

AMENDED IN ASSEMBLY AUGUST 20, 2010

AMENDED IN ASSEMBLY AUGUST 2, 2010

AMENDED IN SENATE MAY 28, 2010

AMENDED IN SENATE MAY 19, 2010

AMENDED IN SENATE APRIL 20, 2010

AMENDED IN SENATE APRIL 5, 2010

**SENATE BILL**

**No. 1268**

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**Introduced by Senator Simitian**

February 19, 2010

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An act to add Chapter 8 (commencing with Section 31490) to Division 17 of the Streets and Highways Code, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1268, as amended, Simitian. Toll bridges, lanes, and highways: electronic toll collection mechanisms: disclosure of personal information.

Existing law authorizes development and implementation of various electronic bridge and highway toll collection mechanisms.

This bill would prohibit a transportation agency, as defined, from selling or providing personally identifiable information of a person obtained pursuant to the person's participation in an electronic toll collection system or use of a toll facility, subject to specified exceptions. The bill would require a transportation agency to establish a privacy policy regarding personally identifiable information in that regard and to provide the policy to subscribers and post the policy on its Internet Web site. The bill would allow a transportation agency to store certain

personally identifiable information of a person and would, on and after July 1, 2011, require it to discard other information within a designated time period. *The bill would prescribe the circumstances in which a transportation agency may make personally identifiable information available to a law enforcement agency.* The bill would authorize a person whose personally identifiable information has been sold or provided in violation of the bill to bring specified actions for recovery of damages, costs, and attorney’s fees. The bill would authorize a transportation agency to impose an administrative fee to implement these provisions, as specified. By imposing new duties on local transportation agencies, the bill would impose 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. Chapter 8 (commencing with Section 31490) is  
 2 added to Division 17 of the Streets and Highways Code, to read:

3  
 4 CHAPTER 8. ELECTRONIC TOLL COLLECTION SYSTEMS

5  
 6 31490. (a) Except as otherwise provided in this section, a  
 7 transportation agency may not sell or otherwise provide to any  
 8 other person or entity personally identifiable information of any  
 9 person who subscribes to an electronic toll collection system or  
 10 who uses a toll bridge, toll lane, or toll highway that employs an  
 11 electronic toll collection system.

12 (b) A transportation agency that employs an electronic toll  
 13 collection system shall establish a privacy policy regarding the  
 14 collection and use of personally identifiable information and  
 15 provide to subscribers of that system a copy of the privacy policy  
 16 in a manner that is conspicuous and meaningful, such as by  
 17 providing a copy to the subscriber with the transponder or other  
 18 device used as an electronic toll collection mechanism, or, if the

1 system does not use a mechanism, with the application materials.  
2 A transportation agency shall conspicuously post its privacy policy  
3 on its Internet Web site. For purposes of this subdivision,  
4 “conspicuously post” has the same meaning as that term is defined  
5 in paragraphs (1) to (4), inclusive, of subdivision (b) of Section  
6 22577 of the Business and Professions Code. The policy shall  
7 include, but need not be limited to, a description of the following:

8 (1) The types of personally identifiable information that is  
9 collected by the agency.

10 (2) The categories of third-party persons or entities with whom  
11 the agency may share personally identifiable information.

12 (3) The process by which a transportation agency notifies  
13 subscribers of material changes to its privacy policy.

14 (4) The effective date of the privacy policy.

15 (5) The process by which a subscriber may review and request  
16 changes to any of his or her personally identifiable information.

17 (c) A transportation agency may, within practical business and  
18 cost constraints, store only personally identifiable information of  
19 a person such as the account name, credit card number, billing  
20 address, vehicle information, and other basic account information  
21 required to perform account functions such as billing, account  
22 settlement, or enforcement activities. All other information, on  
23 and after July 1, 2011, shall be discarded no more than four years  
24 and six months after the closure date of the billing cycle and the  
25 bill has been paid and all toll violations, if applicable, have been  
26 resolved.

27 (d) On and after July 1, 2011, a transportation agency shall take  
28 every effort, within practical business and cost constraints, to purge  
29 the personal account information of an account that is closed or  
30 terminated. In no case shall a transportation agency maintain  
31 personal information more than four years and six months after  
32 the date an account is closed or terminated.

33 (e) (1) A transportation agency may make personally  
34 identifiable information of a person available to a law enforcement  
35 agency only pursuant to a search warrant. Absent a provision in  
36 the search warrant to the contrary, the law enforcement agency  
37 shall immediately, but in any event within no more than five days,  
38 notify the person that his or her records have been obtained and  
39 shall provide the person with a copy of the search warrant and the

1 identity of the law enforcement agency or peace officer to whom  
2 the records were provided.

3 (2) ~~(A)~~—This section does not prohibit a peace officer, as defined  
4 in Section 830.1 or 830.2 of the Penal Code, when conducting a  
5 criminal or traffic collision investigation, from obtaining personally  
6 identifiable information of a person if the officer has good cause  
7 to believe that a delay in obtaining this information by seeking a  
8 search warrant would result in an imminent danger to the health  
9 or safety of a member of the public. The peace officer shall provide  
10 the transportation agency with a written statement setting forth the  
11 basis for his or her good cause belief.

