

AMENDED IN ASSEMBLY JUNE 15, 2014

AMENDED IN SENATE APRIL 29, 2014

AMENDED IN SENATE APRIL 8, 2014

AMENDED IN SENATE MARCH 26, 2014

SENATE BILL

No. 1348

Introduced by Senator DeSaulnier

February 21, 2014

An act to add Chapter 22.3 (commencing with Section 22590) to Division 8 of the Business and Professions Code, relating to personal information.

LEGISLATIVE COUNSEL'S DIGEST

SB 1348, as amended, DeSaulnier. ~~Online data~~ *Data* brokers: sale of personal information; ~~notice~~; *information*.

Existing law protects the privacy of personal information, including customer records, and requires a business that owns or licenses personal information about a California resident to implement and maintain reasonable security procedures and practices appropriate to the nature of the information, in order to protect the personal information from unauthorized access, destruction, use, modification, or disclosure.

Existing law requires an operator of a commercial Internet Web site or online service that collects personally identifiable information through the Internet about consumers residing in California who use or visit its commercial Internet Web site or online service to conspicuously post its privacy policy on its Internet Web site or online service and to comply with that policy.

Unless prohibited by federal or state law, this bill would require ~~an online data~~ *a data* broker, as defined, that sells or offers for sale to a

3rd party the personal information of any resident of California, to permit a subject individual, as defined, to ~~(1) review his or her personal information and (2) correct his or her personal information, as specified.~~ The bill would require ~~an online data a data broker, unless prohibited by federal or state law, to conspicuously post an opt-out notice on its Internet Web site that would include specific and easily understood instructions for permanently removing personal information from the online data broker’s database by making a written demand requesting to have the information permanently removed.~~ *that his or her personal information not be shared with or sold to third parties.* The bill would require ~~an online data a data broker that receives a written demand from a subject individual pursuant to these provisions, unless prohibited by federal or state law, to remove the subject individual’s personal information from public display on the Internet within 10 days of delivery of the written demand, and to take specified additional steps to ensure that the information is not reposted.~~ *cease sharing or selling that information with third parties as soon as is reasonably possible, and thereafter to only retain as much personal information as is reasonably necessary to comply with the subject individual’s demand.*

This bill would also make it unlawful for ~~an online data a data broker to solicit or accept the payment of a fee or other consideration to review or permanently remove personal information from the online data broker’s database, and would authorize a subject individual to bring a civil action against any person in violation of these provisions.~~ ~~The bill’s provisions would apply only to information collected, assembled, or maintained by an online data broker on and after January 1, 2015, except under designated circumstances.~~

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. Chapter 22.3 (commencing with Section 22590)
 2 is added to Division 8 of the Business and Professions Code, to
 3 read:

4
 5 CHAPTER 22.3. ~~ONLINE DATA BROKERS~~

6
 7 22590. The following definitions apply to this chapter:

1 (a) “Conspicuously post,” with respect to an opt-out notice,
2 means to post through any of the following:

3 (1) An Internet Web page on which the actual opt-out notice is
4 posted if the Internet Web page is the homepage or first significant
5 page after entering the Internet Web site.

6 (2) An icon that hyperlinks to an Internet Web page on which
7 the actual opt-out notice is posted, if the icon is located on the
8 homepage or the first significant page after entering the Internet
9 Web site, and if the icon contains the term “opt out” or “opt-out.”
10 The icon shall also use a color that contrasts with the background
11 color of the Internet Web page or is otherwise distinguishable.

12 (3) A text link that hyperlinks to an Internet Web page on which
13 the actual opt-out notice is posted, if the text link is located on the
14 homepage or first significant page after entering the Internet Web
15 site, and if the text link does one of the following:

16 (A) Includes the term “opt out” or “opt-out.”

17 (B) Is written in capital letters equal to or greater in size than
18 the surrounding text.

19 (C) Is written in larger type than the surrounding text, or in
20 contrasting type, font, or color to the surrounding text of the same
21 size, or set off from the surrounding text of the same size by
22 symbols or other marks that call attention to the language.

