

AMENDED IN ASSEMBLY JUNE 28, 2005

AMENDED IN ASSEMBLY JUNE 15, 2005

AMENDED IN SENATE MAY 2, 2005

AMENDED IN SENATE APRIL 11, 2005

SENATE BILL

No. 550

Introduced by Senator Speier

February 18, 2005

An act to amend Section 1798.84 of, and to add Title 1.805 (commencing with Section 1798.79) to Part 4 of Division 3 of, the Civil Code, relating to personal information.

LEGISLATIVE COUNSEL'S DIGEST

SB 550, as amended, Speier. Data brokers.

Existing law regulates businesses that disclose personal information about California residents to 3rd parties.

This bill would enact the California Data Broker Access and Accuracy Act of 2005. The act would regulate the disclosure of personally identifiable information by data brokers, as defined. The act would require data brokers to disclose to individuals who are the subject of the information all personally identifiable information about the individual and the specific sources of the information. The act would also require data brokers to reinvestigate disputed items of information, to post a specified notice on their Web sites, and to maintain specified procedures to control access to the information. The act would also provide for civil actions, injunction, and the imposition of civil penalties for violations of these provisions.

Existing law requires a business to take all reasonable steps to destroy, or arrange for the destruction of a customer's records within

its custody or control containing the personal information which is no longer to be retained by the business by specified means. Existing law authorizes a customer injured by a violation of these provisions to institute a civil action to recover damages.

This bill would additionally authorize any individual whose personal information is disclosed and who is injured by a violation of these provisions to institute a civil action to recover damages.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Title 1.805 (commencing with Section 1798.79)
2 is added to Part 4 of Division 3 of the Civil Code, to read:

3
4 TITLE 1.805. CALIFORNIA DATA BROKER ACCESS
5 AND ACCURACY ACT OF 2005
6

7 1798.79. For purposes of this title:

8 (a) (1) "Consumer data file" means personally identifiable
9 information about an individual, in whatever form or by
10 whatever means it is compiled, maintained or furnished, that is
11 retrievable by, indexed by, or includes *four or more digits of an*
12 *individual's social security number* ~~or a derivative thereof,~~
13 ~~mother's maiden name, unpublished telephone number, wireless~~
14 ~~telephone number,~~ driver's license number, nondriver
15 identification number, or biometric identifier.

16 (2) "Consumer data file" does not include:

17 (A) Compilations of personally identifiable information
18 derived solely from widely distributed media or published court
19 opinions.

20 (B) Compilations of personally identifiable information held
21 or used solely for the purpose of servicing or processing a
22 financial product or service requested or authorized by the
23 consumer.

24 (C) *Compilations of personally identifiable information held*
25 *and used solely for either fraud prevention or to comply with the*
26 *USA PATRIOT ACT (P.L. 107-56).*

27 (D) *Compilations of personally identifiable information that is*
28 *not reasonably expected to include or does not typically include*

1 *any of the following: four or more digits of an individual’s social*
2 *security number, driver’s license number, nondriver*
3 *identification number, or biometric identifier.*

4 (b) (1) “Data broker” means any person other than a
5 governmental entity that regularly engages in compiling or
6 maintaining consumer data files used or expected to be used or
7 collected in whole or in part for the purpose of providing
8 consumer data files, or access to those files, to nonaffiliated third
9 parties for monetary fees, dues, or on a cooperative nonprofit
10 basis.

11 (2) “Data broker” does not include:

12 ~~(A) A consumer reporting agency to the extent it is engaged in~~
13 ~~an activity regulated by the Fair Credit Reporting Act.~~

14 ~~(B) Any person when furnishing information to a consumer~~
15 ~~reporting agency pursuant to and in compliance with the Fair~~
16 ~~Credit Reporting Act.~~

17 ~~(e)–~~

18 *(A) Any financial institution subject to the provisions of*
19 *Division 1.2 (commencing with Section 4050) of the Financial*
20 *Code, except that a consumer reporting agency shall be excluded*
21 *from the definition of “data broker” only to the extent it is*
22 *engaged in an activity regulated by the federal Fair Credit*
23 *Reporting Act (15 U.S.C. 1681 and following).*

24 *(B) Any person when furnishing information to a consumer*
25 *reporting agency pursuant to and in compliance with the federal*
26 *Fair Credit Reporting Act.*

27 *(C) Any “covered entity” as defined in Section 160.103 of*
28 *Title 45 of the Code of Federal Regulations.*

29 *(D) Any person that does not furnish personally identifiable*
30 *information other than public record information solely relating*
31 *to property characteristics, as defined in subdivision (b) of*
32 *Section 408.3 of the Revenue and Taxation Code, or the right,*
33 *title, or interest in real property.*

34 *(E) An Internet service provider, unless the Internet service*
35 *provider is in the business of collecting personally identifiable*
36 *information for the primary purpose of compiling consumer data*
37 *files for the purpose of providing consumer data files, or access*
38 *to those files, to nonaffiliated third parties for monetary fees,*
39 *dues, or on a cooperative nonprofit basis. As used in this section,*
40 *“Internet service provider” means any person or entity who*

1 *provides the intermediary transmission, routing, relaying,*
2 *handling or storing, through an automatic technical process, of*
3 *any information, consumer data file or other communication on*
4 *behalf of another person, or who distributes that information,*
5 *consumer data file or similar communication through an*
6 *information location tool, such as a directory, index, reference,*
7 *pointer or hypertext link.*

8 (c) “Fraud prevention” means:

9 (1) Investigation by a business of a customer of that business
10 who is suspected of committing fraud.

