

Assembly Bill No. 1274

Passed the Assembly September 6, 2013

Chief Clerk of the Assembly

Passed the Senate September 3, 2013

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2013, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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, 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 to dispose that customer data 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.

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

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

TITLE 1.81.4. PRIVACY OF CUSTOMER ELECTRICAL
OR NATURAL GAS USAGE DATA

1798.98. (a) For the purposes of this title, the following definitions shall apply:

(1) “Business” means a sole proprietorship, partnership, corporation, association, or other group, however organized and whether or not organized to operate at a profit, including a financial institution organized, chartered, or holding a license or authorization certificate under the law of this state, any other state, the United States, or of any other country, or the parent or the subsidiary of a financial institution.

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

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

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

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

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

(b) Unless otherwise required or authorized by federal or state law, a business shall not share, disclose, or otherwise make accessible to any third party a customer’s 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.

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

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

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

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

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

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

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

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

Approved _____, 2013

Governor