

AMENDED IN SENATE MARCH 24, 2011

**SENATE BILL**

**No. 761**

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**Introduced by Senator Lowenthal**

February 18, 2011

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~~An act to amend Section 17701 of the Business and Professions Code, relating to representations to the public.~~ *An act to add Section 22947.45 to the Business and Professions Code, relating to business.*

LEGISLATIVE COUNSEL'S DIGEST

SB 761, as amended, Lowenthal. ~~Representations to the public: coupons.~~ *Computer spyware.*

*Existing law, the Consumer Protection Against Computer Spyware Act, prohibits a person or entity other than the authorized user of computer software from, with actual knowledge, conscious avoidance of actual knowledge, or willfully, causing computer software to be copied onto the computer of a consumer in this state and using the software to (1) take control of the computer, as specified, (2) modify certain settings relating to the computer's access to or use of the Internet, as specified, (3) collect, through intentionally deceptive means, personally identifiable information, as defined, (4) prevent, without authorization, an authorized user's reasonable efforts to block the installation of or disabling of software, as specified, (5) intentionally misrepresent that the software will be uninstalled or disabled by an authorized user's action, or (6) through intentionally deceptive means, remove, disable, or render inoperative security, antispyware, or antivirus software installed on the computer.*

*Existing law establishes the California Office of Privacy Protection for specified purposes relating to protecting the privacy rights of consumers.*

*This bill would, no later than July 1, 2012, require the Attorney General, in consultation with the California Office of Privacy Protection, to adopt regulations that would require a covered entity, defined as a person or entity doing business in California that collects, uses, or stores online data containing covered information, from a consumer in this state, to provide a consumer in California with a method to opt out of that collection, use, and storage of such information. The bill would specify that such information, includes, but is not limited to, the online activity of an individual and other personal information. The bill would subject these regulations to certain requirements, including, but not limited to, a requirement that a covered entity disclose to a consumer certain information relating to its collection, use, and storage information practices. The bill would make a covered entity that willfully fails to comply with the adopted regulations liable to a consumer in a civil action for damages, as specified, and would require such an action to be brought within a certain time period.*

~~Existing law prescribes who may lawfully issue coupons, as defined, and requires certain information to be provided in or upon a coupon. A violation of those provisions is a misdemeanor.~~

~~This bill would make nonsubstantive changes to those provisions.~~

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. Section 22947.45 is added to the Business and
- 2     Professions Code, to read:
- 3     22947.45. (a) For the purposes of this section, the following
- 4     definitions shall apply:
- 5     (1) "Covered entity" means a person or entity doing business
- 6     in California that collects, uses, or stores online data containing
- 7     covered information from a consumer in this state. "Covered
- 8     entity" shall not include any of the following:
- 9     (A) The federal government or any instrumentality of the federal
- 10    government.
- 11    (B) The government of any state or any instrumentality of state
- 12    government.
- 13    (C) Any local government or instrumentality of local
- 14    government.

1 (D) Any person who can demonstrate that he or she stores  
2 covered information from or about fewer than 15,000 individuals;  
3 collects covered information from or about fewer than 10,000  
4 individuals during any 12-month period; does not collect or store  
5 sensitive information; or does not use covered information to study,  
6 monitor, or analyze the behavior of individuals as the person's  
7 primary business.

8 (2) (A) "Covered information" means, with respect to an  
9 individual, any of the following that is transmitted online:

10 (i) The online activity of the individual, including, but not limited  
11 to, the Internet Web sites and content from Internet Web sites  
12 accessed; the date and hour of online access; the computer and  
13 geolocation from which online information was accessed; and the  
14 means by which online information was accessed, such as, but not  
15 limited to, a device, browser, or application.

16 (ii) Any unique or substantially unique identifier, such as a  
17 customer number or Internet Protocol address.

18 (iii) Personal information including, but not limited to, a name;  
19 a postal address or other location; an e-mail address or other user  
20 name; a telephone or fax number; a government-issued  
21 identification number, such as a tax identification number, a  
22 passport number, or a driver's license number; or a financial  
23 account number, or credit card or debit card number, or any  
24 required security code, access code, or password that is necessary  
25 to permit access to an individual's financial account.

26 (B) "Covered information" shall not include the title, business  
27 address, business e-mail address, business telephone number, or  
28 business fax number associated with an individual's status as an  
29 employee of an organization, or an individual's name when  
30 collected, stored, used, or disclosed in connection with that  
31 employment status; or any information collected from or about an  
32 employee by an employer, prospective employer, or former  
33 employer that directly relates to the employee-employer  
34 relationship.

35 (3) (A) "Sensitive information" means any of the following:

36 (i) Any information that is associated with covered information  
37 of an individual and relates directly to that individual's medical  
38 history, physical or mental health, or the provision of health care  
39 to the individual; race or ethnicity; religious beliefs and affiliation;  
40 sexual orientation or sexual behavior; income, assets, liabilities,

1 or financial records, and other financial information associated  
2 with a financial account, including balances and other financial  
3 information, except when financial account information is provided  
4 by the individual and is used only to process an authorized credit  
5 or debit to the account; or precise geolocation information and  
6 any information about the individual's activities and relationships  
7 associated with that geolocation.