11 (2) An evaluation of the authenticity or veracity of a
12 customer’s identity based on the customer’s personally
13 identifiable information that is provided as part of a transaction
14 initiated by the customer.

15 (d) “Personally identifiable information” means information
16 that identifies, relates to, ~~describes, or is capable of being~~
17 ~~associated with,~~ or describes a particular individual.

18 ~~(d)~~

19 (e) “Widely distributed media” means media available to the
20 general public and includes a telephone book, a television or
21 radio program, a newspaper, or a Web site that is available to the
22 general public on an unrestricted basis.

23 1798.79.1. (a) (1) A data broker shall, upon request, clearly
24 and accurately disclose to an individual:

25 (A) All consumer data files about the individual compiled or
26 maintained by the broker.

27 (B) The specific sources of the consumer data files about the
28 individual.

29 (2) A data broker shall provide the disclosure required
30 pursuant to paragraph (1) once during any 12-month period
31 without charge to the individual, and for additional disclosures
32 during the 12-month period, the data broker may charge the
33 individual a reasonable fee, not to exceed twenty dollars (\$20).

34 (b) A data broker shall require, as a condition of disclosing
35 personally identifiable information, that an individual furnish
36 proper identification. A data broker shall collect only as much
37 personally identifiable information from an individual as is
38 reasonably necessary to properly identify the individual. A data
39 broker shall use the personally identifiable information provided

1 by an individual solely for the purpose of processing the
2 transaction requested by the individual.

3 1798.79.2. (a) A data broker shall allow an individual the
4 right to request and receive prompt correction of errors in his or
5 her consumer data files.

6 (b) The data broker shall reinvestigate, free of charge, any
7 item disputed by the individual. If, after reinvestigation, an item
8 of information is found to be inaccurate, incomplete, cannot be
9 verified, or is found to pertain to another person, the data broker
10 shall correct or delete the information before the end of the
11 30-day period beginning on the date on which the data broker
12 receives a notice of dispute from an individual.

13 (c) A data broker shall maintain reasonable procedures
14 designed to prevent the reappearance in a consumer data file of
15 inaccurate or deleted information about the individual who
16 disputed the accuracy of the information.

17 (d) This section does not create an obligation upon a data
18 broker to correct or delete disputed information if the disputed
19 information maintained by the data broker accurately reflects
20 information contained in public records or the source of the
21 disputed information ~~is a governmental entity that~~ fails to
22 reconfirm the accuracy of that information after a request to do
23 so.

24 (e) Notwithstanding subdivision (d), if the reinvestigation does
25 not resolve the dispute, the individual may file a brief statement
26 setting forth the nature of the dispute. The data broker may limit
27 the statement to not more than one hundred words if it provides
28 the consumer with assistance in writing a clear summary of the
29 dispute. Whenever a statement of a dispute is filed, unless there
30 are reasonable grounds to believe that it is frivolous or irrelevant,
31 the data broker shall, in any subsequent consumer data file
32 containing, ~~or identity verification service based upon,~~ the
33 information in question, clearly note that it is disputed by the
34 individual and provide either the individual's statement or a clear
35 and accurate codification or summary thereof.

36 1798.79.3. (a) A data broker shall post a notice on its Web
37 site that clearly and conspicuously states all of the following:

38 (1) An individual's right to access consumer data files.

39 (2) An individual's right to request and receive prompt
40 correction of errors in his or her consumer data files.

1 (3) Whether *four or more digits of* a social security number ~~or~~
2 ~~a derivative thereof, mother's maiden name, unpublished~~
3 ~~telephone number, wireless telephone number,~~ driver's license
4 number, nondriver identification number, or biometric identifier
5 may be communicated to a third party.

6 (4) Examples of third parties to which consumer data files are
7 communicated.

8 (5) Examples of the purposes for which the third parties may
9 use consumer data files.

10 (b) A data broker shall post the notice described in subdivision
11 (a) on its Web site through any of the following:

12 (1) A Web page on which the actual notice is posted if the
13 Web page is the homepage or first significant page after entering
14 the Web site.

15 (2) An icon that hyperlinks to a Web page on which the actual
16 notice is posted, if the icon is located on the homepage or the
17 first significant page after entering the Web site, and if the icon
18 contains the words, "consumer access." The icon shall also use a
19 color that contrasts with the background color of the Web page or
20 is otherwise distinguishable.

