

AMENDED IN SENATE JUNE 27, 2024

AMENDED IN SENATE JUNE 17, 2024

AMENDED IN ASSEMBLY APRIL 30, 2024

AMENDED IN ASSEMBLY APRIL 18, 2024

CALIFORNIA LEGISLATURE—2023–24 REGULAR SESSION

ASSEMBLY BILL

No. 2877

Introduced by Assembly Member Bauer-Kahan

February 15, 2024

An act to amend Sections 1798.99.90, 1798.121, 1798.130, 1798.140, 1798.145, 1798.185, and 1798.199.40 of, and to add Section 1798.199.41 to, the Civil Code, relating to privacy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2877, as amended, Bauer-Kahan. California Consumer Privacy Act of 2018: artificial intelligence: training.

The California Consumer Privacy Act of 2018 (CCPA) grants to a consumer various rights with respect to personal information, as defined, that is collected by a business, as defined, including a requirement that a business have the affirmative authorization of the consumer or the consumer's parent or guardian, as provided, before selling or sharing the personal information of a consumer that the business has actual knowledge is less than 16 years of age. The California Privacy Rights Act of 2020, approved by the voters as Proposition 24 at the November 3, 2020, statewide general election, amended, added to, and reenacted the CCPA. The CCPA establishes the California Privacy Protection Agency and vests it with full administrative power, authority, and jurisdiction to implement and enforce the CCPA.

This bill ~~would~~ *would, except if certain conditions are met*, prohibit a developer, as defined, from using the personal information of a consumer less than 16 years of age, as specified, to train or ~~retrain~~ *fine-tune, as defined*, an artificial intelligence system or service unless the consumer or the consumer's parent or guardian, as specified, has affirmatively authorized that use of the consumer's personal information. The bill would require, if affirmative authorization is given, a developer to deidentify and aggregate the personal information subject to the authorization before using the personal information to train or retrain an artificial intelligence system or service. The bill would define "artificial intelligence" to mean an engineered or machine-based system that, for explicit or implicit objectives, infers from the input it receives how to generate outputs that can influence physical or virtual environments and would define "train" to mean to expose artificial intelligence to data in order to alter the relationship between inputs and outputs.

The California Privacy Rights Act of 2020 authorizes the Legislature to amend the act to further the purposes and intent of the act by a majority vote of both houses of the Legislature, as specified.

This bill would declare that its provisions further the purposes and intent of the California Privacy Rights Act of 2020.

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

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

1 SECTION 1. Section 1798.99.90 of the Civil Code is amended
2 to read:
3 1798.99.90. (a) A person or business shall not collect, use,
4 disclose, or retain the personal information of a person who is
5 physically located at, or within a precise geolocation of, a family
6 planning center, except as specified in subdivision (c).
7 (b) For purposes of this section:
8 (1) "Business" has the same meaning as defined in Section
9 1798.140.
10 (2) "Collect" has the same meaning as defined in Section
11 1798.140.
12 (3) "Family planning center" means a business categorized as
13 a family planning center by the North American Industry
14 Classification System adopted by the United States Census Bureau,

1 including, but not limited to, a clinic or center that provides
2 reproductive health care services as defined in Section 1798.300.

3 (4) “Personal information” has the same meaning as defined in
4 Section 1798.140, except as applied to all persons and not limited
5 to consumers and households, as those terms are defined in that
6 section.

7 (5) “Precise geolocation” means a geographic area that is equal
8 to or less than the area of a circle with a radius of 1,850 feet as
9 derived from a device that is used or intended to be used to locate
10 a person.

11 (6) “Sell” has the same meaning as defined in Section 1798.140.

12 (7) “Share” has the same meaning as defined in Section
13 1798.140.

14 (c) A person or business shall not collect, use, disclose, or retain
15 the personal information of a person who is physically located at,
16 or within a precise geolocation of, a family planning center, except
17 only as necessary to perform the services or provide the goods
18 requested by the person. A person or business shall not sell or
19 share this personal information.

20 (d) (1) An aggrieved person or entity, including a family
21 planning center, may institute and prosecute a civil action against
22 any person or business who violates this section for injunctive and
23 monetary relief and attorney’s fees within three years of discovery
24 of the violation.

25 (2) If the court finds for the petitioner in an action authorized
26 by paragraph (1), recovery shall be in the amount of three times
27 the amount of actual damages and any other expenses, costs, or
28 reasonable attorney’s fees incurred in connection with the litigation.

29 (e) This section does not apply to a provider of health care, a
30 health care service plan, or contractor, as those terms are defined
31 in Section 56.05.

32 SEC. 2. Section 1798.121 of the Civil Code is amended to
33 read:

34 1798.121. Consumers’ Right to Limit Use and Disclosure of
35 Sensitive Personal Information

36 (a) A consumer shall have the right, at any time, to direct a
37 business that collects sensitive personal information about the
38 consumer to limit its use of the consumer’s sensitive personal
39 information to that use which is necessary to perform the services
40 or provide the goods reasonably expected by an average consumer

1 who requests those goods or services, to perform the services set
2 forth in paragraphs (2), (4), (5), and (8) of subdivision (f) of Section
3 1798.140, and as authorized by regulations adopted pursuant to
4 subparagraph (C) of paragraph (19) of subdivision (a) of Section
5 1798.185. A business that uses or discloses a consumer's sensitive
6 personal information for purposes other than those specified in
7 this subdivision shall provide notice to consumers, pursuant to
8 subdivision (a) of Section 1798.135, that this information may be
9 used, or disclosed to a service provider or contractor, for additional,
10 specified purposes and that consumers have the right to limit the
11 use or disclosure of their sensitive personal information.

12 (b) A business that has received direction from a consumer not
13 to use or disclose the consumer's sensitive personal information,
14 except as authorized by subdivision (a), shall be prohibited,
15 pursuant to paragraph (4) of subdivision (c) of Section 1798.135,
16 from using or disclosing the consumer's sensitive personal
17 information for any other purpose after its receipt of the consumer's
18 direction unless the consumer subsequently provides consent for
19 the use or disclosure of the consumer's sensitive personal
20 information for additional purposes.

21 (c) A service provider or contractor that assists a business in
22 performing the purposes authorized by subdivision (a) may not
23 use the sensitive personal information after it has received
24 instructions from the business and to the extent it has actual
25 knowledge that the personal information is sensitive personal
26 information for any other purpose. A service provider or contractor
27 is only required to limit its use of sensitive personal information
28 received pursuant to a written contract with the business in response
29 to instructions from the business and only with respect to its
30 relationship with that business.

31 (d) Sensitive personal information that is collected or processed
32 without the purpose of inferring characteristics about a consumer
33 is not subject to this section, as further defined in regulations
34 adopted pursuant to subparagraph (C) of paragraph (19) of
35 subdivision (a) of Section 1798.185, and shall be treated as personal
36 information for purposes of all other sections of this act, including
37 Section 1798.100.

38 SEC. 3. Section 1798.130 of the Civil Code is amended to
39 read:

1 1798.130. Notice, Disclosure, Correction, and Deletion
2 Requirements

3 (a) In order to comply with Sections 1798.100, 1798.105,
4 1798.106, 1798.110, 1798.115, and 1798.125, a business shall, in
5 a form that is reasonably accessible to consumers:

6 (1) (A) Make available to consumers two or more designated
7 methods for submitting requests for information required to be
8 disclosed pursuant to Sections 1798.110 and 1798.115, or requests
9 for deletion or correction pursuant to Sections 1798.105 and
10 1798.106, respectively, including, at a minimum, a toll-free
11 telephone number. A business that operates exclusively online and
12 has a direct relationship with a consumer from whom it collects
13 personal information shall only be required to provide an email
14 address for submitting requests for information required to be
15 disclosed pursuant to Sections 1798.110 and 1798.115, or for
16 requests for deletion or correction pursuant to Sections 1798.105
17 and 1798.106, respectively.

18 (B) If the business maintains an internet website, make the
19 internet website available to consumers to submit requests for
20 information required to be disclosed pursuant to Sections 1798.110
21 and 1798.115, or requests for deletion or correction pursuant to
22 Sections 1798.105 and 1798.106, respectively.

23 (2) (A) Disclose and deliver the required information to a
24 consumer free of charge, correct inaccurate personal information,
25 or delete a consumer's personal information, based on the
26 consumer's request, within 45 days of receiving a verifiable
27 consumer request from the consumer. The business shall promptly
28 take steps to determine whether the request is a verifiable consumer
29 request, but this shall not extend the business's duty to disclose
30 and deliver the information, to correct inaccurate personal
31 information, or to delete personal information within 45 days of
32 receipt of the consumer's request. The time period to provide the
33 required information, to correct inaccurate personal information,
34 or to delete personal information may be extended once by an
35 additional 45 days when reasonably necessary, provided the
36 consumer is provided notice of the extension within the first 45-day
37 period. The disclosure of the required information shall be made
38 in writing and delivered through the consumer's account with the
39 business, if the consumer maintains an account with the business,
40 or by mail or electronically at the consumer's option if the

1 consumer does not maintain an account with the business, in a
2 readily useable format that allows the consumer to transmit this
3 information from one entity to another entity without hindrance.
4 The business may require authentication of the consumer that is
5 reasonable in light of the nature of the personal information
6 requested, but shall not require the consumer to create an account
7 with the business in order to make a verifiable consumer request
8 provided that if the consumer, has an account with the business,
9 the business may require the consumer to use that account to submit
10 a verifiable consumer request.

11 (B) The disclosure of the required information shall cover the
12 12-month period preceding the business' receipt of the verifiable
13 consumer request provided that, upon the adoption of a regulation
14 pursuant to paragraph (9) of subdivision (a) of Section 1798.185,
15 a consumer may request that the business disclose the required
16 information beyond the 12-month period, and the business shall
17 be required to provide that information unless doing so proves
18 impossible or would involve a disproportionate effort. A
19 consumer's right to request required information beyond the
20 12-month period, and a business's obligation to provide that
21 information, shall only apply to personal information collected on
22 or after January 1, 2022. Nothing in this subparagraph shall require
23 a business to keep personal information for any length of time.

