

CALIFORNIA DEPARTMENT OF JUSTICE

FINDING OF EMERGENCY

October 5, 2020

Pursuant to the requirements of Government Code (GC) section 11346.1, subdivision (a)(1), the Department of Justice (Department) is providing notice of the proposed emergency re-adoption of the regulation regarding Data Broker Registration. The Department finds that an emergency continues to exist, and that the re-adoption of Title 11, Division 1, Chapter 20.5, Section 999.400 is necessary to avoid serious harm to the public peace, health and safety, and general welfare.

GC section 11346.1, subdivision (a)(2), requires that, at least five working days prior to the submission of the proposed emergency action to the Office of Administrative Law (OAL), the Department provide a notice of this proposed action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency regulation to the OAL, the OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulation as set forth in GC section 11349.6.

The text of the proposed emergency regulation and the “Finding of Emergency” are posted on the Department’s website at <https://oag.ca.gov/regulations>.

The Department plans to file the emergency rulemaking package with the OAL at least five working days from the date provided at the top of this notice, October 5, 2020. If you would like to comment on the Finding of Emergency or the proposed emergency regulation, those comments must be made in writing only, must contain a notation that identifies the emergency regulation to which they relate, and must be received by both the Department and the OAL within five days of the Department’s filing with the OAL. The Department may respond to comments at its discretion. Send comments simultaneously to:

Department of Justice

California Justice Information Services

Attn: Danielle Hofmeister

P.O. Box 160608

Sacramento, CA 95816-0608

DataBrokerRegulation@doj.ca.gov

and

Office of Administrative Law

300 Capitol Mall, Suite 1250

Sacramento, CA 95814

Statement Regarding Compliance with GC section 11346.1(e)

As explained herein, the Department has made substantial progress and proceeded with diligence toward compliance with GC section 11346.1, subdivision (e). Specifically, as a result of experience gained since the implementation of the initial emergency regulation, the Department identified changes that will be reflected in the regulations that the Department intends to adopt by regular rulemaking (Certificate of Compliance). These changes include adjusting the fee provision.

The Department provided notice to the public on September 11, 2020 of a regular rulemaking that incorporates the above-mentioned changes. A readoption of the emergency regulation is necessary because the Department will not be able to complete the rulemaking process before the emergency regulation expires on October 28, 2020.

Statement Regarding Emergency Circumstances Since the Adoption of the Emergency Regulation

The Department finds it necessary to readopt the emergency regulation because the circumstances demonstrating the existence of an emergency are unchanged since the initial adoption of the emergency regulation.

Subject Matter of Proposed Regulation Readoption

Assembly Bill (AB) 1202 (Chapter 753, Statutes of 2019) requires businesses that meet the definition of “data broker” to register with the California Attorney General (AG) and pay a registration fee in an amount determined by the AG, not to exceed the reasonable costs to establish and maintain the informational internet website required to be established under these provisions. This regulation sets an initial registration fee in the amount of \$360.00.

Existing Regulation to be Added

Title 11, Division 1, Chapter 20.5, Section 999.400.

Specific Facts that Demonstrate the Need for Immediate Action

In 1972, California voters amended the California Constitution to include the right of privacy among the “inalienable” rights of all people. The amendment established a legal and enforceable right of privacy for every Californian. Fundamental to this right of privacy is the ability of individuals to control the use, including the sale, of their personal information.

Since California voters approved the right of privacy, the Legislature has adopted specific mechanisms to safeguard Californians’ privacy, including the 2018 California Consumer Privacy Act, which gives Californians the ability to better control how their personal information is collected and sold.

While many different types of businesses collect data about consumers, a “data broker” aggregates and sells data about consumers with whom the business does not have a direct relationship. A data broker collects many hundreds or thousands of data points about consumers from multiple sources, which can include: internet browsing history, online purchases, public records, location data, loyalty programs, and subscription information. The data broker then analyzes the data to assess content and packages the data for sale to a third party.

Data brokers create risks that are associated with the widespread aggregation and sale of data about consumers, including those related to the consumers’ lack of knowledge and control over information retained and sold about them, and the unauthorized or harmful acquisition and use of consumer information. Consumers are generally not aware that data brokers possess their personal information or of how to exercise their right to opt out, and they do not know whether they can have their information deleted, as provided by California law. Californians should be able to exercise control over their personal information and be certain that there are safeguards in place to protect them against its misuse.

