



Brief

SB85: Data Portability and Interoperability for Social Media Platforms and AI Model Operators

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Summary

Virginia's SB85 [1] would amend the Consumer Data Protection Act (CDPA) [2], requiring social media platforms and AI operators to give their users a practical means of transferring their data to other service providers. Specifically, the bill would extend the existing CDPA rights of deletion and portability to two new information categories: *social graph data* (e.g., created content, replies, connections, public profile) and *contextual data* given by the user to an AI system (e.g., prompts, conversational history, files, preferences). In addition, the bill would require covered entities to implement an interface through which a user may share that data directly with third parties he designates, use an open protocol, maintain continuous real-time sharing, and provide conspicuous consent mechanisms for users.

Although the CDPA already grants a right to data portability (i.e., §59.1-577), that right only allows a consumer to obtain a copy of the personal data he previously provided to the controller. The statute does not specify a format or a protocol, and it does not require the controller to send that data directly to another provider. Furthermore, the right operates as a periodic request, since the controller has 45 days to respond and must respond free of charge only twice a year. Consequently, a consumer may receive a copy of his data that no competing service can import. In order to address this gap, SB85 seeks to ensure that users would have practical means of transferring their own data.

SB85 intends to lessen the cost of leaving a social media platform, which is a costly decision for many people because they accumulate extensive amounts of content and connections on a single social media account and do not have an easy way to transfer that data from one service provider to another. As a result, it is relatively expensive for consumers to move from one social media service provider to another. This same scenario also exists with AI services, where the history of conversations between the user and the service is recorded, and over time those conversations add to the value of the service and make it more difficult for consumers to move to a different provider. The dependency created by using these services has two major consequences. First, many consumers will remain with a small number of large social media and AI providers, contributing to a highly concentrated market. Second, smaller social media and AI providers will have difficulty attracting those users and therefore will be less able to compete effectively. The two goals of SB85 are therefore to provide consumers with greater freedom and choice over the data they have created and to allow smaller providers of both types of services to compete with larger providers for users.

The effect of adding these two categories depends on how the CDPA classifies information. According to the Act, "personal data" is the broader category of consumer information, while "sensitive data" is separately defined under §59.1-575 [2]. This distinction matters because a controller may only process sensitive data if it has obtained the consumer's consent (§59.1-578), and the processing of such data must also undergo a data protection assessment (§59.1-580). The terms *social graph data* and *contextual data* refer to forms of personal data under the CDPA amendments, and neither would qualify as sensitive data. Consequently, the consent and assessment requirements would not apply to the data that SB85 would make portable, which is a concern discussed later in this brief.

Policy Landscape: State, Federal and International Approaches

Utah's Digital Choice Act (HB418) [3] was the first law of this kind to be enacted. Specifically, HB418 requires social media companies to provide portability and maintain interoperability interfaces using open protocols. However, HB418 differs from SB85 in three main aspects: 1) it covers only social media and does not define obligations for AI providers, 2) it assigns enforcement to the Division of Consumer Protection instead of the Attorney General, and 3) it grants the Division of Consumer Protection authority to identify open protocols that qualify.

The available evidence does not establish whether the proposed requirements would achieve the intended goals. Utah's law has not yet taken effect, as HB408 [16] delayed the Digital Choice Act from July 1, 2026 to July 1, 2027, which is the same date proposed for SB85. Consequently, no interoperability requirement of this kind is currently in operation in the U.S.

In 2026, South Dakota [6], New York [7], California [8], New Hampshire [9], and Virginia [1] were all considering digital choice legislation. However, to date, only Utah and South Dakota have passed such a law, and both cover social media alone. California's AB 2169 [8] would extend coverage to AI model operators and contextual data, but it was held in committee. New Hampshire's bill was rejected in committee [9].

At the federal level, similar ideas have been proposed, but none have been passed into law. In 2019, Senator Mark Warner of Virginia introduced the ACCESS Act [17], which would have required large communications services to provide users with data portability and to interoperate with other systems or interfaces. The proposed legislation would also have allowed individuals to designate an approved third party to collect and manage their information, similar to how SB85 proposes to allow third parties to manage information on behalf of users. The ACCESS Act has been reintroduced in each

Congress since its initial introduction, most recently in May 2025 as S1634 [18]. The American Innovation and Choice Online Act [19] also included interoperability requirements and was reported out of the Senate Judiciary Committee on January 20, 2022, but it never received a floor vote in the Senate. As a result, there is currently no federal law requiring this type of service, leaving states to develop their own state-specific regulations.

Shortly before the 2026 session started, there was a shift in federal policy. On December 11th 2025, White House Executive Order 14365 [12] established an AI Litigation Task Force that would evaluate and bring lawsuits against state AI laws in federal courts; required the Secretary of Commerce to provide a report on state AI laws, outlining the ones determined to be onerous and conditioning remaining broadband funds on this determination; and directed the Federal Trade Commission to address state laws that require changes to truthful model outputs [12]. Because SB85 includes a provision for data portability between AI models or platforms, it could be considered a state law pertaining to AI. However, the Executive Order targets output alteration, bias mitigation, and compelled disclosure, and none of these categories describes a data portability requirement [12]. In addition, that implementation of the order has been slow: the evaluation by the Department of Commerce that was due on March 11, 2026 had not yet been issued [14], and the first major federal action was to intervene in litigation filed against the Colorado AI Act on April 24, 2026 [15]. In the meantime, states have continued to pass their own AI legislation. Between January and July 2026 alone, there were 109 AI laws passed in the US [11].

