

AMENDED IN SENATE APRIL 20, 2010

AMENDED IN SENATE APRIL 5, 2010

**SENATE BILL**

**No. 1268**

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**Introduced by Senator Simitian**

February 19, 2010

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An act to add Chapter 8 (commencing with Section 31490) to Division 17 of the Streets and Highways Code, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1268, as amended, Simitian. Toll bridges, lanes, and highways: electronic toll collection mechanisms: disclosure of personal information.

Existing law authorizes development and implementation of various electronic bridge and highway toll collection mechanisms.

This bill would prohibit a transportation agency, as defined, from selling or providing personally identifiable information of a person obtained pursuant to the person's participation in an electronic toll collection system or use of a toll facility, subject to specified exceptions. *The bill would require a transportation agency to establish a privacy policy regarding personally identifiable information in that regard and to provide the policy to subscribers and post the policy on its Internet Web site.* The bill would allow a transportation agency to store certain personally identifiable information of a person and would require it to discard other information within a designated time period. The bill would authorize a person whose personally identifiable information has been sold or provided in violation of the bill to bring a specified ~~action~~ *actions* for recovery of damages, costs, and attorney's fees. By imposing new duties on local transportation agencies, the bill would impose 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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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. Chapter 8 (commencing with Section 31490) is  
2 added to Division 17 of the Streets and Highways Code, to read:

3  
4 CHAPTER 8. ELECTRONIC TOLL COLLECTION SYSTEMS

5  
6 31490. (a) Except as otherwise provided in this section, a  
7 transportation agency may not sell or otherwise provide to any  
8 other person or entity personally identifiable information;  
9 ~~including, but not limited to, travel pattern data, address, telephone~~  
10 ~~number, bank account information, or credit card number,~~ of any  
11 person who subscribes to an electronic toll collection system or  
12 who uses a toll bridge, toll lane, or toll highway that employs an  
13 electronic toll collection system.

14 (b) A transportation agency that employs an electronic toll  
15 collection system shall establish a privacy policy regarding the  
16 collection and use of personally identifiable information and  
17 provide to subscribers of that system a copy of the privacy policy  
18 in a manner that is conspicuous and meaningful, *such as by*  
19 *providing a copy to the subscriber with the transponder or other*  
20 *device used as an electronic toll collection mechanism, or, if the*  
21 *system does not use a mechanism, with the application materials.*  
22 *A transportation agency shall conspicuously post its privacy policy*  
23 *on its Internet Web site. For purposes of this subdivision,*  
24 *“conspicuously post” has the same meaning as that term is defined*  
25 *in paragraphs (1) to (4), inclusive, of subdivision (b) of Section*  
26 *22577 of the Business and Professions Code.* The policy shall  
27 include, but need not be limited to, *a description of the following:*

1 (1) The types of personally identifiable information that is  
2 collected by the agency.

3 (2) The categories of third-party persons or entities with whom  
4 the agency may share personally identifiable information.

5 (3) The process by which a transportation agency notifies  
6 subscribers of material changes to its privacy policy.

7 (4) The effective date of the privacy policy.

8 (5) The process by which a subscriber may review and request  
9 changes to any of his or her personally identifiable information.

10 (c) A transportation agency may, within practical business and  
11 cost constraints, store only personally identifiable information of  
12 a person such as the account name, credit card number, billing  
13 address, vehicle information, and other basic account information  
14 required to perform account functions such as billing, account  
15 settlement, or enforcement activities. All other information shall  
16 be discarded six months after the closure date of the billing cycle  
17 or 60 days after the bill has been paid, whichever occurs last.

18 (d) A transportation agency shall take every effort, within  
19 practical business and cost constraints, to purge the personal  
20 account information of an account within 60 days after the date  
21 the account is closed or terminated. In no case shall a transportation  
22 agency maintain personal information more than 150 days after  
23 the date an account is closed or terminated.

24 (e) (1) A transportation agency may make personally  
25 identifiable information of a person available to a law enforcement  
26 agency *only* pursuant to a search warrant. Absent a provision in  
27 the search warrant to the contrary, the law enforcement agency  
28 shall immediately, but ~~not more than 15 days in any event within~~  
29 *no more than five days*, notify the person that his or her records  
30 have been obtained and shall provide the person with a copy of  
31 the search warrant and the identity of the law enforcement agency  
32 or peace officer to whom the records were provided.

33 (2) (A) This section does not prohibit a peace officer, as defined  
34 in Section 830.1 or 830.2 of the Penal Code, when conducting a  
35 criminal or traffic collision investigation, from obtaining personally  
36 identifiable information of a person if the officer has good cause  
37 to believe that a delay in obtaining this information by seeking a  
38 search warrant would result in an imminent danger to the health  
39 or safety of a member of the public. The peace officer shall provide

1 the transportation agency with a written statement setting forth the  
2 basis for his or her good cause belief.

