

CALIFORNIA DEPARTMENT OF JUSTICE

**TITLE 11. LAW
DIVISION 1. ATTORNEY GENERAL
CHAPTER 20.5. DATA BROKER REGISTRATION**

INITIAL STATEMENT OF REASONS

PROBLEM STATEMENT

Assembly Bill (AB) 1202 (Chapter 753, Statutes of 2019) requires a business that meets the definition of a “data broker” to annually register with the Attorney General (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 of Justice’s (the Department’s) website where the information provided by data brokers shall be made accessible to the public. (See <https://oag.ca.gov/data-brokers>.) 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.

The Department adopted an emergency regulation (Office of Administrative Law file #2019-1210-04) to establish the fee for the registration system that became effective January 1, 2020; however, there is a need to adopt a regular rulemaking as the emergency regulation will expire on October 28, 2020. This proposed regulation will adjust the fee that was established in the related emergency regulation and make permanent the fee provision. This fee adjustment is necessary to align the fee with the actual costs incurred by the Department since January 1, 2020 and update the number of data brokers the Department anticipates will register annually based on the number of registrants since January 1, 2020.

BENEFITS ANTICIPATED FROM REGULATORY ACTION

This rulemaking ensures the Department has access to critical funding to ensure Californians’ right to privacy and safety by implementing a necessary fee to support a system of registration for data brokers. This registration system provides Californians with information to better allow privacy-conscious consumers to exercise their rights to control the collection and sale of their personal information under California law.

SPECIFIC PURPOSE AND NECESSITY OF EACH SECTION

This regulation establishes an annual registration fee of \$400.00. 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 ongoing costs of approximately \$200,000.00, based on the following:

- Personnel costs: \$166,011.00 - \$186,795.00
 - One Information Technology Specialist I, Range C
- Departmental fees: \$22,478.00 - \$25,292.00

The Department estimates that approximately 475 to 500 data brokers will register with the Department. This estimate is based on the number of data brokers that have registered since January 1, 2020. As of June 26, 2020, 373 data brokers have registered with the Department. Businesses have registered as data brokers at a continually decreasing rate since the first month of registration. Assuming that this trend continues through the end of this year, approximately 475 to 500 businesses will either register, or renew their registration, as data brokers annually.

By dividing the above ongoing costs to the Department by the estimated number of data brokers that will register, or renew their registration annually, the Department calculated an annual registration fee of \$400.00.

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

The Department concludes:

- (1) It is unlikely that the proposal would create or eliminate jobs within the state because this proposed regulation only codifies requirements pertaining to businesses that satisfy the definition of “data broker” in subdivision (d) of Civil Code section 1798.99.80.
- (2) It is unlikely that the proposal would create new businesses or eliminate existing businesses within the state for the reason identified above.
- (3) It is unlikely that the proposal would result in the expansion of businesses currently doing business within the state for the reason identified above.

The Department also concludes that:

- (1) The proposal would benefit the health and welfare of California residents by adopting a registration fee that allows the Department to secure critical funding to support a system of registration for data brokers, thus providing Californians with information to better allow privacy conscious consumers to exercise their rights to privacy and the security of their sensitive personal information.
- (2) The proposal would not benefit worker safety.
- (3) The proposal would not benefit the state’s environment.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDIES, REPORTS OR SIMILAR DOCUMENTS RELIED UPON

The Department did not rely on any technical, theoretical, or empirical studies, reports or similar documents in proposing this regulation.

EVIDENCE SUPPORTING DETERMINATION OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Department has made an initial determination that the proposed action would not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. This regulation only codifies requirements pertaining to businesses that satisfy the definition of “data broker” in subdivision (d) of Civil Code section 1798.99.80.

The Department analyzed recent historical data and trends to determine projected economic impacts that businesses may incur to comply with this regulation over its lifetime. The Department also considered the economic impact associated with the registration fee. However, these impacts would not result in an adverse economic impact because the cost of this fee is nominal in proportion to the profits of data broker companies.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The Department finds that no reasonable alternatives were presented to, or considered by, the Department that would lessen any adverse impact on small business.

REASONABLE ALTERNATIVES TO THE PROPOSED ACTION AND THE AGENCY’S REASON FOR REJECTING THOSE ALTERNATIVES

The Department finds that no alternatives were presented to, or considered by, the Department that would be more effective in carrying out the purpose of this proposed regulation or would be as effective as and less burdensome to affected private persons than this proposed regulation.

Performance Standard as Alternative:

The Department is required by statute to mandate a fee that does not exceed the reasonable costs of establishing and maintaining the data broker registry.