

AMENDED IN ASSEMBLY JUNE 5, 2008  
AMENDED IN SENATE JANUARY 7, 2008  
AMENDED IN SENATE APRIL 17, 2007  
AMENDED IN SENATE MARCH 20, 2007

**SENATE BILL**

**No. 31**

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**Introduced by Senator Simitian**

December 4, 2006

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An act to add Title 1.80 (commencing with Section 1798.79) ~~and Title 1.81.4 (commencing with Section 1798.98)~~ to Part 4 of Division 3 of the Civil Code, relating to privacy.

LEGISLATIVE COUNSEL'S DIGEST

SB 31, as amended, Simitian. Identification documents.

The Information Practices Act of 1977 regulates the collection and disclosure of personal information regarding individuals by state agencies, except as specified. Existing law also prohibits certain business entities, as defined, from making specified disclosures in relation to individual consumer records.

This bill would provide that a person or entity that intentionally remotely reads or attempts to remotely read a person's identification document, ~~as defined,~~ using radio waves without his or her knowledge and prior consent, as described, shall be punished by imprisonment in a county jail for up to one year, a fine of not more than \$1,500, or both that fine and imprisonment. The bill would also provide that a person or entity ~~who~~ *that* knowingly discloses, or causes to be disclosed, specified operational system keys shall be punished by imprisonment in a county jail for up to one year, a fine of not more than \$1,500, or both that fine and imprisonment. ~~The bill would provide that the~~

provisions regarding knowing disclosure of operational system keys is to become operative only if SB 30 of the 2007–08 Regular Session is also enacted and becomes effective on or before January 1, 2009. *The bill would also provide that a person or entity that unintentionally remotely reads a person’s identification document using radio waves would be punished by imprisonment in a county jail for up to one year, a fine of not more than \$1,500, or both that fine and imprisonment, only if the person or entity thereafter intentionally stores what it read, or intentionally discloses what it read to a 3rd party, for the purpose of reading a person’s identification document without the knowledge and prior consent of the person whose identification document was read.*

By creating ~~a new crime~~ *new crimes*, this bill would result in a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. The Legislature hereby finds and declares all of  
2 the following:

3 (a) The right to privacy is a personal and fundamental right  
4 protected by Section 1 of Article I of the California Constitution  
5 and by the United States Constitution. All individuals have a right  
6 of privacy in information pertaining to them.

7 (b) This state has previously recognized the importance of  
8 protecting the confidentiality and privacy of an individual’s  
9 personal information contained in identification documents such  
10 as ~~drivers’~~ *driver’s* licenses.

11 SEC. 2. Title 1.80 (commencing with Section 1798.79) is added  
12 to Part 4 of Division 3 of the Civil Code, to read:

13  
14 TITLE 1.80. IDENTIFICATION DOCUMENTS

15  
16 1798.79. (a) Except as provided in subdivisions ~~(b) and (e)~~  
17 *(d) and (e)*, a person or entity that intentionally remotely reads or

1 attempts to remotely read a person’s identification document using  
2 radio waves, for the purpose of reading that person’s identification  
3 document without that person’s knowledge and prior consent, shall  
4 be punished by imprisonment in a county jail for up to one year,  
5 a fine of not more than one thousand five hundred dollars (\$1,500),  
6 or both that fine and imprisonment.

7 *(b) A person or entity that unintentionally remotely reads a*  
8 *person’s identification document using radio waves shall be*  
9 *punished by imprisonment in a county jail for up to one year, a*  
10 *fine not to exceed one thousand five hundred dollars (\$1,500), or*  
11 *both that fine and imprisonment, only under the following*  
12 *circumstances:*

13 *(1) The person or entity knows it unintentionally read the*  
14 *document and thereafter intentionally discloses what it read to a*  
15 *third party for the purpose of allowing a third party to read a*  
16 *person’s identification document without that person’s knowledge*  
17 *and prior consent.*

18 *(2) The person or entity knows it unintentionally read the*  
19 *document and thereafter intentionally stores what it read for the*  
20 *purpose of reading a person’s identification document without*  
21 *that person’s knowledge and prior consent.*

