

**Introduced by Senator Bowen**

February 21, 2002

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An act to amend Section 1785.11.1 of, and to add Title 1.81.2 (commencing with Section 1798.86) to Part 4 of Division 3 of, the Civil Code, relating to personal information.

LEGISLATIVE COUNSEL'S DIGEST

SB 1730, as introduced, Bowen. Personal information.

(1) Existing law authorizes a consumer to place a security alert in his or her credit report by making a request in writing or by telephone to a consumer credit reporting agency, as specified.

This bill would require any person who uses a consumer credit report to establish a system to receive security alerts transmitted by consumer reporting agencies and to establish reasonable procedures to acknowledge the security alert placed by a consumer, as specified.

(2) Existing law regulates financial institutions and accounts provided to consumers by financial institutions, as specified.

This bill would require any person, as defined, that provides an account, as defined, to a consumer to also provide the consumer a unique personal identification number, PIN, or password, as defined, that allows the consumer access to information and services with regard to his or her account, but that is not a personal identifier, as defined.

The bill would provide a consumer specified remedies for negligent or willful violations of these provisions, or for obtaining a consumer credit report under false pretenses or knowingly without a permissible purpose.

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. Section 1785.11.1 of the Civil Code is amended  
2 to read:

3 1785.11.1. (a) A consumer may elect to place a security alert  
4 in his or her credit report by making a request in writing or by  
5 telephone to a consumer credit reporting agency. "Security alert"  
6 means a notice placed in a consumer's credit report, at the request  
7 of the consumer, that notifies a recipient of the credit report that  
8 the consumer's identity may have been used without the  
9 consumer's consent to fraudulently obtain goods or services in the  
10 consumer's name.

11 (b) A consumer credit reporting agency shall notify each  
12 person requesting consumer credit information with respect to a  
13 consumer of the existence of a security alert in the credit report of  
14 that consumer, regardless of whether a full credit report, credit  
15 score, or summary report is requested.

16 (c) Each consumer credit reporting agency shall maintain a  
17 toll-free telephone number to accept security alert requests from  
18 consumers 24 hours a day, seven days a week.

19 (d) The toll-free telephone number shall be included in any  
20 written disclosure by a consumer credit reporting agency to any  
21 consumer pursuant to Section 1785.15 and shall be printed in a  
22 clear and conspicuous manner.

23 (e) A consumer credit reporting agency shall place a security  
24 alert on a consumer's credit report no later than five business days  
25 after receiving a request from the consumer.

26 (f) The security alert shall remain in place for at least 90 days,  
27 and a consumer shall have the right to request a renewal of the  
28 security alert.

29 (g) *Any person who uses a consumer credit report in connection*  
30 *with a credit transaction shall establish a system to receive security*  
31 *alerts transmitted by consumer credit reporting agencies pursuant*  
32 *to subdivision (a) and shall establish reasonable procedures to*  
33 *acknowledge a security alert placed by a consumer. These*  
34 *procedures shall include taking reasonable steps to communicate*  
35 *with the person who placed the alert, either by telephone or in*  
36 *writing, to confirm that the consumer who placed the alert is the*  
37 *same person who initiated the credit application. If the consumer*  
38 *has placed a statement in his or her file requesting that identity be*



1 *verified by calling a specified telephone number; any person who*  
2 *uses the consumer’s credit report shall take reasonable steps to*  
3 *verify the identity of the consumer using the specified telephone*  
4 *number.*

5 SEC. 2. Title 1.81.2 (commencing with Section 1798.87) is  
6 added to Part 4 of Division 3 of the Civil Code, to read:

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8 TITLE 1.81.2. RESTRICTIONS ON PINS AND  
9 PASSWORDS

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11 1798.86. The following definitions govern the interpretation  
12 of this title:

13 (a) “Account” means a financial obligation owed by a  
14 consumer to a person or financial obligation owed to a consumer  
15 by a person, and includes, but is not limited to, the following:

16 (1) A demand deposit (checking), savings, or other consumer  
17 asset account established primarily for personal, family, or  
18 household purposes.

19 (2) A credit card account.

