

AMENDED IN SENATE SEPTEMBER 4, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1149

Introduced by Assembly Member Campos

February 22, 2013

An act to amend Section 1798.29 of the Civil Code, relating to identity theft.

LEGISLATIVE COUNSEL'S DIGEST

AB 1149, as amended, Campos. Identity theft: local agencies.

Existing law requires any state office, officer, or executive agency that owns or licenses computerized data that includes personal information to disclose any breach of the security of the system following discovery or notification of the breach in the security of the data to any resident of California whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person.

This bill would expand this disclosure requirement to apply to a breach of computerized data that is owned or licensed by a local agency. The bill would create a state-mandated local program by imposing new duties on local agencies.

This bill would incorporate additional changes to Section 1798.29 of the Civil Code proposed by SB 46 that would become operative if this bill and SB 46 are enacted and this bill is enacted last.

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. Section 1798.29 of the Civil Code is amended
2 to read:

3 1798.29. (a) Any agency that owns or licenses computerized
4 data that includes personal information shall disclose any breach
5 of the security of the system following discovery or notification
6 of the breach in the security of the data to any resident of California
7 whose unencrypted personal information was, or is reasonably
8 believed to have been, acquired by an unauthorized person. The
9 disclosure shall be made in the most expedient time possible and
10 without unreasonable delay, consistent with the legitimate needs
11 of law enforcement, as provided in subdivision (c), or any measures
12 necessary to determine the scope of the breach and restore the
13 reasonable integrity of the data system.

14 (b) Any agency that maintains computerized data that includes
15 personal information that the agency does not own shall notify the
16 owner or licensee of the information of any breach of the security
17 of the data immediately following discovery, if the personal
18 information was, or is reasonably believed to have been, acquired
19 by an unauthorized person.

20 (c) The notification required by this section may be delayed if
21 a law enforcement agency determines that the notification will
22 impede a criminal investigation. The notification required by this
23 section shall be made after the law enforcement agency determines
24 that it will not compromise the investigation.

25 (d) Any agency that is required to issue a security breach
26 notification pursuant to this section shall meet all of the following
27 requirements:

28 (1) The security breach notification shall be written in plain
29 language.

30 (2) The security breach notification shall include, at a minimum,
31 the following information:

32 (A) The name and contact information of the reporting agency
33 subject to this section.

1 (B) A list of the types of personal information that were or are
2 reasonably believed to have been the subject of a breach.

3 (C) If the information is possible to determine at the time the
4 notice is provided, then any of the following: (i) the date of the
5 breach, (ii) the estimated date of the breach, or (iii) the date range
6 within which the breach occurred. The notification shall also
7 include the date of the notice.

8 (D) Whether the notification was delayed as a result of a law
9 enforcement investigation, if that information is possible to
10 determine at the time the notice is provided.

11 (E) A general description of the breach incident, if that
12 information is possible to determine at the time the notice is
13 provided.

14 (F) The toll-free telephone numbers and addresses of the major
15 credit reporting agencies, if the breach exposed a social security
16 number or a driver's license or California identification card
17 number.

18 (3) At the discretion of the agency, the security breach
19 notification may also include any of the following:

20 (A) Information about what the agency has done to protect
21 individuals whose information has been breached.

22 (B) Advice on steps that the person whose information has been
23 breached may take to protect himself or herself.

24 (e) Any agency that is required to issue a security breach
25 notification pursuant to this section to more than 500 California
26 residents as a result of a single breach of the security system shall
27 electronically submit a single sample copy of that security breach
28 notification, excluding any personally identifiable information, to
29 the Attorney General. A single sample copy of a security breach
30 notification shall not be deemed to be within subdivision (f) of
31 Section 6254 of the Government Code.

32 (f) For purposes of this section, "breach of the security of the
33 system" means unauthorized acquisition of computerized data that
34 compromises the security, confidentiality, or integrity of personal
35 information maintained by the agency. Good faith acquisition of
36 personal information by an employee or agent of the agency for
37 the purposes of the agency is not a breach of the security of the
38 system, provided that the personal information is not used or
39 subject to further unauthorized disclosure.

1 (g) For purposes of this section, “personal information” means
2 an individual’s first name or first initial and last name in
3 combination with any one or more of the following data elements,
4 when either the name or the data elements are not encrypted:

- 5 (1) Social security number.
- 6 (2) Driver’s license number or California identification card
7 number.
- 8 (3) Account number, credit or debit card number, in combination
9 with any required security code, access code, or password that
10 would permit access to an individual’s financial account.
- 11 (4) Medical information.
- 12 (5) Health insurance information.

13 (h) (1) For purposes of this section, “personal information”
14 does not include publicly available information that is lawfully
15 made available to the general public from federal, state, or local
16 government records.

17 (2) For purposes of this section, “medical information” means
18 any information regarding an individual’s medical history, mental
19 or physical condition, or medical treatment or diagnosis by a health
20 care professional.

