

AMENDED IN SENATE APRIL 25, 2011

AMENDED IN SENATE MARCH 30, 2011

AMENDED IN SENATE MARCH 21, 2011

SENATE BILL

No. 602

Introduced by Senator Yee

February 17, 2011

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 privacy.

LEGISLATIVE COUNSEL'S DIGEST

SB 602, as amended, Yee. 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~~ *that* 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, *in order* 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 in a pending civil or administrative action~~, 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, except as otherwise provided. 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.

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

3
4 TITLE 1.81.15. READER PRIVACY ACT
5

6 1798.90. (a) This title shall be known and may be cited as the
7 Reader Privacy Act.

8 (b) For purposes of this section:

9 (1) "Book" means paginated or similarly organized content in
10 printed, audio, electronic, or other format, including fiction,
11 nonfiction, academic, or other works of the type normally published
12 in a volume or volumes.

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

4 (3) “Government entity” means any state or local agency,
5 including, but not limited to, a law enforcement or any other
6 investigative agency, department, division, bureau, board, or
7 commission, or any individual acting or purporting to act for or
8 on behalf of a state or local agency.

9 (4) ~~“Personal information” means any information described in
10 Section 1798.80, and specifically includes a unique identifier or
11 Internet Protocol (IP) address when that identifier or address is
12 being used to identify, relate, describe, or be associated with a
13 particular individual, and any information associated with a
14 particular user’s access or use of a book service or a book in whole
15 or partial form.~~

16 (4) *“Personal information” means all of the following:*

17 (A) *Any information that identifies, relates to, describes, or is
18 associated with a particular user, including, but not limited to, the
19 information specifically listed in Section 1798.80.*

20 (B) *A unique identifier or Internet Protocol address, when that
21 identifier or address is being used to identify, relate to, describe,
22 or be associated with a particular user of a book service or book,
23 in whole or in partial form.*

24 (C) *Any information that relates to, or is capable of being
25 associated with, a particular user’s access to or use of a book
26 service or a book, in whole or in partial form.*

27 (5) “Provider” means any commercial entity offering a book
28 service to the public.

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

30 (c) A provider shall not knowingly disclose to any government
31 entity, or be compelled to disclose to any ~~person or~~ *private*
32 ~~entity, or government~~ entity, ~~a user’s personal information related~~
33 ~~to the use of a book or part of a book, except any personal~~
34 ~~information of a user, except~~ under any of the following
35 circumstances:

36 (1) A provider shall disclose personal information of a user
37 pursuant to a search warrant issued by a duly authorized court with
38 jurisdiction over an offense under investigation using the
39 procedures described in Chapter 3 (commencing with Section

1 1523) of Title 12 of Part 2 of the Penal Code, if all of the following
2 conditions are met:

3 (A) The court issuing the warrant finds that the person or entity
4 seeking disclosure has a compelling interest in obtaining the
5 personal information sought.

6 (B) The court issuing the warrant finds that the personal
7 information sought cannot be obtained by the person or entity
8 seeking disclosure through less intrusive means.

9 (C) The person or entity seeking disclosure provides the provider
10 with reasonable notice of the proceeding prior to the issuance of
11 the warrant.

12 (D) The opportunity to appear and contest the issuance of the
13 warrant is afforded to the provider prior to the issuance of the
14 warrant.

15 (E) Notice of the warrant is given to the user by the person or
16 entity seeking disclosure contemporaneous with execution of the
17 warrant, unless there is a judicial determination of a strong showing
18 of necessity to delay that notification for a reasonable period of
19 time, not to exceed seven days.

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

23 (A) The court issuing the ~~discovery~~ order finds that the person
24 or entity seeking disclosure has a compelling interest in obtaining
25 the personal information sought.

26 (B) The court issuing the ~~discovery~~ order finds that the personal
27 information sought cannot be obtained by the person or entity
28 seeking disclosure through less intrusive means.

29 (C) The person or entity seeking disclosure takes reasonable
30 steps to provide the user and the provider with reasonable notice
31 of the proceeding prior to the issuance of the court order in a timely
32 manner to allow the user and provider the opportunity to appear
33 and contest the issuance of the court order.

34 (D) The provider refrains from disclosing any personal
35 information pursuant to the court order until it provides notice to
36 the user about the issuance of the order and the ability to appear
37 and quash the order, and the user has been given a reasonable
38 opportunity to appear and quash the order.

