

AMENDED IN ASSEMBLY APRIL 18, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1274**

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**Introduced by Assembly Member Bradford**

February 22, 2013

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An act to add Sections 8382 and 8383 to the Public Utilities Code, relating to public utilities. Title 1.81.4 (commencing with Section 1798.98) to Part 4 of Division 3 of the Civil Code, relating to privacy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1274, as amended, Bradford. ~~Public utilities: consumer privacy.~~  
*Privacy: public utilities.*

Existing law prohibits, except as specified, an electric corporation or gas corporation, and a local publicly owned utility, from sharing, disclosing, or otherwise making accessible to a third party a consumer's electric or gas usage that is made available as a part of an advanced metering infrastructure, including the name, account number, and residence of the customer (data). Existing law requires the electrical corporation or gas corporation, and a locally publicly owned utility, to use reasonable security procedures and practices to provide a consumer's unencrypted data from unauthorized access, destruction, use, modification, or disclosure.

*Existing law makes the willful obtaining of personal identifying information, as defined, and use of that information for any unlawful purpose, a felony or misdemeanor. Existing law authorizes a person that has been injured as a result of a violation of this prohibition to bring an action against a claimant, as defined, to establish that they are a victim of identity theft, in connection with the claimant's claim against that person and to bring a cross-complaint if the claimant has*

*brought an action to recover on a claim against the person. A person who proves that he or she is a victim of identity theft by a preponderance of evidence is entitled to a judgment providing for actual damages, attorney's fees, and costs, and any equitable relief that the court deems appropriate.*

~~This bill would require the commission, by order or rule, to require an electrical corporation or gas corporation to establish, on or before December 31, 2014, communication standards and protocols for a home area network device that communicates electrical or gas consumption data, as defined, of that device to the electric corporation or gas corporation through an advanced metering infrastructure to ensure against the unauthorized access, destruction, use, modification, or disclosure of the data (cyber-security) and compatibility of the home area network devices. The bill would require a local publicly owned utility, on or before December 31, 2014, to establish communication standards and protocols for a home area network device that communicates electrical consumption data of that device to the utility to ensure cyber-security. The bill would require the electric corporation or gas corporation and a local publicly owned utility to provide to the consumer educational materials regarding cyber-security after the development of the communication standards and protocols.~~

*This bill would prohibit a customer premises network provider, as defined, from sharing, disclosing, or otherwise making a customer's electrical or gas consumption data accessible to a 3rd party, except upon the express consent of the customer, selling a customer's electrical or gas consumption data, providing an incentive or discount to the customer for accessing the customer's electrical or gas consumption data without the prior consent of the customer, or failing to comply with national or state standards for maintaining energy data security, as specified. The bill would prohibit a customer premises network provider or its contractor from providing a service that allows a customer to monitor his or her electricity or gas usage, except as specified. The bill would also allow a customer who suffers damages as a result of a violation of these provisions to bring an action in a court of appropriate jurisdiction to recover relief as specified.*

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

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

1     SECTION 1. Title 1.81.4 (commencing with Section 1798.98)  
2 *is added to Part 4 of Division 3 of the Civil Code, to read:*

3  
4             TITLE 1.81.4. CUSTOMER PREMISES NETWORK  
5                             PROVIDERS  
6

7     1798.98. (a) *For the purposes of this section, the following*  
8 *definitions shall apply:*

9         (1) *“Electrical or gas consumption data” has the meaning used*  
10 *in Section 8380 of the Public Utilities Code.*

11         (2) *“Customer premises network provider” means a company*  
12 *that provides home area network connectivity or commercial area*  
13 *network connectivity if the network device receives electrical or*  
14 *gas consumption data from a utility advanced metering system.*  
15 *The term “customer premises network provider” does not include*  
16 *an electrical or gas corporation or publicly owned utility merely*  
17 *furnishing connectivity from network devices within customer*  
18 *premises to its utility advanced metering system.*

19         (b) *A customer premises network provider and its contractors*  
20 *shall abide by the following:*

21             (1) *A customer premises network provider shall not share,*  
22 *disclose, or otherwise make accessible to a third party a customer’s*  
23 *electrical or gas consumption data, except upon the express consent*  
24 *of the customer.*

25             (2) *A customer premises network provider shall not sell a*  
26 *customer’s electrical or gas consumption data or any other*  
27 *personally identifiable information for any purpose.*

28             (3) *A customer premises network provider and its contractors*  
29 *shall not provide an incentive or discount to the customer for*  
30 *accessing the customer’s electrical or gas consumption data*  
31 *without the prior consent of the customer.*

32             (4) *A customer premises network provider and its contractors*  
33 *shall maintain compliance with national or state standards for*  
34 *maintaining energy data security in a manner that prevents*  
35 *negligent or willful release of identity or personal information of*  
36 *one or more utility customers.*

37             (5) *If a customer premises network provider or its contractor*  
38 *provides a service that allows a customer to monitor his or her*