23 (4) Any other functional hyperlink that is so displayed that a
24 reasonable person would notice it and understand it to *be a*
25 hyperlink to the actual opt-out notice.

26 (b) ~~“Online data broker”~~—(1) “Data broker” means a
27 commercial entity that collects, assembles, or maintains personal
28 information concerning individuals residing in California who are
29 not customers or employees of that entity, for the purposes of
30 selling or offering for sale, *or other consideration*, the personal
31 information ~~over the Internet~~ to a third party.

32 (2) “Data broker” does not include any of the following:

33 (A) A commercial entity that sells personal information to the
34 subject individual or his or her representative.

35 (B) A commercial entity engaging in the activities of a
36 “consumer reporting agency” pursuant to the Fair Credit
37 Reporting Act (15 U.S.C. Sec. 1681 et seq.)

38 (C) A commercial entity engaging in the activities of a
39 “consumer credit reporting agency” pursuant to the Consumer

1 *Credit Reporting Agencies Act Title 1.6 (commencing with Section*
2 *1785.1) of Part 4 of Division 3 of the Civil Code.*

3 (D) *A commercial entity selling or providing for sale personal*
4 *information to other commercial or nonprofit entities or*
5 *government agencies that will use the information for purposes*
6 *permitted to be used or disclosed pursuant to any applicable*
7 *provision of Title V of the Gramm-Leach-Bliley Act (15 U.S.C.*
8 *Sec. 6801 et seq.), including purposes such as identity confirmation*
9 *and fraud prevention.*

10 (c) “Personal information” means any information that identifies,
11 relates to, describes, or is capable of being associated with, a
12 particular individual, including, but not limited to, his or her name,
13 signature, social security number, physical characteristics or
14 description, address, telephone number, passport number, driver’s
15 license or state identification card number, insurance policy
16 number, education, employment, employment history, bank account
17 number, credit card number, debit card number, or any other
18 financial information, medical information, or health insurance
19 information. “Personal information” does not include information
20 that is lawfully made available to the general public from federal,
21 state, or local government records.

22 ~~(d) “Publicly post” or “publicly display” means to intentionally~~
23 ~~communicate or otherwise make available to the general public.~~

24 ~~(e)~~
25 (d) “Subject individual” means the person to whom personal
26 information pertains.

27 ~~(f) “Written” means documentation in writing, and includes~~
28 ~~facsimile, telegraphic, and other forms of electronic~~
29 ~~communication.~~

30 ~~22591. Unless prohibited by federal or state law, an online data~~
31 ~~broker that sells or offers for sale the personal information of any~~
32 ~~resident of California to a third party, shall do both of the~~
33 ~~following:~~

34 ~~(a) Permit a subject individual to review his or her personal~~
35 ~~information that has been collected, assembled, or maintained by~~
36 ~~the online data broker, either by submitting a written request or~~
37 ~~by means of an electronic search through a secure online system.~~

38 ~~(b) Permit a subject individual to correct his or her personal~~
39 ~~information that has been collected, assembled, or maintained by~~

1 the online data broker, either by submitting a written request or
2 by correcting the information by means of a secure online system.

3 ~~22592. (a) (1) Unless prohibited by federal or state law, an~~
4 ~~online data broker shall conspicuously post an opt-out notice on~~
5 ~~its Internet Web site, which shall include specific instructions for~~
6 ~~permanently removing personal information from the online data~~
7 ~~broker's database by making a written demand requesting to have~~
8 ~~the information removed.~~

9 ~~(2) If a subject individual makes a written demand to remove~~
10 ~~his or her personal information from an online data broker's~~
11 ~~database pursuant to this subdivision, the online data broker shall~~
12 ~~permanently remove the subject individual's personal information~~
13 ~~from its database, in accordance with subdivision (b).~~

