

AMENDED IN SENATE MARCH 21, 2011

SENATE BILL

No. 602

Introduced by Senator Yee

February 17, 2011

~~An act to amend Section 1798.91 of the Civil Code, relating to consumer privacy.~~ *An act to add Title 1.81.15 (commencing with Section 1798.90) to Part 4 of Division 3 of the Civil Code, relating to the reader privacy.*

LEGISLATIVE COUNSEL'S DIGEST

SB 602, as amended, Yee. ~~Consumer privacy: medical information.~~ *Reader Privacy Act.*

The California Public Records Act requires state and local agencies to make their records available for public inspection and, upon request of any person, to provide a copy of any public record unless the record is exempt from disclosure. The act provides that all registration and circulation records of any library which is in whole or in part supported by public funds is confidential and shall not be disclosed to any person, except as provided.

Existing law protects the privacy of personal information, including customer records, and 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, to protect the personal information from unauthorized access, destruction, use, modification, or disclosure.

Existing law provides various grounds for the issuance of a search warrant, and provides that a search warrant cannot be issued but upon probable cause, supported by affidavit, naming or describing the person

to be searched or searched for, and particularly describing the property and the place to be searched.

The Civil Discovery Act generally provides for the scope of discovery in civil actions and proceedings, and permits a party to a civil action to obtain discovery by inspecting documents, tangible things, and land or other property in the possession of any other party to the action.

This bill would enact the Reader Privacy Act, which would, among other things, prohibit a commercial provider of a book service, as defined, from disclosing, or being compelled to disclose, any personal information relating to a user of the book service, subject to certain exceptions. The bill would require a court, when considering whether to issue a search warrant or an order for civil discovery, to make specified findings, including that the person or entity seeking disclosure of personal information of a user of a book service has a compelling interest in obtaining that information. The bill would impose civil penalties on a provider of a book service for knowingly disclosing a user's personal information to a government entity in violation of these provisions. The bill would require that any provider of a book service prepare a specified report relating to demands for disclosure of personal information of users of the book service, and publish that information in a searchable format on the Internet.

~~Existing law prohibits a business from requesting medical information directly from an individual and disclosing it for direct marketing purposes, as defined, without first informing the individual that the information will be used to market or advertise products to him or her and obtaining the individual's consent to use the information for that purpose.~~

~~This bill would make nonsubstantive changes to this provision regarding obtaining and disclosing medical information for direct marketing purposes.~~

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

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

- 1 *SECTION 1. Title 1.81.15 (commencing with Section 1798.90)*
- 2 *is added to Part 4 of Division 3 of the Civil Code, to read:*

1 TITLE 1.81.15. READER PRIVACY ACT

2
3 1798.90. (a) *This title shall be known and may be cited as the*
4 *Reader Privacy Act.*

5 (b) *For purposes of this section:*

6 (1) *“Book” means paginated or similarly organized content in*
7 *printed, audio, electronic, or other format, including fiction,*
8 *nonfiction, academic, or other works of the type normally published*
9 *in a volume or volumes.*

10 (2) *“Book service” means a service that, as its primary purpose,*
11 *provides the rental, purchase, borrowing, browsing, or viewing*
12 *of books.*

13 (3) *“Government entity” means any state or local agency,*
14 *including, but not limited to, a law enforcement or any other*
15 *investigative agency, department, division, bureau, board, or*
16 *commission, or any individual acting or purporting to act for or*
17 *on behalf of a state or local agency.*

18 (4) *“Personal information” means any information described*
19 *in Section 1798.80, and specifically includes a unique identifier*
20 *or Internet Protocol (IP) address when that identifier or address*
21 *is being used to identify, relate, describe, or be associated with, a*
22 *particular individual, and any information associated with a*
23 *particular user’s access or use of a book service or a book in whole*
24 *or partial form.*

25 (5) *“Provider” means any commercial entity offering a book*
26 *service to the public.*

27 (6) *“User” means any person or entity that uses a book service.*

28 (c) *A provider shall not knowingly disclose to any government*
29 *entity, or be compelled to disclose to any person or entity, any*
30 *personal information of a user, in whole or in part, except under*
31 *any of the following circumstances:*