24 (3) (A) A business that receives a verifiable consumer request
25 pursuant to Section 1798.110 or 1798.115 shall disclose any
26 personal information it has collected about a consumer, directly
27 or indirectly, including through or by a service provider or
28 contractor, to the consumer. A service provider or contractor shall
29 not be required to comply with a verifiable consumer request
30 received directly from a consumer or a consumer's authorized
31 agent, pursuant to Section 1798.110 or 1798.115, to the extent that
32 the service provider or contractor has collected personal
33 information about the consumer in its role as a service provider or
34 contractor. A service provider or contractor shall provide assistance
35 to a business with which it has a contractual relationship with
36 respect to the business' response to a verifiable consumer request,
37 including, but not limited to, by providing to the business the
38 consumer's personal information in the service provider's or
39 contractor's possession, which the service provider or contractor
40 obtained as a result of providing services to the business, and by

1 correcting inaccurate information or by enabling the business to
2 do the same. A service provider or contractor that collects personal
3 information pursuant to a written contract with a business shall be
4 required to assist the business through appropriate technical and
5 organizational measures in complying with the requirements of
6 subdivisions (d) to (f), inclusive, of Section 1798.100, taking into
7 account the nature of the processing.

8 (B) For purposes of subdivision (b) of Section 1798.110:

9 (i) To identify the consumer, associate the information provided
10 by the consumer in the verifiable consumer request to any personal
11 information previously collected by the business about the
12 consumer.

13 (ii) Identify by category or categories the personal information
14 collected about the consumer for the applicable period of time by
15 reference to the enumerated category or categories in subdivision
16 (c) that most closely describes the personal information collected;
17 the categories of sources from which the consumer's personal
18 information was collected; the business or commercial purpose
19 for collecting, selling, or sharing the consumer's personal
20 information; and the categories of third parties to whom the
21 business discloses the consumer's personal information.

22 (iii) Provide the specific pieces of personal information obtained
23 from the consumer in a format that is easily understandable to the
24 average consumer, and to the extent technically feasible, in a
25 structured, commonly used, machine-readable format that may
26 also be transmitted to another entity at the consumer's request
27 without hindrance. "Specific pieces of information" do not include
28 data generated to help ensure security and integrity or as prescribed
29 by regulation. Personal information is not considered to have been
30 disclosed by a business when a consumer instructs a business to
31 transfer the consumer's personal information from one business
32 to another in the context of switching services.

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

34 (A) Identify the consumer and associate the information
35 provided by the consumer in the verifiable consumer request to
36 any personal information previously collected by the business
37 about the consumer.

38 (B) Identify by category or categories the personal information
39 of the consumer that the business sold or shared during the
40 applicable period of time by reference to the enumerated category

1 in subdivision (c) that most closely describes the personal
2 information, and provide the categories of third parties to whom
3 the consumer's personal information was sold or shared during
4 the applicable period of time by reference to the enumerated
5 category or categories in subdivision (c) that most closely describes
6 the personal information sold or shared. The business shall disclose
7 the information in a list that is separate from a list generated for
8 the purposes of subparagraph (C).

9 (C) Identify by category or categories the personal information
10 of the consumer that the business disclosed for a business purpose
11 during the applicable period of time by reference to the enumerated
12 category or categories in subdivision (c) that most closely describes
13 the personal information, and provide the categories of persons to
14 whom the consumer's personal information was disclosed for a
15 business purpose during the applicable period of time by reference
16 to the enumerated category or categories in subdivision (c) that
17 most closely describes the personal information disclosed. The
18 business shall disclose the information in a list that is separate
19 from a list generated for the purposes of subparagraph (B).

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

26 (A) A description of a consumer's rights pursuant to Sections
27 1798.100, 1798.105, 1798.106, 1798.110, 1798.115, and 1798.125
28 and two or more designated methods for submitting requests,
29 except as provided in subparagraph (A) of paragraph (1) of
30 subdivision (a).

31 (B) For purposes of subdivision (c) of Section 1798.110:

32 (i) A list of the categories of personal information it has
33 collected about consumers in the preceding 12 months by reference
34 to the enumerated category or categories in subdivision (c) that
35 most closely describe the personal information collected.

36 (ii) The categories of sources from which consumers' personal
37 information is collected.

38 (iii) The business or commercial purpose for collecting, selling,
39 or sharing consumers' personal information.

1 (iv) The categories of third parties to whom the business
2 discloses consumers' personal information.

3 (C) For purposes of paragraphs (1) and (2) of subdivision (c)
4 of Section 1798.115, two separate lists:

5 (i) A list of the categories of personal information it has sold or
6 shared about consumers in the preceding 12 months by reference
7 to the enumerated category or categories in subdivision (c) that
8 most closely describe the personal information sold or shared, or
9 if the business has not sold or shared consumers' personal
10 information in the preceding 12 months, the business shall
11 prominently disclose that fact in its privacy policy.

12 (ii) A list of the categories of personal information it has
13 disclosed about consumers for a business purpose in the preceding
14 12 months by reference to the enumerated category in subdivision
15 (c) that most closely describes the personal information disclosed,
16 or if the business has not disclosed consumers' personal
17 information for a business purpose in the preceding 12 months,
18 the business shall disclose that fact.

19 (6) Ensure that all individuals responsible for handling consumer
20 inquiries about the business' privacy practices or the business'
21 compliance with this title are informed of all requirements in
22 Sections 1798.100, 1798.105, 1798.106, 1798.110, 1798.115,
23 1798.125, and this section, and how to direct consumers to exercise
24 their rights under those sections.

25 (7) Use any personal information collected from the consumer
26 in connection with the business' verification of the consumer's
27 request solely for the purposes of verification and shall not further
28 disclose the personal information, retain it longer than necessary
29 for purposes of verification, or use it for unrelated purposes.

30 (b) A business is not obligated to provide the information
31 required by Sections 1798.110 and 1798.115 to the same consumer
32 more than twice in a 12-month period.

33 (c) The categories of personal information required to be
34 disclosed pursuant to Sections 1798.100, 1798.110, and 1798.115
35 shall follow the definitions of personal information and sensitive
36 personal information in Section 1798.140 by describing the
37 categories of personal information using the specific terms set
38 forth in subparagraphs (A) to (K), inclusive, of paragraph (1) of
39 subdivision-(x) (y) of Section 1798.140 and by describing the
40 categories of sensitive personal information using the specific

1 terms set forth in ~~paragraphs (1) to (9), inclusive,~~ of subdivision
2 ~~(ah)~~ (ai) of Section 1798.140.

3 SEC. 4. Section 1798.140 of the Civil Code is amended to
4 read:

5 1798.140. Definitions

6 For purposes of this title:

7 (a) “Advertising and marketing” means a communication by a
8 business or a person acting on the business’ behalf in any medium
9 intended to induce a consumer to obtain goods, services, or
10 employment.

11 (b) “Aggregate consumer information” means information that
12 relates to a group or category of consumers, from which individual
13 consumer identities have been removed, that is not linked or
14 reasonably linkable to any consumer or household, including via
15 a device. “Aggregate consumer information” does not mean one
16 or more individual consumer records that have been deidentified.

17 (c) “Artificial intelligence” means an engineered or
18 machine-based system that varies in its level of autonomy and that
19 can, for explicit or implicit objectives, infer from the input it
20 receives how to generate outputs that can influence physical or
21 virtual environments.

22 (d) “Biometric information” means an individual’s
23 physiological, biological, or behavioral characteristics, including
24 information pertaining to an individual’s deoxyribonucleic acid
25 (DNA), that is used or is intended to be used singly or in
26 combination with each other or with other identifying data, to
27 establish individual identity. Biometric information includes, but
28 is not limited to, imagery of the iris, retina, fingerprint, face, hand,
29 palm, vein patterns, and voice recordings, from which an identifier
30 template, such as a faceprint, a minutiae template, or a voiceprint,
31 can be extracted, and keystroke patterns or rhythms, gait patterns
32 or rhythms, and sleep, health, or exercise data that contain
33 identifying information.

34 (e) “Business” means:

35 (1) A sole proprietorship, partnership, limited liability company,
36 corporation, association, or other legal entity that is organized or
37 operated for the profit or financial benefit of its shareholders or
38 other owners, that collects consumers’ personal information, or
39 on the behalf of which such information is collected and that alone,
40 or jointly with others, determines the purposes and means of the

1 processing of consumers' personal information, that does business
2 in the state, and that satisfies one or more of the following
3 thresholds:

4 (A) As of January 1 of the calendar year, had annual gross
5 revenues in excess of twenty-five million dollars (\$25,000,000)
6 in the preceding calendar year, as adjusted pursuant to paragraph
7 (5) of subdivision (a) of Section 1798.185.

8 (B) Alone or in combination, annually buys, sells, or shares the
9 personal information of 100,000 or more consumers or households.

10 (C) Derives 50 percent or more of its annual revenues from
11 selling or sharing consumers' personal information.

12 (2) Any entity that controls or is controlled by a business, as
13 defined in paragraph (1), and that shares common branding with
14 the business and with whom the business shares consumers'
15 personal information. "Control" or "controlled" means ownership
16 of, or the power to vote, more than 50 percent of the outstanding
17 shares of any class of voting security of a business; control in any
18 manner over the election of a majority of the directors, or of
19 individuals exercising similar functions; or the power to exercise
20 a controlling influence over the management of a company.
21 "Common branding" means a shared name, ~~servicemark~~, *service*
22 *mark*, or trademark that the average consumer would understand
23 that two or more entities are commonly owned.

24 (3) A joint venture or partnership composed of businesses in
25 which each business has at least a 40 percent interest. For purposes
26 of this title, the joint venture or partnership and each business that
27 composes the joint venture or partnership shall separately be
28 considered a single business, except that personal information in
29 the possession of each business and disclosed to the joint venture
30 or partnership shall not be shared with the other business.

31 (4) A person that does business in California, that is not covered
32 by paragraph (1), (2), or (3), and that voluntarily certifies to the
33 California Privacy Protection Agency that it is in compliance with,
34 and agrees to be bound by, this title.

