

~~Assembly Bill No. 375~~ AMENDED IN ASSEMBLY AUGUST 27, 2018

AMENDED IN ASSEMBLY AUGUST 24, 2018

AMENDED IN ASSEMBLY AUGUST 6, 2018

AMENDED IN ASSEMBLY JUNE 14, 2018

AMENDED IN SENATE MAY 25, 2018

AMENDED IN SENATE APRIL 26, 2018

AMENDED IN SENATE APRIL 9, 2018

SENATE BILL

No. 1121

Introduced by Senator Dodd
(Coauthor: Senator Hertzberg)
(Coauthor: Assembly Member Chau)

February 13, 2018

CHAPTER 55

An act to amend Sections 1798.100, 1798.105, 1798.110, 1798.115, 1798.120, 1798.125, 1798.130, 1798.135, 1798.140, 1798.145, 1798.150, 1798.155, 1798.185, 1798.192, 1798.196, and 1798.198 of, and to add Title 1.81.5 (commencing with Section 1798.100) to Part 4 of Division 3-
of 1798.199 to, the Civil Code, relating to privacy personal information, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 28, 2018. Filed with Secretary of State June 28, 2018.]

legislative counsel's digest

~~AB 375, Chau. Privacy: personal information: businesses.~~

~~The California Constitution grants a right of privacy. Existing law provides for the confidentiality of personal information in various contexts and requires a business or person that suffers a breach of security of computerized data that includes personal information, as defined, to disclose that breach, as specified.~~

~~This bill would enact the California Consumer Privacy Act of 2018. Beginning January 1, 2020, the bill would grant a consumer a right to request a business to disclose the categories and specific pieces of personal information that it collects about the consumer, the categories of sources from which that information is collected, the business purposes for collecting or selling the information, and the categories of 3rd parties with which the information is shared. The bill would require a business to make disclosures about the information and the purposes for which it is used. The bill would grant a consumer the right to request deletion of personal information and would require the business to delete upon receipt of a verified request, as specified. The bill would grant a consumer a right to request that a business~~

~~that sells the consumer's personal information, or discloses it for a business purpose, disclose the categories of information that it collects and categories of information and the identity of 3rd parties to which the information was sold or disclosed. The bill would require a business to provide this information in response to a verifiable consumer request. The bill would authorize a consumer to opt out of the sale of personal information by a business and would prohibit the business from discriminating against the consumer for exercising this right, including by charging the consumer who opts out a different price or providing the consumer a different quality of goods or services, except if the difference is reasonably related to value provided by the consumer's data. The bill would authorize businesses to offer financial incentives for collection of personal information. The bill would prohibit a business from selling the personal information of a consumer under 16 years of age, unless affirmatively authorized, as specified, to be referred to as the right to opt in. The bill would prescribe requirements for receiving, processing, and satisfying these requests from consumers. The bill would prescribe various definitions for its purposes and would~~

SB 1121, as amended, Dodd. California Consumer Privacy Act of 2018.

(1) Existing law, the California Consumer Privacy Act of 2018, grants, commencing on January 1, 2020, a consumer various rights with regard to personal information relating to that consumer that is held by a business, including the right to request a business to delete any

~~define “personal information” with reference to a broad list of characteristics and behaviors, personal and commercial, as well as inferences drawn from this information. The bill would prohibit the provisions described above from restricting the ability of the business to comply with federal, state, or local laws, among other things.~~

~~The bill would provide for its enforcement by the Attorney General, as specified, and would provide a private right of action in connection with certain unauthorized access and exfiltration, theft, or disclosure of a consumer’s nonencrypted or nonredacted personal information, as defined. The bill would prescribe a method for distribution of proceeds of Attorney General actions. The bill would create the Consumer Privacy Fund in the General Fund with the moneys in the fund, upon appropriation by the Legislature, to be applied to support the purposes of the bill and its enforcement. The bill would provide for the deposit of penalty money into the fund. The bill would require the Attorney General to solicit public participation for the purpose of adopting regulations, as specified. The bill would authorize a business, service provider, or 3rd party to seek the Attorney General’s opinion on how to comply with its provisions. The bill would void a waiver of a consumer’s rights under its provisions. The bill would condition its operation on the withdrawal of a specified initiative from the ballot.~~

personal information about the consumer collected by the business, and requires the business to comply with a verifiable consumer request to that effect, unless it is necessary for the business or service provider to maintain the customer’s personal information in order to carry out specified acts. The act requires a business that collects personal information about a consumer to disclose the consumer’s right to delete personal information described above on its Internet Web site or in its online privacy policy or policies.

This bill would modify that requirement by requiring a business that collects personal information about a consumer to disclose the consumer’s right to delete personal information in a form that is reasonably accessible to consumers and in accordance with a specified process.

(2) The act establishes several exceptions to the requirements imposed, and rights granted, by the act, including prohibiting the act from being interpreted to restrict the ability of a business to comply with federal, state, or local laws, and by providing that the act does not apply if it is in conflict with the California Constitution.

This bill would provide that the rights afforded to consumers and the obligations imposed on any business under the act does not apply if those rights or obligations would infringe on the noncommercial activities of people and entities described in a specified provision of the California Constitution addressing activities related to newspapers and periodicals. The bill would also prohibit application of the act to personal information collected, processed, sold, or disclosed pursuant to a specified federal law relating to banks, brokerages, insurance companies, and credit reporting agencies, among others, and would also except application of the act to that information pursuant to the California Financial Information Privacy Act. The bill would provide that these exceptions, and the exception provided to information collected, processed, sold, or disclosed pursuant to the Driver’s Privacy Protection Act of 1994, do not apply to specific provisions of the act related to unauthorized theft and disclosure of information. The bill would revise and expand the exception provided for medical information information, would except a provider of health care or a covered entity, and would also except information collected as part of

clinical trials, as specified. The bill would also clarify that the act does not apply if it is in conflict with the United States Constitution.

(3) The act generally provides for its enforcement by the Attorney General, but also provides for a private right of action in connection

with certain unauthorized access and exfiltration, theft, or disclosure of a consumer's nonencrypted or nonredacted personal information, as defined for this purpose, provided that the consumer bringing an action notify the Attorney General of the action in accordance with a specified process. The act provides that a business, service provider, or other person who violates its provisions, and fails to cure those violations within 30 days, is liable for a civil penalty under laws relating to unfair competition in an action to be brought by the Attorney General. The act prescribes a formula for allocating civil penalties and settlements assessed in these actions with 80% to be allocated to the jurisdictions of the behalf of which the action was brought.

This bill would clarify that the only private right of action permitted under the act is the private right of action described above for violations of unauthorized access and exfiltration, theft, or disclosure of a consumer's nonencrypted or nonredacted personal information. information and would delete the requirement that a consumer bringing a private right of action notify the Attorney General. The bill would remove references to laws relating to unfair competition in connection with Attorney General actions described above. The bill would limit the civil penalty to be assessed in an Attorney General action in this context to not more than \$2,500 per violation or \$7,500 per each intentional violation and would specify that an injunction is also available as remedy. The bill would eliminate the formula for allocating penalties and settlements and would instead provide that all of these moneys be deposited in the Consumer Privacy Fund with the intent to offset costs incurred by the courts and the Attorney General in connection with the act. The bill would also revise timelines and requirements regarding the promulgation of regulations by the Attorney General in connection with the act.

(4) The act makes its provisions operative on January 1, 2020, provided a specified contingency is satisfied. Provisions of the act supersede and preempt laws adopted by local entities regarding the collection and sale of a consumer's personal information by a business. This bill would make the provisions of the act that supersede and preempt laws adopted by local entities, as described above, operative on the date the bill becomes effective.

(5) This bill would also make various technical and clarifying changes to the act.

