

AMENDED IN SENATE MAY 2, 2005  
AMENDED IN SENATE APRIL 11, 2005

**SENATE BILL**

**No. 550**

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**Introduced by Senator Speier**

February 18, 2005

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~~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. An act relating to personal information.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 550, as amended, Speier. Data brokers.

~~(1) Existing law generally regulates a business businesses that discloses disclose personal information about a California resident residents to 3rd parties.~~

~~The bill would declare the intent of the Legislature to enact legislation that allows consumers access to their personal information held by data brokers, as specified.~~

~~This bill would further regulate a data broker, which would be defined as a commercial entity that collects, assembles, or maintains personally identifiable information about a California resident for the sale or transmission of, or provision of access to, that information to any 3rd party. The bill would, among other things, authorize a California resident to request that his or her personally identifiable information, as defined, be excluded from any report prepared by a data broker, and would require a data broker to inform that resident every time the broker issues a report containing that information. The bill would further require every data broker to allow every California resident the right to obtain disclosure of all personally identifiable information pertaining to that individual held by the broker, and to be~~

~~informed of the identity of each person or entity that procures that information from the broker. The bill would require the prompt correction of errors in any report, and, upon a breach of security of an individual's information, would require the data broker to pay for a security freeze of that individual's credit reports. The bill would provide for specified penalty provisions and injunctive relief.~~

~~(2) 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 that contains personal information. Existing law further regulates the disclosure of personal information about a California resident to 3rd parties, and requires any person or business that conducts business in California, and that owns or licenses computerized data that includes personal information, to disclose to those individuals a breach of its security system. Existing law provides a private cause of action to a customer, as defined, who is injured by a violation of the above provisions.~~

~~This bill would provide that cause of action to any individual who is injured by a violation of the above provisions.~~

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. It is the intent of the Legislature to enact~~  
2     ~~legislation that allows consumers access to their personal~~  
3     ~~information held by data brokers and the ability to request~~  
4     ~~corrections in that information from the source of error.~~

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

7  
8                     ~~TITLE 1.805. DATA BROKERS~~

9  
10    ~~1798.79. For purposes of this title:~~

11    ~~(a) "Data broker" means a commercial entity that collects,~~  
12    ~~assembles, or maintains personally identifiable information about~~  
13    ~~a California resident for the sale or transmission of, or the~~  
14    ~~provision of access to, that information to any third party,~~  
15    ~~whether that collection, assembly, or maintenance is performed~~  
16    ~~by the data broker directly or by contract or subcontract with any~~  
17    ~~other entity.~~

1 ~~(b) “Individual” means a natural person residing in California.~~

2 ~~(e) “Personally identifiable information” means any~~  
3 ~~information that identifies, relates to, describes, or is capable of~~  
4 ~~being associated with, a particular individual, including, but not~~  
5 ~~limited to, his or her name, signature, social security number,~~  
6 ~~physical characteristics or description, address, telephone~~  
7 ~~number, passport number, driver’s license or state identification~~  
8 ~~card number, insurance policy number, education, employment,~~  
9 ~~employment history, bank account number, credit card number,~~  
10 ~~debit card number, or any other financial information.~~

11 ~~1798.79.2. (a) Every individual may request that his or her~~  
12 ~~personally identifiable information be excluded from any report~~  
13 ~~prepared by a data broker. Every data broker shall establish a~~  
14 ~~notification system, including, but not limited to, a toll-free~~  
15 ~~telephone number, through which an individual can provide~~  
16 ~~notice to that broker that the individual’s personally identifiable~~  
17 ~~information shall be excluded therefor. The data broker shall be~~  
18 ~~prohibited from disclosing that personally identifiable~~  
19 ~~information after receipt of that notice, except that no penalty~~  
20 ~~shall be imposed for any disclosure made within five business~~  
21 ~~days after the notice if the data broker proves that the data was~~  
22 ~~disclosed in response to a request received prior to receipt of the~~  
23 ~~election and the data broker took all reasonable steps to prevent~~  
24 ~~disclosure.~~

