

AMENDED IN ASSEMBLY MARCH 13, 2006

AMENDED IN ASSEMBLY JUNE 14, 2005

AMENDED IN ASSEMBLY JUNE 6, 2005

AMENDED IN SENATE MAY 2, 2005

AMENDED IN SENATE APRIL 21, 2005

SENATE BILL

No. 440

Introduced by Senator Speier

February 17, 2005

An act to add ~~Section 1798.21.5 to, and to add Title 1.81.23 (commencing with Section 1798.90.5) to Part 4 of Division 3 of, the Civil Code, relating to personal information. Article 6 (commencing with Section 2899) to Chapter 10 of Part 2 of Division 1 of the Public Utilities Code, relating to telecommunications.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 440, as amended, Speier. ~~Personal information. Telecommunications: mobile data and mobile telephony services: charges for unauthorized services.~~

Under existing law, the Federal Communications Commission licenses and partially regulates providers of commercial mobile radio service, including providers of cellular radiotelephone service (cellular), broadband Personal Communications Services (PCS), and digital Specialized Mobile Radio (SMR) services (collectively, mobile telephony service providers). Under existing law, no state or local government may regulate the entry of, or the rates charged by, any commercial mobile radio service, but a state or local government is

generally not prohibited from regulating the other terms and conditions of commercial mobile radio service.

Existing law authorizes the Public Utilities Commission to regulate telecommunications services and rates of telephone corporations, except to the extent regulation of commercial mobile radio service is preempted by federal regulation, and to require telephone corporations to provide customer services. Existing law requires a provider of mobile telephony services to provide subscribers with a means by which a subscriber can obtain reasonably current and available information on the subscriber's calling plan or plans and service usage.

This bill would require that providers of mobile data service, as defined, or mobile telephony service, as defined, give clear and conspicuous written notice of a subscriber's potential liability for any unauthorized use of the service and the means for a subscriber to notify the service provider in the event of theft or other loss of a mobile data or mobile telephony communications handset or other device. The bill would require that the written disclosure contain a blank space for the customer to initial or sign, to acknowledge having been advised of their potential liability for unauthorized use of the service. The bill would limit a subscriber's liability for unauthorized use to usage occurring prior to notification of the service provider, not to exceed \$50. The bill would prohibit a mobile data or mobile telephony service provider from changing a subscriber's contract in a way that results in higher rates or charges or more restrictive terms or conditions, unless specified conditions are met.

~~(1) The Information Practices Act of 1977 regulates the collection and disclosure of personal information regarding individuals by state agencies, as specified.~~

~~On and after July 1, 2006, this bill would require a state agency, or any person contracting with a state agency, to encrypt all personal information, as defined, that is owned by the state and stored or transported on a portable computing or electronic storage device.~~

~~(2) Existing law prescribes various prohibitions with regard to disclosures of personal information related to, among others, consumer credit reports, credit card transactions, driver's licenses, social security numbers, and direct marketing.~~

~~This bill would prohibit a business, as defined, from discriminating against or denying an otherwise qualified consumer a product or service, or charging a higher price for that product or service, because~~

~~the consumer has not provided the consent to disclose or share covered information, as defined, pertaining to him or her, or because the consumer has directed that the information not be disclosed or shared. The bill would except from that prohibition a business that cannot provide a product or service without provision of that covered information and certain institutions already subject to specified federal provisions or regulations. The bill would provide that no liability is created with regard to the above, and that the measure is not intended to prohibit a business from offering incentives or discounts to elicit a specific response pertaining to the disclosure or sharing of covered information.~~

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

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

1 SECTION 1. Article 6 (commencing with Section 2899) is
 2 added to Chapter 10 of Part 2 of Division 1 of the Public Utilities
 3 Code, to read:

4
 5 Article 6. Mobile Data and Mobile Telephony Services

6
 7 2899. For purposes of this article, the following terms have
 8 the following meanings:

9 (a) "Mobile data service" means the delivery of nonvoice
 10 information to a mobile device and includes nonvoice
 11 information communicated to a mobile telephony services
 12 handset, nonvoice information communicated to handheld
 13 personal digital assistant (PDA) devices and laptop computers,
 14 and paging carriers offering services on pagers and two-way
 15 messaging devices.