35 (f) "Business purpose" means the use of personal information
36 for the business' operational purposes, or other notified purposes,
37 or for the service provider's or contractor's operational purposes,
38 as defined by regulations adopted pursuant to paragraph (11) of
39 subdivision (a) of Section 1798.185, provided that the use of
40 personal information shall be reasonably necessary and

1 proportionate to achieve the purpose for which the personal
2 information was collected or processed or for another purpose that
3 is compatible with the context in which the personal information
4 was collected. Business purposes are:

5 (1) Auditing related to counting ad impressions to unique
6 visitors, verifying positioning and quality of ad impressions, and
7 auditing compliance with this specification and other standards.

8 (2) Helping to ensure security and integrity to the extent the use
9 of the consumer's personal information is reasonably necessary
10 and proportionate for these purposes.

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

13 (4) Short-term, transient use, including, but not limited to,
14 nonpersonalized advertising shown as part of a consumer's current
15 interaction with the business, provided that the consumer's personal
16 information is not disclosed to another third party and is not used
17 to build a profile about the consumer or otherwise alter the
18 consumer's experience outside the current interaction with the
19 business.

20 (5) Performing services on behalf of the business, including
21 maintaining or servicing accounts, providing customer service,
22 processing or fulfilling orders and transactions, verifying customer
23 information, processing payments, providing financing, providing
24 analytic services, providing storage, or providing similar services
25 on behalf of the business.

26 (6) Providing advertising and marketing services, except for
27 cross-context behavioral advertising, to the consumer provided
28 that, for the purpose of advertising and marketing, a service
29 provider or contractor shall not combine the personal information
30 of opted-out consumers that the service provider or contractor
31 receives from, or on behalf of, the business with personal
32 information that the service provider or contractor receives from,
33 or on behalf of, another person or persons or collects from its own
34 interaction with consumers.

35 (7) Undertaking internal research for technological development
36 and demonstration.

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

1 upgrade, or enhance the service or device that is owned,
2 manufactured, manufactured for, or controlled by the business.

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

8 (h) “Commercial purposes” means to advance a person’s
9 commercial or economic interests, such as by inducing another
10 person to buy, rent, lease, join, subscribe to, provide, or exchange
11 products, goods, property, information, or services, or enabling or
12 effecting, directly or indirectly, a commercial transaction.

13 (i) “Consent” means any freely given, specific, informed, and
14 unambiguous indication of the consumer’s wishes by which the
15 consumer, or the consumer’s legal guardian, a person who has
16 power of attorney, or a person acting as a conservator for the
17 consumer, including by a statement or by a clear affirmative action,
18 signifies agreement to the processing of personal information
19 relating to the consumer for a narrowly defined particular purpose.
20 Acceptance of a general or broad terms of use, or similar document,
21 that contains descriptions of personal information processing along
22 with other, unrelated information, does not constitute consent.
23 Hovering over, muting, pausing, or closing a given piece of content
24 does not constitute consent. Likewise, agreement obtained through
25 use of dark patterns does not constitute consent.

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

30 (k) (1) “Contractor” means a person to whom the business
31 makes available a consumer’s personal information for a business
32 purpose, pursuant to a written contract with the business, provided
33 that the contract:

34 (A) Prohibits the contractor from:

35 (i) Selling or sharing the personal information.

36 (ii) Retaining, using, or disclosing the personal information for
37 any purpose other than for the business purposes specified in the
38 contract, including retaining, using, or disclosing the personal
39 information for a commercial purpose other than the business

1 purposes specified in the contract, or as otherwise permitted by
2 this title.

3 (iii) Retaining, using, or disclosing the information outside of
4 the direct business relationship between the contractor and the
5 business.

6 (iv) Combining the personal information that the contractor
7 receives pursuant to a written contract with the business with
8 personal information that it receives from or on behalf of another
9 person or persons, or collects from its own interaction with the
10 consumer, provided that the contractor may combine personal
11 information to perform any business purpose as defined in
12 regulations adopted pursuant to paragraph (10) of subdivision (a)
13 of Section 1798.185, except as provided for in paragraph (6) of
14 subdivision (f) and in regulations adopted by the California Privacy
15 Protection Agency.

16 (B) Includes a certification made by the contractor that the
17 contractor understands the restrictions in subparagraph (A) and
18 will comply with them.

19 (C) Permits, subject to agreement with the contractor, the
20 business to monitor the contractor's compliance with the contract
21 through measures, including, but not limited to, ongoing manual
22 reviews and automated scans and regular assessments, audits, or
23 other technical and operational testing at least once every 12
24 months.

25 (2) If a contractor engages any other person to assist it in
26 processing personal information for a business purpose on behalf
27 of the business, or if any other person engaged by the contractor
28 engages another person to assist in processing personal information
29 for that business purpose, it shall notify the business of that
30 engagement, and the engagement shall be pursuant to a written
31 contract binding the other person to observe all the requirements
32 set forth in paragraph (1).

33 (l) "Cross-context behavioral advertising" means the targeting
34 of advertising to a consumer based on the consumer's personal
35 information obtained from the consumer's activity across
36 businesses, distinctly-branded websites, applications, or services,
37 other than the business, distinctly-branded website, application,
38 or service with which the consumer intentionally interacts.

39 (m) "Dark pattern" means a user interface designed or
40 manipulated with the substantial effect of subverting or impairing

1 user autonomy, decisionmaking, or choice, as further defined by
2 regulation.

3 (n) “Deidentified” means information that cannot reasonably
4 be used to infer information about, or otherwise be linked to, a
5 particular consumer provided that the business that possesses the
6 information:

7 (1) Takes reasonable measures to ensure that the information
8 cannot be associated with a consumer or household.

9 (2) Publicly commits to maintain and use the information in
10 deidentified form and not to attempt to reidentify the information,
11 except that the business may attempt to reidentify the information
12 solely for the purpose of determining whether its deidentification
13 processes satisfy the requirements of this subdivision.

14 (3) Contractually obligates any recipients of the information to
15 comply with all provisions of this subdivision.

16 (o) “Designated methods for submitting requests” means a
17 mailing address, email address, internet web page, internet web
18 portal, toll-free telephone number, or other applicable contact
19 information, whereby consumers may submit a request or direction
20 under this title, and any new, consumer-friendly means of
21 contacting a business, as approved by the Attorney General
22 pursuant to Section 1798.185.

23 (p) “Developer” means a qualified business that designs, codes,
24 or otherwise produces an artificial intelligence system or service,
25 or substantially modifies an existing artificial intelligence system
26 or service, by training or ~~retraining~~ *fine-tuning* the artificial
27 intelligence system or service on personal information.

28 (q) “Device” means any physical object that is capable of
29 connecting to the internet, directly or indirectly, or to another
30 device.

31 (r) “*Fine-tune*” means to expose a trained artificial intelligence
32 system or service to additional data in order to further adjust the
33 relationship between inputs and outputs.

34 ~~(r)~~

35 (s) “Homepage” means the introductory page of an internet
36 website and any internet web page where personal information is
37 collected. In the case of an online service, such as a mobile
38 application, homepage means the application’s platform page or
39 download page, a link within the application, such as from the
40 application configuration, “About,” “Information,” or settings

1 page, and any other location that allows consumers to review the
2 notices required by this title, including, but not limited to, before
3 downloading the application.

4 ~~(s)~~

5 (t) “Household” means a group, however identified, of
6 consumers who cohabitate with one another at the same residential
7 address and share use of common devices or services.

8 ~~(t)~~

9 (u) “Infer” or “inference” means the derivation of information,
10 data, assumptions, or conclusions from facts, evidence, or another
11 source of information or data.

12 ~~(u)~~

13 (v) “Intentionally interacts” means when the consumer intends
14 to interact with a person, or disclose personal information to a
15 person, via one or more deliberate interactions, including visiting
16 the person’s website or purchasing a good or service from the
17 person. Hovering over, muting, pausing, or closing a given piece
18 of content does not constitute a consumer’s intent to interact with
19 a person.

20 ~~(v)~~

21 (w) “Nonpersonalized advertising” means advertising and
22 marketing that is based solely on a consumer’s personal
23 information derived from the consumer’s current interaction with
24 the business with the exception of the consumer’s precise
25 geolocation.

26 ~~(w)~~

27 (x) “Person” means an individual, proprietorship, firm,
28 partnership, joint venture, syndicate, business trust, company,
29 corporation, limited liability company, association, committee,
30 and any other organization or group of persons acting in concert.

31 ~~(x)~~

32 (y) (1) “Personal information” means information that identifies,
33 relates to, describes, is reasonably capable of being associated
34 with, or could reasonably be linked, directly or indirectly, with a
35 particular consumer or household. Personal information includes,
36 but is not limited to, the following if it identifies, relates to,
37 describes, is reasonably capable of being associated with, or could
38 be reasonably linked, directly or indirectly, with a particular
39 consumer or household:

1 (A) Identifiers such as a real name, alias, postal address, unique
2 personal identifier, online identifier, Internet Protocol address,
3 email address, account name, social security number, driver's
4 license number, passport number, or other similar identifiers.

5 (B) Any personal information described in subdivision (e) of
6 Section 1798.80.

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

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

12 (E) Biometric information.

13 (F) Internet or other electronic network activity information,
14 including, but not limited to, browsing history, search history, and
15 information regarding a consumer's interaction with an internet
16 website application, or advertisement.

17 (G) Geolocation data.

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

20 (I) Professional or employment-related information.

21 (J) Education information, defined as information that is not
22 publicly available personally identifiable information as defined
23 in the Family Educational Rights and Privacy Act (20 U.S.C. Sec.
24 1232g; 34 C.F.R. Part 99).

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

30 (L) Sensitive personal information.

31 (2) "Personal information" does not include publicly available
32 information or lawfully obtained, truthful information that is a
33 matter of public concern. For purposes of this paragraph, "publicly
34 available" means: information that is lawfully made available from
35 federal, state, or local government records, or information that a
36 business has a reasonable basis to believe is lawfully made
37 available to the general public by the consumer or from widely
38 distributed media; or information made available by a person to
39 whom the consumer has disclosed the information if the consumer
40 has not restricted the information to a specific audience. "Publicly

1 available” does not mean biometric information collected by a
2 business about a consumer without the consumer’s knowledge.

3 (3) “Personal information” does not include consumer
4 information that is deidentified or aggregate consumer information.

5 ~~(y)~~

6 (z) “Precise geolocation” means any data that is derived from
7 a device and that is used or intended to be used to locate a
8 consumer within a geographic area that is equal to or less than the
9 area of a circle with a radius of 1,850 feet, except as prescribed
10 by regulations.

