

AMENDED IN ASSEMBLY MARCH 21, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2455

Introduced by Assembly Member Campos

February 24, 2012

An act to ~~add Section 1798.98 to~~ *amend Section 1798.29* of the Civil Code, relating to identity theft.

LEGISLATIVE COUNSEL'S DIGEST

AB 2455, as amended, Campos. Identity theft: local agencies.

Existing law requires any state *office, officer, or* executive agency that owns or licenses computerized data that includes personal information to disclose any breach of the security of the system following discovery or notification of the breach in the security of the data to any resident of California whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person. ~~Existing law also permits a person to bring an action against a claimant to establish that the person is a victim of identify theft in connection with the claimant's claim against that person for money or an interest in property in connection with a transaction procured through identity theft.~~

~~This bill would require any local agency in possession or control of personal identifying information that is known, or reasonably suspected, to have been the target of identity theft, to notify the person who is the subject of the personal identifying information that an unauthorized access of that information has occurred, and that the person may be the victim of identity theft~~ *expand this disclosure requirement to apply to a breach of computerized data that is owned or licensed by a local*

agency. The bill would create a state-mandated local program by imposing new duties on local agencies.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

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

1 ~~SECTION 1. Section 1798.98 is added to the Civil Code, to~~
2 ~~read:~~

3 ~~1798.98. Any local agency, as defined in subdivision (a) of~~
4 ~~Section 6252 of the Government Code, in possession or control~~
5 ~~of personal identifying information that is known, or reasonably~~
6 ~~suspected, to have been the target of identity theft, shall notify the~~
7 ~~person who is the subject of the personal identifying information~~
8 ~~that an unauthorized access of that information has occurred, and~~
9 ~~that the person may be the victim of identity theft.~~

10 ~~SECTION 1. Section 1798.29 of the Civil Code is amended to~~
11 ~~read:~~

12 ~~1798.29. (a) Any agency that owns or licenses computerized~~
13 ~~data that includes personal information shall disclose any breach~~
14 ~~of the security of the system following discovery or notification~~
15 ~~of the breach in the security of the data to any resident of California~~
16 ~~whose unencrypted personal information was, or is reasonably~~
17 ~~believed to have been, acquired by an unauthorized person. The~~
18 ~~disclosure shall be made in the most expedient time possible and~~
19 ~~without unreasonable delay, consistent with the legitimate needs~~
20 ~~of law enforcement, as provided in subdivision (c), or any measures~~
21 ~~necessary to determine the scope of the breach and restore the~~
22 ~~reasonable integrity of the data system.~~

23 ~~(b) Any agency that maintains computerized data that includes~~
24 ~~personal information that the agency does not own shall notify the~~
25 ~~owner or licensee of the information of any breach of the security~~
26 ~~of the data immediately following discovery, if the personal~~

1 information was, or is reasonably believed to have been, acquired
2 by an unauthorized person.

3 (c) The notification required by this section may be delayed if
4 a law enforcement agency determines that the notification will
5 impede a criminal investigation. The notification required by this
6 section shall be made after the law enforcement agency determines
7 that it will not compromise the investigation.

8 (d) Any agency that is required to issue a security breach
9 notification pursuant to this section shall meet all of the following
10 requirements:

11 (1) The security breach notification shall be written in plain
12 language.

13 (2) The security breach notification shall include, at a minimum,
14 the following information:

15 (A) The name and contact information of the reporting agency
16 subject to this section.

17 (B) A list of the types of personal information that were or are
18 reasonably believed to have been the subject of a breach.

19 (C) If the information is possible to determine at the time the
20 notice is provided, then any of the following: (i) the date of the
21 breach, (ii) the estimated date of the breach, or (iii) the date range
22 within which the breach occurred. The notification shall also
23 include the date of the notice.

24 (D) Whether the notification was delayed as a result of a law
25 enforcement investigation, if that information is possible to
26 determine at the time the notice is provided.

27 (E) A general description of the breach incident, if that
28 information is possible to determine at the time the notice is
29 provided.