22 *(c) A person or entity that knowingly discloses, or causes to be*  
23 *disclosed, the operational system keys used in a contactless*  
24 *identification document system shall be punished by imprisonment*  
25 *in a county jail for up to one year, a fine of not more than one*  
26 *thousand five hundred dollars (\$1,500), or both that fine and*  
27 *imprisonment.*

28 ~~(b)~~

29 *(d) Subdivision (a) shall not apply to:*

30 *(1) The reading of a person’s identification document for triage*  
31 *or medical care during a disaster and immediate hospitalization or*  
32 *immediate outpatient care directly related to a disaster, as defined*  
33 *by the local emergency medical services agency organized under*  
34 *Section 1797.200 of the Health and Safety Code.*

35 *(2) The reading of a person’s identification document by a health*  
36 *care professional for reasons relating to the health or safety of that*  
37 *person or an identification document issued to a patient by*  
38 *emergency services.*

39 *(3) The reading of an identification document of a person who*  
40 *is incarcerated in the state prison or a county jail, detained in a*

1 juvenile facility operated by the Division of Juvenile Facilities in  
2 the Department of Corrections and Rehabilitation, or ~~housing~~  
3 *housed* in a mental health facility, pursuant to a court order after  
4 having been charged with a crime, or to a person pursuant to a  
5 court-ordered electronic monitoring.

6 (4) Law enforcement or government personnel who need to  
7 read a lost identification document when the owner is unavailable  
8 for notice, knowledge, or consent, or those parties specifically  
9 authorized by law enforcement or government personnel for the  
10 limited purpose of reading a lost identification document when  
11 the owner is unavailable for notice, knowledge, or consent.

12 (5) Law enforcement personnel who need to read a person's  
13 identification document after an accident in which the person is  
14 unavailable for notice, knowledge, or consent.

15 (6) Law enforcement personnel who need to read a person's  
16 identification document pursuant to a search warrant.

17 ~~(7) A person or entity that in the course of operating its own  
18 contactless identification document system inadvertently reads or  
19 collects data from another contactless identification document  
20 system, provided that the inadvertently received data comports  
21 with all of the following:~~

22 ~~(A) The data is not disclosed to any other party.~~

23 ~~(B) The data is not used for any purpose.~~

24 ~~(C) The data is not stored or is promptly destroyed.~~

25 ~~(8)~~

26 (7) The reading of a person's identification document in the  
27 course of an act of good faith security research, experimentation,  
28 or scientific inquiry, including, but not limited to, activities useful  
29 in identifying and analyzing security flaws and vulnerabilities.

30 ~~(e)~~

31 (e) Nothing in this section shall affect the existing rights of law  
32 enforcement to access data stored electronically on ~~drivers' driver's~~  
33 licenses.

34 ~~(d)~~

35 (f) The penalties set forth in ~~subdivision (a)~~ *subdivisions (a)*,  
36 *(b)*, and *(c)* are independent of, and do not supersede, any other  
37 penalties provided by state law, and in the case of any conflict, the  
38 greater penalties shall apply.

39 1798.795. For purposes of this title, the following definitions  
40 shall apply:

1 (a) “Contactless identification document system” means a group  
2 of identification documents issued and operated under a single  
3 authority that use radio waves to transmit data remotely to readers  
4 intended to read that data. In a contactless identification document  
5 system, every reader must be able to read every identification  
6 document in the system.

7 (b) “Data” means ~~information stored~~ *any information stored or*  
8 *transmitted* on an identification document in machine-readable  
9 form ~~including, but not limited to, personal information and other~~  
10 ~~unique personal identifier numbers.~~

11 (c) “Identification document” means any document containing  
12 data that is issued to an individual and which that individual, and  
13 only that individual, uses alone or in conjunction with any other  
14 information for the primary purpose of establishing his or her  
15 identity. Identification documents specifically include, but are not  
16 limited to, the following:

17 (1) Driver’s licenses or identification cards issued pursuant to  
18 Section 13000 of the Vehicle Code.

19 (2) Identification cards for employees or contractors.