32 (1) *A provider shall disclose personal information of a user*
33 *pursuant to a search warrant issued by a duly authorized court*
34 *with jurisdiction over an offense under investigation using the*
35 *procedures described in Chapter 3 (commencing with Section*
36 *1523) of Title 12 of Part 2 of the Penal Code, if all of the following*
37 *conditions are met:*

38 (A) *The court issuing the warrant finds that the person or entity*
39 *seeking disclosure has a compelling interest in obtaining the*
40 *personal information sought.*

1 (B) *The court issuing the warrant finds that the personal*
2 *information sought cannot be obtained by the person or entity*
3 *seeking disclosure through less intrusive means.*

4 (C) *The person or entity seeking disclosure provides the provider*
5 *with reasonable notice of the proceeding prior to the issuance of*
6 *the warrant.*

7 (D) *The opportunity to appear and contest the issuance of the*
8 *warrant is afforded to the provider prior to the issuance of the*
9 *warrant.*

10 (E) *Notice of the warrant is given to the user by the person or*
11 *entity seeking disclosure contemporaneous with execution of the*
12 *warrant, unless there is a judicial determination of a strong*
13 *showing of necessity to delay that notification for a reasonable*
14 *period of time, not to exceed seven days.*

15 (2) *A provider shall disclose personal information of a user*
16 *pursuant to a court order in a pending civil or administrative*
17 *action, if all of the following conditions are met:*

18 (A) *The court issuing the discovery order finds that the person*
19 *or entity seeking disclosure has a compelling interest in obtaining*
20 *the personal information sought.*

21 (B) *The court issuing the discovery order finds that the personal*
22 *information sought cannot be obtained by the person or entity*
23 *seeking disclosure through less intrusive means.*

24 (C) *The person or entity seeking disclosure takes reasonable*
25 *steps to provide the user and the provider with reasonable notice*
26 *of the proceeding prior to the issuance of the court order in a*
27 *timely manner to allow the user and provider the opportunity to*
28 *appear and contest the issuance of the court order.*

29 (D) *The provider refrains from disclosing any personal*
30 *information pursuant to the court order until it provides notice to*
31 *the user about the issuance of the order and the ability to appear*
32 *and quash the order, and the user has been given a reasonable*
33 *opportunity to appear and quash the order.*

34 (3) *A provider shall disclose the personal information of a user*
35 *to any person with the informed, affirmative consent of that user.*

36 (4) *A provider may disclose to a government entity, if the*
37 *government entity asserts, and the provider in good faith believes,*
38 *that there is an imminent danger of death or serious physical injury*
39 *requiring the immediate disclosure of the requested personal*
40 *information and there is insufficient time to obtain a warrant. The*

1 government entity seeking the disclosure shall provide the provider
2 with a written statement setting forth the facts giving rise to the
3 emergency upon request or no later than 48 hours after seeking
4 disclosure.

5 (5) A provider may disclose personal information of a user of
6 a book service to a government entity if the provider in good faith
7 believes that the personal information is evidence directly related
8 and relevant to a crime against the provider or that user of the
9 book service.

10 (d) (1) Any court issuing a search warrant or civil discovery
11 order requiring the disclosure of personal information of a user
12 of a book service shall impose appropriate safeguards against the
13 unauthorized disclosure of personal information by the provider
14 pursuant to the warrant or order.

15 (2) The court may, in its discretion, quash or modify a warrant
16 or court order requiring the disclosure of the user's personal
17 information upon a motion made by the user, provider, or person
18 or entity seeking disclosure.

19 (e) Except as proof in an action for a violation of this section,
20 no evidence obtained in violation of this section shall be admissible
21 in any civil, administrative, or other proceeding.

22 (f) (1) Violations of this section shall be subject to the following
23 penalties:

24 (A) Any provider that knowingly provides personal information
25 about the use of a book service to a government entity in violation
26 of this section shall be subject to a civil penalty not to exceed five
27 hundred dollars (\$500) for each violation, which may be recovered
28 in a civil action brought by the person who is the subject of the
29 records.

