

AMENDED IN ASSEMBLY AUGUST 7, 2006

AMENDED IN ASSEMBLY JUNE 21, 2006

AMENDED IN ASSEMBLY JUNE 8, 2006

AMENDED IN SENATE MARCH 28, 2006

**SENATE BILL**

**No. 1666**

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**Introduced by Senator Bowen**  
**(Coauthors: Senators Kuehl and Romero)**  
(Coauthors: Assembly Members Koretz, Laird, and Pavley)

February 24, 2006

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An act to amend Sections 1798.80 and 1798.84 of, and to add Section 1798.83.5 to, the Civil Code, relating to personal information.

LEGISLATIVE COUNSEL'S DIGEST

SB 1666, as amended, Bowen. Personal information: prohibited practices.

Existing law requires a business to ensure the privacy of a customer's personal information, as defined, contained in records, as defined, by destroying, or arranging for the destruction of, the records. Existing law requires, subject to certain exceptions, a business that discloses a customer's personal information, including information relating to income or purchases, to a 3rd party for direct marketing purposes to provide the customer, within 30 days after the customer's request, as specified, in writing or by e-mail the names and addresses of the recipients of that information and specified details regarding the information disclosed, except as specified. Existing law requires a person or business that owns or licenses computerized data that include personal information to disclose any breach of the security of its system, as specified. Existing law requires a business, other than

specified entities, that own or license personal information about a California resident to implement and maintain reasonable security procedures and practices to protect personal information from unauthorized access, destruction, use, modification, or disclosure. Any customer injured by a business' violation of these provisions is entitled to recover damages, a civil penalty, attorney's fees, injunctive relief, and other remedies.

This bill would include a telephone calling pattern record or list in the definition of "personal information" for purposes of the above-described provisions. The bill would also prohibit any person, as defined, from, among other things, obtaining or attempting to obtain, or causing or attempting to cause the disclosure of, personal information about a customer or employee *contained in the records* of a business through specified methods, such as by making false, fictitious, or fraudulent statements or representations, with specified exceptions. The bill would provide civil remedies for the violation thereof, and would make related and conforming changes in that regard.

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. Section 1798.80 of the Civil Code is amended  
2 to read:  
3 1798.80. The following definitions apply to this title:  
4 (a) "Business" means a sole proprietorship, partnership,  
5 corporation, association, or other group, however organized, and  
6 whether or not organized to operate at a profit, including a  
7 financial institution organized, chartered, or holding a license or  
8 authorization certificate under the law of this state, any other  
9 state, the United States, or of any other country, or the parent or  
10 the subsidiary of a financial institution. The term includes an  
11 entity that destroys records.  
12 (b) "Customer" means an individual who provides personal  
13 information to a business for the purpose of purchasing or leasing  
14 a product or obtaining a service from the business.  
15 (c) "Individual" means a natural person.

1 (d) “Person” means an individual, business association,  
2 partnership, limited partnership, corporation, limited liability  
3 company, trust, estate, cooperative association or other entity.

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

14 (f) “Records” means any material, regardless of the physical  
15 form, on which information is recorded or preserved by any  
16 means, including in written or spoken words, graphically  
17 depicted, printed, or electromagnetically transmitted. “Records”  
18 does not include publicly available directories containing  
19 information an individual has voluntarily consented to have  
20 publicly disseminated or listed, such as name, address, or  
21 telephone number.

22 SEC. 2. Section 1798.83.5 is added to the Civil Code, to read:

23 1798.83.5. (a) No person shall obtain or attempt to obtain, or  
24 cause to be disclosed or attempt to cause to be disclosed,  
25 personal information about a customer or employee *contained in*  
26 *the records* of a business using any of the following methods:

27 (1) By making a false, fictitious, or fraudulent statement or  
28 representation to an officer, employee, or agent of a business.

29 (2) By making a false, fictitious, or fraudulent statement or  
30 representation to a customer of a business.