21 (3) For purposes of this section, “health insurance information”
22 means an individual’s health insurance policy number or subscriber
23 identification number, any unique identifier used by a health insurer
24 to identify the individual, or any information in an individual’s
25 application and claims history, including any appeals records.

26 (i) For purposes of this section, “notice” may be provided by
27 one of the following methods:

- 28 (1) Written notice.
- 29 (2) Electronic notice, if the notice provided is consistent with
30 the provisions regarding electronic records and signatures set forth
31 in Section 7001 of Title 15 of the United States Code.
- 32 (3) Substitute notice, if the agency demonstrates that the cost
33 of providing notice would exceed two hundred fifty thousand
34 dollars (\$250,000), or that the affected class of subject persons to
35 be notified exceeds 500,000, or the agency does not have sufficient
36 contact information. Substitute notice shall consist of all of the
37 following:

38 (A) ~~E-mail~~ *Email* notice when the agency has an ~~e-mail~~ *email*
39 address for the subject persons.

1 (B) Conspicuous posting of the notice on the agency’s Internet
2 Web site page, if the agency maintains one.

3 (C) Notification to major statewide media and the Office of
4 Information Security within the Department of Technology.

5 (j) Notwithstanding subdivision (i), an agency that maintains
6 its own notification procedures as part of an information security
7 policy for the treatment of personal information and is otherwise
8 consistent with the timing requirements of this part shall be deemed
9 to be in compliance with the notification requirements of this
10 section if it notifies subject persons in accordance with its policies
11 in the event of a breach of security of the system.

12 (k) Notwithstanding the exception specified in paragraph (4) of
13 subdivision (b) of Section 1798.3, for purposes of this section,
14 “agency” includes a local agency, as defined in subdivision (a) of
15 Section 6252 of the Government Code.

16 *SEC. 1.5. Section 1798.29 of the Civil Code is amended to*
17 *read:*

18 1798.29. (a) Any agency that owns or licenses computerized
19 data that includes personal information shall disclose any breach
20 of the security of the system following discovery or notification
21 of the breach in the security of the data to any resident of California
22 whose unencrypted personal information was, or is reasonably
23 believed to have been, acquired by an unauthorized person. The
24 disclosure shall be made in the most expedient time possible and
25 without unreasonable delay, consistent with the legitimate needs
26 of law enforcement, as provided in subdivision (c), or any measures
27 necessary to determine the scope of the breach and restore the
28 reasonable integrity of the data system.

29 (b) Any agency that maintains computerized data that includes
30 personal information that the agency does not own shall notify the
31 owner or licensee of the information of any breach of the security
32 of the data immediately following discovery, if the personal
33 information was, or is reasonably believed to have been, acquired
34 by an unauthorized person.

35 (c) The notification required by this section may be delayed if
36 a law enforcement agency determines that the notification will
37 impede a criminal investigation. The notification required by this
38 section shall be made after the law enforcement agency determines
39 that it will not compromise the investigation.

1 (d) Any agency that is required to issue a security breach
2 notification pursuant to this section shall meet all of the following
3 requirements:

4 (1) The security breach notification shall be written in plain
5 language.

6 (2) The security breach notification shall include, at a minimum,
7 the following information:

8 (A) The name and contact information of the reporting agency
9 subject to this section.

10 (B) A list of the types of personal information that were or are
11 reasonably believed to have been the subject of a breach.

12 (C) If the information is possible to determine at the time the
13 notice is provided, then any of the following: (i) the date of the
14 breach, (ii) the estimated date of the breach, or (iii) the date range
15 within which the breach occurred. The notification shall also
16 include the date of the notice.

17 (D) Whether the notification was delayed as a result of a law
18 enforcement investigation, if that information is possible to
19 determine at the time the notice is provided.

20 (E) A general description of the breach incident, if that
21 information is possible to determine at the time the notice is
22 provided.

23 (F) The toll-free telephone numbers and addresses of the major
24 credit reporting agencies, if the breach exposed a social security
25 number or a driver's license or California identification card
26 number.

27 (3) At the discretion of the agency, the security breach
28 notification may also include any of the following:

29 (A) Information about what the agency has done to protect
30 individuals whose information has been breached.

31 (B) Advice on steps that the person whose information has been
32 breached may take to protect himself or herself.

33 (4) *In the case of a breach of the security of the system involving*
34 *personal information defined in paragraph (2) of subdivision (g)*
35 *for an online account, and no other personal information defined*
36 *in paragraph (1) of subdivision (g), the agency may comply with*
37 *this section by providing the security breach notification in*
38 *electronic or other form that directs the person whose personal*
39 *information has been breached to promptly change his or her*
40 *password and security question or answer, as applicable, or to*

1 take other steps appropriate to protect the online account with the
2 agency and all other online accounts for which the person uses
3 the same user name or email address and password or security
4 question or answer.

