

1                   **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2                                   STATE OF OKLAHOMA

3                                   1st Session of the 59th Legislature (2023)

4 COMMITTEE SUBSTITUTE  
5 FOR  
6 HOUSE BILL NO. 2790

By: Stinson of the House

and

**Howard** of the Senate

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10                                   COMMITTEE SUBSTITUTE

11                   An Act relating to cybersecurity; creating The  
12                   Oklahoma Hospital Cybersecurity Protection Act of  
13                   2023; providing definitions; creating requirements  
14                   for affirmative defense; recognizing industry  
15                   framework; providing for severability; providing for  
16                   codification; and providing an effective date.

17 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

18                   SECTION 1.           NEW LAW           A new section of law to be codified  
19                   in the Oklahoma Statutes as Section 2068 of Title 18, unless there  
20                   is created a duplication in numbering, reads as follows:

21                   This act shall be known and may be cited as "The Oklahoma  
22                   Hospital Cybersecurity Protection Act of 2023".  
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1 SECTION 2. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 2069 of Title 18, unless there  
3 is created a duplication in numbering, reads as follows:

4 As used in this act:

5 A. "Covered entity" means any hospital, as defined in Section  
6 1-701 of Title 63 of the Oklahoma Statutes, whether for profit or  
7 not-for-profit, which is owned, either in whole in or part, or is  
8 managed in whole or in part, by hospitals whose business is subject  
9 to the Health Insurance Portability and Accountability Act of 1996,  
10 Public Law 104-191.

11 B. "Data breach" means the unauthorized access and acquisition  
12 of unencrypted and unredacted computerized data that compromises the  
13 security or confidentiality of personal information or restricted  
14 information maintained by a covered entity as part of a database of  
15 personal information or restricted information regarding multiple  
16 individuals and that causes, or the covered entity reasonably  
17 believes has caused or will cause, identity theft or other fraud to  
18 any resident of this state. Good-faith acquisition of personal  
19 information or restricted information by an employee or agent of a  
20 covered entity for the purposes of the covered entity is not a  
21 breach of the security system; provided, that the personal  
22 information or restricted information, as the case may be, is not  
23 used for a purpose other than a lawful purpose of the covered entity  
24 or subject to further unauthorized disclosure.

1 C. "Personal information" means the first name or first initial  
2 and last name in combination with and linked to any one or more of  
3 the following data elements that relate to a resident of this state,  
4 when the data elements are neither encrypted nor redacted:

5 1. Social Security number;

6 2. Driver license number or state identification number issued  
7 in lieu of a driver license, or

8 3. Financial account number, or credit or debit card number, in  
9 combination with any required security code, access code, or  
10 password that would permit access to the financial accounts of an  
11 individual.

12 The term does not include information that is lawfully obtained  
13 from publicly available information, or from federal, state, or  
14 local government records lawfully made available to the public.

15 D. "Restricted information" means any information about an  
16 individual, other than personal information, that, alone or in  
17 combination with other information, including personal information,  
18 can be used to distinguish or trace the individual's identity or  
19 that is linked or linkable to an individual, if the information is  
20 not encrypted, redacted, or altered by any method or technology in  
21 such a manner that the information is unreadable, and the breach of  
22 which is likely to result in a material risk of identity theft or  
23 other fraud to person or property.

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1 E. As used in this act, the terms "encrypted" and "redacted"  
2 have the same meanings as in Section 162 of Title 24 of Oklahoma  
3 law.

4 SECTION 3. NEW LAW A new section of law to be codified  
5 in the Oklahoma Statutes as Section 2070 of Title 18, unless there  
6 is created a duplication in numbering, reads as follows:

7 A. The requirements of this section are voluntary; provided, a  
8 covered entity may only seek an affirmative defense under this act  
9 if the following conditions are met:

10 1. A covered entity seeking an affirmative defense under this  
11 act shall create, maintain, and comply, including documentation of  
12 such compliance, with a written cybersecurity program that contains  
13 administrative, technical, and physical safeguards for the  
14 protection of both personal information and restricted information  
15 and that reasonably conforms to an industry recognized cybersecurity  
16 framework, as described in this section.

17 2. A covered entity's cybersecurity program shall be designed  
18 to do all of the following with respect to the information described  
19 in paragraph 1 of subsection A of this section, as applicable:

- 20 a. protect the security and confidentiality of the  
21 information,
- 22 b. protect against any anticipated threats or hazards to  
23 the security or integrity of the information,

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1 c. protect against unauthorized access to and acquisition  
2 of the information that is likely to result in a  
3 material risk of identity theft or other fraud to the  
4 individual to whom the information relates.

5 3. The scale and scope of a covered entity's cybersecurity  
6 program under subsection A of this section is appropriate if it is  
7 based on all of the following factors:

- 8 a. the size and complexity of the covered entity,  
9 b. the nature and scope of the activities of the covered  
10 entity,  
11 c. the sensitivity of the information to be protected,  
12 d. the cost and availability of tools to improve  
13 information security and reduce vulnerabilities, and  
14 e. the resources available to the covered entity.

15 4. The cybersecurity program shall contain requirements that it  
16 be reviewed, evaluated, and updated on at least an annual basis and  
17 shall require documentation of the same.

18 B. A covered entity that satisfies paragraphs 1 through 4 of  
19 subsection A of this section is entitled to an affirmative defense  
20 to any cause of action sounding in tort that is brought alleging  
21 that the failure to implement reasonable information security  
22 controls resulted in a data breach concerning personal information  
23 or restricted information.  
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1 SECTION 4. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 2071 of Title 18, unless there  
3 is created a duplication in numbering, reads as follows:

4 A covered entity's cybersecurity program, as described in  
5 Section 2 of this act, reasonably conforms to an industry-recognized  
6 cybersecurity framework for purposes of that section if subsection A  
7 of this section is satisfied:

8 A. 1. The covered entity is subject to the requirements of the  
9 laws or regulations listed below, and the cybersecurity program  
10 reasonably conforms to the entirety of the current version of both  
11 of the following, subject to paragraph 2 of subsection A of this  
12 section:

- 13 a. the security requirements of the "Health Insurance  
14 Portability and Accountability Act of 1996", as set  
15 forth in 45 CFR Part 164 Subpart C; and
- 16 b. the "Health Information Technology for Economic and  
17 Clinical Health Act", as set forth in 45 CFR Part 162.

18 2. When a framework listed in paragraph 1 of subsection A of  
19 this section is amended, a covered entity whose cybersecurity  
20 program reasonably conforms to that framework shall reasonably  
21 conform to the amended framework not later than one (1) year after  
22 the effective date of the amended framework.

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1 SECTION 5. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 2072 of Title 18, unless there  
3 is created a duplication in numbering, reads as follows:

4 If any provision off this act or the application thereof to a  
5 covered entity is for any reason held to be invalid, the remainder  
6 of the provisions under those sections and the application of such  
7 provisions to other covered entities shall not be thereby affected.

8 SECTION 6. This act shall become effective November 1, 2023.

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10 COMMITTEE REPORT BY: COMMITTEE ON PUBLIC HEALTH, dated 03/02/2023 -  
11 DO PASS, As Amended and Coauthored.

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