

AMENDED IN SENATE JUNE 11, 2013

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 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. 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 prohibit a customer premises network an energy management service provider, as defined, from, among other things, 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, or selling a customer’s electrical or gas consumption data, except upon the consent of the customer, as specified. The bill would prohibit an energy management service provider or its contractors from 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 customer. The bill would prohibit a customer premises network an energy management service 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 authorize a customer who suffers damages as a result of a violation of these provisions to bring an to bring a civil action in a court of appropriate jurisdiction to recover relief as specified for actual damages not to exceed \$500 for each willful violation of these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: 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~~ ENERGY
- 5 MANAGEMENT SERVICE 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”~~ “Energy
- 12 management service provider” means a company an entity that

1 ~~provides home area network connectivity or commercial area~~  
2 ~~network connectivity if the network device receives electrical or~~  
3 ~~gas consumption data from a utility advanced metering system,~~  
4 ~~but excludes an electrical or gas corporation or publicly owned~~  
5 ~~utility or its agent, contractor, or vendor. The term “customer~~  
6 ~~premises network provider” does not include an electrical or gas~~  
7 ~~corporation or publicly owned utility merely furnishing~~  
8 ~~connectivity from network devices within customer premises to~~  
9 ~~its utility advanced metering system.~~

10 (3) *“Customer” means a residential customer or a*  
11 *nonresidential customer with a demand of 20kW or less during*  
12 *the previous calendar year.*

13 ~~(b) A customer premises network~~*An energy management service*  
14 ~~provider and its contractors shall abide by the following:~~

15 ~~(1) A customer premises network~~*An energy management service*  
16 ~~provider shall not share, disclose, or otherwise make accessible to~~  
17 ~~a third party a customer’s electrical or gas consumption data, except~~  
18 ~~upon the express consent of the customer.~~

19 ~~(2) A customer premises network~~*An energy management service*  
20 ~~provider shall not sell a customer’s electrical or gas consumption~~  
21 ~~data or any other personally identifiable information for any~~  
22 ~~purpose, except as provided in subdivision (d).~~

23 ~~(3) A customer premises network~~*An energy management service*  
24 ~~provider and its contractors shall not provide an incentive or~~  
25 ~~discount to the customer for accessing the customer’s electrical or~~  
26 ~~gas consumption data without the prior consent of the customer.~~

27 ~~(4) A customer premises network provider and its contractors~~  
28 ~~shall maintain compliance with national or state standards for~~  
29 ~~maintaining energy data security in a manner that prevents~~  
30 ~~negligent or willful release of identity or personal information of~~  
31 ~~one or more utility customers.~~

32 (5)

33 ~~(4) If a customer premises network~~*an energy management*  
34 ~~service provider or its contractor provides a service that allows a~~  
35 ~~customer to monitor his or her electricity or gas usage, and uses~~  
36 ~~the data for a purpose other than that specified in the agreement~~  
37 ~~between the customer and the customer premises network~~*energy*  
38 ~~management service provider, either the customer premises~~  
39 ~~network~~*energy management service* provider shall prominently  
40 disclose the purpose and secure the customer’s express consent to

1 the use of his or her data for that purpose prior to the use of the  
2 data, or the contract between the ~~customer premises network~~ energy  
3 *management service* provider and its contractor shall provide that  
4 the contractor prominently discloses that purpose to the customer  
5 and secures the customer's express consent to the use of his or her  
6 data for that purpose prior to the use of the data.

7 *(5) If an energy management service provider contracts with a*  
8 *third party for any service and that third party uses customer*  
9 *electrical or gas consumption data for a secondary commercial*  
10 *purpose, the energy management service provider shall*  
11 *prominently disclose that secondary commercial purpose and*  
12 *secure the customer's consent to the use of his or her data for that*  
13 *purpose prior to the use of the data.*

14 ~~A customer premises network~~ *An energy management service*  
15 *provider shall use generally accepted principles and practices*  
16 *industry standards for securing a customer's unencrypted electrical*  
17 *or gas consumption data from the unauthorized access, destruction,*  
18 *use, modification, or disclosure of the data.*

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

25 *(c) This section shall not preclude an energy management*  
26 *service provider from using or disclosing electrical or gas*  
27 *consumption data for analysis, research, reporting, sharing with*  
28 *third parties, or program management if the data has been*  
29 *aggregated sufficiently to protect individual customer identity and*  
30 *personally identifying information has been removed.*

31 *(d) This section shall not preclude an energy management*  
32 *service provider, with the consent of the customer, from disclosing*  
33 *a customer's electrical or gas consumption data to a third party*  
34 *for the operational needs of an electric or natural gas system or*  
35 *electric grid, or the implementation of demand response, energy*  
36 *management, or energy efficiency programs. The third party shall*  
37 *use industry standards for securing customer's unencrypted data*  
38 *from the unauthorized access, destruction, use, modification, or*  
39 *disclosure of the data and for the destruction of data.*

40 (e)

1 (e) This section shall not preclude a customer premises network  
2 an energy management service provider from disclosing electrical  
3 or gas consumption data as required under state or federal law.

4 ~~1798.99. (a) A customer who suffers damages as a result of a~~  
5 ~~violation of Section 1798.98 by any entity or person may bring an~~  
6 ~~action in a court of appropriate jurisdiction against that entity or~~  
7 ~~person and the court may award any of the following:~~

8 (1) ~~In the case of a negligent violation, actual damages, including~~  
9 ~~court costs, loss of wages, attorney's fees, and, when applicable,~~  
10 ~~pain and suffering.~~

11 (2) ~~In the case of a willful violation:~~

12 (A) ~~Actual damages as set forth in paragraph (1).~~

13 (B) ~~Punitive damages of not less than one hundred dollars (\$100)~~  
14 ~~or more than five thousand dollars (\$5,000) for each violation as~~  
15 ~~the court deems proper.~~

16 (C) ~~Any other relief the court deems proper.~~

17 (3) ~~Injunctive relief shall be available to a consumer aggrieved~~  
18 ~~by a violation or a threatened violation of this title whether or not~~  
19 ~~the customer seeks any other remedy under this section.~~

20 (4) ~~The prevailing plaintiffs in any action commenced under~~  
21 ~~this section shall be entitled to recover court costs and reasonable~~  
22 ~~attorney's fees.~~

23 (b) ~~If a plaintiff only seeks and obtains injunctive relief to~~  
24 ~~compel compliance with this title, court costs and attorney's fees~~  
25 ~~shall be awarded pursuant to Section 1021.5 of the Code of Civil~~  
26 ~~Procedure.~~

27 (e) ~~Nothing in this section is intended to affect remedies~~  
28 ~~available under Section 128.5 of the Code of Civil Procedure.~~

29 *1798.99. (a) A customer harmed by the release and*  
30 *unauthorized use of his or her electrical or gas consumption data,*  
31 *as described in Section 1798.98, may bring a civil action to recover*  
32 *actual damages in an amount not to exceed five hundred dollars*  
33 *(\$500) for each willful violation.*

34 (b) *The rights, remedies, and penalties established by this title*  
35 *are in addition to the rights, remedies, or penalties established*  
36 *under any other law.*

37 (c) *Nothing in this title shall abrogate any authority of the*  
38 *Attorney General to enforce existing law.*

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