Effective January 1, 2020, AB 1202 expanded upon Californians’ right to privacy by giving consumers an additional tool to help control the collection and sale of their personal information. This was achieved by requiring data brokers to register annually with the AG and provide information about how consumers may opt out of the sale of their personal information. The bill requires the AG to create a page on the Department’s website where the information provided by data brokers shall be made accessible to the public. Data brokers are now required to pay a registration fee in an amount determined by the AG, not to exceed the reasonable costs to establish and maintain the informational website.

In order to meet the intent of the statute and safeguard the privacy of Californians, the AG has developed a registration website that was made available starting January 1, 2020. In order to fund this development effort, it is necessary that the Department have the authority to continue collecting the registration fee. This will only be possible through the immediate action of the readoption of this emergency regulation. If this fee cannot be collected, there will be no funding to support this registration system and the Department will be unable to ensure that this necessary consumer protection is in place.

Explanation of Failure to Adopt Nonemergency Regulations

The Department currently accepts manual payments of the initial data broker registration fee. However, the Department is working on the implementation of an electronic payment option that will alleviate the burden of ongoing manual payments on both the regulated community and the Department. In this effort, the Department is seeking to contract with a vendor to build electronic payment functionality into the existing database. The Department has been in communication with the new vendor; however, the final costs for the new contract have not been solidified. As such, the Department has not been able to verify whether the current fee listed in the emergency regulation will be sufficient to cover the monthly maintenance fees and costs of the new vendor.

The recent outbreak of the novel Coronavirus disease (COVID-19) has caused many businesses to temporarily close and has impacted the Department's ability to communicate with the newly contracted vendor. Therefore, the Department will not be able to obtain final costs and file the regulation reflecting those costs through the regular rulemaking process before the expiration of the existing emergency regulation on August 29, 2020.

Authority and Reference Citations

Authority cited: Section 1798.99.82, Civil Code.

Reference: Section 1798.99.82, Civil Code.

Information Digest/Policy Statement Overview

SUMMARY OF LAW

AB 1202 (Chapter 753, Statutes of 2019) requires a business that meets the definition of a "data broker" to annually register with the AG, and, in doing so, complete all of the following: (1) pay a registration fee in an amount determined by the AG, not to exceed the reasonable costs of establishing and maintaining the required informational internet website; (2) provide the name of the data broker and its primary physical, email, and internet website addresses; and (3) provide any additional information or explanation the data broker chooses to provide concerning its data collection practices. The AG is required to create a page on the Department's website where the information provided by data brokers shall be made accessible to the public. A data broker that fails to register as required is subject to injunction and is liable for civil penalties, fees, and costs in an action brought in the name of the people of the State of California.

BENEFITS

This rulemaking protects public safety and privacy by implementing a necessary fee to support a system of registration for data brokers. This registration system provides Californians with a necessary tool to help control the collection and sale of their personal information and provides crucial information, which they are entitled to under California law. The emergency regulation to adopt a registration fee allows the Department to secure critical funding to ensure that this essential safeguard remains in place, thus protecting Californians' right to privacy and the security of their sensitive personal information.

Forms Incorporated by Reference

None.

Evaluation of the Proposed Regulation for Consistency and Compatibility with Existing Regulations

This regulation is neither inconsistent nor incompatible with existing regulations.

Other Matters Prescribed by Statute Applicable to the Agency or to Any Specific Regulation or Class of Regulations

None.

Mandate on Local Agencies and School Districts

The Department has determined the proposed emergency regulation does not impose a mandate or a cost requiring reimbursement by the State pursuant to GC Division 4, Part 7 (commencing with Section 17500). It will not require local agencies or school districts to incur additional costs in order to comply with the proposed emergency regulation.

Technical, Theoretical, and Empirical Study, Report, or Similar Document, if any, Upon Which the Department Relied

Vermont Office of the Attorney General, Preliminary Report to Vermont General Assembly on Data Broker Registry, March 1, 2019.

Vermont Office of the Attorney General, Supplement to the Preliminary Report to the Vermont General Assembly on the Vermont Data Broker Registry, May 20, 2019.

DISCLOSURES REGARDING THE PROPOSED ACTION

DOJ has made the following determinations:

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other non-discretionary costs or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Cost or savings to any state agency: As detailed on the attachment to the Economic and Fiscal Impact Statement (STD 399), the Department estimates it will have one-time information technology (IT) costs in the amount of \$360,972.00, and ongoing IT costs in the amount of \$188,489.00. The Department anticipates receiving \$360,000.00 from the 1,000 initial registrations in the first year if the initial registration fee is set in the amount of \$360.00.