30 (B) Any provider that knowingly provides personal information
31 to a government entity in violation of this section on three or more
32 occasions in any six-month period shall, in addition to the penalty
33 prescribed by subparagraph (A), be subject to a civil penalty not
34 to exceed five hundred dollars (\$500) for each violation, which
35 may be assessed and recovered in a civil action brought by the
36 Attorney General, by any district attorney or city attorney, or by
37 a city prosecutor in any city having a full-time city prosecutor, in
38 any court of competent jurisdiction.

39 (2) If an action is brought by the Attorney General, one-half of
40 the penalty collected shall be paid to the treasurer of the county

1 *in which the judgment was entered, and one-half to the General*
2 *Fund. If the action is brought by a district attorney, the penalty*
3 *collected shall be paid to the treasurer of the county in which the*
4 *judgment was entered. If the action is brought by a city attorney*
5 *or city prosecutor, one-half of the penalty shall be paid to the*
6 *treasurer of the city in which the judgment was entered, and*
7 *one-half to the treasurer of the county in which the judgment was*
8 *entered.*

9 (3) *The penalties provided by this section are not the exclusive*
10 *remedy and do not affect any other relief or remedy provided by*
11 *law.*

12 (4) *A civil action brought pursuant to this section shall be*
13 *commenced within two years after the date upon which the claimant*
14 *first discovered the violation.*

15 (g) *An objectively reasonable reliance by the provider on a*
16 *warrant or court order for the disclosure of personal information*
17 *of a user of a book service, or on any of the enumerated exceptions*
18 *to the confidentiality of a user's personal information set forth in*
19 *this section, is a complete defense to any civil, administrative, or*
20 *criminal action.*

21 (h) *Unless disclosure of information pertaining to a particular*
22 *request or set of requests is specifically prohibited by law, a*
23 *provider shall prepare a report including all of the following*
24 *information, to the extent it can be reasonably determined:*

25 (1) *The number of federal warrants, state warrants, grand jury*
26 *subpoenas, civil and administrative subpoenas, court orders, and*
27 *requests for information made with the informed consent of the*
28 *user as described in paragraph (3) of subdivision (a), seeking*
29 *disclosure of any personal information of a user related to the*
30 *access or use of a book service or book, received by the provider*
31 *from January 1 to December 31, inclusive, of the previous year.*

32 (2) *The number of disclosures made by the provider pursuant*
33 *to paragraphs (5) and (6) of subdivision (a) from January 1 to*
34 *December 31, inclusive, of the previous year.*

35 (3) *For each category of demand or disclosure, the provider*
36 *shall include all of the following information:*

37 (A) *The number of times notice of a warrant or a court order*
38 *in a civil or administrative action has been provided by the*
39 *provider and the date the notice was provided.*

1 (B) *The number of times personal information has been*
2 *disclosed by the provider.*

3 (C) *The number of times no personal information has been*
4 *disclosed by the provider.*

5 (D) *The number of times the provider contests the demand.*

6 (E) *The number of times the user contests the demand.*

7 (F) *The number of users whose personal information was*
8 *disclosed by the provider.*

9 (G) *The type of personal information that was disclosed and*
10 *the number of times that type of personal information was*
11 *disclosed.*

12 (i) *Reports prepared pursuant to subdivision (h) shall be made*
13 *publicly available in an online, searchable format by March 1 of*
14 *each year.*

15 (j) *Any provider subject to Section 22575 of the Business and*
16 *Professions Code shall create a prominent hyperlink to its latest*
17 *report published pursuant to subdivision (i) in the disclosure*
18 *section of the privacy policy applicable to its book service by*
19 *March 1 of each year.*

20 (k) *Nothing in this section shall otherwise affect the rights of*
21 *any person under the California Constitution or any other law.*

22 SECTION 1. ~~Section 1798.91 of the Civil Code is amended~~
23 ~~to read:~~

24 ~~1798.91. (a) For purposes of this title, the following definitions~~
25 ~~shall apply:~~

26 (1) ~~“Direct marketing purposes” means the use of personal~~
27 ~~information for marketing or advertising products, goods, or~~
28 ~~services directly to individuals. “Direct marketing purposes” does~~
29 ~~not include the use of personal information in either of the~~
30 ~~following circumstances:~~