11 ~~(z)~~

12 (aa) “Probabilistic identifier” means the identification of a
13 consumer or a consumer’s device to a degree of certainty of more
14 probable than not based on any categories of personal information
15 included in, or similar to, the categories enumerated in the
16 definition of personal information.

17 ~~(aa)~~

18 (ab) “Processing” means any operation or set of operations that
19 are performed on personal information or on sets of personal
20 information, whether or not by automated means.

21 ~~(ab)~~

22 (ac) “Profiling” means any form of automated processing of
23 personal information, as further defined by regulations pursuant
24 to paragraph (16) of subdivision (a) of Section 1798.185, to
25 evaluate certain personal aspects relating to a natural person and
26 in particular to analyze or predict aspects concerning that natural
27 person’s performance at work, economic situation, health, personal
28 preferences, interests, reliability, behavior, location, or movements.

29 ~~(ae)~~

30 (ad) “Pseudonymize” or “pseudonymization” means the
31 processing of personal information in a manner that renders the
32 personal information no longer attributable to a specific consumer
33 without the use of additional information, provided that the
34 additional information is kept separately and is subject to technical
35 and organizational measures to ensure that the personal information
36 is not attributed to an identified or identifiable consumer.

37 ~~(ad)~~

38 (ae) “Qualified business” means a sole proprietorship,
39 partnership, limited liability company, corporation, association,
40 or other legal entity that collects consumers’ personal information,

1 or on the behalf of which that information is collected and that
2 alone, or jointly with others, determines the purposes and means
3 of the processing of consumers' personal information, that does
4 business in the state, and that satisfies one or more of the following
5 thresholds:

6 (1) As of January 1 of the calendar year, had annual gross
7 revenues in excess of twenty-five million dollars (\$25,000,000)
8 in the preceding calendar year, as adjusted pursuant to paragraph
9 (5) of subdivision (a) of Section 1798.185.

10 (2) Alone or in combination, annually buys, sells, or shares the
11 personal information of 100,000 or more consumers or households.

12 (3) Derives 50 percent or more of its annual revenues from
13 selling or sharing consumers' personal information.

14 (4) Provides a system or service for use in schools.

15 ~~(ae)~~

16 *(af)* "Research" means scientific analysis, systematic study, and
17 observation, including basic research or applied research that is
18 designed to develop or contribute to public or scientific knowledge
19 and that adheres or otherwise conforms to all other applicable
20 ethics and privacy laws, including, but not limited to, studies
21 conducted in the public interest in the area of public health.
22 Research with personal information that may have been collected
23 from a consumer in the course of the consumer's interactions with
24 a business' service or device for other purposes shall be:

25 (1) Compatible with the business purpose for which the personal
26 information was collected.

27 (2) Subsequently pseudonymized and deidentified, or
28 deidentified and in the aggregate, such that the information cannot
29 reasonably identify, relate to, describe, be capable of being
30 associated with, or be linked, directly or indirectly, to a particular
31 consumer, by a business.

32 (3) Made subject to technical safeguards that prohibit
33 reidentification of the consumer to whom the information may
34 pertain, other than as needed to support the research.

35 (4) Subject to business processes that specifically prohibit
36 reidentification of the information, other than as needed to support
37 the research.

38 (5) Made subject to business processes to prevent inadvertent
39 release of deidentified information.

40 (6) Protected from any reidentification attempts.

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

(8) Subjected by the business conducting the research to additional security controls that limit access to the research data to only those individuals as are necessary to carry out the research purpose.

~~(af)~~

(ag) “Security and integrity” means the ability of:

(1) Networks or information systems to detect security incidents that compromise the availability, authenticity, integrity, and confidentiality of stored or transmitted personal information.

(2) Businesses to detect security incidents, resist malicious, deceptive, fraudulent, or illegal actions and to help prosecute those responsible for those actions.

(3) Businesses to ensure the physical safety of natural persons.

~~(ag)~~

(ah) (1) “Sell,” “selling,” “sale,” or “sold,” means 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 a third party for monetary or other valuable consideration.

(2) For purposes of this title, a business does not sell personal information when:

(A) A consumer uses or directs the business to intentionally:

(i) Disclose personal information.

(ii) Interact with one or more third parties.

(B) The business uses or shares an identifier for a consumer who has opted out of the sale of the consumer’s personal information or limited the use of the consumer’s sensitive personal information for the purposes of alerting persons that the consumer has opted out of the sale of the consumer’s personal information or limited the use of the consumer’s sensitive personal information.

(C) 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 this title. If a third party materially alters how it uses or shares the personal information of a consumer in a manner that is materially

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

11 ~~(ah)~~

12 *(ai)* “Sensitive personal information” means:

13 (1) Personal information that reveals:

14 (A) A consumer’s social security, driver’s license, state
15 identification card, or passport number.

16 (B) A consumer’s account log-in, financial account, debit card,
17 or credit card number in combination with any required security
18 or access code, password, or credentials allowing access to an
19 account.

20 (C) A consumer’s precise geolocation.

21 (D) A consumer’s racial or ethnic origin, citizenship or
22 immigration status, religious or philosophical beliefs, or union
23 membership.

24 (E) The contents of a consumer’s mail, email, and text messages
25 unless the business is the intended recipient of the communication.

26 (F) A consumer’s genetic data.

27 (2) (A) The processing of biometric information for the purpose
28 of uniquely identifying a consumer.

29 (B) Personal information collected and analyzed concerning a
30 consumer’s health.

31 (C) Personal information collected and analyzed concerning a
32 consumer’s sex life or sexual orientation.

33 (3) Sensitive personal information that is “publicly available”
34 pursuant to paragraph (2) of subdivision~~-(x)~~ (y) shall not be
35 considered sensitive personal information or personal information.

36 ~~(aj)~~

37 *(aj)* “Service” or “services” means work, labor, and services,
38 including services furnished in connection with the sale or repair
39 of goods.

40 ~~(aj)~~

1 ~~(ak)~~ (1) “Service provider” means a person that processes
2 personal information on behalf of a business and that receives from
3 or on behalf of the business consumer’s personal information for
4 a business purpose pursuant to a written contract, provided that
5 the contract prohibits the person from:

6 (A) Selling or sharing the personal information.

7 (B) Retaining, using, or disclosing the personal information for
8 any purpose other than for the business purposes specified in the
9 contract for the business, including retaining, using, or disclosing
10 the personal information for a commercial purpose other than the
11 business purposes specified in the contract with the business, or
12 as otherwise permitted by this title.

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

16 (D) Combining the personal information that the service provider
17 receives from, or on behalf of, the business with personal
18 information that it receives from, or on behalf of, another person
19 or persons, or collects from its own interaction with the consumer,
20 provided that the service provider may combine personal
21 information to perform any business purpose as defined in
22 regulations adopted pursuant to paragraph (10) of subdivision (a)
23 of Section 1798.185, except as provided for in paragraph (6) of
24 subdivision (f) of this section and in regulations adopted by the
25 California Privacy Protection Agency. The contract may, subject
26 to agreement with the service provider, permit the business to
27 monitor the service provider’s compliance with the contract through
28 measures, including, but not limited to, ongoing manual reviews
29 and automated scans and regular assessments, audits, or other
30 technical and operational testing at least once every 12 months.

31 (2) If a service provider engages any other person to assist it in
32 processing personal information for a business purpose on behalf
33 of the business, or if any other person engaged by the service
34 provider engages another person to assist in processing personal
35 information for that business purpose, it shall notify the business
36 of that engagement, and the engagement shall be pursuant to a
37 written contract binding the other person to observe all the
38 requirements set forth in paragraph (1).

39 ~~(ak)~~

1 (al) (1) “Share,” “shared,” or “sharing” means sharing, 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 a third party for cross-context behavioral advertising, whether
6 or not for monetary or other valuable consideration, including
7 transactions between a business and a third party for cross-context
8 behavioral advertising for the benefit of a business in which no
9 money is exchanged.

10 (2) For purposes of this title, a business does not share personal
11 information when:

12 (A) A consumer uses or directs the business to intentionally
13 disclose personal information or intentionally interact with one or
14 more third parties.

15 (B) The business uses or shares an identifier for a consumer
16 who has opted out of the sharing of the consumer’s personal
17 information or limited the use of the consumer’s sensitive personal
18 information for the purposes of alerting persons that the consumer
19 has opted out of the sharing of the consumer’s personal information
20 or limited the use of the consumer’s sensitive personal information.

21 (C) The business transfers to a third party the personal
22 information of a consumer as an asset that is part of a merger,
23 acquisition, bankruptcy, or other transaction in which the third
24 party assumes control of all or part of the business, provided that
25 information is used or shared consistently with this title. If a third
26 party materially alters how it uses or shares the personal
27 information of a consumer in a manner that is materially
28 inconsistent with the promises made at the time of collection, it
29 shall provide prior notice of the new or changed practice to the
30 consumer. The notice shall be sufficiently prominent and robust
31 to ensure that existing consumers can easily exercise their choices
32 consistently with this title. This subparagraph does not authorize
33 a business to make material, retroactive privacy policy changes or
34 make other changes in their privacy policy in a manner that would
35 violate the Unfair and Deceptive Practices Act (Chapter 5
36 commencing with Section 17200) of Part 2 of Division 7 of the
37 Business and Professions Code).

38 (at)

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

1 (1) The business with whom the consumer intentionally interacts
2 and that collects personal information from the consumer as part
3 of the consumer’s current interaction with the business under this
4 title.

5 (2) A service provider to the business.

6 (3) A contractor.

7 ~~(am)~~

8 *(an)* “Train” means to expose *an* artificial intelligence *system*
9 *or service* to data in order to alter the relationship between inputs
10 and outputs.

11 ~~(an)~~

12 *(ao)* “Unique identifier” or “unique personal identifier” means
13 a persistent identifier that can be used to recognize a consumer, a
14 family, or a device that is linked to a consumer or family, over
15 time and across different services, including, but not limited to, a
16 device identifier; an Internet Protocol address; cookies, beacons,
17 pixel tags, mobile ad identifiers, or similar technology; customer
18 number, unique pseudonym, or user alias; telephone numbers, or
19 other forms of persistent or probabilistic identifiers that can be
20 used to identify a particular consumer or device that is linked to a
21 consumer or family. For purposes of this subdivision, “family”
22 means a custodial parent or guardian and any children under 18
23 years of age over which the parent or guardian has custody.