16 (b) "Mobile telephony service" means commercially available
 17 interconnected mobile phone services that provide access to the
 18 public switched telephone network (PSTN) via mobile
 19 communication devices employing radiowave technology to
 20 transmit calls, including cellular radiotelephone, broadband
 21 Personal Communications Services (PCS), and digital
 22 Specialized Mobile Radio (SMR). "Mobile telephony services"
 23 does not include mobile satellite services or mobile data services

1 *used exclusively for the delivery of nonvoice information to a*
2 *mobile device.*

3 *(c) “Subscriber” means any individual or small commercial*
4 *entity that purchases or subscribes, or may potentially purchase*
5 *or subscribe, to any product or service provided or billed by a*
6 *mobile data service or mobile telephony service provider.*

7 *2899.1. (a) Every mobile data service or mobile telephony*
8 *service provider shall give clear and conspicuous written notice*
9 *of a subscriber’s potential liability for any unauthorized use of*
10 *the service and the means for a subscriber to notify the service*
11 *provider in the event of theft or other loss of a mobile data or*
12 *mobile telephony communications handset or other device.*

13 *(b) The written disclosure required by subdivision (a), shall*
14 *contain a blank space for the customer to initial or sign, to*
15 *acknowledge having been advised of their potential liability for*
16 *unauthorized use of the service.*

17 *(c) A subscriber’s liability for unauthorized use is limited to*
18 *usage occurring prior to notification of the service provider,*
19 *consistent with the written notice. In no event shall a subscriber’s*
20 *liability exceed fifty dollars (\$50).*

21 *(d) (1) In any action brought by a mobile data service or*
22 *mobile telephony service provider, the service provider has the*
23 *burden of proof to establish that use of the service was*
24 *authorized.*

25 *(2) In any action brought by a mobile data service or mobile*
26 *telephony service provider, to recover for services that were*
27 *unauthorized, the service provider has the burden of proof to*
28 *establish that the subscriber is responsible for the charges under*
29 *the agreement.*

30 *2899.2. (a) No mobile data or mobile telephony service*
31 *provider shall change a subscriber’s contract in a way that*
32 *results in higher rates or charges or more restrictive terms or*
33 *conditions, unless all of the following conditions are met:*

34 *(1) The change is permitted by law.*

35 *(2) The subscriber is provided with at least 30 calendar days*
36 *prior written notice before the effective date of the change,*
37 *during which time the subscriber may terminate service before*
38 *the effective date of the change. The written notice shall include*
39 *the following statement in at least 12-point bold face type: “The*
40 *terms of your contract have changed.” Following this heading*

1 shall be a clear, concise, and conspicuous statement explaining
2 the change in the rate, charge, term, or condition in the
3 subscriber's contract.

4 (3) If the subscriber's contract contains any early termination
5 fee or charge provision, any early termination fee or charge is
6 waived and may not be collected by the service provider if the
7 subscriber elects to terminate service pursuant to paragraph (2).
8 If the subscriber's contract contains any early termination fee or
9 charge, the prior written notice shall, in addition to the notice
10 required in paragraph (2), include the following statement in at
11 least 12-point bold fact type: "You have a right to terminate
12 service without penalty." Following this heading shall be a clear,
13 concise, and conspicuous statement explaining the number of
14 days that the subscriber has to terminate service without
15 incurring a fee or charge.

16 (b) The requirements of subdivision (a) do not apply to either
17 of the following:

18 (1) When the subscriber initiates the request to change the
19 terms or conditions of the contract, including a request for
20 additional services not offered under the existing contract.

21 (2) An increase in a tax or fee that the mobile data or mobile
22 telephony service provider is required to collect from the
23 subscriber and remit to a governmental entity.