12 ~~(B)~~—When obtaining personally identifiable information of a  
13 person, the peace officer shall immediately, but in any event within  
14 no more than five days, notify the person that his or her records  
15 have been obtained, identify the law enforcement agency or peace  
16 officer to whom the records have been provided, and provide the  
17 person with a copy of the written statement provided to the  
18 transportation agency pursuant to subparagraph (A) that sets forth  
19 the basis for his or her good cause belief. If the notification to the  
20 person would interfere with an ongoing investigation, the peace  
21 officer or law enforcement agency may request a court order for  
22 a 30-day extension of the notice requirement. *cause an adverse*  
23 *result, as defined in paragraph (2) of subdivision (a) of Section*  
24 *1524.2 of the Penal Code.*

25 (f) This section does not prohibit a transportation agency in  
26 subdivision (a) from providing aggregated traveler information  
27 derived from collective data that relates to a group or category of  
28 persons from which personally identifiable information has been  
29 removed.

30 (g) This section does not prohibit a transportation agency from  
31 providing the license plate number of an intermodal chassis to the  
32 owner of the chassis for purposes of locating the driver of the  
33 chassis in the event the driver fails to pay the toll.

34 (h) This section does not prohibit a transportation agency from  
35 sharing data with another transportation agency solely to comply  
36 with interoperability specifications and standards adopted pursuant  
37 to Section 27565 regarding electronic toll collection devices and  
38 technologies. A third-party vendor may not use personally  
39 identifiable information obtained under this subdivision for a  
40 purpose other than described in this subdivision.

1 (i) Subdivision (d) shall not prohibit a transportation agency,  
2 or its designee, from performing financial and accounting functions  
3 such as billing, account settlement, enforcement, or other financial  
4 activities required to operate and manage the toll facilities.

5 (j) This section does not prohibit a transportation agency from  
6 communicating about products and services offered by itself, a  
7 business partner, or the agency with which it contracts to  
8 subscribers of the transportation agency through a contracted  
9 third-party vendor using personally identifiable information limited  
10 to the subscriber's name, address, and electronic mail address,  
11 provided that, for customer agreements entered into on or after  
12 January 1, 2011, the transportation agency has received the  
13 subscriber's express written consent to receive the communications.

14 (k) A transportation agency may not use a nonsubscriber's  
15 personally identifiable information obtained using an electronic  
16 toll collection system to market products or services to that  
17 nonsubscriber. This subdivision shall not apply to toll-related  
18 products or services contained in a notice of toll evasion issued  
19 pursuant to Section 23302 of the Vehicle Code.

20 (l) For purposes of this section, "transportation agency" means  
21 the Department of Transportation, the Bay Area Toll Authority,  
22 any entity operating a toll bridge, toll lane, or toll highway within  
23 the state, or any entity under contract with any of the above entities.

24 (m) For purposes of this section, "electronic toll collection  
25 system" is a system where a transponder, camera-based vehicle  
26 identification system, or other electronic medium is used to deduct  
27 payment of a toll from a subscriber's account or to establish an  
28 obligation to pay a toll.

29 (n) For purposes of this section, "person" means any person  
30 who subscribes to an electronic toll collection system or any person  
31 who uses a toll bridge, toll lane, or toll road that employs an  
32 electronic toll collection system.

33 (o) For purposes of this section, "personally identifiable  
34 information" means any information that identifies or describes a  
35 person including, but not limited to, travel pattern data, address,  
36 telephone number, e-mail address, license plate number,  
37 photograph, bank account information, or credit card number.

38 (p) (1) In addition to any other remedies provided by law, a  
39 person whose personally identifiable information has been  
40 knowingly sold or otherwise provided in violation of this section

1 may bring an action to recover either actual damages or two  
2 thousand five hundred dollars (\$2,500) for each individual  
3 violation, whichever is greater, and may also recover reasonable  
4 costs and attorney’s fees.

5 (2) A person whose personally identifiable information has been  
6 knowingly sold or otherwise provided three or more times in  
7 violation of this section may bring an action to recover either actual  
8 damages or four thousand dollars (\$4,000) for each individual  
9 violation, whichever is greater, and may also recover reasonable  
10 costs and attorney’s fees.

11 (q) Nothing in subdivisions (c) and (d) shall preclude compliance  
12 with a court order or settlement agreement that has been approved  
13 on or before April 25, 2010.

14 (r) A transportation agency that employs an electronic toll  
15 collection system may impose an administrative fee on persons  
16 who use that system in an amount sufficient to cover the cost of  
17 implementing this section.

18 SEC. 2. No reimbursement is required by this act pursuant to  
19 Section 6 of Article XIII B of the California Constitution because  
20 a local agency or school district has the authority to levy service  
21 charges, fees, or assessments sufficient to pay for the program or  
22 level of service mandated by this act, within the meaning of Section  
23 17556 of the Government Code.