20 (3) Identification cards issued by educational institutions.

21 (4) Health insurance or benefit cards.

22 (5) Benefit cards issued in conjunction with any  
23 government-supported aid program.

24 (6) Licenses, certificates, registration, or other means to engage  
25 in a business or profession regulated by the Business and  
26 Professions Code.

27 (7) Library cards issued by any public library.

28 (d) “Key” means a string of bits of information used as part of  
29 a cryptographic algorithm used in encryption.

30 (e) ~~“Personal information” includes any of the following data~~  
31 ~~elements to the extent that they are used alone or in conjunction~~  
32 ~~with any other information to identify an individual:~~

33 (1) ~~First or last name.~~

34 (2) ~~Address.~~

35 (3) ~~Telephone number.~~

36 (4) ~~E-mail address.~~

37 (5) ~~Date of birth.~~

38 (6) ~~Driver’s license number or California identification card~~  
39 ~~number.~~

1 ~~(7) Any unique personal identifier number contained or encoded~~  
 2 ~~on a driver's license or identification card issued pursuant to~~  
 3 ~~Section 13000 of the Vehicle Code.~~

4 ~~(8) Bank, credit card, or other financial institution account~~  
 5 ~~number.~~

6 ~~(9) Credit or debit card number.~~

7 ~~(10) Any unique personal identifier number contained or~~  
 8 ~~encoded on a health insurance, health benefit, or benefit card issued~~  
 9 ~~in conjunction with any government-supported aid program.~~

10 ~~(11) Religion.~~

11 ~~(12) Ethnicity or nationality.~~

12 ~~(13) Photograph.~~

13 ~~(14) Fingerprint or other biometric identification.~~

14 ~~(15) Social security number.~~

15 ~~(16) Any unique personal identifier.~~

16 ~~(f)~~

17 ~~(e) "Reader" means a scanning device that is capable of using~~  
 18 ~~radio waves to communicate with an identification document and~~  
 19 ~~read the data transmitted by that identification document.~~

20 ~~(g)~~

21 ~~(f) "Remotely" means that no physical contact between the~~  
 22 ~~identification document and a reader is necessary in order to~~  
 23 ~~transmit data using radio waves.~~

24 ~~(h) "Unique personal identifier number" means a randomly~~  
 25 ~~assigned string of numbers or symbols that is encoded onto the~~  
 26 ~~identification document and is intended to identify the identification~~  
 27 ~~document that has been issued to a particular individual.~~

28 ~~SEC. 3. Title 1.81.4 (commencing with Section 1798.98) is~~  
 29 ~~added to Part 4 of Division 3 of the Civil Code, to read:~~

30  
 31 ~~TITLE 1.81.4. OPERATIONAL SYSTEM KEYS~~

32  
 33 ~~1798.98. (a) A person or entity who knowingly discloses, or~~  
 34 ~~causes to be disclosed, the operational system keys described in~~  
 35 ~~Section 1798.11 in violation of Section 1798.11 shall be punished~~  
 36 ~~by imprisonment in a county jail for up to one year, a fine of not~~  
 37 ~~more than one thousand five hundred dollars (\$1,500), or both that~~  
 38 ~~fine and imprisonment.~~

39 ~~(b) The definitions described in Section 1798.795 shall apply~~  
 40 ~~to this title.~~

1     ~~1798.99. This title shall become operative on January 1, 2009,~~  
2 ~~only if Senate Bill 30 of the 2007-08 Regular Session is enacted~~  
3 ~~and becomes effective on or before January 1, 2009.~~

4     ~~SEC. 4.~~

5     *SEC. 3.* No reimbursement is required by this act pursuant to  
6 Section 6 of Article XIII B of the California Constitution because  
7 the only costs that may be incurred by a local agency or school  
8 district will be incurred because this act creates a new crime or  
9 infraction, eliminates a crime or infraction, or changes the penalty  
10 for a crime or infraction, within the meaning of Section 17556 of  
11 the Government Code, or changes the definition of a crime within  
12 the meaning of Section 6 of Article XIII B of the California  
13 Constitution.