25 ~~(b) Whenever a data broker issues a report containing~~  
26 ~~personally identifiable information, except for a report issued to~~  
27 ~~a government agency or pursuant to a court order, the data broker~~  
28 ~~shall send a written notice to the individual who is the subject of~~  
29 ~~the report. That notice shall provide the name and address of the~~  
30 ~~person or entity who requested the report, and shall advise the~~  
31 ~~data subject that he or she has a right to receive a copy of the~~  
32 ~~report and to have all personally identifiable information~~  
33 ~~excluded from future reports.~~

34 ~~(e) Every data broker shall allow every individual the right to~~  
35 ~~obtain disclosure of all personally identifiable information~~  
36 ~~pertaining to the individual held by the broker, and to be~~  
37 ~~informed of the identity of each person or entity that procures~~  
38 ~~any personally identifiable information from the broker.~~

1 ~~(d) Every data broker shall allow every individual the right to~~  
2 ~~request and receive prompt correction of errors in personally~~  
3 ~~identifiable information held by the broker.~~

4 ~~(e) Upon request of an individual, a data broker shall provide~~  
5 ~~the name and address of any recipient of a report about the~~  
6 ~~individual provided within the prior 12 months.~~

7 ~~1798.79.4. In the event of a breach in information security by~~  
8 ~~a data broker that holds an individual's personally identifiable~~  
9 ~~information, the data broker shall pay for a security freeze of that~~  
10 ~~individual's credit reports pursuant to Section 1785.11.2.~~

11 ~~1798.79.6. (a) For a willful, intentional, or reckless violation~~  
12 ~~of this title, an individual may recover a civil penalty not to~~  
13 ~~exceed three thousand dollars (\$3,000) per violation. Otherwise,~~  
14 ~~the individual may recover a civil penalty of up to five hundred~~  
15 ~~dollars (\$500) per violation for a violation of this title.~~

16 ~~(b) Any data broker that violates, proposes to violate, or has~~  
17 ~~violated this title may be enjoined.~~

18 ~~(c) The rights and remedies available under this section are~~  
19 ~~eumulative with each other and with any other rights and~~  
20 ~~remedies available under law.~~

21 ~~SEC. 2. Section 1798.84 of the Civil Code is amended to~~  
22 ~~read:~~

23 ~~1798.84. (a) Any waiver of a provision of this title is~~  
24 ~~contrary to public policy and is void and unenforceable.~~

25 ~~(b) Any customer or individual whose personal information is~~  
26 ~~disclosed who is injured by a violation of this title may institute a~~  
27 ~~civil action to recover damages.~~

28 ~~(c) In addition, for a willful, intentional, or reckless violation~~  
29 ~~of Section 1798.83, a customer may recover a civil penalty not to~~  
30 ~~exceed three thousand dollars (\$3,000) per violation; otherwise,~~  
31 ~~the customer may recover a civil penalty of up to five hundred~~  
32 ~~dollars (\$500) per violation for a violation of Section 1798.83.~~

33 ~~(d) Unless the violation is willful, intentional, or reckless, a~~  
34 ~~business that is alleged to have not provided all the information~~  
35 ~~required by subdivision (a) of Section 1798.83, to have provided~~  
36 ~~inaccurate information, failed to provide any of the information~~  
37 ~~required by subdivision (a) of Section 1798.83, or failed to~~  
38 ~~provide information in the time period required by subdivision~~  
39 ~~(b) of Section 1798.83, may assert as a complete defense in any~~  
40 ~~action in law or equity that it thereafter provided regarding the~~

1 ~~information that was alleged to be untimely, all the information,~~  
2 ~~or accurate information, to all customers who were provided~~  
3 ~~incomplete or inaccurate information, respectively, within 90~~  
4 ~~days of the date the business knew that it had failed to provide~~  
5 ~~the information, timely information, all the information, or the~~  
6 ~~accurate information, respectively.~~

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

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

12 ~~(g) The rights and remedies available under this section are~~  
13 ~~eumulative to each other and to any other rights and remedies~~  
14 ~~available under law.~~