

Assembly Bill No. 1094

CHAPTER 134

An act to amend Sections 1798.80, 1798.81, 1798.84, 1980, 1983, 1993, and 1993.03 of the Civil Code, relating to personal information.

[Approved by Governor August 5, 2009. Filed with
Secretary of State August 6, 2009.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1094, Conway. Disposal of personal information.

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 by shredding, erasing, or otherwise modifying the personal information in those records to make it unreadable or undecipherable through any means. Existing law provides for specified civil remedies for a violation of these provisions.

This bill would, instead, require a business to take all reasonable steps to dispose, or arrange for the disposal, of customer records within its custody or control containing personal information when the records are no longer to be retained by the business by taking any of the actions described above. The bill would exempt from these provisions information that is made available to the general public from federal, state, or local government records. The bill would provide that a cause of action shall not lie against a business that disposes of abandoned records containing personal information in accordance with these provisions. The bill would set forth findings regarding records that end up in the possession of a storage company or commercial landlord, and would provide that it is the intent of the Legislature to create a safe harbor for such a record custodian who properly disposes of the records.

Existing law requires a landlord, if personal property remains on the premises after a tenancy or commercial tenancy has terminated and the premises have been vacated by the tenant, to give written notice to the tenant and to any other person the landlord reasonably believes to be the owner of the property, as specified.

This bill would provide that, if the property consists of records, the tenant shall be presumed to be the owner of the records.

This bill would define "records" as it relates to these provisions.

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

SECTION 1. Section 1798.80 of the Civil Code is amended to read:

1798.80. The following definitions apply to this title:

(a) “Business” means a sole proprietorship, partnership, corporation, association, or other group, however organized and whether or not organized to operate at a profit, including a financial institution organized, chartered, or holding a license or authorization certificate under the law of this state, any other state, the United States, or of any other country, or the parent or the subsidiary of a financial institution. The term includes an entity that disposes of records.

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

(c) “Customer” means an individual who provides personal information to a business for the purpose of purchasing or leasing a product or obtaining a service from the business.

(d) “Individual” means a natural person.

(e) “Personal information” means any information that identifies, relates to, describes, or is capable of being associated with, a particular individual, including, but not limited to, his or her name, signature, social security number, physical characteristics or description, address, telephone number, passport number, driver’s license or state identification card number, insurance policy number, education, employment, employment history, bank account number, credit card number, debit card number, or any other financial information, medical information, or health insurance information. “Personal information” does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

SEC. 2. Section 1798.81 of the Civil Code is amended to read:

1798.81. A business shall take all reasonable steps to dispose, or arrange for the disposal, of customer records within its custody or control containing personal information when the records are no longer to be retained by the business by (a) shredding, (b) erasing, or (c) otherwise modifying the personal information in those records to make it unreadable or undecipherable through any means.

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

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

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

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

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

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

(f) (1) A cause of action shall not lie against a business for disposing of abandoned records containing personal information by shredding, erasing, or otherwise modifying the personal information in the records to make it unreadable or undecipherable through any means.

(2) The Legislature finds and declares that when records containing personal information are abandoned by a business, they often end up in the possession of a storage company or commercial landlord. It is the intent of the Legislature in paragraph (1) to create a safe harbor for such a record custodian who properly disposes of the records in accordance with paragraph (1).

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

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

SEC. 4. Section 1980 of the Civil Code is amended to read:

1980. As used in this chapter:

(a) "Landlord" means any operator, keeper, lessor, or sublessor of any furnished or unfurnished premises for hire, or his or her agent or successor in interest.

(b) "Owner" means any person other than the landlord who has any right, title, or interest in personal property.

(c) "Premises" includes any common areas associated therewith.

(d) "Reasonable belief" means the actual knowledge or belief a prudent person would have without making an investigation (including any investigation of public records) except that, where the landlord has specific information indicating that such an investigation would more probably than not reveal pertinent information and the cost of such an investigation would be reasonable in relation to the probable value of the personal property involved, "reasonable belief" includes the actual knowledge or belief a prudent person would have if such an investigation were made.