24 ~~(ae)~~

25 *(ap)* “Verifiable consumer request” means a request that is made
26 by a consumer, by a consumer on behalf of the consumer’s minor
27 child, by a natural person or a person registered with the Secretary
28 of State, authorized by the consumer to act on the consumer’s
29 behalf, or by a person who has power of attorney or is acting as a
30 conservator for the consumer, and that the business can verify,
31 using commercially reasonable methods, pursuant to regulations
32 adopted by the Attorney General pursuant to paragraph (7) of
33 subdivision (a) of Section 1798.185 to be the consumer about
34 whom the business has collected personal information. A business
35 is not obligated to provide information to the consumer pursuant
36 to Sections 1798.110 and 1798.115, to delete personal information
37 pursuant to Section 1798.105, or to correct inaccurate personal
38 information pursuant to Section 1798.106, if the business cannot
39 verify, pursuant to this subdivision and regulations adopted by the
40 Attorney General pursuant to paragraph (7) of subdivision (a) of

1 Section 1798.185, that the consumer making the request is the
2 consumer about whom the business has collected information or
3 is a person authorized by the consumer to act on such consumer's
4 behalf.

5 SEC. 5. Section 1798.145 of the Civil Code is amended to
6 read:

7 1798.145. Exemptions

8 (a) (1) The obligations imposed on businesses by this title shall
9 not restrict a business's ability to:

10 (A) Comply with federal, state, or local laws or comply with a
11 court order or subpoena to provide information.

12 (B) Comply with a civil, criminal, or regulatory inquiry,
13 investigation, subpoena, or summons by federal, state, or local
14 authorities. Law enforcement agencies, including police and
15 sheriff's departments, may direct a business pursuant to a law
16 enforcement agency-approved investigation with an active case
17 number not to delete a consumer's personal information, and, upon
18 receipt of that direction, a business shall not delete the personal
19 information for 90 days in order to allow the law enforcement
20 agency to obtain a court-issued subpoena, order, or warrant to
21 obtain a consumer's personal information. For good cause and
22 only to the extent necessary for investigatory purposes, a law
23 enforcement agency may direct a business not to delete the
24 consumer's personal information for additional 90-day periods. A
25 business that has received direction from a law enforcement agency
26 not to delete the personal information of a consumer who has
27 requested deletion of the consumer's personal information shall
28 not use the consumer's personal information for any purpose other
29 than retaining it to produce to law enforcement in response to a
30 court-issued subpoena, order, or warrant unless the consumer's
31 deletion request is subject to an exemption from deletion under
32 this title.

33 (C) Cooperate with law enforcement agencies concerning
34 conduct or activity that the business, service provider, or third
35 party reasonably and in good faith believes may violate federal,
36 state, or local law.

37 (D) (i) Cooperate with a government agency request for
38 emergency access to a consumer's personal information if a natural
39 person is at risk or danger of death or serious physical injury
40 provided that:

1 (I) The request is approved by a high-ranking agency officer
2 for emergency access to a consumer's personal information.

3 (II) The request is based on the agency's good faith
4 determination that it has a lawful basis to access the information
5 on a nonemergency basis.

6 (III) The agency agrees to petition a court for an appropriate
7 order within three days and to destroy the information if that order
8 is not granted.

9 (ii) For purposes of this subparagraph, a consumer accessing,
10 procuring, or searching for services regarding contraception,
11 pregnancy care, and perinatal care, including, but not limited to,
12 abortion services, shall not constitute a natural person being at risk
13 or danger of death or serious physical injury.

14 (E) Exercise or defend legal claims.

15 (F) Collect, use, retain, sell, share, or disclose consumers'
16 personal information that is deidentified or aggregate consumer
17 information.

18 (G) Collect, sell, or share a consumer's personal information if
19 every aspect of that commercial conduct takes place wholly outside
20 of California. For purposes of this title, commercial conduct takes
21 place wholly outside of California if the business collected that
22 information while the consumer was outside of California, no part
23 of the sale of the consumer's personal information occurred in
24 California, and no personal information collected while the
25 consumer was in California is sold. This paragraph shall not
26 prohibit a business from storing, including on a device, personal
27 information about a consumer when the consumer is in California
28 and then collecting that personal information when the consumer
29 and stored personal information is outside of California.

30 (2) (A) This subdivision shall not apply if the consumer's
31 personal information contains information related to accessing,
32 procuring, or searching for services regarding contraception,
33 pregnancy care, and perinatal care, including, but not limited to,
34 abortion services.

35 (B) This paragraph does not alter the use of aggregated or
36 deidentified personal information consistent with a business
37 purpose as defined in paragraphs (1), (2), (3), (4), (5), (7), or (8)
38 of subdivision (f) of Section 1798.140, provided that the personal
39 information is only retained in aggregated and deidentified form
40 and is not sold or shared.

1 (C) This paragraph does not alter the duty of a business to
2 preserve or retain evidence pursuant to California or federal law
3 in an ongoing civil proceeding.

4 (b) The obligations imposed on businesses by Sections 1798.110,
5 1798.115, 1798.120, 1798.121, 1798.130, and 1798.135 shall not
6 apply where compliance by the business with the title would violate
7 an evidentiary privilege under California law and shall not prevent
8 a business from providing the personal information of a consumer
9 to a person covered by an evidentiary privilege under California
10 law as part of a privileged communication.

11 (c) (1) This title shall not apply to any of the following:

12 (A) Medical information governed by the Confidentiality of
13 Medical Information Act (Part 2.6 (commencing with Section 56)
14 of Division 1) or protected health information that is collected by
15 a covered entity or business associate governed by the privacy,
16 security, and breach notification rules issued by the United States
17 Department of Health and Human Services, Parts 160 and 164 of
18 Title 45 of the Code of Federal Regulations, established pursuant
19 to the Health Insurance Portability and Accountability Act of 1996
20 (Public Law 104-191) and the Health Information Technology for
21 Economic and Clinical Health Act (Public Law 111-5).

22 (B) A provider of health care governed by the Confidentiality
23 of Medical Information Act (Part 2.6 (commencing with Section
24 56) of Division 1) or a covered entity governed by the privacy,
25 security, and breach notification rules issued by the United States
26 Department of Health and Human Services, Parts 160 and 164 of
27 Title 45 of the Code of Federal Regulations, established pursuant
28 to the Health Insurance Portability and Accountability Act of 1996
29 (Public Law 104-191), to the extent the provider or covered entity
30 maintains patient information in the same manner as medical
31 information or protected health information as described in
32 subparagraph (A) of this section.

33 (C) Personal information collected as part of a clinical trial or
34 other biomedical research study subject to, or conducted in
35 accordance with, the Federal Policy for the Protection of Human
36 Subjects, also known as the Common Rule, pursuant to good
37 clinical practice guidelines issued by the International Council for
38 Harmonisation or pursuant to human subject protection
39 requirements of the United States Food and Drug Administration,
40 provided that the information is not sold or shared in a manner not

1 permitted by this subparagraph, and, if it is inconsistent, that
2 participants be informed of that use and provide consent.

3 (2) For purposes of this subdivision, the definitions of “medical
4 information” and “provider of health care” in Section 56.05 shall
5 apply and the definitions of “business associate,” “covered entity,”
6 and “protected health information” in Section 160.103 of Title 45
7 of the Code of Federal Regulations shall apply.

8 (d) (1) This title shall not apply to an activity involving the
9 collection, maintenance, disclosure, sale, communication, or use
10 of any personal information bearing on a consumer’s
11 creditworthiness, credit standing, credit capacity, character, general
12 reputation, personal characteristics, or mode of living by a
13 consumer reporting agency, as defined in subdivision (f) of Section
14 1681a of Title 15 of the United States Code, by a furnisher of
15 information, as set forth in Section 1681s-2 of Title 15 of the
16 United States Code, who provides information for use in a
17 consumer report, as defined in subdivision (d) of Section 1681a
18 of Title 15 of the United States Code, and by a user of a consumer
19 report as set forth in Section 1681b of Title 15 of the United States
20 Code.

21 (2) Paragraph (1) shall apply only to the extent that such activity
22 involving the collection, maintenance, disclosure, sale,
23 communication, or use of such information by that agency,
24 furnisher, or user is subject to regulation under the Fair Credit
25 Reporting Act, Section 1681 et seq., Title 15 of the United States
26 Code and the information is not collected, maintained, used,
27 communicated, disclosed, or sold except as authorized by the Fair
28 Credit Reporting Act.

29 (3) This subdivision shall not apply to Section 1798.150.

30 (e) This title shall not apply to personal information collected,
31 processed, sold, or disclosed subject to the federal
32 Gramm-Leach-Bliley Act (Public Law 106-102), and implementing
33 regulations, or the California Financial Information Privacy Act
34 (Division 1.4 (commencing with Section 4050) of the Financial
35 Code), or the federal Farm Credit Act of 1971 (as amended in 12
36 U.S.C. 2001-2279cc and implementing regulations, 12 C.F.R. 600,
37 et seq.). This subdivision shall not apply to Section 1798.150.

38 (f) This title shall not apply to personal information collected,
39 processed, sold, or disclosed pursuant to the Driver’s Privacy

1 Protection Act of 1994 (18 U.S.C. Sec. 2721 et seq.). This
2 subdivision shall not apply to Section 1798.150.

3 (g) (1) Section 1798.120 shall not apply to vehicle information
4 or ownership information retained or shared between a new motor
5 vehicle dealer, as defined in Section 426 of the Vehicle Code, and
6 the vehicle's manufacturer, as defined in Section 672 of the Vehicle
7 Code, if the vehicle information or ownership information is shared
8 for the purpose of effectuating, or in anticipation of effectuating,
9 a vehicle repair covered by a vehicle warranty or a recall conducted
10 pursuant to Sections 30118 to 30120, inclusive, of Title 49 of the
11 United States Code, provided that the new motor vehicle dealer
12 or vehicle manufacturer with which that vehicle information or
13 ownership information is shared does not sell, share, or use that
14 information for any other purpose.