(6) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. ~~This measure shall be known and may be cited as "The California Consumer Privacy Act of 2018."~~ SEC. 2. ~~The Legislature finds and declares that:~~ Section 1798.100 of the Civil Code, as added by
(a) In 1972, California voters

2 Section 3 of Chapter 55 of the Statutes of 2018, is 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.~~

~~(b) Since California voters approved the right of privacy, the California Legislature has adopted specific mechanisms to safeguard Californians’ privacy, including the Online Privacy Protection Act, the Privacy Rights for California Minors in the Digital World Act, and Shine the Light, a California law intended to give Californians the ‘who, what, where, and when’ of how businesses handle consumers’ personal information.~~

~~(c) At the same time, California is one of the world’s leaders in the development of new technologies and related industries. Yet the proliferation of personal information has limited Californians’ ability to properly protect and safeguard their privacy. It is almost impossible to apply for a job, raise a child, drive a car, or make an appointment without sharing personal information.~~

91

~~(d) As the role of technology and data in the every daily lives of consumers increases, there is an increase in the amount of personal information shared by consumers with businesses. California law has not kept pace with these developments and the personal privacy implications surrounding the collection, use, and protection of personal information.~~

~~(e) Many businesses collect personal information from California consumers. They may know where a consumer lives and how many children a consumer has, how fast a consumer drives, a consumer’s personality, sleep habits, biometric and health information, financial information, precise geolocation information, and social networks, to name a few categories.~~

~~(f) The unauthorized disclosure of personal information and the loss of privacy can have devastating effects for individuals, ranging from financial fraud, identity theft, and unnecessary costs to personal time and finances, to destruction of property, harassment, reputational damage, emotional stress, and even potential physical harm.~~

~~(g) In March 2018, it came to light that tens of millions of people had their personal data misused by a data mining firm called Cambridge Analytica. A series of congressional hearings highlighted that our personal information may be vulnerable to misuse when shared on the Internet. As a result, our desire for privacy controls and transparency in data practices is heightened.~~

~~(h) People desire privacy and more control over their information. California consumers should be able to exercise control over their personal information, and they want to be certain that there are safeguards against misuse of their personal information. It is possible for businesses both to respect consumers’ privacy and provide a high level transparency to their business practices.~~

~~(i) Therefore, it is the intent of the Legislature to further Californians’ right to privacy by giving consumers an effective way to control their personal information, by ensuring the following rights:~~

~~(1) The right of Californians to know what personal information is being collected about them.~~

~~(2) The right of Californians to know whether their personal information is sold or disclosed and to whom.~~

~~(3) The right of Californians to say no to the sale of personal information.~~

~~(4) The right of Californians to access their personal information.~~

~~(5) The right of Californians to equal service and price, even if they exercise their privacy rights.~~10

3 SEC. 3. Title 1.81.5 (commencing with Section 1798.100) is added to Part 4 of Division 3 of the Civil Code, to read:

TITLE 1.81.5. CALIFORNIA CONSUMER PRIVACY ACT OF 2018

4 1798.100. (a) A consumer shall have the right to request that
5 a business that collects a consumer's personal information disclose
6 to that consumer

91
the
cate
gori
es
and
spec
ific
piec
es of
pers
onal

7 information the business has collected.

(b) A business that collects a consumer's personal information
8 shall, at or before the point of collection, inform consumers as to
9 the categories of personal information to be collected and the
10 purposes for which the categories of personal information shall be
11 used. A business shall not collect additional categories of personal
12 information or use personal information collected for additional
13 purposes without providing the consumer with notice consistent
14 with this section.

(c) A business shall provide the information specified in
15 subdivision (a) to a consumer only upon receipt of a verifiable
16 consumer request.

(d) A business that receives a verifiable consumer request from
17 a consumer to access personal information shall promptly take
18 steps to disclose and deliver, free of charge to the consumer, the
19 personal information required by this section. The information
20 may be delivered by mail or electronically, and if provided
21 electronically, the information shall be in a portable and, to the
22 extent technically feasible, in a readily useable format that allows
23 the consumer to transmit this information to another entity without
24 hindrance. A business may provide personal information to a
25 consumer at any time, but shall not be required to provide personal
26 information to a consumer more than twice in a 12-month period.

(e) This section shall not require a business to retain any
27 personal information collected for a single, one-time transaction,
28 if such information is not sold or retained by the business or to
29 reidentify or otherwise link information that is not maintained in
30 a manner that would be considered personal information.

~~(1)Retain any personal information collected for a single, one-time
transaction, if the information is not sold or retained by the business.~~

~~(2)Reidentify or otherwise link any data that, in the ordinary course of
business, is not maintained in a manner that would be considered personal
information.~~

SEC. 2. Section 1798.105 of the Civil Code, as added by
Section 3 of Chapter 55 of the Statutes of 2018, is amended to
read:

1798.105. (a) A consumer shall have the right to request that a business delete any personal information about the consumer which the business has collected from the consumer.

(b) A business that collects personal information about consumers shall disclose, pursuant to ~~subparagraph (A) of paragraph (5) of subdivision (a) of~~ Section 1798.130, the consumer's rights to request the deletion of the consumer's personal information.

(c) A business that receives a verifiable consumer request from a consumer to delete the consumer's personal information pursuant to subdivision (a) of this section shall delete the consumer's personal information from its records and direct any service providers to delete the consumer's personal information from their records.

(d) A business or a service provider shall not be required to comply with a consumer's request to delete the consumer's personal information if it is necessary for the business or service provider to maintain the consumer's personal information in order to:

(1) Complete the transaction for which the personal information was collected, provide a good or service requested by the consumer, or reasonably anticipated within the context of a business's ongoing business relationship with the consumer, or otherwise perform a contract between the business and the consumer.

(2) Detect security incidents, protect against malicious, deceptive, fraudulent, or illegal activity; or prosecute those responsible for that activity.

(3) Debug to identify and repair errors that impair existing intended functionality.

(4) Exercise free speech, ensure the right of another consumer to exercise his or her right of free speech, or exercise another right provided for by law.

(5) Comply with the California Electronic Communications Privacy Act pursuant to Chapter 3.6 (commencing with Section ~~1546~~) of Title 12 of Part 2 of the Penal Code.

(6) Engage in public or peer-reviewed scientific, historical, or statistical research in the public interest that adheres to all other applicable ethics and privacy laws, when the businesses' deletion

of the information is likely to render impossible or seriously impair the achievement of such research, if the consumer has provided informed consent.

(7) To enable solely internal uses that are reasonably aligned with the expectations of the consumer based on the consumer's relationship with the business.

(8) Comply with a legal obligation.

(9) Otherwise use the consumer's personal information,

internally, in a lawful manner that is compatible with the context in which the consumer provided the information.

SEC. 3. Section 1798.110 of the Civil Code, as added by Section 3 of Chapter 55 of the Statutes of 2018, is amended to read:

1798.110. (a) A consumer shall have the right to request that a business that collects personal information about the consumer disclose to the consumer the following:

(1) The categories of personal information it has collected about that consumer.

(2) The categories of sources from which the personal information is collected.

(3) The business or commercial purpose for collecting or selling personal information.

(4) The categories of third parties with whom the business shares personal information.

(5) The specific pieces of personal information it has collected about that consumer.

(b) A business that collects personal information about a consumer shall disclose to the consumer, pursuant to paragraph (3) of subdivision (a) of Section 1798.130, the information specified in subdivision (a) upon receipt of a verifiable consumer request from the consumer.

(c) A business that collects personal information about consumers shall disclose, pursuant to subparagraph (B) of paragraph (5) of subdivision (a) of Section 1798.130:

(1) The categories of personal information it has collected about that consumer.

(2) The categories of sources from which the personal information is collected.

(3) The business or commercial purpose for collecting or selling personal information.

92

(4) The categories of third parties with whom the business shares personal information.

(5) The specific pieces of personal information the business has collected about that consumer.

(d) This section does not require a business to do the following:

(1) Retain any personal information about a consumer collected for a single one-time transaction if, in the ordinary course of business, that information about the consumer is not retained.

(2) Reidentify or otherwise link any data that, in the ordinary course of business, is not maintained in a manner that would be considered personal information.

SEC. 4. Section 1798.115 of the Civil Code, as added by Section 3 of Chapter 55 of the Statutes of 2018, is amended to read:

1798.115. (a) A consumer shall have the right to request that a business that sells the consumer's personal information, or that

12 discloses it for a business purpose, disclose to that consumer:

(1) The categories of personal information that the business
13 collected about the consumer.

(2) The categories of personal information that the business sold
14 about the consumer and the categories of third parties to whom
15 the personal information was sold, by category or categories of
16 personal information for each third party to whom the personal
17 information was sold.

(3) The categories of personal information that the business
18 disclosed about the consumer for a business purpose.

(b) A business that sells personal information about a consumer,
19 or that discloses a consumer's personal information for a business
20 purpose, shall disclose, pursuant to paragraph (4) of subdivision ~~(a)~~
(a) of Section 1798.130, the information specified in subdivision ~~(a)~~
(a) to the consumer upon receipt of a verifiable consumer request
21 from the consumer.