21 (3) A text link that hyperlinks to a Web page on which the
22 actual notice is posted, if the text is located on the homepage or
23 first significant page after entering the Web site, and if the text
24 link does one of the following:

25 (A) Includes the words, "consumer access."

26 (B) Is written in capital letters equal to or greater in size than
27 the surrounding text.

28 (C) Is written in capital letters equal to or greater in size than
29 the surrounding text, or in contrasting type, font, or color to the
30 surrounding text of the same size, or set off from the surrounding
31 text of the same size by symbols or other marks that call attention
32 to the language.

33 (c) A data broker shall, in addition to posting the notice
34 specified in subdivision (a) on its Web site, notify an individual
35 of his or her right to access personally identifiable information
36 and the right to request and receive prompt correction of errors in
37 that information in a live or automated message through its
38 customer service telephone number.

39 1798.79.4. (a) A data broker shall have a secure and
40 dependable authentication process for each third party to whom

1 the data broker furnishes or permits to have access to consumer
2 data files, ~~or to whom the data broker provides identity~~
3 ~~verification services~~. A data broker shall maintain reasonable
4 procedures to avoid unauthorized access to consumer data files,
5 including requiring prospective recipients to identify themselves,
6 certify the purposes for which the information is sought, and
7 certify that the information will be used for no other purpose. A
8 data broker shall make a reasonable effort to verify the identity of
9 a new prospective recipient and the uses certified by the
10 prospective recipient prior to furnishing a consumer data file. No
11 data broker may furnish a consumer data file to any person if it
12 has reasonable grounds for believing the consumer data file will
13 be used for any purpose in violation of any applicable federal or
14 state law or regulation.

15 (b) A data broker shall have a process to determine which
16 subscribed access code accessed consumer data files or identity
17 verification services, which consumer data files have been
18 accessed and by whom, and for what purpose the files or services
19 were accessed.

20 ~~1798.79.5. (a) If there is a breach in the security of the~~
21 ~~information held by a data broker, the data broker shall, at the~~
22 ~~request of an individual notified of the breach as described in~~
23 ~~Section 1798.82, pay for, or reimburse the individual for his or~~
24 ~~her cost of, any security freezes that the individual places on his~~
25 ~~or her credit reports pursuant to Section 1785.11.2.~~

26 ~~(b) A data broker shall, in the same manner as the notice of~~
27 ~~breach, notify an individual that the data broker will pay for~~
28 ~~placing a security freeze if requested by the individual.~~

29 1798.79.6. (a) Any waiver of a provision of this title is
30 contrary to public policy and is void and unenforceable.

31 (b) Any individual injured by a violation of this title may
32 institute a civil action to recover damages.

33 (c) In addition to damages, for a willful, intentional, or
34 reckless violation of this title, an individual may recover a civil
35 penalty not to exceed three thousand dollars (\$3,000) per
36 violation. Otherwise, the individual may recover a civil penalty
37 of up to five hundred dollars (\$500) per violation for a violation
38 of this title.

39 (d) Any data broker that violates, proposes to violate, or has
40 violated this title may be enjoined.

1 (e) The rights and remedies available under this title are
2 cumulative with each other and with any other rights and
3 remedies available under law.

4 SEC. 2. Section 1798.84 of the Civil Code is amended to
5 read:

6 1798.84. (a) Any waiver of a provision of this title is
7 contrary to public policy and is void and unenforceable.

8 (b) Any customer, or any individual whose personal
9 information is disclosed, who is injured by a violation of this title
10 may institute a civil action to recover damages.

11 (c) In addition, for a willful, intentional, or reckless violation
12 of Section 1798.83, a customer may recover a civil penalty not to
13 exceed three thousand dollars (\$3,000) per violation; otherwise,
14 the customer may recover a civil penalty of up to five hundred
15 dollars (\$500) per violation for a violation of Section 1798.83.

16 (d) Unless the violation is willful, intentional, or reckless, a
17 business that is alleged to have not provided all the information
18 required by subdivision (a) of Section 1798.83, to have provided
19 inaccurate information, failed to provide any of the information
20 required by subdivision (a) of Section 1798.83, or failed to
21 provide information in the time period required by subdivision
22 (b) of Section 1798.83, may assert as a complete defense in any
23 action in law or equity that it thereafter provided regarding the
24 information that was alleged to be untimely, all the information,
25 or accurate information, to all customers who were provided
26 incomplete or inaccurate information, respectively, within 90
27 days of the date the business knew that it had failed to provide
28 the information, timely information, all the information, or the
29 accurate information, respectively.

30 (e) Any business that violates, proposes to violate, or has
31 violated this title may be enjoined.

32 (f) A prevailing plaintiff in any action commenced under
33 Section 1798.83 shall also be entitled to recover his or her
34 reasonable attorney's fees and costs.

35 (g) The rights and remedies available under this section are
36 cumulative to each other and to any other rights and remedies
37 available under law.

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