15 (2) Section 1798.120 shall not apply to vessel information or
16 ownership information retained or shared between a vessel dealer
17 and the vessel's manufacturer, as defined in Section 651 of the
18 Harbors and Navigation Code, if the vessel information or
19 ownership information is shared for the purpose of effectuating,
20 or in anticipation of effectuating, a vessel repair covered by a vessel
21 warranty or a recall conducted pursuant to Section 4310 of Title
22 46 of the United States Code, provided that the vessel dealer or
23 vessel manufacturer with which that vessel information or
24 ownership information is shared does not sell, share, or use that
25 information for any other purpose.

26 (3) For purposes of this subdivision:

27 (A) "Ownership information" means the name or names of the
28 registered owner or owners and the contact information for the
29 owner or owners.

30 (B) "Vehicle information" means the vehicle information
31 number, make, model, year, and odometer reading.

32 (C) "Vessel dealer" means a person who is engaged, wholly or
33 in part, in the business of selling or offering for sale, buying or
34 taking in trade for the purpose of resale, or exchanging, any vessel
35 or vessels, as defined in Section 651 of the Harbors and Navigation
36 Code, and receives or expects to receive money, profit, or any
37 other thing of value.

38 (D) "Vessel information" means the hull identification number,
39 model, year, month and year of production, and information
40 describing any of the following equipment as shipped, transferred,

1 or sold from the place of manufacture, including all attached parts
2 and accessories:

- 3 (i) An inboard engine.
- 4 (ii) An outboard engine.
- 5 (iii) A stern drive unit.
- 6 (iv) An inflatable personal floatation device approved under
7 Section 160.076 of Title 46 of the Code of Federal Regulations.

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

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

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

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

30 (i) (1) A business that discloses personal information to a
31 service provider or contractor in compliance with this title shall
32 not be liable under this title if the service provider or contractor
33 receiving the personal information uses it in violation of the
34 restrictions set forth in the title, provided that, at the time of
35 disclosing the personal information, the business does not have
36 actual knowledge, or reason to believe, that the service provider
37 or contractor intends to commit such a violation. A service provider
38 or contractor shall likewise not be liable under this title for the
39 obligations of a business for which it provides services as set forth

1 in this title provided that the service provider or contractor shall
2 be liable for its own violations of this title.

3 (2) A business that discloses personal information of a consumer,
4 with the exception of consumers who have exercised their right to
5 opt out of the sale or sharing of their personal information,
6 consumers who have limited the use or disclosure of their sensitive
7 personal information, and minor consumers who have not opted
8 in to the collection or sale of their personal information, to a third
9 party pursuant to a written contract that requires the third party to
10 provide the same level of protection of the consumer's rights under
11 this title as provided by the business shall not be liable under this
12 title if the third party receiving the personal information uses it in
13 violation of the restrictions set forth in this title provided that, at
14 the time of disclosing the personal information, the business does
15 not have actual knowledge, or reason to believe, that the third party
16 intends to commit such a violation.

17 (j) This title shall not be construed to require a business, service
18 provider, or contractor to:

19 (1) Reidentify or otherwise link information that, in the ordinary
20 course of business, is not maintained in a manner that would be
21 considered personal information.

22 (2) Retain any personal information about a consumer if, in the
23 ordinary course of business, that information about the consumer
24 would not be retained.

25 (3) Maintain information in identifiable, linkable, or associable
26 form, or collect, obtain, retain, or access any data or technology,
27 in order to be capable of linking or associating a verifiable
28 consumer request with personal information.

29 (k) The rights afforded to consumers and the obligations
30 imposed on the business in this title shall not adversely affect the
31 rights and freedoms of other natural persons. A verifiable consumer
32 request for specific pieces of personal information pursuant to
33 Section 1798.110, to delete a consumer's personal information
34 pursuant to Section 1798.105, or to correct inaccurate personal
35 information pursuant to Section 1798.106, shall not extend to
36 personal information about the consumer that belongs to, or the
37 business maintains on behalf of, another natural person. A business
38 may rely on representations made in a verifiable consumer request
39 as to rights with respect to personal information and is under no
40 legal requirement to seek out other persons that may have or claim

1 to have rights to personal information, and a business is under no
2 legal obligation under this title or any other provision of law to
3 take any action under this title in the event of a dispute between
4 or among persons claiming rights to personal information in the
5 business's possession.

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

11 (m) (1) This title shall not apply to any of the following:

12 (A) Personal information that is collected by a business about
13 a natural person in the course of the natural person acting as a job
14 applicant to, an employee of, owner of, director of, officer of,
15 medical staff member of, or independent contractor of, that
16 business to the extent that the natural person's personal information
17 is collected and used by the business solely within the context of
18 the natural person's role or former role as a job applicant to, an
19 employee of, owner of, director of, officer of, medical staff member
20 of, or an independent contractor of, that business.

21 (B) Personal information that is collected by a business that is
22 emergency contact information of the natural person acting as a
23 job applicant to, an employee of, owner of, director of, officer of,
24 medical staff member of, or independent contractor of, that
25 business to the extent that the personal information is collected
26 and used solely within the context of having an emergency contact
27 on file.

28 (C) Personal information that is necessary for the business to
29 retain to administer benefits for another natural person relating to
30 the natural person acting as a job applicant to, an employee of,
31 owner of, director of, officer of, medical staff member of, or
32 independent contractor of, that business to the extent that the
33 personal information is collected and used solely within the context
34 of administering those benefits.

35 (2) For purposes of this subdivision:

36 (A) "Independent contractor" means a natural person who
37 provides any service to a business pursuant to a written contract.

38 (B) "Director" means a natural person designated in the articles
39 of incorporation as director, or elected by the incorporators and

1 natural persons designated, elected, or appointed by any other
2 name or title to act as directors, and their successors.

3 (C) “Medical staff member” means a licensed physician and
4 surgeon, dentist, or podiatrist, licensed pursuant to Division 2
5 (commencing with Section 500) of the Business and Professions
6 Code and a clinical psychologist as defined in Section 1316.5 of
7 the Health and Safety Code.

8 (D) “Officer” means a natural person elected or appointed by
9 the board of directors to manage the daily operations of a
10 corporation, including a chief executive officer, president,
11 secretary, or treasurer.

12 (E) “Owner” means a natural person who meets one of the
13 following criteria:

14 (i) Has ownership of, or the power to vote, more than 50 percent
15 of the outstanding shares of any class of voting security of a
16 business.

17 (ii) Has control in any manner over the election of a majority
18 of the directors or of individuals exercising similar functions.

19 (iii) Has the power to exercise a controlling influence over the
20 management of a company.

21 (3) This subdivision shall not apply to subdivision (a) of Section
22 1798.100 or Section 1798.150.

23 (4) This subdivision shall become inoperative on January 1,
24 2023.

25 (n) (1) The obligations imposed on businesses by Sections
26 1798.100, 1798.105, 1798.106, 1798.110, 1798.115, 1798.121,
27 1798.130, and 1798.135 shall not apply to personal information
28 reflecting a written or verbal communication or a transaction
29 between the business and the consumer, where the consumer is a
30 natural person who acted or is acting as an employee, owner,
31 director, officer, or independent contractor of a company,
32 partnership, sole proprietorship, nonprofit, or government agency
33 and whose communications or transaction with the business occur
34 solely within the context of the business conducting due diligence
35 regarding, or providing or receiving a product or service to or from
36 such company, partnership, sole proprietorship, nonprofit, or
37 government agency.

38 (2) For purposes of this subdivision:

39 (A) “Independent contractor” means a natural person who
40 provides any service to a business pursuant to a written contract.

(B) “Director” means a natural person designated in the articles of incorporation as such or elected by the incorporators and natural persons designated, elected, or appointed by any other name or title to act as directors, and their successors.

(C) “Officer” means a natural person elected or appointed by the board of directors to manage the daily operations of a corporation, such as a chief executive officer, president, secretary, or treasurer.

(D) “Owner” means a natural person who meets one of the following:

(i) Has ownership of, or the power to vote, more than 50 percent of the outstanding shares of any class of voting security of a business.

(ii) Has control in any manner over the election of a majority of the directors or of individuals exercising similar functions.

(iii) Has the power to exercise a controlling influence over the management of a company.

(3) This subdivision shall become inoperative on January 1, 2023.

(o) (1) Sections 1798.105 and 1798.120 shall not apply to a commercial credit reporting agency’s collection, processing, sale, or disclosure of business controller information to the extent the commercial credit reporting agency uses the business controller information solely to identify the relationship of a consumer to a business that the consumer owns or contact the consumer only in the consumer’s role as the owner, director, officer, or management employee of the business.

(2) For the purposes of this subdivision:

(A) “Business controller information” means the name or names of the owner or owners, director, officer, or management employee of a business and the contact information, including a business title, for the owner or owners, director, officer, or management employee.

(B) “Commercial credit reporting agency” has the meaning set forth in subdivision (b) of Section 1785.42.

(C) “Owner” means a natural person that meets one of the following:

(i) Has ownership of, or the power to vote, more than 50 percent of the outstanding shares of any class of voting security of a business.

1 (ii) Has control in any manner over the election of a majority
2 of the directors or of individuals exercising similar functions.

3 (iii) Has the power to exercise a controlling influence over the
4 management of a company.

5 (D) “Director” means a natural person designated in the articles
6 of incorporation of a business as director, or elected by the
7 incorporators and natural persons designated, elected, or appointed
8 by any other name or title to act as directors, and their successors.

9 (E) “Officer” means a natural person elected or appointed by
10 the board of directors of a business to manage the daily operations
11 of a corporation, including a chief executive officer, president,
12 secretary, or treasurer.

13 (F) “Management employee” means a natural person whose
14 name and contact information is reported to or collected by a
15 commercial credit reporting agency as the primary manager of a
16 business and used solely within the context of the natural person’s
17 role as the primary manager of the business.

18 (p) The obligations imposed on businesses in Sections 1798.105,
19 1798.106, 1798.110, and 1798.115 shall not apply to household
20 data.

