

AMENDED IN SENATE MAY 11, 2005

AMENDED IN SENATE MAY 4, 2005

AMENDED IN SENATE MARCH 31, 2005

SENATE BILL

No. 682

Introduced by Senator Simitian

February 22, 2005

An act to add Article 4 (commencing with Section 1798.9) to Chapter 1 of Title 1.8 of Part 4 of Division 3 of the Civil Code, relating to privacy.

LEGISLATIVE COUNSEL'S DIGEST

SB 682, as amended, Simitian. Identity Information Protection Act of 2005.

Existing law, the Information Practices Act of 1977, regulates the collection and disclosure of personal information regarding individuals by state agencies, except as specified. The intentional disclosure of medical, psychiatric, or psychological information in violation of the disclosure provisions of the act is punishable as a misdemeanor if the wrongful disclosure results in economic loss or personal injury to the individual to whom the information pertains.

This bill would enact the Identity Information Protection Act of 2005. The act would prohibit identification documents created, mandated, purchased, or issued by various public entities from containing a contactless integrated circuit or other device that uses radio waves to broadcast personal information or to enable personal information to be scanned remotely, except as specified. *The bill would provide that its provisions do not apply to existing systems, as defined, in use prior to the effective date of this bill.*

Because the intentional disclosure of medical, psychiatric, or psychological information in violation of the disclosure provisions of the Information Practices Act of 1977, which would include this act, is punishable as a misdemeanor if the wrongful disclosure results in economic loss or personal injury to the individual to whom the information pertains, and because the scanning or attempted scanning of a person's identification document without his or her knowledge would be punishable as a misdemeanor, this bill would create a new crime, thereby imposing a state-mandated local program.

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 no reimbursement is required by this act for a specified reason.

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. This act shall be known and may be cited as the
2 Identity Information Protection Act of 2005.

3 SEC. 2. The Legislature hereby finds and declares all of the
4 following:

5 (a) The right to privacy is a personal and fundamental right
6 protected by Section 1 of Article I of the California Constitution
7 and by the United States Constitution. All individuals have a
8 right of privacy in information pertaining to them.

9 (b) Easy access to the information found on drivers' licenses
10 and other similar identification documents facilitates the crime of
11 identity theft, a crime that is a major concern in California. More
12 than 39,000 Californians reported being victims of this crime in
13 2003.

14 (c) This state has previously recognized the importance of
15 protecting the confidentiality and privacy of an individual's
16 personal information contained in identification documents such
17 as drivers' licenses.

18 (d) The inclusion in identification documents of contactless
19 integrated circuits or other devices that use radio waves to
20 broadcast data or to enable data to be scanned secretly and

1 remotely will greatly magnify the potential risk to individual
2 privacy, safety, and economic well-being that can occur from
3 unauthorized interception and use of personal information. The
4 inclusion of those devices will also make it possible for any
5 person or entity with access to a reader to engage in the secret
6 tracking of Californians on an unprecedented scale.

7 SEC. 3. Article 4 (commencing with Section 1798.9) is added
8 to Chapter 1 of Title 1.8 of Part 4 of Division 3 of the Civil Code,
9 to read:

10
11 Article 4. Identity Documents

12
13 1798.9. For purposes of this article, the following definitions
14 shall apply:

15 (a) “Contactless integrated circuit” means a data carrying unit,
16 such as an integrated circuit or computer chip, that can be read
17 remotely.

18 (b) “Identification document” means any document containing
19 personal information that an individual uses alone or in
20 conjunction with any other information to establish his or her
21 identity. Identification documents specifically include, but are
22 not limited to, the following:

- 23 (1) Driver’s licenses or identification cards.
24 (2) Identification cards for employees or contractors.
25 (3) Identification cards issued by educational institutions.
26 (4) Health insurance or benefit cards.
27 (5) Benefit cards issued in conjunction with any
28 government-supported aid program.
29 (6) Licenses, certificates, registration, or other means to
30 engage in a business or profession regulated by the California
31 Business and Professions Code.

32 (7) Library cards issued by any public library.

33 (c) “Personal information” includes any of the following: an
34 individual’s name, address, telephone number, e-mail address,
35 date of birth, race, religion, ethnicity, nationality, photograph,
36 fingerprint or other biometric identification, social security
37 number, or any other unique personal identifier or number.

38 (d) “Remotely” means that no physical contact between the
39 integrated circuit or device and a reader is necessary in order to
40 transmit data.