20 (3) A “retail installment account,” “installment account,” or  
21 “revolving account,” means an account established by an  
22 agreement entered into in this state, pursuant to which the buyer  
23 promises to pay, in installments, to a retail seller, the outstanding  
24 balance incurred in retail installment sales, whether or not a  
25 security interest in the goods sold is retained by the seller, and that  
26 provides for a finance charge that is expressed as a percent of the  
27 periodic balances to accrue thereafter providing the charge is not  
28 capitalized or stated as a dollar amount in the agreement, as  
29 specified in Section 1802.7.

30 (4) A loan account.

31 (5) A product or service account involving the provision of any  
32 product or service to the consumer.

33 (b) “Consumer” means a natural person.

34 (c) “Person” means any individual, partnership, corporation,  
35 trust, estate, cooperative, association, government or  
36 governmental subdivision or agency, or other entity.

37 (d) “Personal identification number,” “PIN,” and  
38 “password” mean a unique alpha, numeric, or alphanumeric code  
39 used by a consumer to gain access to information and services for  
40 an account.



- 1 (e) “Personal identifier” means, with respect to a consumer,
- 2 any of the following:
- 3 (1) His or her first, middle, and last name.
- 4 (2) His or her mother’s maiden name.
- 5 (3) His or her month and date of birth.
- 6 (4) His or her driver’s license number.
- 7 (5) His or her place of employment.
- 8 (6) His or her current or previous residence address or zip code.
- 9 (7) His or her current or previous phone number or social
- 10 security number.

11 1798.87. (a) A person providing an account to a consumer  
12 shall provide a unique personal identification number, PIN, or  
13 password to the consumer that allows the consumer access to  
14 information and services with regard to his or her account.

15 (b) A personal identification number, PIN, or password  
16 assigned by an account provider may not be a personal identifier.

17 (c) If a consumer modifies his or her account, personal  
18 identification number, PIN, or password to match a personal  
19 identifier, the provider of the account shall not be held liable under  
20 Section 1798.88.

21 1798.88. (a) Any consumer who suffers damages as a result  
22 of a violation of this title by any person may bring an action in a  
23 court of appropriate jurisdiction against that person to recover the  
24 following:

25 (1) In the case of a negligent violation, actual damages,  
26 including court costs, loss of wages, attorney’s fees and, when  
27 applicable, pain and suffering.

28 (2) In the case of a willful violation:

29 (A) Actual damages as set forth in paragraph (1) above.

30 (B) Punitive damages of not less than one hundred dollars  
31 (\$100) nor more than five thousand dollars (\$5,000) for each  
32 violation as the court deems proper.

33 (C) Any other relief that the court deems proper.

34 (3) In the case of liability of a natural person for obtaining a  
35 consumer credit report under false pretenses or knowingly without  
36 a permissible purpose, an award of actual damages pursuant to  
37 paragraph (1) or subparagraph (A) of paragraph (2) shall be in an  
38 amount of not less than two thousand five hundred dollars  
39 (\$2,500).



1 (b) Injunctive relief shall be available to any consumer  
2 aggrieved by a violation or a threatened violation of this title,  
3 whether or not the consumer seeks any other remedy under this  
4 section.

5 (c) Notwithstanding any other provision of this section, any  
6 person who willfully violates any requirement imposed under this  
7 title may be liable for punitive damages in the case of a class action,  
8 in an amount that the court may allow. In determining the amount  
9 of an award in any class action, the court shall consider among  
10 other relevant factors, the amount of any actual damages awarded,  
11 the frequency of the violations, the resources of the violator, and  
12 the number of persons adversely affected.

13 (d) Except as provided in subdivision (e), the prevailing  
14 plaintiffs in any action commenced under this section shall be  
15 entitled to recover court costs and reasonable attorney's fees.

16 (e) If a plaintiff brings an action pursuant to this section against  
17 a debt collector, as defined in subdivision (c) of Section 1788.2,  
18 and the basis for the action is related to the collection of a debt,  
19 whether issues relating to the debt collection are raised in the same  
20 or another proceeding, the debt collector shall be entitled to  
21 recover reasonable attorney's fees upon a finding by the court that  
22 the action was not brought in good faith.

23 (f) If a plaintiff only seeks and obtains injunctive relief to  
24 compel compliance with this title, court costs and attorney's fees  
25 shall be awarded pursuant to Section 1021.5 of the Code of Civil  
26 Procedure.

27 (g) Nothing in this section is intended to affect remedies  
28 available under Section 128.5 of the Code of Civil Procedure.