8 (ii) An individual's unique biometric data, including a  
9 fingerprint or retina scan, or social security number.

10 (iii) Information deemed sensitive information pursuant to  
11 regulations adopted by the Attorney General under subparagraph  
12 (B).

13 (B) The Attorney General in consultation with the California  
14 Office of Privacy Protection may, by regulations adopted pursuant  
15 to subdivision (b), modify the scope or application of the definition  
16 of "sensitive information" as necessary to promote the purposes  
17 of this act. In adopting these regulations, the Attorney General  
18 shall consider the purpose of collecting the information and the  
19 context in which the information is used; how easily the information  
20 can be used to identify a specific individual; the nature and extent  
21 of authorized access to the information; an individual's reasonable  
22 expectations under the circumstances; and adverse effects that  
23 may be experienced by an individual if the information is disclosed  
24 to an unauthorized person.

25 (b) (1) No later than July 1, 2012, the Attorney General, in  
26 consultation with the California Office of Privacy Protection, shall  
27 adopt regulations that would require a covered entity doing  
28 business in California to provide a consumer in this state with a  
29 method for the consumer to opt out of the collection or use of any  
30 covered information by a covered entity.

31 (2) The regulations shall do the following:

32 (A) Include a requirement for a covered entity to disclose, in a  
33 manner that is easily accessible to a consumer, information on the  
34 collection, use, and storage of information practices, how the entity  
35 uses or discloses that information, and the names of the persons  
36 to whom that entity would disclose that information.

37 (B) Prohibit the collection or use of covered information by a  
38 covered entity for which a consumer has opted out of such  
39 collection or use, unless the consumer changes his or her opt-out  
40 preference to allow the collection or use of that information.

1     (3) *The regulations may do the following:*

2     (A) *Include a requirement that a covered entity provide a*  
3 *consumer with a means to access the covered information of that*  
4 *consumer and the data retention and security policies of the*  
5 *covered entity in a format that is clear and easy to understand.*

6     (B) *Include a requirement that some or all of the regulations*  
7 *apply with regard to the collection and use of covered information,*  
8 *regardless of the source.*

9     (4) *The Attorney General may exempt from some or all of the*  
10 *regulations required by this section certain commonly accepted*  
11 *commercial practices, including the following:*

12     (A) *Providing, operating, or improving a product or service*  
13 *used, requested, or authorized by an individual, including the*  
14 *ongoing provision of customer service and support.*

15     (B) *Analyzing data related to use of the product or service for*  
16 *purposes of improving the products, services, or operations.*

17     (C) *Basic business functions, such as, but not limited to,*  
18 *accounting, inventory and supply chain management, quality*  
19 *assurance, and internal auditing.*

20     (D) *Protecting or defending rights or property, including, but*  
21 *not limited to, intellectual property, against actual or potential*  
22 *security threats, fraud, theft, unauthorized transactions, or other*  
23 *illegal activities.*

24     (E) *Preventing imminent danger to the personal safety of an*  
25 *individual or group of individuals.*

26     (F) *Complying with a federal, state, or local law, regulation,*  
27 *rule, or other applicable legal requirement, including, but not*  
28 *limited to, disclosures pursuant to a court order, subpoena,*  
29 *summons, or other properly executed compulsory process.*

30     (G) *Any other category of operational use specified by the*  
31 *Attorney General in regulations adopted pursuant to this*  
32 *subdivision that is consistent with the purposes of this act.*

33     (c) *A covered entity that willfully fails to comply with regulations*  
34 *promulgated by the Attorney General pursuant to subdivision (b)*  
35 *with respect to any individual is liable to that individual in a civil*  
36 *action brought in a California court of appropriate jurisdiction*  
37 *in an amount equal to the sum of the greater of any actual*  
38 *damages, but in no event less than one hundred dollars (\$100) or*  
39 *more than one thousand dollars (\$1,000), and such amount of*  
40 *punitive damages as the court may allow. In the case of any*

1 *successful action under this section, the covered entity shall be*  
2 *liable to the individual for the costs of the action together with*  
3 *reasonable attorney's fees as determined by the court. A civil*  
4 *action under this section shall not be commenced later than two*  
5 *years after the date upon which the claimant first discovered or*  
6 *had a reasonable opportunity to discover the violation.*

7 ~~SECTION 1. Section 17701 of the Business and Professions~~  
8 ~~Code is amended to read:~~

9 ~~17701. It is unlawful for any person to issue coupons unless~~  
10 ~~there shall be specified in or upon the coupons, specifically or by~~  
11 ~~class, the person by whom or with whom the coupon is~~  
12 ~~exchangeable or redeemable, and unless the person specified is~~  
13 ~~any of the following:~~

14 ~~(a) The person issuing the coupon.~~

15 ~~(b) A member or members of an association issuing the coupon,~~  
16 ~~which association shall be a bona fide organization in existence~~  
17 ~~for a period of at least six months prior to issuing the coupon. The~~  
18 ~~name and address by street and number of the principal place of~~  
19 ~~business of the association shall also be specified in or upon the~~  
20 ~~coupon.~~

21 ~~(c) A person engaged in the business of issuing coupons for use~~  
22 ~~or distribution by itself or by other persons.~~