

AMENDED IN SENATE APRIL 4, 2019

SENATE BILL

No. 753

Introduced by Senator Stern

February 22, 2019

~~An act to amend Section 1798.135 of the Civil Code, relating to privacy.~~ *An act to amend Section 1798.140 of the Civil Code, relating to privacy.*

LEGISLATIVE COUNSEL'S DIGEST

SB 753, as amended, Stern. ~~California Consumer Privacy Act.~~ *California Consumer Privacy Act: definition of sale: advertisement service exception.*

Existing law, the California Consumer Privacy Act of 2018, beginning on January 1, 2020, grants a consumer various rights with regard to personal information relating to that consumer that a business collects, discloses for a business purpose, or sells, as provided. The act defines various terms for these purposes. The act defines the terms "sell," "selling," "sale," or "sold" to mean selling, renting, releasing, disclosing, disseminating, making available, transferring, or otherwise communicating orally, in writing, or by electronic or other means, a consumer's personal information by the business to another business or a third party for monetary or other valuable consideration. The act provides that, for purposes of the act, a business does not sell personal information in specified circumstances, including, among other exceptions, when 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. The act imposes certain responsibilities on the Attorney General in connection with the

act, including the creation of regulations and providing guidance on how to comply with the act.

This bill, additionally, would provide that, for purposes of the act, a business does not sell personal information if the business, pursuant to a written contract, shares, discloses, or otherwise communicates to another business or third party a unique identifier only to the extent necessary to serve or audit a specific advertisement to the consumer. The bill would require the contract to prohibit the other business or third party from sharing, selling, or otherwise communicating the information except as necessary to serve or audit advertisement from the business.

~~Existing law, the California Consumer Privacy Act of 2018, beginning on January 1, 2020, grants a consumer various rights with regard to personal information relating to that consumer that is held by a business, including the right to direct the business not to sell the consumer's personal information. The act requires a business that sells consumers' personal information to 3rd parties to provide notice to consumers that this information may be sold and that consumers have the right to direct the business to not to sell this information. The act requires the business to comply by, among other things, providing on its internet homepage a specified link that enables a consumer to direct the business not to sell the consumer's personal information and including that link with a description of a consumer's specified rights in any of the business's online privacy policy or policies and any California-specific descriptions of consumers' privacy rights.~~

~~This bill would make nonsubstantive changes to the provision detailing those compliance requirements.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

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

- 1 **SECTION 1.** *Section 1798.140 of the Civil Code is amended*
- 2 *to read:*
- 3 1798.140. For purposes of this title:
- 4 (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

1 a device. “Aggregate consumer information” does not mean one
2 or more individual consumer records that have been deidentified.

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

14 (c) “Business” means:

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

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

27 (B) Alone or in combination, annually buys, receives for the
28 business’s commercial purposes, sells, or shares for commercial
29 purposes, alone or in combination, the personal information of
30 50,000 or more consumers, households, or devices.

31 (C) Derives 50 percent or more of its annual revenues from
32 selling consumers’ personal information.

33 (2) Any entity that controls or is controlled by a business, as
34 defined in paragraph (1), and that shares common branding with
35 the business. “Control” or “controlled” means ownership of, or
36 the power to vote, more than 50 percent of the outstanding shares
37 of any class of voting security of a business; control in any manner
38 over the election of a majority of the directors, or of individuals
39 exercising similar functions; or the power to exercise a controlling

1 influence over the management of a company. “Common branding”
2 means a shared name, servicemark, or trademark.

3 (d) “Business purpose” means the use of personal information
4 for the business’s or a service provider’s operational purposes, or
5 other notified purposes, provided that the use of personal
6 information shall be reasonably necessary and proportionate to
7 achieve the operational purpose for which the personal information
8 was collected or processed or for another operational purpose that
9 is compatible with the context in which the personal information
10 was collected. Business purposes are:

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

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

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

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

27 (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.

34 (6) Undertaking internal research for technological development
35 and demonstration.

36 (7) Undertaking activities to verify or maintain the quality or
37 safety of a service or device that is owned, manufactured,
38 manufactured for, or controlled by the business, and to improve,
39 upgrade, or enhance the service or device that is owned,
40 manufactured, manufactured for, or controlled by the business.