(c) A business that sells consumers' personal information, or
22 that discloses consumers' personal information for a business
23 purpose, shall disclose, pursuant to subparagraph (C) of paragraph ~~(5)~~
(5) of subdivision (a) of Section 1798.130:

(1) The category or categories of consumers' personal
24 information it has sold, or if the business has not sold consumers'
25 personal information, it shall disclose that fact.

92

(2) The category or categories of consumers' personal
1 information it has disclosed for a business purpose, or if the
2 business has not disclosed the consumers' personal information
3 for a business purpose, it shall disclose that fact.

(d) A third party shall not sell personal information about a
4 consumer that has been sold to the third party by a business unless
5 the consumer has

9+
recei
ved
expl
icit
noti
ce
and
is
prov
ided
an

6 opportunity to exercise the right to opt out pursuant to Section 9
1798.120.

10 SEC. 5. Section 1798.120 of the Civil Code, as added by
11 Section 3 of Chapter 55 of the Statutes of 2018, is amended to
12 read:

13 1798.120. (a) A consumer shall have the right, at any time, to
14 direct a business that sells personal information about the consumer
15 to third parties not to sell the consumer's personal information.
16 This right may be referred to as the right to opt out.

(b) A business that sells consumers' personal information to
17 third parties shall provide notice to consumers, pursuant to
18 subdivision (a) of Section 1798.135, that this information may be
19 sold and that consumers have the "right to opt out" of the sale of
20 their personal information.

~~(e) A business that has received direction from a consumer not to sell the consumer's personal information or, in the case of a minor consumer's personal information has not received consent to sell the minor consumer's personal information shall be prohibited, pursuant to paragraph (4) of subdivision (a) of Section 1798.135, from selling the consumer's personal information after its receipt of the consumer's direction, unless the consumer subsequently provides express authorization for the sale of the consumer's personal information.~~

~~(c)~~ (d) Notwithstanding subdivision (a), a business shall not sell
21 the personal information of consumers if the business has actual
22 knowledge that the consumer is less than 16 years of age, unless
23 the consumer, in the case of consumers between 13 and 16 years
24 of age, or the consumer's parent or guardian, in the case of
25 consumers who are less than 13 years of age, has affirmatively
26 authorized the sale of the consumer's personal information. A
27 business that willfully disregards the consumer's age shall be
28 deemed to have had actual knowledge of the consumer's age. This
29 right may be referred to as the "right to opt ~~in.~~ in."

~~(d) A business that has received direction from a consumer not to sell the consumer's personal information or, in the case of a minor consumer's personal information has not received consent to sell the minor consumer's personal information shall be prohibited, pursuant to paragraph (4) of subdivision (a) of Section 1798.135, from selling the consumer's personal information after its receipt of the consumer's direction, unless the consumer subsequently provides express authorization for the sale of the consumer's personal information.~~

1 SEC. 6. Section 1798.125 of the Civil Code, as added by
2 Section 3 of Chapter 55 of the Statutes of 2018, is amended to
3 read:

4 1798.125. (a) (1) A business shall not discriminate against a
5 consumer because the consumer exercised any of the consumer's
6 rights under this title, including, but not limited to, by:

- (A) Denying goods or services to the consumer.
 - (B) Charging different prices or rates for goods or services,
7 including through the use of discounts or other benefits or imposing
8 penalties.
 - (C) Providing a different level or quality of goods or services
9 to the consumer, ~~if the consumer exercises the consumer's rights under this title.~~
 - (D) Suggesting that the consumer will receive a different price
10 or rate for goods or services or a different level or quality of goods
11 or services.
- (2) Nothing in this subdivision prohibits a business from
12 charging a consumer a different price or rate, or from providing a

13 different level or quality of goods or services to the consumer, if
14 that difference is reasonably related to the value provided to the
15 consumer by the consumer's data.

(b) (1) A business may offer financial incentives, including
16 payments to consumers as compensation, for the collection of
17 personal information, the sale of personal information, or the
18 deletion of personal information. A business may also offer a
19 different price, rate, level, or quality of goods or services to the
20 consumer if that price or difference is directly related to the value
21 provided to the consumer by the consumer's data.

91

(2) A business that offers any financial incentives pursuant to
22 subdivision (a), shall notify consumers of the financial incentives
23 pursuant to Section 1798.135.

(3) A business may enter a consumer into a financial incentive
24 program only if the consumer gives the business prior opt-in
25 consent pursuant to Section 1798.135 which clearly describes the
26 material terms of the financial incentive program, and which may
27 be revoked by the consumer at any time.

(4) A business shall not use financial incentive practices that
28 are unjust, unreasonable, coercive, or usurious in nature.

29 SEC. 7. Section 1798.130 of the Civil Code, as added by
30 Section 3 of Chapter 55 of the Statutes of 2018, is amended to
31 read:

92

1 1798.130. (a) In order to comply with Sections 1798.100, 2
1798.105, 1798.110, 1798.115, and 1798.125, a business shall, in
3 a form that is reasonably accessible to consumers, ~~a business shall:~~

(1) Make available to consumers two or more designated
4 methods for submitting requests for information required to be
5 disclosed pursuant to Sections 1798.110 and 1798.115, including,
6 at a minimum, a toll-free telephone number, and if the business
7 maintains an Internet Web site, a Web site address.

(2) Disclose and deliver the required information to a consumer
8 free of charge within 45 days of receiving a verifiable consumer
9 request from the consumer. The business shall promptly take steps
10 to determine whether the request is a verifiable consumer request,
11 but this shall not extend the business's duty to disclose and deliver
12 the information within 45 days of receipt of the consumer's request.
13 The time period to provide the required information may be
14 extended once by an additional 45 days when reasonably necessary,
15 provided the consumer is provided notice of the extension within
16 the first 45-day period. The disclosure shall cover the 12-month
17 period preceding the business's receipt of the verifiable consumer
18 request and shall be made in writing and delivered through the
19 consumer's account with the business, if the consumer maintains
20 an account with the business, or by mail or electronically at the
21 consumer's option if the consumer does not maintain an account
22 with the business, in a readily useable format that allows the
23 consumer to transmit this information from one entity to another
24 entity without hindrance. The business shall not require the

25 consumer to create an account with the business in order to make
26 a verifiable consumer request.

(3) For purposes of subdivision (b) of Section 1798.110:

(A) To identify the consumer, associate the information provided
27 by the consumer in the verifiable consumer request to any personal
28 information previously collected by the business about the
29 consumer.

(B) Identify by category or categories the personal information
30 collected about the consumer in the preceding 12 months by
31 reference to the enumerated category or categories in subdivision ~~(e)~~
(c) that most closely describes the personal information collected.

(4) For purposes of subdivision (b) of Section 1798.115:

(A) Identify the consumer and associate the information
32 provided by the consumer in the verifiable consumer request to

92

1 any personal information previously collected by the business
2 about the consumer.

91

(B) Identify by category or categories the personal information
3 of the consumer that the business sold in the preceding 12 months
4 by reference to the enumerated category in subdivision (c) that
5 most closely describes the personal information, and provide the
6 categories of third parties to whom the consumer's personal
7 information was sold in the preceding 12 months by reference to
8 the enumerated category or categories in subdivision (c) that most
9 closely describes the personal information sold. The business shall
10 disclose the information in a list that is separate from a list
11 generated for the purposes of subparagraph (C).

(C) Identify by category or categories the personal information
12 of the consumer that the business disclosed for a business purpose
13 in the preceding 12 months by reference to the enumerated category
14 or categories in subdivision (c) that most closely describes the
15 personal information, and provide the categories of third parties
16 to whom the consumer's personal information was disclosed for
17 a business purpose in the preceding 12 months by reference to the
18 enumerated category or categories in subdivision (c) that most
19 closely describes the personal information disclosed. The business
20 shall disclose the information in a list that is separate from a list
21 generated for the purposes of subparagraph (B).

(5) Disclose the following information in its online privacy
22 policy or policies if the business has an online privacy policy or
23 policies and in any California-specific description of consumers'
24 privacy rights, or if the business does not maintain those policies,
25 on its Internet Web site, and update that information at least once
26 every 12 months:

(A) A description of a consumer's rights pursuant to Sections 31
1798.110, 1798.115, and 1798.125 and one or more designated
32 methods for submitting requests.