(e) "Records" means any material, regardless of the physical form, on which information is recorded or preserved by any means, including in

written or spoken words, graphically depicted, printed, or electromagnetically transmitted. “Records” does not include publicly available directories containing information an individual has voluntarily consented to have publicly disseminated or listed, such as name, address, or telephone number.

(f) “Tenant” includes any paying guest, lessee, or sublessee of any premises for hire.

SEC. 5. Section 1983 of the Civil Code is amended to read:

1983. (a) Where personal property remains on the premises after a tenancy has terminated and the premises have been vacated by the tenant, the landlord shall give written notice to the tenant and to any other person the landlord reasonably believes to be the owner of the property. If the property consists of records, the tenant shall be presumed to be the owner of the records for the purposes of this chapter.

(b) The notice shall describe the property in a manner reasonably adequate to permit the owner of the property to identify it. The notice may describe all or a portion of the property, but the limitation of liability provided by Section 1989 does not protect the landlord from any liability arising from the disposition of property not described in the notice except that a trunk, valise, box, or other container which is locked, fastened, or tied in a manner which deters immediate access to its contents may be described as such without describing its contents. The notice shall advise the person to be notified that reasonable costs of storage may be charged before the property is returned, where the property may be claimed, and the date before which the claim must be made. The date specified in the notice shall be a date not less than 15 days after the notice is personally delivered or, if mailed, not less than 18 days after the notice is deposited in the mail.

(c) The notice shall be personally delivered to the person to be notified or sent by first-class mail, postage prepaid, to the person to be notified at his or her last known address and, if there is reason to believe that the notice sent to that address will not be received by that person, also to any other address known to the landlord where the person may reasonably be expected to receive the notice. If the notice is sent by mail to the former tenant, one copy shall be sent to the premises vacated by the tenant.

SEC. 6. Section 1993 of the Civil Code is amended to read:

1993. This chapter shall only apply to commercial real property. As used in this chapter:

(a) “Commercial real property” has the meaning specified in subdivision (d) of Section 1954.26. For purposes of this chapter, commercial real property shall not include self-storage units.

(b) “Landlord” means any operator, keeper, lessor, or sublessor of any furnished or unfurnished premises for hire, or his or her agent or successor in interest.

(c) “Owner” means any person other than the landlord who has any right, title, or interest in property.

(d) “Premises” includes any common areas associated therewith.

(e) “Reasonable belief” means the actual knowledge or belief a prudent person would have without making an investigation, including any

investigation of public records, except that, if the landlord has specific information indicating that an investigation would more probably than not reveal pertinent information and the cost of an investigation would be reasonable in relation to the probable value of the property involved, “reasonable belief” includes the actual knowledge or belief a prudent person would have if an investigation were made.

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

(g) “Tenant” includes any lessee or sublessee of any commercial real property and its premises for hire.

SEC. 7. Section 1993.03 of the Civil Code is amended to read:

1993.03. (a) If property remains on the premises after a tenancy has terminated and the premises have been vacated by the tenant, the landlord shall give written notice to the tenant and to any other person the landlord reasonably believes to be the owner of the property. If the property consists of records, the tenant shall be presumed to be the owner of the records for the purposes of this chapter.

(b) The notice shall describe the property in a manner reasonably adequate to permit the owner of the property to identify it. The notice may describe all or a portion of the property, but the limitation of liability provided by Section 1993.08 does not protect the landlord from any liability arising from the disposition of property not described in the notice, except that a trunk, valise, box, safe, vault, or other container that is locked, fastened, or tied in a manner that deters immediate access to its contents may be described as such without describing its contents. The notice shall advise the person to be notified that reasonable costs of storage may be charged before the property is returned, where the property may be claimed, and the date before which the claim must be made. The date specified in the notice shall be a date not less than 15 days after the notice is personally delivered or, if mailed, not less than 18 days after the notice is deposited in the mail.

(c) The notice shall be personally delivered to the person to be notified or sent by first-class mail, postage prepaid, to the person to be notified at his or her last known address and, if there is reason to believe that the notice sent to that address will not be received by that person, also to any other address known to the landlord where the person may reasonably be expected to receive the notice. If the notice is sent by mail to the former tenant, one copy shall be sent to the premises vacated by the tenant.