1 (e) “Collects,” “collected,” or “collection” means buying,
2 renting, gathering, obtaining, receiving, or accessing any personal
3 information pertaining to a consumer by any means. This includes
4 receiving information from the consumer, either actively or
5 passively, or by observing the consumer’s behavior.

6 (f) “Commercial purposes” means to advance a person’s
7 commercial or economic interests, such as by inducing another
8 person to buy, rent, lease, join, subscribe to, provide, or exchange
9 products, goods, property, information, or services, or enabling or
10 effecting, directly or indirectly, a commercial transaction.
11 “Commercial purposes” do not include for the purpose of engaging
12 in speech that state or federal courts have recognized as
13 noncommercial speech, including political speech and journalism.

14 (g) “Consumer” means a natural person who is a California
15 resident, as defined in Section 17014 of Title 18 of the California
16 Code of Regulations, as that section read on September 1, 2017,
17 however identified, including by any unique identifier.

18 (h) “Deidentified” means information that cannot reasonably
19 identify, relate to, describe, be capable of being associated with,
20 or be linked, directly or indirectly, to a particular consumer,
21 provided that a business that uses deidentified information:

22 (1) Has implemented technical safeguards that prohibit
23 reidentification of the consumer to whom the information may
24 pertain.

25 (2) Has implemented business processes that specifically
26 prohibit reidentification of the information.

27 (3) Has implemented business processes to prevent inadvertent
28 release of deidentified information.

29 (4) Makes no attempt to reidentify the information.

30 (i) “Designated methods for submitting requests” means a
31 mailing address, email address, Internet Web page, Internet Web
32 portal, toll-free telephone number, or other applicable contact
33 information, whereby consumers may submit a request or direction
34 under this title, and any new, consumer-friendly means of
35 contacting a business, as approved by the Attorney General
36 pursuant to Section 1798.185.

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

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

8 (l) “Homepage” means the introductory page of an ~~Internet Web~~
9 ~~site internet website and any Internet Web~~ *an internet web* page
10 where personal information is collected. In the case of an online
11 service, such as a mobile application, homepage means the
12 application’s platform page or download page, a link within the
13 application, such as from the application configuration, “About,”
14 “Information,” or settings page, and any other location that allows
15 consumers to review the notice required by subdivision (a) of
16 ~~Section 1798.145, 1798.135~~, including, but not limited to, before
17 downloading the application.

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

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

25 (o) (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:

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

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

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

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

4 (E) Biometric information.

5 (F) Internet or other electronic network activity information,
6 including, but not limited to, browsing history, search history, and
7 information regarding a consumer's interaction with an ~~Internet~~
8 ~~Web site~~, *internet website*, application, or advertisement.

9 (G) Geolocation data.

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

12 (I) Professional or employment-related information.

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

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

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

34 (p) "Probabilistic identifier" means the identification of a
35 consumer or a device to a degree of certainty of more probable
36 than not based on any categories of personal information included
37 in, or similar to, the categories enumerated in the definition of
38 personal information.

1 (q) “Processing” means any operation or set of operations that
2 are performed on personal data or on sets of personal data, whether
3 or not by automated means.

4 (r) “Pseudonymize” or “Pseudonymization” means the
5 processing of personal information in a manner that renders the
6 personal information no longer attributable to a specific consumer
7 without the use of additional information, provided that the
8 additional information is kept separately and is subject to technical
9 and organizational measures to ensure that the personal information
10 is not attributed to an identified or identifiable consumer.

11 (s) “Research” means scientific, systematic study and
12 observation, including basic research or applied research that is in
13 the public interest and that adheres to all other applicable ethics
14 and privacy laws or studies conducted in the public interest in the
15 area of public health. Research with personal information that may
16 have been collected from a consumer in the course of the
17 consumer’s interactions with a business’s service or device for
18 other purposes shall be:

19 (1) Compatible with the business purpose for which the personal
20 information was collected.

21 (2) Subsequently pseudonymized and deidentified, or
22 deidentified and in the aggregate, such that the information cannot
23 reasonably identify, relate to, describe, be capable of being
24 associated with, or be linked, directly or indirectly, to a particular
25 consumer.

26 (3) Made subject to technical safeguards that prohibit
27 reidentification of the consumer to whom the information may
28 pertain.