(B) For purposes of subdivision (c) of Section 1798.110, a list
33 of the categories of personal information it has collected about

34 consumers in the preceding 12 months by reference to the
35 enumerated category or categories in subdivision (c) that most
36 closely describe the personal information collected.
(C) For purposes of paragraphs (1) and (2) of subdivision (c)
37 of Section 1798.115, two separate lists:

92

- (i) A list of the categories of personal information it has sold
1 about consumers in the preceding 12 months by reference to the
2 enumerated category or categories in subdivision (c) that most
3 closely describe the personal information sold, or if the business
4 has not sold consumers' personal information in the preceding 12
5 months, the business shall disclose that fact.
- (ii) A list of the categories of personal information it has
6 disclosed about consumers for a business purpose in the preceding
7 12 months by reference to the enumerated category in subdivision ~~(e)~~
(c) that most closely describe the personal information disclosed,
8 or if the business has not disclosed consumers' personal
9 information for a business purpose in the preceding 12 months,
10 the business shall disclose that fact.
- (6) Ensure that all individuals responsible for handling consumer
11 inquiries about the business's privacy practices or the business's
12 compliance with

~~91~~
this
title
are
infor
med
of
all
requ
irem
ents
in

- 13 Sections 1798.110, 1798.115, 1798.125, and this section, and how
14 to direct consumers to exercise their rights under those sections.
- (7) Use any personal information collected from the consumer
15 in connection with the business's verification of the consumer's
16 request solely for the purposes of verification.
- (b) A business is not obligated to provide the information
17 required by Sections 1798.110 and 1798.115 to the same consumer
18 more than twice in a 12-month period.
- (c) The categories of personal information required to be
19 disclosed pursuant to Sections 1798.110 and 1798.115 shall follow
20 the definition of personal information in Section 1798.140.
21 SEC. 8. Section 1798.135 of the Civil Code, as added by
22 Section 3 of Chapter 55 of the Statutes of 2018, is amended to
23 read:
24 1798.135. (a) A business that is required to comply with

25 Section 1798.120 shall, in a form that is reasonably accessible to
26 consumers:

(1) Provide a clear and conspicuous link on the business's s
27 Internet homepage, titled "Do Not Sell My Personal Information,"
28 to an Internet Web page that enables a consumer, or a person
29 authorized by the consumer, to opt uout of the sale of the consumer's
30 personal information. A business shall not require a consumer to
31 create an account in order to direct the business not to sell the
32 consumer's personal information.

92

(2) Include a description of a consumer's rights pursuant to
1 Section 1798.120, along with a separate link to the "Do Not Sell
2 My Personal Information" Internet Web page in:

(A) Its online privacy policy or policies if the business has an
3 online privacy policy or policies.

(B) Any California-specific description of consumers' privacy
4 rights.

(3) Ensure that all individuals responsible for handling consumer
5 inquiries about the business's privacy practices or the business's
6 compliance with this title are informed of all requirements in
7 Section 1798.120 and this section and how to direct consumers to
8 exercise their rights under those sections.

(4) For consumers who exercise their right to opt uout of the sale
9 of their personal information, refrain from selling personal
10 information collected by the business about the consumer.

(5) For a consumer who has opted uout of the sale of the
11 consumer's personal information, respect the consumer's decision
12 to opt uout for at least 12 months before requesting that the
13 consumer authorize the sale of the consumer's personal
14 information.

(6) Use any personal information collected from the consumer
15 in connection with the submission of the consumer's opt-out
16 request solely for the purposes of complying with the opt-out
17 request.

(b) Nothing in this title shall be construed to require a business
18 to comply with the title by including the required links and text
19 on the homepage that the business makes available to the public
20 generally, if the business maintains a separate and additional
21 homepage that is dedicated to California consumers and that
22 includes the required links and text, and the business takes
23 reasonable steps to ensure that California consumers are directed
24 to the

ume
rs
and
not
the
hom
epag
e

25 made available to the public generally.

(c) A consumer may authorize another person solely to opt out
26 of the sale of the consumer's personal information on the
27 consumer's behalf, and a business shall comply with an opt out
28 request received from a person authorized by the consumer to act
29 on the consumer's behalf, pursuant to regulations adopted by the
30 Attorney General.

92

1 SEC. 9. Section 1798.140 of the Civil Code, as added by
2 Section 3 of Chapter 55 of the Statutes of 2018, is amended to
3 read:

4 1798.140. For purposes of this title:

(a) "Aggregate consumer information" means information that
5 relates to a group or category of consumers, from which individual
6 consumer identities have been removed, that is not linked or
7 reasonably linkable to any consumer or household, including via
8 a device. "Aggregate consumer information" does not mean one
9 or more individual consumer records that have been deidentified.

(b) "Biometric information" means an individual's
10 physiological, biological or behavioral characteristics, including
11 an individual's deoxyribonucleic acid (DNA), that can be used,
12 singly or in combination with each other or with other identifying
13 data, to establish individual identity. Biometric information
14 includes, but is not limited to, imagery of the iris, retina,
15 fingerprint, face, hand, palm, vein patterns, and voice recordings,
16 from which an identifier template, such as a faceprint, a minutiae
17 template, or a voiceprint, can be extracted, and keystroke patterns
18 or rhythms, gait patterns or rhythms, and sleep, health, or exercise
19 data that contain identifying information.

(c) "Business" means:

(1) A sole proprietorship, partnership, limited liability company,
20 corporation, association, or other legal entity that is organized or
21 operated for the profit or financial benefit of its shareholders or
22 other owners, that collects consumers' personal information, or
23 on the behalf of which such information is collected and that alone,
24 or jointly with others, determines the purposes and means of the
25 processing of consumers' personal information, that does business
26 in the State of California, and that satisfies one or more of the
27 following thresholds:

(A) Has annual gross revenues in excess of twenty-five million
28 dollars (\$25,000,000), as adjusted pursuant to paragraph (5) of
29 subdivision (a) of Section 1798.185.

(B) Alone or in combination, annually buys, receives for the

30 business's commercial purposes, sells, or shares for commercial
31 purposes, alone or in combination, the personal information of
32 50,000 or more consumers, households, or devices.
(C) Derives 50 percent or more of its annual revenues from
33 selling consumers' personal information.

92

(2) Any entity that controls or is controlled by a business, as
1 defined in paragraph (1), and that shares common branding with
2 the business. "Control" or "controlled" means ownership of, or
3 the power to vote, more than 50 percent of the outstanding shares
4 of any class of voting security of a business; control in any manner
5 over the election of a majority of the directors, or of

~~91~~
indi
vidu
als

6 exercising similar functions; or the power to exercise a controlling
7 influence over the management of a company. "Common branding"
8 means a shared name, servicemark, or trademark.

(d) "Business purpose" means the use of personal information
9 for the business's or a service provider's operational purposes, or
10 other notified purposes, provided that the use of personal
11 information shall be reasonably necessary and proportionate to
12 achieve the operational purpose for which the personal information
13 was collected or processed or for another operational purpose that
14 is compatible with the context in which the personal information
15 was collected. Business purposes are:

(1) Auditing related to a current interaction with the consumer
16 and concurrent transactions, including, but not limited to, counting
17 ad impressions to unique visitors, verifying positioning and quality
18 of ad impressions, and auditing compliance with this specification
19 and other standards.

(2) Detecting security incidents, protecting against malicious,
20 deceptive, fraudulent, or illegal activity, and prosecuting those
21 responsible for that activity.

(3) Debugging to identify and repair errors that impair existing
22 intended functionality.

(4) Short-term, transient use, provided the personal information
23 that is not disclosed to another third party and is not used to build
24 a profile about a consumer or otherwise alter an individual
25 consumer's experience outside the current interaction, including,
26 but not limited to, the contextual customization of ads shown as
27 part of the same interaction.

(5) Performing services on behalf of the business or service
28 provider, including maintaining or servicing accounts, providing
29 customer service, processing or fulfilling orders and transactions,
30 verifying customer information, processing payments, providing
31 financing, providing advertising or marketing services, providing
32 analytic services, or providing similar services on behalf of the
33 business or service provider.

- (6) Undertaking internal research for technological development
1 and demonstration.
- (7) Undertaking activities to verify or maintain the quality or
2 safety of a service or device that is owned, manufactured,
3 manufactured for, or controlled by the business, and to improve,
4 upgrade, or enhance the service or device that is owned,
5 manufactured, manufactured for, or controlled by the business.
- (e) “Collects,” “collected,” or “collection” means buying,
6 renting, gathering, obtaining, receiving, or accessing any personal
7 information pertaining to a consumer by any means. This includes
8 receiving information from the consumer, either actively or
9 passively, or by observing the consumer’s behavior.
- (f) “Commercial purposes” means to advance a person’s
10 commercial or economic interests, such as by inducing another
11 person to buy, rent, lease, join, subscribe to, provide, or exchange
12 products, goods, property, information, or services, or enabling or
13 effecting, directly or indirectly, a

~~91~~
com
merc
ial
trans
actio
n.