The requirement for real-time portability is also included in Article 6(9) of the EU Digital Markets Act [10], which applies to certain entities and shows that these types of obligations can be implemented on a large scale. However, Article 7, which requires interoperability between services, currently applies only to messaging services and does not extend to social networking services. Article 53 required the European Commission to review whether Article 7 should be extended to social networking services by May 3, 2026. In its first review, published on April 28, 2026, the Commission concluded that it was still too early to determine the impact of the interoperability requirements already in effect, but indicated that it would continue to monitor the market for signs of demand [20]. Other commentators have interpreted this decision as reflecting a lack of clear demand from either users or business for such a requirement [21]. In either case, the EU experience does not provide clear evidence as to whether this type of interoperability requirement would increase the number of users switching between providers.

Key Policy Questions

Each question below has a corresponding consideration in the following section.

1. If Virginia proposes a requirement to use an open protocol, should it designate a specific protocol, or instead designate an appropriate agency to identify qualifying open protocols?
2. Given that social graph data may contain relational references to other users, how might users whose data is embedded within another user's social graph be protected?
3. Should contextual data be treated as sensitive data, as defined by §59.1-575 of the Code of Virginia?
4. What security standards should govern both the interface and the receiving party? Should a covered entity be permitted to refuse a designated recipient for reasons of security?
5. Should the AI provisions advance together with the social media provisions or separately, given that a portability mandate may not fall within the categories of state AI law currently targeted at the federal level?
6. What data should be collected to determine whether the mandate works? No enacted or proposed interoperability law currently requires reporting on transfer requests made, fulfilled, or declined.
7. Is there consumer and market demand for this functionality, and how should that affect the cost of implementing the bill?

Considerations & Concerns

Open protocol [Q1]: The bill requires that covered entities use an open protocol but it does not specify one. Utah authorized its Division of Consumer Protection to identify qualifying protocols and granted a rebuttable presumption of compliance to companies adopting one of them. SB85 does not have any equivalent provision. This has two consequences. First, covered entities could select a protocol whose adequacy could only be tested after it has been already adopted. Such ambiguities could lead to a lengthy period of legal challenges to establish which protocols are effective, delaying the intended outcomes of the bill. Second, different entities could select incompatible protocols, undermining the spirit of the bill, which aims to enable easy transfers of data between platforms [5].

Non-consenting users [Q2]: Significant components of a user's social graph are the connections and interactions with other users. Therefore, the transferring of a user's *social graph data* can potentially include the content and responses of other users who have not agreed to that transfer. The

amendments to the proposed Virginia bill in committee addressed this concern by excluding the content and responses of other users from the definition of *social graph data*. However, this definition still requires sufficient relational references to preserve the associations among the remaining elements in the graph, which may still reveal who a user is connected to, especially in a context where AI models could be used to interpret the data [4]. Utah addressed this in HB 408 [16], which now requires a user's consent before that user's data may be shared as part of another user's social graph, and removes other users' responses to a user's content from the definition of social graph.

Sensitivity of Contextual Data [Q3]: Personal information can be disclosed through conversational histories and, in many cases, this information may be more sensitive than the information contained in a *social graph*. However, §59.1-575 of the Code of Virginia [2] defines sensitive data by specific categories, and *contextual data* does not automatically fall within any of them. This has two consequences. First, the consent requirement under §59.1-578 does not apply to *contextual data*. Second, the data protection assessment requirement under §59.1-580 does not apply either. If §59.1-575 were amended to define *contextual data* as sensitive data, then both requirements would apply. In addition, if the receiving party is a controller subject to the Virginia CDPA, that party could also become subject to obligations arising from its receipt and processing of sensitive data. In some circumstances, however, a designated recipient may fall outside the scope of the Act under §59.1-576, in which case the data could leave the CDPA's regulated environment at the time of transfer.

Security of Data Transfers [Q4]: A continuous real-time interface is a distribution channel that would create more exposure than a one-time download. Despite its potential security risks, SB85 does not establish a security standard for such an interface, and it does not define any obligation on the party receiving the data. Similarly, the bill does not say whether a covered entity may reject a designated recipient; a bad actor posing as a competing service recipient may collect user data through the exposed interface.

Federal Policy Risk [Q5]: Executive Order 14365 raises federal concerns with state AI laws that compel disclosures or mandate bias mitigation. It also targets state laws that require changes to the truthful output of a model [12, 13]. Because SB85's data portability requirement does not fall within those categories, its AI provisions are unlikely to be the primary target of the order. There has also been a delay in the order's implementation [14, 15]. However, the risk cannot be dismissed entirely. If the AI and social media provisions of SB85 move forward together, any federal challenge to the AI provisions could also delay the social media requirements. The two could be separated to protect the social media provisions from such a challenge, but doing so would remove the AI coverage that distinguishes SB85 from the laws adopted in Utah and South Dakota.

Absence of a Measurement Requirement [Q6]: Neither SB85 nor HB418 requires covered entities to report how many transfer requests they receive and how many they complete. Furthermore, Utah's law is delayed to July 1, 2027 [16], so there is not any legislation of this kind currently in operation within the US. Consequently, there is no baseline to compare against and assess potential outcomes in Virginia. Including a reporting requirement in the bill for covered entities to provide this information would address the concern.

Consumer and Market Demand [Q7]: The bill assumes that users will use the interface once it exists. The available evidence does not support that assumption. Studies of the GDPR right to data portability find that use of the right has remained low since 2018, in part because the data received is difficult to reuse without interoperability at the receiving end [22]. The European Commission used similar reasoning when it decided not to extend interoperability to social networks in April 2026 [20]. In addition, covered entities would carry the cost of building and maintaining the interface regardless of how many users use it. However, low demand is not by itself an argument against the bill, and demand cannot be measured effectively before the interface exists.

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