1 1798.10. ~~No~~ *The* identification document created, mandated,
2 purchased, or issued by a state, county, or municipal government,
3 or subdivision or agency thereof shall *not* contain a contactless
4 integrated circuit or other device that uses radio waves to
5 broadcast personal information or to enable personal information
6 to be scanned remotely, ~~except as follows~~ *for the following*:

7 (a) The identification document is to be used on a toll road or
8 bridge for the specific purpose of collecting funds for the use of
9 that road or bridge, such as FasTrak.

10 (b) The identification document is to be given to a person who
11 is incarcerated in the state prison or a county jail, detained in a
12 juvenile facility operated by the California Youth Authority, or
13 housed in a mental health facility, pursuant to a court order after
14 having been charged with a crime, or to a person pursuant to
15 court-ordered electronic monitoring.

16 (c) The identification document is to be given to a child four
17 years of age or younger who is in the custodial care of a
18 government-operated hospital, clinic, or other medical facility.

19 (d) The identification document is to be given to a patient who
20 is in the care of a government-operated hospital, ambulatory
21 surgery center, or oncology or dialysis clinic, but the
22 identification document is valid for only a single episode of care
23 and is removed from the patient at the time the patient is
24 discharged. A patient returning for a new episode of care shall be
25 assigned a new unique identifier number.

26 (e) The identification document is issued for the purpose of
27 facilitating secured access by the identification document holder
28 to a secured public building ~~if the issuing entity does all of the~~
29 ~~following~~:

30 ~~(1) Complies with the provisions of Section 1798.10.5 at the~~
31 ~~time of issuance or reissuance of the identification document.~~

32 ~~(2) Complies with the provisions of Section 1798.11 at the~~
33 ~~time of issuance or reissuance of the identification document, and~~
34 ~~not less than once annually.~~

35 ~~(3) Furnishes to the identification document holder, at the time~~
36 ~~of issuance or reissuance, a shield device that will block remote~~
37 ~~scanning of the identification document, and warns the document~~
38 ~~holder that removal or nonuse of the shield device could allow~~
39 ~~his or her unique personal identifier number to be broadcast or~~
40 ~~scanned remotely without his or her knowledge..~~

1 (f) The identification document is part of a contactless
2 integrated system used by a state, county, or municipal
3 government, or subdivision or agency thereof that is operational
4 and in use prior to January 1, 2006.

5 (g) The Legislature determines through legislation that an
6 exception allowing the inclusion of a contactless integrated
7 circuit or other device is necessary to meet a compelling state
8 interest and that there exists no means less intrusive to the
9 individual's privacy and security that would achieve that
10 compelling state interest.

11 1798.10.5. An identification document described in
12 subdivisions (a) to ~~(g)~~ (e), inclusive, or (g), of Section 1798.10
13 shall not contain, transmit, or enable the remote scanning of, any
14 personal information other than a unique personal identifier
15 number.

16 1798.11. The issuing entity of an identification document
17 described in subdivision (a), (d), (e), ~~(f)~~, or (g) of Section
18 1798.10 shall communicate in writing to the person to whom the
19 document is issued, all of the following:

20 (a) That the identification document contains a circuit or
21 device that can broadcast a unique personal identifier number or
22 enable that number to be scanned remotely without his or her
23 knowledge.

24 (b) That countermeasures, such as shield devices, may be used
25 to help one control the risk that his or her unique personal
26 identifier number will be broadcast or scanned remotely without
27 his or her knowledge.

28 (c) The location of all scanners and readers used or intended to
29 be used by the issuing authority or by any other entity known to
30 that authority to read the unique personal identifier number on
31 the identification document.

32 ~~1798.11.5. The exception described in subdivision (f) of~~
33 ~~Section 1798.10 shall remain in effect only until January 1, 2011.~~

34 1798.12. A person or entity that, using radio waves, remotely
35 scans or attempts to remotely scan a person's identification
36 document without the knowledge of that person may be
37 punished, upon conviction, by imprisonment in a county jail for
38 up to one year. The court may also impose a fine of no more than
39 five thousand dollars (\$5,000), or may impose both
40 imprisonment and fine.

1 1798.12.5. *This act shall not apply to existing systems in use*
2 *prior to the effective date of this article. For purposes of this*
3 *section, “system” means a network of contactless integrated*
4 *circuits and corresponding scanners issued by an entity for a*
5 *limited purpose or purposes.*

6 SEC. 4. No reimbursement is required by this act pursuant to
7 Section 6 of Article XIII B of the California Constitution because
8 the only costs that may be incurred by a local agency or school
9 district will be incurred because this act creates a new crime or
10 infraction, eliminates a crime or infraction, or changes the
11 penalty for a crime or infraction, within the meaning of Section
12 17556 of the Government Code, or changes the definition of a
13 crime within the meaning of Section 6 of Article XIII B of the
14 California Constitution.

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