- 14 “Commercial purposes” do not include for the purpose of engaging
15 in speech that state or federal courts have recognized as
16 noncommercial speech, including political speech and journalism.
- (g) “Consumer” means a natural person who is a California
17 resident, as defined in Section 17014 of Title 18 of the California
18 Code of Regulations, as that section read on September 1, 2017,
19 however identified, including by any unique identifier.
- (h) “Deidentified” means information that cannot reasonably
20 identify, relate to, describe, be capable of being associated with,
21 or be linked, directly or indirectly, to a particular consumer,
22 provided that a business that uses deidentified information:
- (1) Has implemented technical safeguards that prohibit
23 reidentification of the consumer to whom the information may
24 pertain.
- (2) Has implemented business processes that specifically
25 prohibit reidentification of the information.
- (3) Has implemented business processes to prevent inadvertent
26 release of deidentified information.
- (4) Makes no attempt to reidentify the information.
- (i) “Designated methods for submitting requests” means a
27 mailing address, email address, Internet Web page, Internet Web
28 portal, toll-free telephone number, or other applicable contact
29 information, whereby consumers may submit a request or direction

1 under this title, and any new, consumer-friendly means of
2 contacting a business, as approved by the Attorney General
3 pursuant to Section 1798.185.

(j) “Device” means any physical object that is capable of
4 connecting to the Internet, directly or indirectly, or to another
5 device.

(k) “Health insurance information” means a consumer’s
6 insurance policy number or subscriber identification number, any
7 unique identifier used by a health insurer to identify the consumer,
8 or any information in the consumer’s application and claims
9 history, including any appeals records, if the information is linked
10 or reasonably linkable to a consumer or household, including via
11 a device, by a business or service provider.

12 ~~(H)~~ (L) “Homepage” means the introductory page of an Internet Web
13 site and any Internet Web page where personal information is
14 collected. In the case of an online service, such as a mobile
15 application, homepage means the application’s platform page or
16 download page, a link within the application, such as from the
17 application configuration, “About,” “Information,” or settings
18 page, and any other location that allows consumers to review the
19 notice required by subdivision (a) of Section 1798.145, including,
20 but not limited to, before downloading the application.

(m) “Infer” or “inference” means the derivation of information,
21 data, assumptions, or conclusions from facts, evidence, or another
22 source of information or data.

(n) “Person” means an individual, proprietorship, firm,
23 partnership, joint venture, syndicate, business trust, company,
24 corporation, limited liability company, association, committee,
25 and any other organization or group of persons acting in concert.

91

(o) ~~(H)~~ (1) “Personal information” means information that identifies,
26 relates to, describes, is capable of being associated with, or could
27 reasonably be linked, directly or indirectly, with a particular
28 consumer or household. Personal information includes, but is not
29 limited to, the following if it identifies, relates to, describes, is
30 capable of being associated with, or could be reasonably linked,
31 directly or indirectly, with a particular consumer or household:

(A) Identifiers such as a real name, alias, postal address, unique
32 personal identifier, online identifier, Internet Protocol address,
33 email address, account name, social security number, driver’s
34 license number, passport number, or other similar identifiers.

92

(B) Any categories of personal information described in
1 subdivision (e) of Section 1798.80.

(C) Characteristics of protected classifications under California
2 or federal law.

(D) Commercial information, including records of personal
3 property, products or services purchased, obtained, or considered,
4 or other purchasing or consuming histories or tendencies.

(E) Biometric information.

(F) Internet or other electronic network activity information,

including, but not limited to, browsing history, search history, and information regarding a consumer's interaction with an Internet Web site, application, or advertisement.

(G) Geolocation data.

(H) Audio, electronic, visual, thermal, olfactory, or similar information.

(I) Professional or employment-related information.

(J) Education information, defined as information that is not publicly available personally identifiable information as defined in the Family Educational Rights and Privacy Act (20 U.S.C. section 1232g, 34 C.F.R. Part 99).

(K) Inferences drawn from any of the information identified in this subdivision to create a profile about a consumer reflecting the consumer's preferences, characteristics, psychological trends, ~~preferences,~~ predispositions, behavior, attitudes, intelligence, abilities, and aptitudes.

(2) "Personal information" does not include publicly available information. For these purposes, "publicly available" means information that is lawfully made available from federal, state, or local government records, if any conditions associated with such information. "Publicly available" does not mean biometric information collected by a business about a consumer without the consumer's knowledge. Information is not "publicly available" if that data is used for a purpose that is not compatible with the purpose for which the data is maintained and made available in the government records or for which it is publicly maintained. "Publicly available" does not include consumer information that is deidentified or aggregate consumer information.

~~(p)~~ ~~(e)~~ "Probabilistic identifier" means the identification of a consumer or a device to a degree of certainty of more probable than not based on any categories of personal information included

1 in, or similar to, the categories enumerated in the definition of
2 personal information.

~~(q)~~ ~~(p)~~ "Processing" means any operation or set of operations that are performed on personal data or on sets of personal data, whether or not by automated means.

~~(r)~~ ~~(e)~~ "Pseudonymize" or "Pseudonymization" means the processing of personal information in a manner that renders the personal information no longer attributable to a specific consumer without the use of additional information, provided that the additional information is kept separately and is subject to technical and organizational measures to ensure that the personal information is not attributed to an identified or identifiable consumer.

~~(s)~~ ~~(e)~~ "Research" means scientific, systematic study and observation, including basic research or applied research that is in the public interest and that adheres to all other applicable ethics and privacy laws or studies conducted in the public interest in the area of public health. Research with personal information that may

- 15 have been collected from a consumer in the course of the
16 consumer's interactions with a business's service or device for
17 other purposes shall be:
- 18 (1) Compatible with the business purpose for which the personal
19 information was collected.
 - 20 (2) Subsequently pseudonymized and deidentified, or
21 deidentified and in the aggregate, such that the information cannot
22 reasonably identify, relate to, describe, be capable of being
23 associated with, or be linked, directly or indirectly, to a particular
24 consumer.
 - 25 (3) Made subject to technical safeguards that prohibit
26 reidentification of the consumer to whom the information may
27 pertain.
 - 28 (4) Subject to business processes that specifically prohibit
29 reidentification of the information.
 - 30 (5) Made subject to business processes to prevent inadvertent
31 release of deidentified information.
 - 32 (6) Protected from any reidentification attempts.
 - 33 (7) Used solely for research purposes that are compatible with
34 the context in which the personal information was collected.
 - 35 (8) Not be used for any commercial purpose.
 - 36 (9) Subjected by the business conducting the research to
37 additional security controls limit access to the research data to only

- 1 those individuals in a business as are necessary to carry out the
2 research purpose.
- 3 ~~(t)~~ ~~(1)~~ "Sell," "selling," "sale," or "sold," means selling, renting,
4 releasing, disclosing, disseminating, making available, transferring,
5 or otherwise communicating orally, in writing, or by electronic or
6 other means, a consumer's personal information by the business
7 to another business or a third party for monetary or other valuable
8 consideration.
- 9 (2) For purposes of this title, a business does not sell personal
10 information when:
- 11 (A) A consumer uses or directs the business to intentionally
12 disclose personal information or uses the business to intentionally
13 interact with a third party, provided the third party does not also
14 sell the personal information, unless that disclosure would be
15 consistent with the provisions of this title. An intentional interaction
16 occurs when the consumer intends

~~91~~ to
inter
act
with
the
third
part
y,

- 14 via one or more deliberate interactions. Hovering over, muting,
15 pausing, or closing a given piece of content does not constitute a

16 consumer's intent to interact with a third party.

(B) The business uses or shares an identifier for a consumer who has opted out of the sale of the consumer's personal information for the purposes of alerting third parties that the consumer has opted out of the sale of the consumer's personal information.

(C) The business uses or shares with a service provider personal information of a consumer that is necessary to perform a business ~~purposes~~ purpose if both of the following conditions are met: ~~services that the service provider performs on the business' behalf, provided that the service provider also does not sell the personal information.~~

(i) The business has provided notice that information being used or shared in its terms and conditions consistent with Section 30 1798.135.