39 (3) A provider shall disclose the personal information of a user
40 ~~to any person with the informed, affirmative consent of that user.~~

1 *to any person if the user has given his or her informed, affirmative*
2 *consent to the specific disclosure for a particular purpose.*

3 (4) A provider may disclose to a government entity, if the
4 government entity asserts, and the provider in good faith believes,
5 that there is an imminent danger of death or serious physical injury
6 requiring the immediate disclosure of the requested personal
7 information and there is insufficient time to obtain a warrant. The
8 government entity seeking the disclosure shall provide the provider
9 with a written statement setting forth the facts giving rise to the
10 emergency upon request or no later than 48 hours after seeking
11 disclosure.

12 (5) A provider may disclose personal information of a user of
13 a book service to a government entity if the provider in good faith
14 believes that the personal information is evidence directly related
15 and relevant to a crime against the provider or that user of the book
16 service.

17 (d) (1) Any court issuing a search warrant or ~~civil discovery~~
18 order requiring the disclosure of personal information of a user of
19 a book service shall impose appropriate safeguards against the
20 unauthorized disclosure of personal information by the provider
21 pursuant to the warrant or order.

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

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

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

31 (A) Any provider that knowingly provides personal information
32 about ~~the use of a book service~~ *a user* to a government entity in
33 violation of this section shall be subject to a civil penalty not to
34 exceed five hundred dollars (\$500) for each violation, which may
35 be recovered in a civil action brought by the person who is the
36 subject of the records.

37 (B) Any provider that knowingly provides personal information
38 to a government entity in violation of this section ~~on three or more~~
39 ~~occasions in any six month period~~ shall, in addition to the penalty
40 prescribed by subparagraph (A), be subject to a civil penalty not

1 to exceed five hundred dollars (\$500) for each violation, which
2 may be assessed and recovered in a civil action brought by the
3 Attorney General, by any district attorney or city attorney, or by
4 a city prosecutor in any city having a full-time city prosecutor, in
5 any court of competent jurisdiction.

6 (2) If an action is brought by the Attorney General, one-half of
7 the penalty collected shall be paid to the treasurer of the county in
8 which the judgment was entered, and one-half to the General Fund.
9 If the action is brought by a district attorney, the penalty collected
10 shall be paid to the treasurer of the county in which the judgment
11 was entered. If the action is brought by a city attorney or city
12 prosecutor, one-half of the penalty shall be paid to the treasurer
13 of the city in which the judgment was entered, and one-half to the
14 treasurer of the county in which the judgment was entered.

15 (3) The penalties provided by this section are not the exclusive
16 remedy and do not affect any other relief or remedy provided by
17 law.

18 (4) A civil action brought pursuant to this section shall be
19 commenced within two years after the date upon which the
20 claimant first discovered the violation.

21 (g) An objectively reasonable reliance by the provider on a
22 warrant or court order for the disclosure of personal information
23 of a user of a book service, or on any of the enumerated exceptions
24 to the confidentiality of a user's personal information set forth in
25 this section, is a complete defense to any civil, administrative, or
26 criminal action.

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

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

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

- 1 (3) For each category of demand or disclosure, the provider
2 shall include all of the following information:
3 (A) The number of times notice of a warrant or a court order in
4 a civil or administrative action has been provided by the provider
5 and the date the notice was provided.
6 (B) The number of times personal information has been
7 disclosed by the provider.
8 (C) The number of times no personal information has been
9 disclosed by the provider.
10 (D) The number of times the provider contests the demand.
11 (E) The number of times the user contests the demand.
12 (F) The number of users whose personal information was
13 disclosed by the provider.
14 (G) The type of personal information that was disclosed and
15 the number of times that type of personal information was
16 disclosed.
17 (i) Reports prepared pursuant to subdivision (h) shall be made
18 publicly available in an online, searchable format on or before
19 March 1 of each year.
20 (j) Any provider subject to Section 22575 of the Business and
21 Professions Code shall create a prominent hyperlink to its latest
22 report published pursuant to subdivision (i) in the disclosure section
23 of the privacy policy applicable to its book service on or before
24 March 1 of each year.
25 (k) Nothing in this section shall otherwise affect the rights of
26 any person under the California Constitution or any other law.

O