29 (4) Subject to business processes that specifically prohibit
30 reidentification of the information.

31 (5) Made subject to business processes to prevent inadvertent
32 release of deidentified information.

33 (6) Protected from any reidentification attempts.

34 (7) Used solely for research purposes that are compatible with
35 the context in which the personal information was collected.

36 (8) Not be used for any commercial purpose.

37 (9) Subjected by the business conducting the research to
38 additional security controls limit access to the research data to only
39 those individuals in a business as are necessary to carry out the
40 research purpose.

1 (t) (1) “Sell,” “selling,” “sale,” or “sold,” means selling, renting,
2 releasing, disclosing, disseminating, making available, transferring,
3 or otherwise communicating orally, in writing, or by electronic or
4 other means, a consumer’s personal information by the business
5 to another business or a third party for monetary or other valuable
6 consideration.

7 (2) For purposes of this title, a business does not sell personal
8 information ~~when:~~ *if any of the following apply:*

9 (A) A consumer uses or directs the business to intentionally
10 disclose personal information or uses the business to intentionally
11 interact with a third party, provided the third party does not also
12 sell the personal information, unless that disclosure would be
13 consistent with the provisions of this title. An intentional interaction
14 occurs when the consumer intends to interact with the third party,
15 via one or more deliberate interactions. Hovering over, muting,
16 pausing, or closing a given piece of content does not constitute a
17 consumer’s intent to interact with a third party.

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

23 (C) The business uses or shares with a service provider personal
24 information of a consumer that is necessary to perform a business
25 purpose if both of the following conditions are met:

26 (i) The business has provided notice that information being used
27 or shared in its terms and conditions consistent with Section
28 1798.135.

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

32 (D) The business transfers to a third party the personal
33 information of a consumer as an asset that is part of a merger,
34 acquisition, bankruptcy, or other transaction in which the third
35 party assumes control of all or part of the business, provided that
36 information is used or shared ~~consistently~~ *consistent* with Sections
37 1798.110 and 1798.115. If a third party materially alters how it
38 uses or shares the personal information of a consumer in a manner
39 that is materially inconsistent with the promises made at the time
40 of collection, it shall provide prior notice of the new or changed

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

10 (E) (i) *Pursuant to a written contract, the business shares,*
11 *discloses, or otherwise communicates to another business or third*
12 *party an online identifier, an Internet Protocol address, a cookie*
13 *identifier, a device identifier, or any unique identifier only to the*
14 *extent necessary to deliver, show, measure, or otherwise serve or*
15 *audit a specific advertisement to the consumer.*

16 (ii) *The contract specified in clause (i) shall prohibit the other*
17 *business or third party from sharing, selling, or otherwise*
18 *communicating the information except as necessary to deliver,*
19 *show, measure, or otherwise serve or audit an advertisement from*
20 *the business.*

21 (u) “Service” or “services” means work, labor, and services,
22 including services furnished in connection with the sale or repair
23 of goods.

24 (v) “Service provider” means a sole proprietorship, partnership,
25 limited liability company, corporation, association, or other legal
26 entity that is organized or operated for the profit or financial benefit
27 of its shareholders or other owners, that processes information on
28 behalf of a business and to which the business discloses a
29 consumer’s personal information for a business purpose pursuant
30 to a written contract, provided that the contract prohibits the entity
31 receiving the information from retaining, using, or disclosing the
32 personal information for any purpose other than for the specific
33 purpose of performing the services specified in the contract for
34 the business, or as otherwise permitted by this title, including
35 retaining, using, or disclosing the personal information for a
36 commercial purpose other than providing the services specified in
37 the contract with the business.

38 (w) “Third party” means a person who is not any of the
39 following:

1 (1) The business that collects personal information from
2 consumers under this title.

3 (2) (A) A person to whom the business discloses a consumer’s
4 personal information for a business purpose pursuant to a written
5 contract, provided that the contract:

6 (i) Prohibits the person receiving the personal information from:

7 (I) Selling the personal information.

8 (II) Retaining, using, or disclosing the personal information for
9 any purpose other than for the specific purpose of performing the
10 services specified in the contract, including retaining, using, or
11 disclosing the personal information for a commercial purpose other
12 than providing the services specified in the contract.