(ii) The service provider does not further collect, sell, or use the personal information of the consumer except as necessary to perform the business purpose.

(D) The business transfers to a third party the personal information of a consumer as an asset that is part of a merger, acquisition, bankruptcy, or other transaction in which the third party assumes control of all or part of the business, provided that information is used or shared consistently with Sections 1798.110 and 1798.115. If a third party materially alters how it uses or shares the personal information of a consumer in a manner that is

1 materially inconsistent with the promises made at the time of
2 collection, it shall provide prior notice of the new or changed
3 practice to the consumer. The notice shall be sufficiently prominent
4 and robust to ensure that existing consumers can easily exercise
5 their choices consistently with Section 1798.120. This
6 subparagraph does not authorize a business to make material,
7 retroactive privacy policy changes or make other changes in their
8 privacy policy in a manner that would violate the Unfair and
9 Deceptive Practices Act (Chapter 5 (commencing with Section ~~17200~~)
17200) of Part 2 of Division 7 of the Business and Professions
10 Code).

(u) ~~(s)~~ "Service" or "services" means work, labor, and services, including services furnished in connection with the sale or repair of goods.

(v) ~~(t)~~ "Service provider" means a sole proprietorship, partnership, limited liability company, corporation, association, or other legal entity that is organized or operated for the profit or financial benefit of its shareholders or other owners, that processes information on behalf of a business and to which the business discloses a consumer's personal information for a business purpose pursuant to a written contract, provided that the contract prohibits the entity receiving the information from retaining, using, or disclosing the personal information for any purpose other than for the specific purpose of performing the services specified in the contract for the business, or as otherwise permitted by this title, including retaining, using, or disclosing the personal information for a commercial purpose other than providing the services specified in the contract with the business.

(w) ~~(u)~~ "Third party" means a person who is not any of the

26 following:

- (1) The business that collects personal information from consumers under this title.
- (2) (A) A person to whom the business discloses a consumer's personal information for a business purpose pursuant to a written contract, provided that the contract:
- (i) ~~(A)~~ Prohibits the person receiving the personal information from:
 - (I) ~~(I)~~ Selling the personal information.
 - (II) ~~(II)~~ Retaining, using, or disclosing the personal information for any purpose other than for the specific purpose of performing the services specified in the contract, including retaining, using, or

92

1 disclosing the personal information for a commercial purpose other than providing the services specified in the contract.

(iii) ~~(iii)~~ Retaining, using, or disclosing the information outside of the direct business relationship between the person and the business.

(ii) ~~(B)~~ Includes a certification made by the person receiving the personal information that the person understands the restrictions in subparagraph (A) and will comply with them.

(B) A person covered by this paragraph ~~(2)~~ that violates any of the restrictions set forth in this title shall be liable for the violations.

A business that discloses personal information to a person covered by this paragraph ~~(2)~~ in compliance with this paragraph ~~(2)~~ shall not be liable under this title if the person receiving the personal information uses it in violation of the restrictions set forth in this title, provided that, at the time of disclosing the personal information, the business does not have actual knowledge, or reason to believe, that the person intends to commit such a violation.

(x) "Unique identifier" or "Unique personal identifier" means a persistent identifier that can be used to recognize a consumer, a family, or a device that is linked to a consumer or family, over time and across different services, including, but not limited to, a device identifier; an Internet Protocol address; cookies, beacons, pixel tags, mobile ad identifiers, or similar technology; customer number, unique pseudonym, or user alias; telephone numbers, or other forms of persistent or probabilistic identifiers that can be used to identify a particular consumer or device. For purposes of this subdivision, "family" means a custodial parent or guardian and any minor children over which the parent or guardian has custody.

(y) "Verifiable consumer request" means a request that is made by a consumer, by a consumer on behalf of the consumer's minor child, or by a natural person or a person registered with the Secretary of State, authorized by the consumer to act on the consumer's behalf, and that the business can reasonably verify, pursuant to regulations adopted by the Attorney General pursuant to paragraph (7) of subdivision (a) of Section 1798.185 to be the consumer about whom the business has collected personal

34 information. A business is not obligated to provide information to
35 the consumer pursuant to Sections 1798.110 and 1798.115 if the

92

1 business cannot verify, pursuant this subdivision and regulations
2 adopted by the Attorney General pursuant to paragraph (7) of
3 subdivision (a) of Section 1798.185, that the consumer making
4 the request is the consumer about whom the business has collected

91

5 information or is a person authorized by the consumer to act on
6 such consumer's behalf.

7 SEC. 10. Section 1798.145 of the Civil Code, as added by
8 Section 3 of Chapter 55 of the Statutes of 2018, is amended to
9 read:

10 1798.145. (a) The obligations imposed on businesses by this
11 title shall not restrict a business's ability to:

- 12 (1) Comply with federal, state, or local laws.
- 13 (2) Comply with a civil, criminal, or regulatory inquiry,
14 investigation, subpoena, or summons by federal, state, or local
15 authorities.
- 16 (3) Cooperate with law enforcement agencies concerning
17 conduct or activity that the business, service provider, or third
18 party reasonably and in good faith believes may violate federal,
19 state, or local law.
- 20 (4) Exercise or defend legal claims.
- 21 (5) Collect, use, retain, sell, or disclose consumer information
22 that is deidentified or in the aggregate consumer information.
- 23 (6) Collect or sell a consumer's personal information if every
24 aspect of that commercial conduct takes place wholly outside of
25 California. For purposes of this title, commercial conduct takes
26 place wholly outside of California if the business collected that
27 information while the consumer was outside of California, no part
28 of the sale of the consumer's personal information occurred in
29 California, and no personal information collected while the
30 consumer was in California is sold. This paragraph shall not permit
31 a business from storing, including on a device, personal information
32 about a consumer when the consumer is in California and then
collecting that personal information when the consumer and stored
personal information is outside of California.
- (b) The obligations imposed on businesses by Sections 1798.110
to 1798.135, inclusive, shall not apply where compliance by the
business with the title would violate an evidentiary privilege under
California law and shall not prevent a business from providing the
personal information of a consumer to a person covered by an

92

1 evidentiary privilege under California law as part of a privileged
2 communication.

- (c) ~~This act shall not apply to protected or health information that is collected by a covered entity governed by the Confidentiality of Medical Information Act (Part 2.6 (commencing with Section 56 of Division 1)).~~

~~or governed by the privacy, security, and breach notification rules issued by the federal Department of Health and Human Services, Parts 160 and 164 of Title 45 of the Code of Federal Regulations, established pursuant to the Health Insurance Portability and Availability Act of 1996. For purposes of this subdivision, the definition of “medical information” in Section 56.05 shall apply and the definitions of “protected health information” and “covered entity” from the federal privacy rule shall apply. (1)~~

This title shall not apply to any of the following:

- (A) Medical information governed by the Confidentiality of
Medical Information Act (Part 2.6 (commencing with Section 56)
of Division 1) or protected health information that is collected by
a covered entity or business associate governed by the privacy,
security, and breach notification rules issued by the United States
Department of Health and Human Services, Parts 160 and 164 of
Title 45 of the Code of Federal Regulations, established pursuant
to the Health Insurance Portability and Accountability Act of 1996
(Public Law 104-191) and the Health Information Technology for
Economic and Clinical Health Act (Public Law 111-5).
- (B) A provider of health care governed by the Confidentiality
of Medical Information Act (Part 2.6 (commencing with Section
56) of Division 1) or a covered entity governed by the privacy,
security, and breach notification rules issued by the United States
Department of Health and Human Services, Parts 160 and 164 of
Title 45 of the Code of Federal Regulations, established pursuant
to the Health Insurance Portability and Accountability Act of 1996
(Public Law 104-191), to the extent the provider or covered entity
maintains patient information in the same manner as medical
information or protected health information as described in
subparagraph (A) of this section.
- (C) Information collected as part of a clinical trial subject to the
Federal Policy for the Protection of Human Subjects, also known
as the Common Rule, pursuant to good clinical practice guidelines
issued by the International Council for Harmonisation or pursuant
to human subject protection requirements of the United States
Food and Drug Administration.
- (2) For purposes of this subdivision, the definitions of “medical
information” and “provider of health care” in Section 56.05 shall
apply and the definitions of “business associate,” “covered entity,”
and “protected health information” in Section 160.103 of Title 45
of the Code of Federal Regulations shall apply.
- (d) This title shall not apply to the sale of personal information
to or from a consumer reporting agency if that information is to
be reported in, or used to generate, a consumer report as defined
by subdivision (d) of Section 1681a of Title 15 of the United States

1 Code, and use of that information is limited by the federal Fair
2 Credit Reporting Act (15 U.S.C. Sec. 1681 et seq.).

91

(e) This title shall not apply to personal information collected,
processed, sold, or disclosed pursuant to the federal
Gramm-Leach-Bliley Act (Public Law 106-102), and implementing
regulations, if it is in conflict

~~with that law.~~

regulations, or the California Financial Information Privacy Act (Division 1.4 (commencing with Section 4050) of the Financial Code). This subdivision shall not apply to Section 1798.150.

