

ASSEMBLY BILL

No. 372

Introduced by Assembly Member Salas

February 15, 2007

An act to amend Section 1798.84 of the Civil Code, relating to personal information.

LEGISLATIVE COUNSEL'S DIGEST

AB 372, as introduced, Salas. Personal information: civil penalties.

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 personal information that is no longer to be retained by the business, as specified.

Existing law requires a business that owns or licenses personal information about a California resident to implement and maintain reasonable security procedures and practices appropriate to the nature of the information, and to protect that personal information from unauthorized access, destruction, use, modification, or disclosure. Existing law requires a business that discloses that information to a 3rd party to ensure by contract that the 3rd party agrees to implement and maintain reasonable security procedures.

Existing law requires any person or business that conducts business in California, and that owns or licenses computerized data that includes personal information, to disclose any breach of that data.

Existing law, upon request, requires a business to provide specified information to a customer in relation to the disclosure of personal information to 3rd parties, as specified.

For a violation of any of the above-described provisions, existing law allows an injured customer to institute a civil action to recover damages or for injunctive relief.

This bill would, in addition to those remedies, impose a civil penalty in the amount of up to \$2,500 upon any business that violates, proposes to violate, or has violated any of the above-described provisions, to be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General, or by any district attorney, any county counsel, or any city attorney of a city or county.

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

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

1 SECTION 1. Section 1798.84 of the Civil Code is amended
 2 to read:
 3 1798.84. (a) Any waiver of a provision of this title is contrary
 4 to public policy and is void and unenforceable.
 5 (b) Any customer injured by a violation of this title may institute
 6 a civil action to recover damages.
 7 (c) *Any business that violates, proposes to violate, or has*
 8 *violated this title shall be liable for a civil penalty not to exceed*
 9 *two thousand five hundred dollars (\$2,500), which shall be*
 10 *assessed and recovered in a civil action brought in the name of*
 11 *the people of the State of California by the Attorney General, or*
 12 *by any district attorney, any county counsel, or any city attorney*
 13 *of a city or city and county.*
 14 (d) *Any business that violates, proposes to violate, or has*
 15 *violated this title may be enjoined.*
 16 ~~(e)~~
 17 (e) In addition, for a willful, intentional, or reckless violation
 18 of Section 1798.83, a customer may recover a civil penalty not to
 19 exceed three thousand dollars (\$3,000) per violation; ~~otherwise.~~
 20 *Otherwise*, the customer may recover a civil penalty of up to five
 21 hundred dollars (\$500) per violation for a violation of Section
 22 1798.83.
 23 ~~(d)~~
 24 (f) Unless the violation is willful, intentional, or reckless, a
 25 business that is alleged to have not provided all the information

1 required by subdivision (a) of Section 1798.83, to have provided
2 inaccurate information, failed to provide any of the information
3 required by subdivision (a) of Section 1798.83, or failed to provide
4 information in the time period required by subdivision (b) of
5 Section 1798.83, may assert as a complete defense in any action
6 in law or equity that it thereafter provided regarding the information
7 that was alleged to be untimely, all the information, or accurate
8 information, to all customers who were provided incomplete or
9 inaccurate information, respectively, within 90 days of the date
10 the business knew that it had failed to provide the information,
11 timely information, all the information, or the accurate information,
12 respectively.

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

15 ~~(f)–~~

16 (g) A prevailing plaintiff in any action commenced under
17 Section 1798.83 shall also be entitled to recover his or her
18 reasonable attorney’s fees and costs.

19 ~~(g)–~~

20 (h) The rights and remedies available under this section are
21 cumulative to each other and to any other rights and remedies
22 available under law.