedures for detecting, assessing, reporting, and addressing information security threats. The curriculum shall include activities, case studies, hypothetical situations, and other methods of instruction (i) that focus on forming good information security habits and procedures among state employees and (ii) that teach best practices for detecting, assessing, reporting, and addressing information security threats.

3. Every state agency shall provide annual information security training for each of its employees using the curriculum and materials developed by the CIO pursuant to subdivision 2. Employees shall complete such training within 30 days of initial employment and by January 31 each year thereafter.

State agencies may develop additional training materials that address specific needs of such agency, provided that such materials do not contradict the training curriculum and materials developed by the CIO.

The CIO shall coordinate with and assist state agencies in implementing the annual information security training requirement.

4. Each state agency shall (i) monitor and certify the training activity of its employees to ensure compliance with the annual information security training requirement, (ii) evaluate the efficacy of the information security training program, and (iii) forward to the CIO such certification and evaluation, together with any suggestions for improving the curriculum and materials, or any other aspects of the training program. The CIO shall consider such evaluations when it annually updates its curriculum and materials.

§ 2.2-5514. Prohibited products and services and required incident reporting.

A. For the purposes of this section, "public body" means any legislative body; any court of the Commonwealth; any authority, board, bureau, commission, district, or agency of the Commonwealth; any political subdivision of the Commonwealth, including counties, cities, and towns, city councils, boards of supervisors, school boards, planning commissions, and governing boards of institutions of higher education; and other organizations, corporations, or agencies in the Commonwealth supported wholly or principally by public funds. "Public body" includes any committee, subcommittee, or other entity however designated of the public body or formed to advise the public body, including those with private sector or citizen members and corporations organized by the Virginia Retirement System.

B. No public body may use, whether directly or through work with or on behalf of another public body, any hardware, software, or services that have been prohibited by the U.S. Department of Homeland Security for use on federal systems.

C. Every public body shall report [~~to the Chief Information Officer, as described in § 2.2-2005,~~] all (i) known incidents that threaten the security of the Commonwealth's data or communications or result in exposure of data protected by federal or state laws and (ii) other incidents compromising the security of the public body's information technology systems with the potential to cause major disruption to normal activities of the public body or other public bodies. Such reports shall be made to the [~~Chief Information Officer~~ Virginia Fusion Intelligence Center] within 24 hours from when the incident was discovered. [~~The Virginia Fusion Intelligence Center shall share such reports with the Chief Information Officer, as described in § 2.2-2005, or his designee at the Virginia Information Technologies Agency, promptly upon receipt.~~]

[2. That the Chief Information Officer of the Commonwealth shall convene a work group to include representatives from the Virginia Data Advisory Commission, the Office of Data Governance and Analytics, the Virginia State Police, the Virginia Department of Emergency Management, the Virginia Information Technologies Agency, the Virginia Municipal League, the Virginia Association of Counties, and other relevant state or local entities. The work group shall review current cybersecurity reporting and information sharing practices and make recommendations on best practices for the reporting of cybersecurity incidents, as well as the scope and implementation of the required incident reporting. If further legislative changes are recommended, the work group shall report on its findings and such recommendations to the Governor and the Chairmen of the Senate Committee on General Laws and Technology and the

182 House Committee on Communications, Technology and Innovation by November 15, 2022.]