(f) This title shall not apply to personal information collected, processed, sold, or disclosed pursuant to the Driver's Privacy Protection Act of 1994 (18 U.S.C. Sec. 2721 et seq.); ~~if it is in conflict with that act.~~ This section subdivision shall not apply to Section 1798.150.

(g) Notwithstanding a business's obligations to respond to and honor consumer rights requests pursuant to this title:

(1) A time period for a business to respond to any verified consumer request may be extended by up to 90 additional days where necessary, taking into account the complexity and number of the requests. The business shall inform the consumer of any such extension within 45 days of receipt of the request, together with the reasons for the delay.

(2) If the business does not take action on the request of the consumer, the business shall inform the consumer, without delay and at the latest within the time period permitted of response by this section, of the reasons for not taking action and any rights the consumer may have to appeal the decision to the business.

(3) If requests from a consumer are manifestly unfounded or excessive, in particular because of their repetitive character, a business may either charge a reasonable fee, taking into account the administrative costs of providing the information or communication or taking the action requested, or refuse to act on the request and notify the consumer of the reason for refusing the request. The business shall bear the burden of demonstrating that any verified consumer request is manifestly unfounded or excessive.

(h) A business that discloses personal information to a service provider shall not be liable under this title if the service provider receiving the personal information uses it in violation of the restrictions set forth in the title, provided that, at the time of disclosing the personal information, the business does not have actual knowledge, or reason to believe, that the service provider

92

intends to commit such a violation. A service provider shall likewise not be liable under this title for the obligations of a business for which it provides services as set forth in this title.

(i) This title shall not be construed to require a business to reidentify or otherwise link information that is not maintained in a manner that would be considered personal information.

(j) The rights afforded to consumers and the obligations imposed on the business in this title shall not adversely affect the rights and freedoms of other consumers.

The rights afforded to consumers and the obligations imposed on any business under this title shall not apply to the extent that they infringe on the noncommercial activities of a person or entity described in subdivision (b) of Section 2 of Article I of the California Constitution.

SEC. 11. Section 1798.150 of the Civil Code, as added by Section 3 of Chapter 55 of the Statutes of 2018, is amended to

14 read:

15 1798.150. (a) (1) Any consumer whose nonencrypted or
16 nonredacted personal information, as defined in subparagraph (A)
17 of paragraph (1) of subdivision (d) of Section 1798.81.5, is subject
18 to an unauthorized access and exfiltration, theft, or disclosure as
19 a result of the business's violation of the duty to implement and
20 maintain reasonable security procedures and practices appropriate
21 to the nature of the information to protect the personal information
22 may institute a civil action for any of the following:

- 91
- (A) To recover damages in an amount not less than one hundred
23 dollars (\$100) and not greater than seven hundred and fifty (\$750)
24 per consumer per incident or actual damages, whichever is greater.
 (B) Injunctive or declaratory relief.
 (C) Any other relief the court deems proper.
 (2) In assessing the amount of statutory damages, the court shall
25 consider any one or more of the relevant circumstances presented
26 by any of the parties to the case, including, but not limited to, the
27 nature and seriousness of the misconduct, the number of violations,
28 the persistence of the misconduct, the length of time over which
29 the misconduct occurred, the willfulness of the defendant's
30 misconduct, and the defendant's assets, liabilities, and net worth.
 (b) Actions pursuant to this section may be brought by a
31 consumer if all of the following requirements are met:

92

- (1) ~~Prior~~ if, prior to initiating any action against a business for
1 statutory damages on an individual or class-wide basis, a consumer
2 ~~shall provide~~ provides a business 30 days' written notice
3 identifying the specific provisions of this title the consumer alleges
4 have been or are being violated. In the event a cure is possible, if
5 within the 30 days the business actually cures the noticed violation
6 and provides the consumer an express written statement that the
7 violations have been cured and that no further violations shall
8 occur, no action for individual statutory damages or class-wide
9 statutory damages may be initiated against the business. No notice
10 shall be required prior to an individual consumer initiating an
11 action solely for actual pecuniary damages suffered as a result of
12 the alleged violations of this title. If a business continues to violate
13 this title in breach of the express written statement provided to the
14 consumer under this section, the consumer may initiate an action
15 against the business to enforce the written statement and may
16 pursue statutory damages for each breach of the express written
17 statement, as well as any other violation of the title that postdates
18 the written statement.
 (2) ~~A consumer bringing an action as defined in paragraph (1) of subdivision (c) shall notify the~~
19 ~~Attorney General within 30 days that the action has been filed.~~
 (3) ~~The Attorney General, upon receiving such notice shall,~~
20 ~~within 30 days, do one of the following:~~
 (A) ~~Notify the consumer bringing the action of the Attorney~~

21 General's intent to prosecute an action against the violation. If the
22 Attorney General does not prosecute within six months, the
23 consumer may proceed with the action.
24 (B) Refrain from acting within the 30 days, allowing the
25 consumer bringing the action to proceed.
26 (C) Notify the consumer bringing the action that the consumer
27 shall not proceed with the action.
28 (c) The cause of action established by this section shall apply
29 only to violations as defined in subdivision (a) and shall not be
(e) based on violations of any other section of this title. Nothing in
this ~~act~~ title shall be interpreted to serve as the basis for a private right
of action under any other law. This shall not be construed to

91
relie
ve

30 any party from any duties or obligations imposed under other law
31 or the United States or California Constitution.

1 SEC. 12. Section 1798.155 of the Civil Code, as added by
2 Section 3 of Chapter 55 of the Statutes of 2018, is amended to
3 read:
4 1798.155. (a) Any business or third party may seek the opinion
5 of the Attorney General for guidance on how to comply with the
6 provisions of this title.
7 (b) ~~(a)~~ A business shall be in violation of this title if it fails to cure
8 any alleged violation within 30 days after being notified of alleged
9 noncompliance. Any business, service provider, or other person
10 that violates this title shall be subject to an injunction and liable
11 for a civil penalty ~~as provided in Section 17206 of the Business and Professions Code~~ of not more than
12 two thousand five hundred
13 dollars (\$2,500) for each violation or seven thousand five hundred
14 dollars (\$7,500) for each intentional violation, which shall be
15 assessed and recovered in a civil action brought in the name of the
16 people of the State of California by the Attorney General. The civil
17 penalties provided for in this section shall be exclusively assessed
and recovered in a civil action brought in the name of the people
of the State of California by the Attorney General.
~~(b) Notwithstanding Section 17206 of the Business and Professions Code,~~
~~any person, business, or service provider that intentionally violates this title~~
~~may be liable for a civil penalty of up to seven thousand five hundred dollars~~
~~(\$7,500) for each violation.~~
(c) ~~Notwithstanding Section 17206 of the Business and Professions Code, any~~ Any civil penalty assessed
pursuant to ~~Section 17206~~ for a violation of this title, and
the proceeds of any settlement of an action brought pursuant to
subdivision (a), ~~shall be allocated as follows: (1) Twenty percent to the Consumer Privacy Fund, created~~
~~within the General Fund pursuant to subdivision (a) of Section 1798.109, with the intent to fully offset any~~
~~costs incurred by the state courts and the Attorney General in connection with this title.~~ b), shall be
deposited in the Consumer Privacy Fund.
~~(2) Eighty percent to the jurisdiction on whose behalf the action leading to~~

the civil penalty was brought.