3 (B) When obtaining personally identifiable information of a  
4 person, the peace officer shall immediately, ~~within no more than~~  
5 ~~15 days in any event within no more than five days~~, notify the  
6 person that his or her records have been obtained, identify the law  
7 enforcement agency or peace officer to whom the records have  
8 been provided, and provide the person with a copy of the written  
9 statement provided to the transportation agency pursuant to  
10 subparagraph (A) that sets forth the basis for his or her good cause  
11 belief. If the notification to the person would interfere with an  
12 ongoing investigation, the peace officer or law enforcement agency  
13 may request a court order for a 30-day extension of the notice  
14 requirement.

15 (f) This section does not prohibit a transportation agency in  
16 subdivision (a) from providing aggregated traveler information  
17 derived from collective data that relates to a group or category of  
18 persons from which personally identifiable information has been  
19 removed.

20 (g) This section does not prohibit a transportation agency from  
21 providing the license plate number of an intermodal chassis to the  
22 owner of the chassis for purposes of locating the driver of the  
23 chassis in the event the driver fails to pay the toll.

24 (h) This section does not prohibit a transportation agency from  
25 sharing data with another transportation agency solely to comply  
26 with interoperability specifications and standards adopted pursuant  
27 to Section 27565 regarding electronic toll collection devices and  
28 technologies. A third-party vendor may not use personally  
29 identifiable information obtained under this subdivision for a  
30 purpose other than described in this subdivision.

31 (i) Subdivision (d) shall not prohibit a transportation agency,  
32 or its designee, from performing financial and accounting functions  
33 such as billing, account settlement, enforcement, or other financial  
34 activities required to operate and manage the toll facilities.

35 (j) This section does not prohibit a transportation agency from  
36 communicating exclusively about its ~~transportation-related~~  
37 ~~toll-related~~ products and services ~~on behalf of~~ *offered by* itself or  
38 the agency with which it contracts to subscribers of the  
39 transportation agency through a contracted third-party vendor using  
40 personally identifiable information limited to the subscriber's

1 name, address, and electronic mail address, *provided that the*  
2 *transportation agency has received the subscriber's express written*  
3 *consent to receive the communications. Each communication shall*  
4 *contain a clear and conspicuous notice and instructions to the*  
5 *subscriber regarding the process for terminating any future*  
6 *communication about a transportation-related product or service.*

7 *(k) A transportation agency may not use a nonsubscriber's*  
8 *personally identifiable information obtained using an electronic*  
9 *toll collection system to market products or services to that*  
10 *nonsubscriber.*

11 ~~(k)~~  
12 *(l) For purposes of this section, "transportation agency" means*  
13 *the Department of Transportation, the Bay Area Toll Authority,*  
14 *any entity operating a toll bridge, toll lane, or toll highway within*  
15 *the state, or any entity under contract with any of the above entities.*

16 ~~(l)~~  
17 *(m) For purposes of this section, "electronic toll collection*  
18 *system" is a system where a transponder, camera-based vehicle*  
19 *identification system, or other electronic medium is used to deduct*  
20 *payment of a toll from a subscriber's account or to establish an*  
21 *obligation to pay a toll.*

22 ~~(m)~~  
23 *(n) For purposes of this section, "person" means any person*  
24 *who subscribes to an electronic toll collection system or any person*  
25 *who uses a toll bridge, toll lane, or toll road that employs an*  
26 *electronic toll collection system.*

27 *(o) For purposes of this section, "personally identifiable*  
28 *information" means any information that identifies or describes*  
29 *a person, including, but not limited to, travel pattern data, address,*  
30 *telephone number, e-mail address, license plate number,*  
31 *photograph, bank account information, or credit card number.*

32 ~~(n)~~  
33 *(p) (1) In addition to any other remedies provided by law, a*  
34 *person whose personally identifiable information has been*  
35 *knowingly sold or otherwise provided in violation of this section*  
36 *may bring an action to recover either actual damages or two*  
37 *thousand five hundred dollars (\$2,500) for each individual*  
38 *violation, whichever is greater, and may also recover reasonable*  
39 *costs and attorney's fees.*

1     (2) *A person whose personally identifiable information has been*  
2 *knowingly sold or otherwise provided three or more times in*  
3 *violation of this section may bring an action to recover either*  
4 *actual damages or four thousand dollars (\$4,000) for each*  
5 *individual violation, whichever is greater, and may also recover*  
6 *reasonable costs and attorney’s fees.*

7     SEC. 2. If the Commission on State Mandates determines that  
8 this act contains costs mandated by the state, reimbursement to  
9 local agencies and school districts for those costs shall be made  
10 pursuant to Part 7 (commencing with Section 17500) of Division  
11 4 of Title 2 of the Government Code.

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