31 (A) ~~By bona fide tax exempt charitable or religious organizations~~
32 ~~to solicit charitable contributions.~~

33 (B) ~~To raise funds from, and communicate with, individuals~~
34 ~~regarding politics and government.~~

35 (2) ~~“Medical information” means any individually identifiable~~
36 ~~information, in electronic or physical form, regarding the~~
37 ~~individual’s medical history, or medical treatment or diagnosis by~~
38 ~~a health care professional. “Individually identifiable” means that~~
39 ~~the medical information includes or contains any element of~~
40 ~~personal identifying information sufficient to allow identification~~

1 of the individual, such as the individual's name, address, electronic
2 mail address, telephone number, or social security number, or other
3 information that, alone or in combination with other publicly
4 available information, reveals the individual's identity. For
5 purposes of this section, "medical information" does not mean a
6 subscription to, purchase of, or request for a periodical, book,
7 pamphlet, video, audio, or other multimedia product or nonprofit
8 association information.

9 (3) "Clear and conspicuous" means in larger type than the
10 surrounding text, or in contrasting type, font, or color to the
11 surrounding text of the same size, or set off from the surrounding
12 text of the same size by symbols or other marks that call attention
13 to the language.

14 (4) For purposes of this section, the collection of medical
15 information online constitutes "in writing." For purposes of this
16 section, "written consent" includes consent obtained online.

17 (b) A business may not orally request medical information
18 directly from an individual regardless of whether the information
19 pertains to the individual or not, and use, share, or otherwise
20 disclose that information for direct marketing purposes, without
21 doing both of the following prior to obtaining that information:

22 (1) Orally disclosing to the individual in the same conversation
23 during which the business seeks to obtain the information, that it
24 is obtaining the information to market or advertise products, goods,
25 or services to the individual.

26 (2) Obtaining the consent of either the individual to whom the
27 information pertains or a person legally authorized to consent for
28 the individual, to permit his or her medical information to be used
29 or shared to market or advertise products, goods, or services to the
30 individual, and making and maintaining for two years after the
31 date of the conversation, an audio recording of the entire
32 conversation.

33 (c) A business may not request in writing medical information
34 directly from an individual regardless of whether the information
35 pertains to the individual or not, and use, share, or otherwise
36 disclose that information for direct marketing purposes, without
37 doing both of the following prior to obtaining that information:

38 (1) Disclosing in a clear and conspicuous manner that it is
39 obtaining the information to market or advertise products, goods,
40 or services to the individual.

1 ~~(2) Obtaining the written consent of either the individual to~~
2 ~~whom the information pertains or a person legally authorized to~~
3 ~~consent for the individual, to permit his or her medical information~~
4 ~~to be used or shared to market or advertise products, goods, or~~
5 ~~services to the individual.~~

6 ~~(d) This section does not apply to a provider of health care,~~
7 ~~health care service plan, or contractor, as defined in Section 56.05.~~

8 ~~(e) This section shall not apply to an insurance institution, agent,~~
9 ~~or support organization, as defined in Section 791.02 of the~~
10 ~~Insurance Code, when engaged in an insurance transaction, as~~
11 ~~defined in subdivision (m) of Section 791.02 of the Insurance~~
12 ~~Code, pursuant to all the requirements of Article 6.6 (commencing~~
13 ~~with Section 791) of Chapter 1 of Part 2 of Division 1 of the~~
14 ~~Insurance Code, and the regulations promulgated thereunder.~~

15 ~~(f) This section does not apply to a telephone corporation, as~~
16 ~~defined in Section 234 of the Public Utilities Code, when that~~
17 ~~corporation is engaged in providing telephone services and products~~
18 ~~pursuant to Sections 2881, 2881.1, and 2881.2 of the Public~~
19 ~~Utilities Code, if the corporation does not share or disclose medical~~
20 ~~information obtained as a consequence of complying with those~~
21 ~~sections of the Public Utilities Code, to third parties for direct~~
22 ~~marketing purposes.~~

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