~~(d) It is the intent of the Legislature that the percentages specified in subdivision (c) be adjusted as necessary to ensure that any civil penalties assessed for a violation of this title fully offset any costs incurred by the state courts and the Attorney General in connection with this title, including a sufficient amount to cover any deficit from a prior fiscal year.~~

~~1798.160. (a) A special fund to be known as the "Consumer Privacy Fund" is hereby~~

20 ~~created within the General Fund in the State Treasury, and is available upon appropriation by the Legislature to offset any costs incurred by the state courts in connection with actions brought to enforce this title and any costs incurred by the Attorney General in carrying out the Attorney General's duties under this title.~~

~~(b) Funds transferred to the Consumer Privacy Fund shall be used exclusively to offset any costs incurred by the state courts and the Attorney General in connection with this title. These funds shall not be subject to appropriation or transfer by the Legislature for any other purpose, unless the Director of Finance determines that the funds are in excess of the funding needed to fully offset the costs incurred by the state courts and the Attorney General in connection with this title, in which case the Legislature may appropriate excess funds for other purposes.~~

91

~~1798.175. This title is intended to further the constitutional right of privacy and to supplement existing laws relating to consumers' personal information, including, but not limited to, Chapter 22 (commencing with Section 22575) of Division 8 of the Business and Professions Code and Title 1.81 (commencing with Section 1798.80). The provisions of this title are not limited to information collected electronically or over the Internet, but apply to the collection and sale of all personal information collected by a business from consumers. Wherever possible, law relating to consumers' personal information should be construed to harmonize with the provisions of this title, but in the event of a conflict between other laws and the provisions of this title, the provisions of the law that afford the greatest protection for the right of privacy for consumers shall control.~~

~~1798.180. This title is a matter of statewide concern and supersedes and preempts all rules, regulations, codes, ordinances, and other laws adopted by a city, county, city and county, municipality, or local agency regarding the collection and sale of consumers' personal information by a business.~~

21 Section 1798.160 with the intent to fully offset any costs incurred
22 by the state courts and the Attorney General in connection with
23 this title.

24 SEC. 13. Section 1798.185 of the Civil Code, as added by
25 Section 3 of Chapter 55 of the Statutes of 2018, is amended to
26 read:

27 1798.185. (a) On or before ~~January~~July 1, 2020, the Attorney General
28 shall solicit broad public participation ~~to~~and adopt regulations to
29 further the purposes of this title, including, but not limited to, the
30 following areas:

(1) Updating as needed additional categories of personal
31 information to those enumerated in subdivision (c) of Section
32 1798.130 and subdivision ~~(e)~~ (o) of Section 1798.140 in order to
33 address changes in technology, data collection practices, obstacles
34 to implementation, and privacy concerns.

(2) Updating as needed the definition of unique identifiers to
35 address changes in technology, data collection, obstacles to
36 implementation, and privacy concerns, and additional categories

1 to the definition of designated methods for submitting requests to
2 facilitate a consumer's ability to obtain information from a business
3 pursuant to Section 1798.130.

(3) Establishing any exceptions necessary to comply with state
4 or federal law, including, but not limited to, those relating to trade
5 secrets and intellectual property rights, within one year of passage
6 of this title and as needed thereafter.

(4) Establishing rules and procedures for the following, ~~within one year of passage of this title and as
 needed thereafter:~~

(A) To facilitate and govern the submission of a request by a
7 consumer to opt out of the sale of personal information pursuant
8 to paragraph (1) of subdivision (a) of Section 1798.145.

(B) To govern business compliance with a consumer's opt-out
9 request.

(C) ~~The~~For the development and use of a recognizable and uniform
10 opt-out logo or button by all businesses to promote consumer
11 awareness of the opportunity to opt out of the sale of personal
12 information.

(5) Adjusting the monetary threshold in subparagraph (A) of
13 paragraph ~~(1)~~ (1) of subdivision ~~(b)~~ (c) of Section ~~1798.106~~ 1798.140 in January
14 of every odd-numbered year to reflect any increase in the Consumer
15 Price Index.

(6) Establishing rules, procedures, and any exceptions necessary
16 to ensure that the notices and information that businesses are
17 required to provide pursuant to this title are provided in a manner
18 that may be easily understood

~~91~~ by
 the
 aver
 age
 cons
 ume
 r,
 are

19 accessible to consumers with disabilities, and are available in the
20 language primarily used to interact with the consumer, including
21 establishing rules and guidelines regarding financial incentive
22 offerings, within one year of passage of this title and as needed
23 thereafter.

(7) Establishing rules and procedures to further the purposes of
24 Sections 1798.110 and 1798.115 and to facilitate a consumer's or
25 the consumer's authorized agent's ability to obtain information
26 pursuant to Section 1798.130, with the goal of minimizing the
27 administrative burden on consumers, taking into account available
28 technology, security concerns, and the burden on the business, to
29 govern a business's determination that a request for information
30 received by a consumer is a verifiable consumer request, including
31 treating a request submitted through a password-protected account
32 maintained by the consumer with the business while the consumer

1 is logged into the account as a verifiable consumer request and
 2 providing a mechanism for a consumer who does not maintain an
 3 account with the business to request information through the
 4 business's authentication of the consumer's identity, within one
 5 year of passage of this title and as needed thereafter.

(b) The Attorney General may adopt additional regulations as
 6 necessary to further the purposes of this title.

~~1798.190. If a series of steps or transactions were component parts of a
 single transaction intended from the beginning to be taken with the intention
 of avoiding the reach of this title, including the disclosure of information by
 a business to a third party in order to avoid the definition of sell, a court shall
 disregard the intermediate steps or transactions for purposes of effectuating
 the purposes of this title.~~

(c) The Attorney General shall not bring an enforcement action
 7 under this title until six months after the publication of the final
 8 regulations issued pursuant to this section or July 1, 2020,
 9 whichever is sooner.

10 SEC. 14. Section 1798.192 of the Civil Code, as added by
 11 Section 3 of Chapter 55 of the Statutes of 2018, is amended to
 12 read:

13 1798.192. Any provision of a contract or agreement of any
 14 kind that purports to waive or limit in any way a consumer's rights
 15 under this title, including, but not limited to, any right to a remedy
 16 or means of enforcement, shall be deemed contrary to public policy
 17 and shall be void and unenforceable. This section shall not prevent
 18 a consumer from declining to request information from a business,
 19 declining to opt out of a business's sale of the consumer's personal
 20 information, or authorizing a business to sell the consumer's
 21 personal information after previously opting out.

22 SEC. 15. Section 1798.196 of the Civil Code, as added by
 23 Section 3 of Chapter 55 of the Statutes of 2018, is amended to
 24 read:

25 ~~1798.194. This title shall be liberally construed to effectuate its purposes.~~ 1798.196. This title is
 intended to supplement federal and state
 26 law, if permissible, but shall not apply if such application is
 27 preempted by, or in conflict with, federal law or the United States
 28 or California Constitution.

29 SEC. 16. Section 1798.198 of the Civil Code, as added by
 30 Section 3 of Chapter 55 of the Statutes of 2018, is amended to
 31 read:

32 1798.198. (a) Subject to limitation provided in subdivision
 33 (b), and in Section 1798.199, this title shall be operative January
 36 1, 2020.

(b) This ~~act~~title shall become operative only if initiative measure
 37 No. 17-0039, The Consumer Right to Privacy Act of 2018, is
 38 withdrawn from the ballot pursuant to Section 9604 of the Elections
 39 Code.

~~SEC. 4. (a) The provisions of this bill are severable. If any provision of
 this bill or its application is held invalid, that invalidity shall not affect~~

~~other provisions or applications that can be given effect without the invalid provision or application.~~

92

1 SEC. 17. Section 1798.199 is added to the Civil Code, to read:
2 1798.199. Notwithstanding Section 1798.198, Section 1798.180
3 shall be operative on the effective date of the act adding this
4 section.

5 SEC. 18. This act is an urgency statute necessary for the
6 immediate preservation of the public peace, health, or safety within
7 the meaning of Article IV of the California Constitution and shall
8 go into immediate effect. The facts constituting the necessity are:

9 In order to prevent the confusion created by the enactment of
10 conflicting local laws regarding the collection and sale of
personal

11 information, it is necessary that this act take immediate effect.

Document comparison by Workshare Compare on Monday, September 03, 2018
4:31:57 PM

Input:	
Document 1 ID	interwovenSite://USDMS/America/69860608/1
Description	#69860608v1<America> - California Data Privacy Statute 20170AB375_91
Document 2 ID	interwovenSite://USDMS/America/69923976/1
Description	#69923976v1<America> - SB 1121
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	1153
Deletions	133
Moved from	19
Moved to	19
Style change	0
Format changed	0
Total changes	1324