

AMENDED IN SENATE JULY 8, 2013  
AMENDED IN SENATE JUNE 25, 2013  
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: customer electrical or natural gas usage data.

Existing law prohibits, except as specified, an electrical corporation or gas corporation, and a local publicly owned utility, from sharing, disclosing, or otherwise making accessible to a 3rd 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 local 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 business from sharing, disclosing, or otherwise making accessible to any 3rd party a customer’s electrical or natural gas usage *data* without obtaining the express consent of the customer and conspicuously disclosing to whom the disclosure will be made and how the data will be used. The bill would require a business and a nonaffiliated 3rd party, pursuant to a contract, to implement and maintain reasonable security procedures and practices to protect the data from unauthorized disclosure. The bill would prohibit a business from providing an incentive or discount to the customer for accessing the data without the prior consent of the customer. The bill would require a business to take reasonable steps ~~with regard to the disposal of~~ *to dispose that customer data no longer to be retained within its custody or control when the data is no longer to be retained by the business, as specified.* The bill would authorize a customer to bring a civil action 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. PRIVACY OF CUSTOMER ELECTRICAL
- 5 OR NATURAL GAS USAGE DATA
- 6
- 7 1798.98. (a) For the purposes of this title, the following
- 8 definitions shall apply:
- 9 (1) “Business” means a sole proprietorship, partnership,
- 10 corporation, association, or other group, however organized and
- 11 whether or not organized to operate at a profit, including a financial

1 institution organized, chartered, or holding a license or  
2 authorization certificate under the law of this state, any other state,  
3 the United States, or of any other country, or the parent or the  
4 subsidiary of a financial institution.

5 (2) “Customer” means a customer of an electrical or gas  
6 corporation or a local publicly owned electric utility that permits  
7 a business to have access to data in association with purchasing  
8 or leasing a product or obtaining a service from the business.

9 (3) “Data” means a customer’s electrical or natural gas usage  
10 that is made available to the business as part of an advanced  
11 metering infrastructure provided by an electrical corporation, a  
12 gas corporation, or a local publicly owned electric utility, and  
13 includes the name, account number, or physical address of the  
14 customer.

15 (4) “Electrical corporation” has the same meaning as in Section  
16 218 of the Public Utilities Code.

17 (5) “Gas corporation” has the same meaning as in Section 222  
18 of the Public Utilities Code.

19 (6) “Local publicly owned electric utility” has the same meaning  
20 as in Section 224.3 of the Public Utilities Code.

21 (b) Unless otherwise required or authorized by federal or state  
22 law, a business shall not share, disclose, or otherwise make  
23 accessible to any third party a customer’s data without obtaining  
24 the express consent of the customer and conspicuously disclosing  
25 to whom the disclosure will be made and how the data will be  
26 used.

27 (c) A business that discloses data, with the express consent of  
28 the customer, pursuant to a contract with a nonaffiliated third party,  
29 shall require by contract that the third party implement and  
30 maintain reasonable security procedures and practices appropriate  
31 to the nature of the information, to protect the data from  
32 unauthorized access, destruction, use, modification, or disclosure.

33 (d) A business shall implement and maintain reasonable security  
34 procedures and practices appropriate to the nature of the  
35 information to protect the data from unauthorized access,  
36 destruction, use, modification, or disclosure.

37 (e) A business shall not provide an incentive or discount to the  
38 customer for accessing the data without the prior consent of the  
39 customer.

1 (f) A business shall take all reasonable steps to dispose, or  
2 arrange for the disposal, of customer data within its custody or  
3 control when the records are no longer to be retained by the  
4 business by (1) shredding, (2) erasing, or (3) otherwise modifying  
5 the data in those records to make it unreadable or undecipherable  
6 through any means.

7 (g) The provisions of this section do not apply to an electrical  
8 corporation, a gas corporation, or a local publicly owned electric  
9 utility or a business that secures the data as a result of a contract  
10 with an electrical or gas corporation or a local publicly owned  
11 electric utility under the provisions of *subdivision (e)* of Section  
12 8380 or *subdivision (e) of 8381* of the Public Utilities Code.

13 1798.99. (a) A customer harmed by the release ~~and~~ *or*  
14 unauthorized use of his or her customer data, in violation of Section  
15 1798.98, may bring a civil action to recover actual damages in an  
16 amount not to exceed five hundred dollars (\$500) for each willful  
17 violation.

18 (b) The rights, remedies, and penalties established by this title  
19 are in addition to the rights, remedies, or penalties established  
20 under any other law.

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