30 (F) The toll-free telephone numbers and addresses of the major
31 credit reporting agencies, if the breach exposed a social security
32 number or a driver's license or California identification card
33 number.

34 (3) At the discretion of the agency, the security breach
35 notification may also include any of the following:

36 (A) Information about what the agency has done to protect
37 individuals whose information has been breached.

38 (B) Advice on steps that the person whose information has been
39 breached may take to protect himself or herself.

1 (e) Any agency that is required to issue a security breach
2 notification pursuant to this section to more than 500 California
3 residents as a result of a single breach of the security system shall
4 electronically submit a single sample copy of that security breach
5 notification, excluding any personally identifiable information, to
6 the Attorney General. A single sample copy of a security breach
7 notification shall not be deemed to be within subdivision (f) of
8 Section 6254 of the Government Code.

9 (f) For purposes of this section, “breach of the security of the
10 system” means unauthorized acquisition of computerized data that
11 compromises the security, confidentiality, or integrity of personal
12 information maintained by the agency. Good faith acquisition of
13 personal information by an employee or agent of the agency for
14 the purposes of the agency is not a breach of the security of the
15 system, provided that the personal information is not used or
16 subject to further unauthorized disclosure.

17 (g) For purposes of this section, “personal information” means
18 an individual’s first name or first initial and last name in
19 combination with any one or more of the following data elements,
20 when either the name or the data elements are not encrypted:

21 (1) Social security number.

22 (2) Driver’s license number or California ~~Identification Card~~
23 *identification card* number.

24 (3) Account number, credit or debit card number, in combination
25 with any required security code, access code, or password that
26 would permit access to an individual’s financial account.

27 (4) Medical information.

28 (5) Health insurance information.

29 (h) (1) For purposes of this section, “personal information”
30 does not include publicly available information that is lawfully
31 made available to the general public from federal, state, or local
32 government records.

33 (2) For purposes of this section, “medical information” means
34 any information regarding an individual’s medical history, mental
35 or physical condition, or medical treatment or diagnosis by a health
36 care professional.

37 (3) For purposes of this section, “health insurance information”
38 means an individual’s health insurance policy number or subscriber
39 identification number, any unique identifier used by a health insurer

1 to identify the individual, or any information in an individual’s
2 application and claims history, including any appeals records.

3 (i) For purposes of this section, “notice” may be provided by
4 one of the following methods:

5 (1) Written notice.

6 (2) Electronic notice, if the notice provided is consistent with
7 the provisions regarding electronic records and signatures set forth
8 in Section 7001 of Title 15 of the United States Code.

9 (3) Substitute notice, if the agency demonstrates that the cost
10 of providing notice would exceed two hundred fifty thousand
11 dollars (\$250,000), or that the affected class of subject persons to
12 be notified exceeds 500,000, or the agency does not have sufficient
13 contact information. Substitute notice shall consist of all of the
14 following:

15 (A) E-mail notice when the agency has an e-mail address for
16 the subject persons.

17 (B) Conspicuous posting of the notice on the agency’s Internet
18 Web site page, if the agency maintains one.

19 (C) Notification to major statewide media and the Office of
20 Information Security within the California Technology Agency.

21 (j) Notwithstanding subdivision (i), an agency that maintains
22 its own notification procedures as part of an information security
23 policy for the treatment of personal information and is otherwise
24 consistent with the timing requirements of this part shall be deemed
25 to be in compliance with the notification requirements of this
26 section if it notifies subject persons in accordance with its policies
27 in the event of a breach of security of the system.

28 *(k) Notwithstanding the exception specified in paragraph (4)*
29 *of subdivision (b) of Section 1798.3, for purposes of this section,*
30 *“agency” includes a local agency, as defined in subdivision (a)*
31 *of Section 6252 of the Government Code.*

32 SEC. 2. If the Commission on State Mandates determines that
33 this act contains costs mandated by the state, reimbursement to
34 local agencies and school districts for those costs shall be made
35 pursuant to Part 7 (commencing with Section 17500) of Division
36 4 of Title 2 of the Government Code.

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