31 (3) By providing any document to an officer, employee, or  
32 agent of a business, knowing that the document is forged,  
33 counterfeit, lost, or stolen, was fraudulently obtained, or contains  
34 a false, fictitious, or fraudulent statement or representation.

35 (b) No person shall request a person to obtain personal  
36 information about a customer or employee *contained in the*  
37 *records* of a business, knowing that the person will obtain, or  
38 attempt to obtain, the information in any manner described in  
39 subdivision (a).

1 (c) No provision of this section shall be construed to prevent  
2 any action by a law enforcement agency, or any officer,  
3 employee, or agent of that agency, to obtain personal information  
4 about a customer or employee *contained in the records* of a  
5 business, as permitted by law in connection with the performance  
6 of the official duties of the agency.

7 (d) No provision of this section shall be construed to prevent  
8 any business, or any officer, employee, or agent of that business,  
9 from obtaining personal information about a customer or  
10 employee *contained in the records* of the business, in the course  
11 of any of the following:

12 (1) Testing the security procedures or systems of the business,  
13 for maintaining the confidentiality of personal information about  
14 a customer or employee.

15 (2) Investigating allegations of misconduct or negligence on  
16 the part of any officer, employee, or agent of the business.

17 (3) Recovering personal information about a customer or  
18 employee of the business, which was obtained or received by  
19 another person in any manner described in subdivision (a) or (b).

20 (4) Analyzing its customer records for patterns of activity in  
21 an effort to identify fraud or identity theft.

22 (e) Any personal information that is obtained in violation of  
23 subdivision (a) or (b) shall be inadmissible as evidence in any  
24 judicial, administrative, legislative, or other proceeding, except  
25 when that information is offered as proof in an action for a  
26 violation of this title.

27 (f) No provision of this section shall be construed to prevent  
28 any person from obtaining personal information pursuant to a  
29 lawfully issued and noticed subpoena or court order.

30 (g) The rights and remedies of a customer or employee for a  
31 violation of this section are the remedies provided in Section  
32 1798.84.

33 SEC. 3. Section 1798.84 of the Civil Code is amended to  
34 read:

35 1798.84. (a) Any waiver of a provision of this title is  
36 contrary to public policy and is void and unenforceable.

37 (b) Any customer injured by a violation of this title may  
38 institute a civil action to recover damages.

39 (c) In addition, for a willful, intentional, or reckless violation  
40 of Section 1798.83 or 1798.83.5, a customer may recover a civil

1 penalty not to exceed three thousand dollars (\$3,000) per  
2 violation; otherwise, the customer may recover a civil penalty of  
3 up to five hundred dollars (\$500) per violation for a violation of  
4 Section 1798.83 or 1798.83.5.

5 (d) Unless the violation is willful, intentional, or reckless, a  
6 business that is alleged to have not provided all the information  
7 required by subdivision (a) of Section 1798.83, to have provided  
8 inaccurate information, failed to provide any of the information  
9 required by subdivision (a) of Section 1798.83, or failed to  
10 provide information in the time period required by subdivision  
11 (b) of Section 1798.83, may assert as a complete defense in any  
12 action in law or equity that it thereafter provided regarding the  
13 information that was alleged to be untimely, all the information,  
14 or accurate information, to all customers who were provided  
15 incomplete or inaccurate information, respectively, within 90  
16 days of the date the business knew that it had failed to provide  
17 the information, timely information, all the information, or the  
18 accurate information, respectively.

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

21 (f) A prevailing plaintiff in any action commenced under  
22 Section 1798.83 or 1798.83.5 shall also be entitled to recover his  
23 or her reasonable attorney's fees and costs.

24 (g) The rights and remedies available under this section are  
25 cumulative to each other and to any other rights and remedies  
26 available under law.

27 (h) The term "customer," as used in this section, with respect  
28 to a violation of Section 1798.83.5 only, includes a customer or  
29 employee of a business.