5 (5) In the case of a breach of the security of the system involving
6 personal information defined in paragraph (2) of subdivision (g)
7 for login credentials of an email account furnished by the agency,
8 the agency shall not comply with this section by providing the
9 security breach notification to that email address, but may, instead,
10 comply with this section by providing notice by another method
11 described in subdivision (i) or by clear and conspicuous notice
12 delivered to the resident online when the resident is connected to
13 the online account from an Internet Protocol address or online
14 location from which the agency knows the resident customarily
15 accesses the account.

16 (e) Any agency that is required to issue a security breach
17 notification pursuant to this section to more than 500 California
18 residents as a result of a single breach of the security system shall
19 electronically submit a single sample copy of that security breach
20 notification, excluding any personally identifiable information, to
21 the Attorney General. A single sample copy of a security breach
22 notification shall not be deemed to be within subdivision (f) of
23 Section 6254 of the Government Code.

24 (f) For purposes of this section, “breach of the security of the
25 system” means unauthorized acquisition of computerized data that
26 compromises the security, confidentiality, or integrity of personal
27 information maintained by the agency. Good faith acquisition of
28 personal information by an employee or agent of the agency for
29 the purposes of the agency is not a breach of the security of the
30 system, provided that the personal information is not used or
31 subject to further unauthorized disclosure.

32 (g) For purposes of this section, “personal information” means
33 ~~an~~ either of the following:

34 (1) An individual’s first name or first initial and last name in
35 combination with any one or more of the following data elements,
36 when either the name or the data elements are not encrypted:

37 (1)

38 (A) Social security number.

39 (2)

1 (B) Driver’s license number or California ~~Identification Card~~
 2 *identification card* number.

3 ~~(3)~~

4 (C) Account number, credit or debit card number, in
 5 combination with any required security code, access code, or
 6 password that would permit access to an individual’s financial
 7 account.

8 ~~(4)~~

9 (D) Medical information.

10 ~~(5)~~

11 (E) Health insurance information.

12 (2) *A user name or email address, in combination with a*
 13 *password or security question and answer that would permit access*
 14 *to an online account.*

15 (h) (1) For purposes of this section, “personal information”
 16 does not include publicly available information that is lawfully
 17 made available to the general public from federal, state, or local
 18 government records.

19 (2) For purposes of this section, “medical information” means
 20 any information regarding an individual’s medical history, mental
 21 or physical condition, or medical treatment or diagnosis by a health
 22 care professional.

23 (3) For purposes of this section, “health insurance information”
 24 means an individual’s health insurance policy number or subscriber
 25 identification number, any unique identifier used by a health insurer
 26 to identify the individual, or any information in an individual’s
 27 application and claims history, including any appeals records.

28 (i) For purposes of this section, “notice” may be provided by
 29 one of the following methods:

30 (1) Written notice.

31 (2) Electronic notice, if the notice provided is consistent with
 32 the provisions regarding electronic records and signatures set forth
 33 in Section 7001 of Title 15 of the United States Code.

34 (3) Substitute notice, if the agency demonstrates that the cost
 35 of providing notice would exceed two hundred fifty thousand
 36 dollars (\$250,000), or that the affected class of subject persons to
 37 be notified exceeds 500,000, or the agency does not have sufficient
 38 contact information. Substitute notice shall consist of all of the
 39 following:

1 (A) ~~E-mail~~ *Email* notice when the agency has an ~~e-mail~~ *email*
2 address for the subject persons.

3 (B) Conspicuous posting of the notice on the agency’s Internet
4 Web site page, if the agency maintains one.

5 (C) Notification to major statewide media and the Office of
6 Information Security within the ~~California Technology Agency~~
7 *Department of Technology*.

8 (j) Notwithstanding subdivision (i), an agency that maintains
9 its own notification procedures as part of an information security
10 policy for the treatment of personal information and is otherwise
11 consistent with the timing requirements of this part shall be deemed
12 to be in compliance with the notification requirements of this
13 section if it notifies subject persons in accordance with its policies
14 in the event of a breach of security of the system.

15 (k) *Notwithstanding the exception specified in paragraph (4)*
16 *of subdivision (b) of Section 1798.3, for purposes of this section,*
17 *“agency” includes a local agency, as defined in subdivision (a)*
18 *of Section 6252 of the Government Code.*

19 *SEC. 2. Section 1.5 of this bill incorporates amendments to*
20 *Section 1798.29 of the Civil Code proposed by both this bill and*
21 *Senate Bill 46. It shall only become operative if (1) both bills are*
22 *enacted and become effective on or before January 1, 2014, (2)*
23 *each bill amends Section 1798.29 of the Civil Code, and (3) this*
24 *bill is enacted after Senate Bill 46, in which case Section 1 of this*
25 *bill shall not become operative.*

26 ~~SEC. 2.~~

27 *SEC. 3. If the Commission on State Mandates determines that*
28 *this act contains costs mandated by the state, reimbursement to*
29 *local agencies and school districts for those costs shall be made*
30 *pursuant to Part 7 (commencing with Section 17500) of Division*
31 *4 of Title 2 of the Government Code.*