1 *electricity or gas usage, and uses the data for a purpose other than*  
2 *that specified in the agreement between the customer and the*  
3 *customer premises network provider, either the customer premises*  
4 *network provider shall prominently disclose the purpose and secure*  
5 *the customer's express consent to the use of his or her data for*  
6 *that purpose prior to the use of the data or the contract between*  
7 *the customer premises network provider and its contractor shall*  
8 *provide that the contractor prominently discloses that purpose to*  
9 *the customer and secures the customer's express consent to the*  
10 *use of his or her data for that purpose prior to the use of the data.*

11 *(6) A customer premises network provider shall use generally*  
12 *accepted principles and practices for securing a customer's*  
13 *unencrypted electrical or gas consumption data from the*  
14 *unauthorized access, destruction, use, modification, or disclosure*  
15 *of the data.*

16 *(7) If a customer chooses to disclose his or her electrical or gas*  
17 *consumption data to a third party that is unaffiliated with, and has*  
18 *no other business relationship with the customer premises network*  
19 *provider, the customer premises network provider shall not be*  
20 *responsible for the security of that data, or its use or misuse.*

21 *(c) This section shall not preclude a customer premises network*  
22 *provider from disclosing electrical or gas consumption data as*  
23 *required under state or federal law.*

24 *1798.99. (a) A customer who suffers damages as a result of a*  
25 *violation of Section 1798.98 by any entity or person may bring an*  
26 *action in a court of appropriate jurisdiction against that entity or*  
27 *person and the court may award any of the following:*

28 *(1) In the case of a negligent violation, actual damages,*  
29 *including court costs, loss of wages, attorney's fees, and, when*  
30 *applicable, pain and suffering.*

31 *(2) In the case of a willful violation:*

32 *(A) Actual damages as set forth in paragraph (1).*

33 *(B) Punitive damages of not less than one hundred dollars*  
34 *(\$100) or more than five thousand dollars (\$5,000) for each*  
35 *violation as the court deems proper.*

36 *(C) Any other relief the court deems proper.*

37 *(3) Injunctive relief shall be available to a consumer aggrieved*  
38 *by a violation or a threatened violation of this title whether or not*  
39 *the customer seeks any other remedy under this section.*

1 (4) *The prevailing plaintiffs in any action commenced under*  
2 *this section shall be entitled to recover court costs and reasonable*  
3 *attorney's fees.*

4 (b) *If a plaintiff only seeks and obtains injunctive relief to*  
5 *compel compliance with this title, court costs and attorney's fees*  
6 *shall be awarded pursuant to Section 1021.5 of the Code of Civil*  
7 *Procedure.*

8 (c) *Nothing in this section is intended to affect remedies*  
9 *available under Section 128.5 of the Code of Civil Procedure.*

10 SECTION 1. Section 8382 is added to the Public Utilities Code,  
11 to read:

12 ~~8382. (a) The commission shall, by order or rule, require an~~  
13 ~~electric corporation or gas corporation to establish, on or before~~  
14 ~~December 31, 2014, communication standards and protocols for~~  
15 ~~a home area network device that communicates electrical or gas~~  
16 ~~consumption data of that device to the electric corporation or gas~~  
17 ~~corporation through an advanced metering infrastructure to ensure~~  
18 ~~against the unauthorized access, destruction, use, modification, or~~  
19 ~~disclosure of the data and compatibility of the home area network~~  
20 ~~devices.~~

21 ~~(b) An electric corporation or gas corporation shall ensure the~~  
22 ~~consumer's electrical or gas consumption data are not compromised~~  
23 ~~by a third-party consultant of the corporation.~~

24 ~~(c) After the development of the communication standards and~~  
25 ~~protocols, the electric corporation or gas corporation shall provide~~  
26 ~~to consumers educational materials regarding measures to ensure~~  
27 ~~against the unauthorized access, destruction, use, modification, or~~  
28 ~~disclosure of the electrical or gas consumption data.~~

29 ~~(d) As used in this section, "electrical or gas consumption data"~~  
30 ~~means a consumer's electrical or gas usage, and includes the name,~~  
31 ~~account number, or residence of the consumer.~~

32 SEC. 2. Section 8383 is added to the Public Utilities Code, to  
33 read:

34 ~~8383. (a) On or before December 31, 2014, a local publicly~~  
35 ~~owned electric utility shall establish communication standards and~~  
36 ~~protocols for a home area network device that communicates~~  
37 ~~electrical consumption data of that device to the utility through an~~  
38 ~~advanced metering infrastructure to ensure against the unauthorized~~  
39 ~~access, destruction, use, modification, or disclosure of the data~~  
40 ~~and compatibility of the home area network devices.~~

- 1     ~~(b) A local publicly owned electric utility shall ensure that the~~
- 2     ~~consumer’s electrical consumption data are not compromised by~~
- 3     ~~a third-party consultant of the utility.~~
- 4     ~~(c) After the development of the communication standards and~~
- 5     ~~protocols, the local publicly owned electric utility shall provide to~~
- 6     ~~consumers educational materials regarding measures to ensure~~
- 7     ~~against the unauthorized access, destruction, use, modification, or~~
- 8     ~~disclosure of the electrical or gas consumption data.~~
- 9     ~~(d) As used in this section, “electrical consumption data” means~~
- 10    ~~a consumer’s electrical usage, and includes the name, account~~
- 11    ~~number, or residence of the consumer.~~