21 (q) (1) This title does not require a business to comply with a
22 verifiable consumer request to delete a consumer’s personal
23 information under Section 1798.105 to the extent the verifiable
24 consumer request applies to a student’s grades, educational scores,
25 or educational test results that the business holds on behalf of a
26 local educational agency, as defined in subdivision (d) of Section
27 49073.1 of the Education Code, at which the student is currently
28 enrolled. If a business does not comply with a request pursuant to
29 this section, it shall notify the consumer that it is acting pursuant
30 to this exception.

31 (2) This title does not require, in response to a request pursuant
32 to Section 1798.110, that a business disclose on educational
33 standardized assessment or educational assessment or a consumer’s
34 specific responses to the educational standardized assessment or
35 educational assessment if consumer access, possession, or control
36 would jeopardize the validity and reliability of that educational
37 standardized assessment or educational assessment. If a business
38 does not comply with a request pursuant to this section, it shall
39 notify the consumer that it is acting pursuant to this exception.

40 (3) For purposes of this subdivision:

(A) “Educational standardized assessment or educational assessment” means a standardized or nonstandardized quiz, test, or other assessment used to evaluate students in or for entry to kindergarten and grades 1 to 12, inclusive, schools, postsecondary institutions, vocational programs, and postgraduate programs that are accredited by an accrediting agency or organization recognized by the State of California or the United States Department of Education, as well as certification and licensure examinations used to determine competency and eligibility to receive certification or licensure from a government agency or government certification body.

(B) “Jeopardize the validity and reliability of that educational standardized assessment or educational assessment” means releasing information that would provide an advantage to the consumer who has submitted a verifiable consumer request or to another natural person.

(r) Sections 1798.105 and 1798.120 shall not apply to a business’s use, disclosure, or sale of particular pieces of a consumer’s personal information if the consumer has consented to the business’s use, disclosure, or sale of that information to produce a physical item, including a school yearbook containing the consumer’s photograph if:

(1) The business has incurred significant expense in reliance on the consumer’s consent.

(2) Compliance with the consumer’s request to opt out of the sale of the consumer’s personal information or to delete the consumer’s personal information would not be commercially reasonable.

(3) The business complies with the consumer’s request as soon as it is commercially reasonable to do so.

SEC. 6. Section 1798.185 of the Civil Code is amended to read:

1798.185. Regulations

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

(1) Updating or adding categories of personal information to those enumerated in subdivision (c) of Section 1798.130 and subdivision-(x) (y) of Section 1798.140, and updating or adding

categories of sensitive personal information to those enumerated in subdivision ~~(ag)~~ (ai) of Section 1798.140 in order to address changes in technology, data collection practices, obstacles to implementation, and privacy concerns.

(2) Updating as needed the definitions of “deidentified” and “unique identifier” to address changes in technology, data collection, obstacles to implementation, and privacy concerns, and adding, modifying, or deleting categories to the definition of designated methods for submitting requests to facilitate a consumer’s ability to obtain information from a business pursuant to Section 1798.130. The authority to update the definition of “deidentified” shall not apply to deidentification standards set forth in Section 164.514 of Title 45 of the Code of Federal Regulations, where such information previously was “protected health information” as defined in Section 160.103 of Title 45 of the Code of Federal Regulations.

(3) Establishing any exceptions necessary to comply with state or federal law, including, but not limited to, those relating to trade secrets and intellectual property rights, within one year of passage of this title and as needed thereafter, with the intention that trade secrets should not be disclosed in response to a verifiable consumer request.

(4) Establishing rules and procedures for the following:

(A) To facilitate and govern the submission of a request by a consumer to opt out of the sale or sharing of personal information pursuant to Section 1798.120 and to limit the use of a consumer’s sensitive personal information pursuant to Section 1798.121 to ensure that consumers have the ability to exercise their choices without undue burden and to prevent business from engaging in deceptive or harassing conduct, including in retaliation against consumers for exercising their rights, while allowing businesses to inform consumers of the consequences of their decision to opt out of the sale or sharing of their personal information or to limit the use of their sensitive personal information.

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

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

(5) Adjusting the monetary thresholds, in January of every odd-numbered year to reflect any increase in the Consumer Price Index, in: subparagraph (A) of paragraph (1) of subdivision (e) of Section 1798.140; subparagraph (A) of paragraph (1) of subdivision (a) of Section 1798.150; subdivision (a) of Section 1798.155; Section 1798.199.25; and subdivision (a) of Section 1798.199.90.

(6) Establishing rules, procedures, and any exceptions necessary to ensure that the notices and information that businesses are required to provide pursuant to this title are provided in a manner that may be easily understood by the average consumer, are accessible to consumers with disabilities, and are available in the language primarily used to interact with the consumer, including establishing rules and guidelines regarding financial incentives within one year of passage of this title and as needed thereafter.

(7) Establishing rules and procedures to further the purposes of Sections 1798.105, 1798.106, 1798.110, and 1798.115 and to facilitate a consumer's or the consumer's authorized agent's ability to delete personal information, correct inaccurate personal information pursuant to Section 1798.106, or obtain information pursuant to Section 1798.130, with the goal of minimizing the administrative burden on consumers, taking into account available technology, security concerns, and the burden on the business, to govern a business's determination that a request for information received from a consumer is a verifiable consumer request, including treating a request submitted through a password-protected account maintained by the consumer with the business while the consumer is logged into the account as a verifiable consumer request and providing a mechanism for a consumer who does not maintain an account with the business to request information through the business's authentication of the consumer's identity, within one year of passage of this title and as needed thereafter.

(8) Establishing how often, and under what circumstances, a consumer may request a correction pursuant to Section 1798.106, including standards governing the following:

(A) How a business responds to a request for correction, including exceptions for requests to which a response is impossible or would involve disproportionate effort, and requests for correction of accurate information.

(B) How concerns regarding the accuracy of the information may be resolved.

1 (C) The steps a business may take to prevent fraud.

2 (D) If a business rejects a request to correct personal information
3 collected and analyzed concerning a consumer's health, the right
4 of a consumer to provide a written addendum to the business with
5 respect to any item or statement regarding any such personal
6 information that the consumer believes to be incomplete or
7 incorrect. The addendum shall be limited to 250 words per alleged
8 incomplete or incorrect item and shall clearly indicate in writing
9 that the consumer requests the addendum to be made a part of the
10 consumer's record.

11 (9) Establishing the standard to govern a business's
12 determination, pursuant to subparagraph (B) of paragraph (2) of
13 subdivision (a) of Section 1798.130, that providing information
14 beyond the 12-month period in a response to a verifiable consumer
15 request is impossible or would involve a disproportionate effort.

16 (10) Issuing regulations further defining and adding to the
17 business purposes, including other notified purposes, for which
18 businesses, service providers, and contractors may use consumers'
19 personal information consistent with consumers' expectations, and
20 further defining the business purposes for which service providers
21 and contractors may combine consumers' personal information
22 obtained from different sources, except as provided for in paragraph
23 (6) of subdivision (f) of Section 1798.140.

24 (11) Issuing regulations identifying those business purposes,
25 including other notified purposes, for which service providers and
26 contractors may use consumers' personal information received
27 pursuant to a written contract with a business, for the service
28 provider's or contractor's own business purposes, with the goal
29 of maximizing consumer privacy.

30 (12) Issuing regulations to further define "intentionally
31 interacts," with the goal of maximizing consumer privacy.

32 (13) Issuing regulations to further define "precise geolocation,"
33 including if the size defined is not sufficient to protect consumer
34 privacy in sparsely populated areas or when the personal
35 information is used for normal operational purposes, including
36 billing.

37 (14) Issuing regulations to define the term "specific pieces of
38 information obtained from the consumer" with the goal of
39 maximizing a consumer's right to access relevant personal
40 information while minimizing the delivery of information to a

1 consumer that would not be useful to the consumer, including
2 system log information and other technical data. For delivery of
3 the most sensitive personal information, the regulations may require
4 a higher standard of authentication provided that the agency shall
5 monitor the impact of the higher standard on the right of consumers
6 to obtain their personal information to ensure that the requirements
7 of verification do not result in the unreasonable denial of verifiable
8 consumer requests.

9 (15) Issuing regulations requiring businesses whose processing
10 of consumers' personal information presents significant risk to
11 consumers' privacy or security, to:

12 (A) Perform a cybersecurity audit on an annual basis, including
13 defining the scope of the audit and establishing a process to ensure
14 that audits are thorough and independent. The factors to be
15 considered in determining when processing may result in
16 significant risk to the security of personal information shall include
17 the size and complexity of the business and the nature and scope
18 of processing activities.

19 (B) Submit to the California Privacy Protection Agency on a
20 regular basis a risk assessment with respect to their processing of
21 personal information, including whether the processing involves
22 sensitive personal information, and identifying and weighing the
23 benefits resulting from the processing to the business, the
24 consumer, other stakeholders, and the public, against the potential
25 risks to the rights of the consumer associated with that processing,
26 with the goal of restricting or prohibiting the processing if the risks
27 to privacy of the consumer outweigh the benefits resulting from
28 processing to the consumer, the business, other stakeholders, and
29 the public. Nothing in this section shall require a business to
30 divulge trade secrets.

31 (16) Issuing regulations governing access and opt-out rights
32 with respect to businesses' use of automated decisionmaking
33 technology, including profiling and requiring businesses' response
34 to access requests to include meaningful information about the
35 logic involved in those decisionmaking processes, as well as a
36 description of the likely outcome of the process with respect to
37 the consumer.

38 (17) Issuing regulations to further define a "law enforcement
39 agency-approved investigation" for purposes of the exception in

1 subparagraph (B) of paragraph (1) of subdivision (a) of Section
2 1798.145.

3 (18) Issuing regulations to define the scope and process for the
4 exercise of the agency's audit authority, to establish criteria for
5 selection of persons to audit, and to protect consumers' personal
6 information from disclosure to an auditor in the absence of a court
7 order, warrant, or subpoena.

8 (19) (A) Issuing regulations to define the requirements and
9 technical specifications for an opt-out preference signal sent by a
10 platform, technology, or mechanism, to indicate a consumer's
11 intent to opt out of the sale or sharing of the consumer's personal
12 information and to limit the use or disclosure of the consumer's
13 sensitive personal information. The requirements and specifications
14 for the opt-out preference signal should be updated from time to
15 time to reflect the means by which consumers interact with
16 businesses, and should:

17 (i) Ensure that the manufacturer of a platform or browser or
18 device that sends the opt-out preference signal cannot unfairly
19 disadvantage another business.