13 (III) Retaining, using, or disclosing the information outside of
14 the direct business relationship between the person and the
15 business.

16 (ii) Includes a certification made by the person receiving the
17 personal information that the person understands the restrictions
18 in ~~subparagraph (A)~~ *clause (i)* and will comply with them.

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

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

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

1 (y) “Verifiable consumer request” means a request that is made
2 by a consumer, by a consumer on behalf of the consumer’s minor
3 child, or by a natural person or a person registered with the
4 Secretary of State, authorized by the consumer to act on the
5 consumer’s behalf, and that the business can reasonably verify,
6 pursuant to regulations adopted by the Attorney General pursuant
7 to paragraph (7) of subdivision (a) of Section 1798.185 to be the
8 consumer about whom the business has collected personal
9 information. A business is not obligated to provide information to
10 the consumer pursuant to Sections 1798.110 and 1798.115 if the
11 business cannot verify, pursuant to this subdivision and regulations
12 adopted by the Attorney General pursuant to paragraph (7) of
13 subdivision (a) of Section 1798.185, that the consumer making
14 the request is the consumer about whom the business has collected
15 information or is a person authorized by the consumer to act on
16 such consumer’s behalf.

17 ~~SECTION 1. Section 1798.135 of the Civil Code is amended~~
18 ~~to read:~~

19 ~~1798.135. (a) A business that is required to comply with~~
20 ~~Section 1798.120 shall, in a form that is reasonably accessible to~~
21 ~~consumers:~~

22 ~~(1) Provide a clear and conspicuous link on the business’s~~
23 ~~internet homepage, titled “Do Not Sell My Personal Information,”~~
24 ~~to an internet web page that enables a consumer, or a person~~
25 ~~authorized by the consumer, to opt-out of the sale of the consumer’s~~
26 ~~personal information. A business shall not require a consumer to~~
27 ~~create an account in order to direct the business not to sell the~~
28 ~~consumer’s personal information.~~

29 ~~(2) Include a description of a consumer’s rights pursuant to~~
30 ~~Section 1798.120, along with a separate link to the “Do Not Sell~~
31 ~~My Personal Information” internet web page in:~~

32 ~~(A) Its online privacy policy or policies if the business has an~~
33 ~~online privacy policy or policies.~~

34 ~~(B) Any California-specific description of consumers’ privacy~~
35 ~~rights.~~

36 ~~(3) Ensure that all individuals responsible for handling consumer~~
37 ~~inquiries about the business’s privacy practices or the business’s~~
38 ~~compliance with this title are informed of all requirements in~~
39 ~~Section 1798.120 and this section and how to direct consumers to~~
40 ~~exercise their rights under those sections.~~

1 ~~(4) For consumers who exercise their right to opt-out of the sale~~
2 ~~of their personal information, refrain from selling personal~~
3 ~~information collected by the business about the consumer.~~

4 ~~(5) For a consumer who has opted-out of the sale of the~~
5 ~~consumer's personal information, respect the consumer's decision~~
6 ~~to opt-out for at least 12 months before requesting that the~~
7 ~~consumer authorize the sale of the consumer's personal~~
8 ~~information.~~

9 ~~(6) Use any personal information collected from the consumer~~
10 ~~in connection with the submission of the consumer's opt-out~~
11 ~~request solely for the purposes of complying with the opt-out~~
12 ~~request.~~

13 ~~(b) Nothing in this title shall be construed to require a business~~
14 ~~to comply with the title by including the required links and text~~
15 ~~on the homepage that the business makes available to the public~~
16 ~~generally, if the business maintains a separate and additional~~
17 ~~homepage that is dedicated to California consumers and that~~
18 ~~includes the required links and text, and the business takes~~
19 ~~reasonable steps to ensure that California consumers are directed~~
20 ~~to the homepage for California consumers and not the homepage~~
21 ~~made available to the public generally.~~

22 ~~(e) A consumer may authorize another person solely to opt-out~~
23 ~~of the sale of the consumer's personal information on the~~
24 ~~consumer's behalf, and a business shall comply with an opt-out~~
25 ~~request received from a person authorized by the consumer to act~~
26 ~~on the consumer's behalf, pursuant to regulations adopted by the~~
27 ~~Attorney General.~~

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