24 SECTION 1. ~~Section 1798.21.5 is added to the Civil Code, to~~
25 ~~read:~~

26 ~~1798.21.5. (a) On and after July 1, 2006, an agency, or any~~
27 ~~person contracting with an agency, shall encrypt all personal~~
28 ~~information that is owned by the state and stored or transported~~
29 ~~on a portable computing or electronic storage device.~~

30 ~~(b) For purposes of this section:~~

31 ~~(1) "Personal information" means an individual's first name or~~
32 ~~first initial and his or her last name in combination with any one~~
33 ~~or more of the following data elements:~~

34 ~~(A) Social security number.~~

35 ~~(B) Driver's license number or California identification card~~
36 ~~number.~~

37 ~~(C) Account number or credit or debit card number, in~~
38 ~~combination with any required security code, access code, or~~
39 ~~password that would permit access to an individual's financial~~
40 ~~account.~~

1 ~~(D) Medical information.~~

2 ~~(2) “Medical information” means any individually identifiable~~
 3 ~~information, in electronic or physical form, regarding the~~
 4 ~~individual’s medical history or medical treatment or diagnosis by~~
 5 ~~a health care professional.~~

6 ~~SEC. 2. Title 1.81.23 (commencing with Section 1798.90.5)~~
 7 ~~is added to Part 4 of Division 3 of the Civil Code, to read:~~

8

9 ~~TITLE 1.81.23. PERSONAL INFORMATION~~
 10 ~~DISCLOSURES TO BUSINESSES~~

11

12 ~~1798.90.5. (a) A business required by state or federal law to~~
 13 ~~obtain a consumer’s consent before disclosing or sharing covered~~
 14 ~~information pertaining to the consumer or to provide the~~
 15 ~~consumer with an opportunity to direct that the information not~~
 16 ~~be shared or disclosed shall not discriminate against or deny an~~
 17 ~~otherwise qualified consumer a product or service sold or leased~~
 18 ~~by the business or charge a higher price for that product or~~
 19 ~~service because the consumer has not provided the business the~~
 20 ~~consent to disclose or share covered information pertaining to~~
 21 ~~him or her, or because the consumer has directed that the~~
 22 ~~information not be disclosed or shared.~~

23 ~~(b) Notwithstanding any other provision of law, nothing in this~~
 24 ~~section shall prohibit a business from denying a consumer a~~
 25 ~~product or service, or from charging a consumer a higher price, if~~
 26 ~~the business could not provide the product or service, or a lower~~
 27 ~~price, to the consumer without disclosure of the consumer’s~~
 28 ~~covered information, and the consumer has failed to provide~~
 29 ~~consent to that disclosure or has directed that covered~~
 30 ~~information pertaining to him or her not be disclosed or shared.~~

31 ~~(c) A business shall not be liable for failing to offer products~~
 32 ~~or services to a consumer solely because that consumer or for~~
 33 ~~charging a higher price for a product or service, pursuant to state~~
 34 ~~or federal law, has failed to provide the business the consent to~~
 35 ~~disclose or share covered information pertaining to him or her or~~
 36 ~~has directed that covered information not be disclosed or shared,~~
 37 ~~and the business could not offer or charge a lower price for the~~
 38 ~~product or service without the disclosure of the consumer’s~~
 39 ~~covered information.~~

1 ~~(d) Nothing in this section is intended to prohibit a business~~
2 ~~from offering incentives or discounts to elicit a specific response~~
3 ~~to a choice pertaining to the disclosure or sharing of covered~~
4 ~~information granted in state or federal law.~~

5 ~~(e) The requirements of this section shall not apply where a~~
6 ~~business is subject to paragraph (1) of subdivision (a) or~~
7 ~~paragraph (4) of subdivision (b) of Section 4053 of the Financial~~
8 ~~Code, or is a “covered entity” as defined in Section 160.103 of~~
9 ~~Title 45 of the Code of Federal Regulations of the Standards for~~
10 ~~Privacy of Individually Identifiable Health Information under the~~
11 ~~federal Health Insurance Portability and Accountability Act (42~~
12 ~~U.S.C. Sec. 300gg et seq.) and is subject to Sections~~
13 ~~164.508(b)(4) and 164.530(g) of Title 42 of the Code of Federal~~
14 ~~Regulations.~~

15 ~~(f) For purposes of this section:~~

16 ~~(1) “Business” means a proprietorship, partnership,~~
17 ~~corporation, or any other form of commercial enterprise, doing~~
18 ~~business in California.~~

19 ~~(2) “Covered information” means the information pertaining~~
20 ~~to a consumer that state or federal law prohibits a business from~~
21 ~~sharing or disclosing before obtaining a consumer’s consent or~~
22 ~~before providing the consumer with an opportunity to direct that~~
23 ~~the information not be shared or disclosed.~~