20 (ii) Ensure that the opt-out preference signal is
21 consumer-friendly, clearly described, and easy to use by an average
22 consumer and does not require that the consumer provide additional
23 information beyond what is necessary.

24 (iii) Clearly represent a consumer's intent and be free of defaults
25 constraining or presupposing that intent.

26 (iv) Ensure that the opt-out preference signal does not conflict
27 with other commonly used privacy settings or tools that consumers
28 may employ.

29 (v) Provide a mechanism for the consumer to selectively consent
30 to a business's sale of the consumer's personal information, or the
31 use or disclosure of the consumer's sensitive personal information,
32 without affecting the consumer's preferences with respect to other
33 businesses or disabling the opt-out preference signal globally.

34 (vi) State that in the case of a page or setting view that the
35 consumer accesses to set the opt-out preference signal, the
36 consumer should see up to three choices, including:

37 (I) Global opt out from sale and sharing of personal information,
38 including a direction to limit the use of sensitive personal
39 information.

1 (II) Choice to “Limit the Use of My Sensitive Personal
2 Information.”

3 (III) Choice titled “Do Not Sell/Do Not Share My Personal
4 Information for Cross-Context Behavioral Advertising.”

5 (B) Issuing regulations to establish technical specifications for
6 an opt-out preference signal that allows the consumer, or the
7 consumer’s parent or guardian, to specify that the consumer is less
8 than 13 years of age or at least 13 years of age and less than 16
9 years of age.

10 (C) Issuing regulations, with the goal of strengthening consumer
11 privacy while considering the legitimate operational interests of
12 businesses, to govern the use or disclosure of a consumer’s
13 sensitive personal information, notwithstanding the consumer’s
14 direction to limit the use or disclosure of the consumer’s sensitive
15 personal information, including:

16 (i) Determining any additional purposes for which a business
17 may use or disclose a consumer’s sensitive personal information.

18 (ii) Determining the scope of activities permitted under
19 paragraph (8) of subdivision (f) of Section 1798.140, as authorized
20 by subdivision (a) of Section 1798.121, to ensure that the activities
21 do not involve health-related research.

22 (iii) Ensuring the functionality of the business’s operations.

23 (iv) Ensuring that the exemption in subdivision (d) of Section
24 1798.121 for sensitive personal information applies to information
25 that is collected or processed incidentally, or without the purpose
26 of inferring characteristics about a consumer, while ensuring that
27 businesses do not use the exemption for the purpose of evading
28 consumers’ rights to limit the use and disclosure of their sensitive
29 personal information under Section 1798.121.

30 (20) Issuing regulations to govern how a business that has
31 elected to comply with subdivision (b) of Section 1798.135
32 responds to the opt-out preference signal and provides consumers
33 with the opportunity subsequently to consent to the sale or sharing
34 of their personal information or the use and disclosure of their
35 sensitive personal information for purposes in addition to those
36 authorized by subdivision (a) of Section 1798.121. The regulations
37 should:

38 (A) Strive to promote competition and consumer choice and be
39 technology neutral.

1 (B) Ensure that the business does not respond to an opt-out
2 preference signal by:

3 (i) Intentionally degrading the functionality of the consumer
4 experience.

5 (ii) Charging the consumer a fee in response to the consumer's
6 opt-out preferences.

7 (iii) Making any products or services not function properly or
8 fully for the consumer, as compared to consumers who do not use
9 the opt-out preference signal.

10 (iv) Attempting to coerce the consumer to opt in to the sale or
11 sharing of the consumer's personal information, or the use or
12 disclosure of the consumer's sensitive personal information, by
13 stating or implying that the use of the opt-out preference signal
14 will adversely affect the consumer as compared to consumers who
15 do not use the opt-out preference signal, including stating or
16 implying that the consumer will not be able to use the business's
17 products or services or that those products or services may not
18 function properly or fully.

19 (v) Displaying any notification or pop-up in response to the
20 consumer's opt-out preference signal.

21 (C) Ensure that any link to a web page or its supporting content
22 that allows the consumer to consent to opt in:

23 (i) Is not part of a popup, notice, banner, or other intrusive
24 design that obscures any part of the web page the consumer
25 intended to visit from full view or that interferes with or impedes
26 in any way the consumer's experience visiting or browsing the
27 web page or website the consumer intended to visit.

28 (ii) Does not require or imply that the consumer must click the
29 link to receive full functionality of any products or services,
30 including the website.

31 (iii) Does not make use of any dark patterns.

32 (iv) Applies only to the business with which the consumer
33 intends to interact.

34 (D) Strive to curb coercive or deceptive practices in response
35 to an opt-out preference signal but should not unduly restrict
36 businesses that are trying in good faith to comply with Section
37 1798.135.

38 (21) Review existing Insurance Code provisions and regulations
39 relating to consumer privacy, except those relating to insurance
40 rates or pricing, to determine whether any provisions of the

1 Insurance Code provide greater protection to consumers than the
2 provisions of this title. Upon completing its review, the agency
3 shall adopt a regulation that applies only the more protective
4 provisions of this title to insurance companies. For the purpose of
5 clarity, the Insurance Commissioner shall have jurisdiction over
6 insurance rates and pricing.

7 (22) Harmonizing the regulations governing opt-out
8 mechanisms, notices to consumers, and other operational
9 mechanisms in this title to promote clarity and the functionality
10 of this title for consumers.

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

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

17 (d) Notwithstanding subdivision (a), the timeline for adopting
18 final regulations required by the act adding this subdivision shall
19 be July 1, 2022. Beginning the later of July 1, 2021, or six months
20 after the agency provides notice to the Attorney General that it is
21 prepared to begin rulemaking under this title, the authority assigned
22 to the Attorney General to adopt regulations under this section
23 shall be exercised by the California Privacy Protection Agency.
24 Notwithstanding any other law, civil and administrative
25 enforcement of the provisions of law added or amended by this
26 act shall not commence until July 1, 2023, and shall only apply to
27 violations occurring on or after that date. Enforcement of provisions
28 of law contained in the California Consumer Privacy Act of 2018
29 amended by this act shall remain in effect and shall be enforceable
30 until the same provisions of this act become enforceable.

31 SEC. 7. Section 1798.199.40 of the Civil Code is amended to
32 read:

33 1798.199.40. The agency shall perform the following functions:

34 (a) Administer, implement, and enforce through administrative
35 actions this title.

36 (b) On and after the later of July 1, 2021, or within six months
37 of the agency providing the Attorney General with notice that it
38 is prepared to assume rulemaking responsibilities under this title,
39 adopt, amend, and rescind regulations pursuant to Section 1798.185
40 to carry out the purposes and provisions of the California Consumer

1 Privacy Act of 2018, including regulations specifying
2 recordkeeping requirements for businesses to ensure compliance
3 with this title.

4 (c) Through the implementation of this title, protect the
5 fundamental privacy rights of natural persons with respect to the
6 use of their personal information.

7 (d) Promote public awareness and understanding of the risks,
8 rules, responsibilities, safeguards, and rights in relation to the
9 collection, use, sale, and disclosure of personal information,
10 including the rights of minors with respect to their own
11 information, and provide a public report summarizing the risk
12 assessments filed with the agency pursuant to paragraph (15) of
13 subdivision (a) of Section 1798.185 while ensuring that data
14 security is not compromised.

15 (e) Provide guidance to consumers regarding their rights under
16 this title.

17 (f) Provide guidance to businesses regarding their duties and
18 responsibilities under this title and appoint a Chief Privacy Auditor
19 to conduct audits of businesses to ensure compliance with this title
20 pursuant to regulations adopted pursuant to paragraph (18) of
21 subdivision (a) of Section 1798.185.

22 (g) Provide technical assistance and advice to the Legislature,
23 upon request, with respect to privacy-related legislation.

24 (h) Monitor relevant developments relating to the protection of
25 personal information and, in particular, the development of
26 information and communication technologies and commercial
27 practices.

28 (i) Cooperate with other agencies with jurisdiction over privacy
29 laws and with data processing authorities in California, other states,
30 territories, and countries to ensure consistent application of privacy
31 protections.

32 (j) Establish a mechanism pursuant to which persons doing
33 business in California that do not meet the definition of business
34 set forth in paragraph (1), (2), or (3) of subdivision (e) of Section
35 1798.140 may voluntarily certify that they are in compliance with
36 this title, as set forth in paragraph (4) of subdivision (e) of Section
37 1798.140, and make a list of those entities available to the public.

38 (k) Solicit, review, and approve applications for grants to the
39 extent funds are available pursuant to paragraph (2) of subdivision
40 (b) of Section 1798.160.

1 (l) Perform all other acts necessary or appropriate in the exercise
2 of its power, authority, and jurisdiction and seek to balance the
3 goals of strengthening consumer privacy while giving attention to
4 the impact on businesses.

5 SEC. 8. Section 1798.199.41 is added to the Civil Code, to
6 read:

7 1798.199.41. (a) ~~A~~*Except as provided in subdivision (c), a*
8 developer shall not use the personal information of a consumer
9 described by subdivision (c) of Section 1798.120 to train or ~~retrain~~
10 *fine-tune* an artificial intelligence system or service unless the
11 consumer or the consumer's parent or guardian has affirmatively
12 authorized, in the same manner as described in subdivision (c) of
13 Section 1798.120, that use of the consumer's personal information.

14 (b) If affirmative authorization is given pursuant to this section,
15 a developer shall deidentify and aggregate the personal information
16 subject to the authorization before using the personal information
17 to train or ~~retrain~~ *fine-tune* an artificial intelligence system or
18 service.

19 (c) *A developer shall not be required to obtain affirmative*
20 *authorization pursuant to subdivision (a) if both of the following*
21 *conditions are met:*

22 (1) *Training or fine-tuning an artificial intelligence system or*
23 *service using the consumer's personal information is necessary*
24 *to protect the consumer from imminent threats to their physical*
25 *health or safety.*

26 (2) *The developer deidentifies and aggregates the personal*
27 *information of the consumer prior to training or fine-tuning an*
28 *artificial intelligence system or service.*

29 SEC. 9. The Legislature finds and declares that this act furthers
30 the purposes and intent of The California Privacy Rights Act of
31 2020.