14 ~~(b) (1) Unless prohibited by federal or state law, an online data~~
15 ~~broker that receives a written demand from a subject individual~~
16 ~~pursuant to this section shall remove the subject individual's~~
17 ~~personal information from public display on the Internet within~~
18 ~~10 days of delivery of the written demand, and shall ensure that~~
19 ~~this information is not reposted on the same Internet Web site, a~~
20 ~~subsidiary site, or any other Internet Web site owned, controlled,~~
21 ~~or maintained by the online data broker receiving the written~~
22 ~~demand.~~

23 ~~(2) After receiving a subject individual's written demand, the~~
24 ~~online data broker shall not transfer the subject individual's~~
25 ~~personal information to any other person, business, or association~~
26 ~~through any other medium.~~

27 ~~(3) Any additional information collected by an online data~~
28 ~~broker to confirm the identity of a subject individual who has made~~
29 ~~a written request to remove his or her personal information from~~
30 ~~a database pursuant to this chapter shall be deleted after the identity~~
31 ~~of the subject individual has been confirmed and shall not be used~~
32 ~~for any other purpose.~~

33 ~~22593. (a) It is unlawful for an online data broker to solicit or~~
34 ~~accept the payment of a fee or other consideration to review or~~
35 ~~permanently remove personal information from the online data~~
36 ~~broker's database.~~

37 ~~(b) Each payment solicited or accepted in violation of this~~
38 ~~section constitutes a separate violation.~~

1 22591. *Unless prohibited by federal or state law, a data broker*
2 *that sells or offers for sale the personal information of any resident*
3 *of California to a third party shall do both of the following:*

4 (a) *Permit a subject individual to review his or her personal*
5 *information that has been collected, assembled, or maintained by*
6 *the data broker by submitting an electronic demand through a*
7 *secure online system.*

8 (b) (1) *The data broker shall conspicuously post an opt-out*
9 *notice on its Internet Web site, which shall include specific and*
10 *easily understood instructions for the subject individual to make*
11 *a demand on the Internet Web site that his or her personal*
12 *information not be shared with or sold to third parties.*

13 (2) *If a subject individual makes a demand on the Internet Web*
14 *site that his or her personal information not be shared with or sold*
15 *to third parties, the data broker shall cease sharing or selling that*
16 *information with third parties as soon as is reasonably possible,*
17 *and in no event later than 10 days after receipt of the notice, and*
18 *the data broker shall thereafter retain only as much personal*
19 *information as is reasonably necessary to comply with the subject*
20 *individual's demand.*

21 (3) *After receiving a subject individual's demand, the data*
22 *broker shall not transfer the subject individual's personal*
23 *information to any other person, business, or association through*
24 *any other medium.*

25 (4) *Any information collected by a data broker to confirm the*
26 *identity of a subject individual who has made a demand to remove*
27 *his or her personal information from a database pursuant to this*
28 *chapter shall be deleted after the identity of the subject individual*
29 *has been confirmed and shall not be used for any other purpose.*

30 22592. (a) *It is unlawful for a data broker to solicit or accept*
31 *the payment of a fee or other consideration to review or*
32 *permanently remove personal information from the data broker's*
33 *database.*

34 (b) *Each payment solicited or accepted in violation of this*
35 *section constitutes a separate violation.*

36 ~~22594.~~

37 22593. *In addition to any other sanction, penalty, or remedy*
38 *provided by law, a subject individual may bring a civil action in*
39 *any court of competent jurisdiction against any person in violation*
40 *of this chapter for damages in an amount equal to the greater of*

1 one thousand dollars (\$1,000) per violation or the actual damages
2 suffered by the subject individual as a result, along with costs,
3 reasonable attorney's fees, and any other legal or equitable relief.

4 ~~22595. (a) This chapter shall only apply to personal~~
5 ~~information that is collected, assembled, or maintained by an online~~
6 ~~data broker after January 1, 2015.~~

7 ~~(b) Notwithstanding subdivision (a), this chapter shall apply to~~
8 ~~information collected, assembled, or maintained by an online data~~
9 ~~broker prior to January 1, 2015, if the data broker collected,~~
10 ~~assembled, or maintained the information in violation of any law~~
11 ~~or regulation.~~