

CALIFORNIA DEPARTMENT OF JUSTICE

FINDING OF EMERGENCY

The Department of Justice (Department) finds that an emergency exists, and that the immediate adoption of Chapter 20.5 of California Code of Regulations (CCR) Title 11, Division 1 is necessary to preserve the public's right to privacy, safety, and general welfare.

Government Code (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. To this end, the Department will post the proposed emergency regulation on its website and simultaneously disseminate notice of the proposed emergency action to all persons who have filed a request for notice.

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. If you would like to comment on the Finding of Emergency or the proposed emergency regulation, those comments must be submitted in writing only, must contain a notation that identifies the topic of 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 OAL. To determine the OAL's five-day comment period, please visit <http://www.oal.ca.gov/> often.

Subject Matter of Proposed Regulation Adoption

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.

New Regulation to be Added

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

Express Statement of Emergency

This emergency regulation is necessary for the immediate preservation of the public's general welfare. The Legislature just passed a new law that will become effective on January 1, 2020, that requires data brokers to pay a fee and register with the Attorney General by January 31, 2020, and by January 31 each year thereafter. The purpose of the fee is to pay the Department's costs to establish an information website. To implement the fee by January 31, 2020, as required by the new law, the Department must adopt an emergency regulation.

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 will further Californians’ right to privacy by giving consumers an additional tool to help control the collection and sale of their personal information. This will be 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. Upon implementation, a data broker will be 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 will develop a registration website that will be made available starting January 1, 2020. In order to fund this development effort, it is necessary that the Department have the authority to collect the registration fee amount beginning January 1, 2020. This is only possible through the immediate action of the adoption of this emergency regulation. If this fee cannot be collected by January 1, 2020, 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.

Purpose and Necessity of Each Provision of the Emergency Regulation

The regulations establish an initial registration fee of \$360. The revenue resulting from the fee will not exceed the Department's costs to establish and maintain the information website required by AB 1202.

The Department will have one-time costs of \$360,972.00, based on the following:

- Infrastructure Costs: \$142,980.00
 - Software license/subscription - \$2,980.00
 - Accessibility Review - \$20,000.00
 - Drupal 8 Training - \$70,000.00
 - Storage - \$50,000.00
- Personnel: \$173,371.00
 - One Information Technology Specialist I, Range C
- Departmental fees: \$44,621.00

The Department estimates that approximately 1,000 data brokers will register with DOJ. This estimate is based on information from the State of Vermont. Last year, Vermont implemented a new registration requirement for data brokers and the Vermont Attorney General last reported that 138 companies had registered. The estimate is also based on an estimate from WebFX, a digital marketing agency. In a blog, WebFX estimated that over 4,000 data brokers exist worldwide. Given California's population and size of its economy, the Department believes at least 1,000 data brokers will register in California.

The Department anticipates receiving approximately \$360,000 in the first year from the initial registration fee.

Authority and Reference Citations

Authority cited: Section 1798.99.82, Civil Code.

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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 will provide Californians with a necessary tool to help control the collection and sale of their personal information and will provide 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 is in place as soon as possible, 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 or 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 initial 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: The regulations will generate revenue for the Department to offset its costs to establish a new information website. The Department estimates that its initial costs will be \$360,972 in the first year. The Department estimates it will receive \$360,000 in revenue from registration fees in the first year.